

BETWEEN**MITCHELL DUNNE****PLAINTIFF**

AND
TRUSTEES AND BOARD OF MANAGEMENT OF
ST. PAUL'S SECONDARY SCHOOL

DEFENDANT**JUDGMENT of Mr. Justice Barr delivered on the 24th day of January, 2019****Introduction**

1. In 2014, the plaintiff was a transition year student in St. Paul's Secondary School, Monasterevin, Co. Kildare. His action arises out of an accident which occurred while he was participating in a PE class on the morning of 2nd May, 2014. The plaintiff was aged sixteen years and five months at that time. In the course of the lesson, the plaintiff was required to participate in a high jump exercise. It is common case that while undertaking a jump in the course of the class, he experienced severe pain in his right knee after he had taken off from the ground and was in the air going over the jump. The exact mechanism of the injury will be examined in greater detail in due course.

2. After the accident, the plaintiff was taken by his mother to hospital, where x-rays revealed that he had suffered an avulsion fracture to the lateral tibial plateau of the right knee. This required surgical treatment in the form of an open reduction and internal fixation of the fracture site.

3. Arising out of this injury, the plaintiff has issued proceedings against the school authorities. He alleges that the injury was caused due to the negligence and breach of duty on the part of the PE teacher, Ms. Elaine Mahoney, for failure on her part to instruct the class adequately or at all as to the correct procedure to be adopted when doing the high jump and for failure to conduct the high jump exercise in a safe and proper manner.

4. The defendants and, in particular, Ms. Mahoney, have denied that there was any negligence on her part in supervising the PE class on the day in question. There is a direct conflict between Ms. Mahoney and the plaintiff in relation to the level of instruction that she had given prior to the class undertaking the high jump exercise. In these circumstances, it is necessary look at the case made by each of the parties in some detail.

The Plaintiff's Case

5. The plaintiff alleged that there was negligence on the part of the school authorities and, in particular, on the part of Ms. Mahoney in a number of respects. Firstly, he claimed that at the time of the accident he was 6ft, 1inch tall and weighed approximately 17 stone. It was the plaintiff's case, which was backed up by his expert witness, that it was inappropriate to ask a young person of that height and weight, who had a body mass index of 32, to undertake the high jump exercise in the first place.

6. Secondly, the plaintiff alleged that he had been forced to undertake the high jump routine on the morning in question, even though he had not wanted to participate in it. He did not allege that he had specifically asked to be excused from participating in the exercise, but he stated that it was effectively compulsory for students to participate in PE class.

7. Thirdly, the plaintiff alleged that there had been gross negligence on the part of Ms. Mahoney in her carrying out of the PE class on that morning. The plaintiff stated that on the morning in question, they had been due to go swimming in a nearby pool for their PE class. However, when the pool was not available for use by the school, Ms. Mahoney directed them to the gym instead.

8. The plaintiff stated that when they got to the gym, Ms. Mahoney assembled the high jump equipment. She told them from where to start their run up and where they should start their jump to clear the bar of the high jump. However, she did not give any further instruction. She did not give any demonstration of the method that should be adopted in making the jump itself. He stated that nobody mentioned that they should adopt the "step-over" technique, which is also known as the scissors technique. The plaintiff further stated that there was no warm up exercises done prior to the class commencing the high jump routine.

9. He stated that he did not participate in the initial jumps when the bar on the high jump had been placed at knee height. He simply hid at the back of queue, as he did not want to participate in the exercise. After the class had participated in the first jump, the height of the bar, which the plaintiff said was made by stringing a piece of material between two poles, was raised by a small amount.

10. The plaintiff stated that the students were simply put standing in front of the high jump some meters back and were told to run and jump over it. Other than telling them where to start the run and where to start their lift off to clear the jump, no further instruction was given. They were just told to copy the person in front. They were not told to approach the jump from an angle. He said that they just ran straight at the jump head on.

11. The plaintiff stated that when the jump was at approximately mid-thigh height, he made his first attempt at the jump. He ran straight towards the jump and planted his right foot on the ground. As he lifted off and sailed through the air, he heard a crack and experienced severe pain. When he landed on the mats on the other side of the jump, he stated that his leg became caught in a gap between the two landing mats.

12. The plaintiff also made complaint in relation to the care which he received after the accident. He stated that Ms. Mahoney was very concerned about his injury and had sent for the Principal, Mr. Bergin. When Mr. Bergin arrived, he looked at the knee and stated that he thought that it was not fractured, but may be dislocated. He said that he would phone the plaintiff's mother and went off to do so. Thereafter, the plaintiff was left alone. Some friends put him sitting on a chair outside the gym. Sometime later, his mother arrived and it was agreed that he should be taken by her to hospital. His friends then put him in her car.

13. In cross examination, the plaintiff was challenged on a number of aspects of his account. In relation to his weight, two photographs were put to him. The first showed a picture of the school under 16 Gaelic football team. This photograph had been taken in November 2013. The plaintiff confirmed that he was the boy standing seven in from the left, in the second row on the photograph. He also confirmed that another photograph taken of four students in the science class, showed him sitting almost facing the camera, wearing a school jumper. That photograph had been taken in January 2014. The plaintiff did not agree that in those photographs he

did not appear to be anything like 17 stone in weight. He stated that he knew what weight he was at that time, because his mother had bought a new weighing scales some months prior to the accident. He and his mother had tried out the scales and he recalled that it recorded his weight at approximately 17 stone.

14. He accepted that he had been a member of the under 16 Gaelic football team in the school in 2013. He had also played Gaelic football with his club. He had also played on an informal rugby team in the school prior to the time of the accident.

15. It was put to the plaintiff that Ms. Mahoney would state that they had done a warm up on that morning, as had been done in all previous PE classes. The plaintiff stated that Ms. Mahoney had done a roll call at the beginning of the class, but there had been no warm up on that occasion. However, he did accept that there was usually a warm up at the beginning of PE class, but not on this occasion. It was put to the plaintiff that Ms. Mahoney would state that the warm up consisted of running the length of the gym, side stepping, high leg lifts, heel lifts, skipping and three quarter pace runs. The plaintiff stated that they did none of those things on the morning in question.

16. It was put to the plaintiff that Ms. Mahoney would state that the class was made up of 24 pupils, being 16 boys and 8 girls. She would state that as the girls did not want to participate in the high jump exercise, they were allowed sit on the bench at the side of the gym. The plaintiff accepted that the girls had not participated in the high jump that morning. He accepted that participation in the high jump was therefore not compulsory for all the students in the class.

17. The plaintiff denied that Ms. Mahoney had done any demonstration of the step-over manoeuvre when the rope was at knee height.

18. It was put to the plaintiff that Ms. Mahoney would state that he had completed three jumps without incident, prior to the jump on which he injured his knee. The plaintiff denied that that was correct. He stated that his first and only jump was the one on which he had injured his knee.

19. It was put to the plaintiff that Ms. Mahoney would state that she had remained with him at all times after the accident, until he departed with his mother in her car. The plaintiff stated that he could not actually recall whether she had been there all the time, as he had been in severe pain at that time. He did recall that Mr. Bergin had come to investigate the matter. He had gone to phone his mother and subsequently returned to him in the gym. In re-examination, the plaintiff stated that if he had been properly instructed how to do the high jump, he would not have objected to participating in it.

20. Evidence was given by Ms. Regina Dunne, the plaintiff's mother. She stated that they had purchased a new weighing scales some time prior to the accident. She and her son had tried it out. She recalled saying to him "*You don't look 17 stone*". She accepted that the plaintiff had been active prior to the time of the accident and in particular had played Gaelic football and some rugby.

21. She stated that when she arrived at the school, the plaintiff was sitting on a chair just outside the gym. There was no question of anyone calling an ambulance. However, it was obvious that the plaintiff had suffered a significant injury to his knee. She was going to bring him to hospital and when she turned around some of his friends had put him into the car. She stated that when Mr. Bergin phoned her some days later, she stated that an ambulance should have been called. She stated that she was somewhat annoyed that an ambulance had not been called that morning.

22. It was put to her that the defendant's expert, Dr. Warrington, would state that when the plaintiff had told him that the accident had occurred on his first attempt at clearing the high jump, she had stated that the plaintiff had told her that he had done more than one jump prior to the accident. She denied that she had said that to Dr. Warrington.

23. Expert evidence was called on behalf of the plaintiff from Mr. Desmond Broderick. He has two Master degrees, one in education and one in physical education. He was a teacher in both primary and secondary schools for over 35 years. He was also a lecturer in St. Patrick's College, Dublin City University, which trains primary school teachers. For the last number of years, he has worked as a consultant. He stated that based on the plaintiff's account of what had happened that morning, he was of opinion that there was a clear breach of duty by the defendants and in particular on the part of Ms. Mahoney. Firstly, the plaintiff had told him that he was 17 stone, 4 pounds and that his BMI was 32. He did not think that it was appropriate to ask such a person to participate in such an exercise.

24. The plaintiff had told him that there was no warm up on the morning in question. There had been no coaching or teaching as to the correct technique to adopt in doing the high jump. The plaintiff told him that they were just told by Ms. Mahoney to copy the person in front of them. Mr. Broderick stated that the high jump was a very specific skill. It is a technical event, for which a participant, particularly a beginner, would need proper instruction.

25. The plaintiff had further told him that there was no demonstration by the teacher on the morning in question. He stated that that was also inappropriate. When adopting proper procedure, a teacher should demonstrate a scissors jump prior to asking the students to do likewise.

26. In cross examination, it was put to the witness that from the photographs of the Gaelic football team taken in November 2013 and the photograph of the boys in the science class taken in January 2014, it did not appear that the plaintiff was anywhere near 17 stone at that time. The witness stated that it was difficult to judge a person's weight from photographs. However, he accepted that in neither photograph did the plaintiff look to be 17 stone.

27. Mr. Broderick accepted that the scissors technique was the most basic technique for starting the high jump. He also accepted that beginning the jump at knee height and raising it to mid-thigh, being approximately 2.5ft, was appropriate practice. He agreed that the proper procedure to be adopted in a PE class, would be to do a warm up beforehand, followed by a detailed explanation of the technique to be employed in carrying out the high jump, followed by a demonstration from the teacher. He accepted that the scissors technique was the accepted way to introduce beginners to the high jump. He further accepted that it would not be difficult for beginners to manage a jump of 2.5ft in height.

28. In re-examination, Mr. Broderick stated that if the students ran straight at the jump, that would have constituted bad practice, as the safe method of effecting the high jump was to run at it from an angle.

The Defendant's Evidence

29. Evidence was given on behalf of the defendants by the PE teacher, Ms. Elaine Mahoney. She qualified with a degree in Geography and PE from the University of Limerick in 2008. Thereafter, she had worked as a geography and PE teacher in the defendant's school.

She stated that she had no previous accidents involving any of her students in that time.

30. Ms. Mahoney stated that on the morning in question when the pool was not available for use by them, she directed the TY class to the gym. She decided they would do the high jump that day, as she had done the high jump in previous days with her first year, second year and third year classes. She erected the equipment consisting of two poles and an elasticated rope, as shown in the photographs attached to Dr. Warrington's report. However, there were two differences from those photographs; firstly, there were additional smaller mats placed around the perimeter of the two larger mats as shown in the photograph and secondly, they were not able to provide the elasticated rope on the day of the experts' meeting, but an example of the rope which they had used was shown in figure 6.

31. She stated that having taken the roll call, she placed a cone under the basketball net at the end of the hall and told the students that they were to assemble there prior to starting their run up. She stated that she instructed them how to do a simple step-over jump, with the bar at knee height. She then did a demonstration of this herself. She then asked if there were any questions. She recalled that one of the students asked if they could summersault over the jump, to which she replied in the negative. No other questions were asked. She stated that she instructed the students to run at the jump from an angle and to follow the path which had been shown in figure 3 of the photographs attached to Dr. Warrington's report.

32. Ms. Mahoney stated that the girls in the class did not want to participate in the exercise, so they were allowed to sit on a bench at the side of the hall. The remainder of the class assembled at the cone under the basketball net. One by one, they would move out from the assembly point to the right and run at the jump from an angle. She was standing directly behind the jump on the far side of the two large mats. When each of the boys had completed the first jump at knee height, the rope was raised by 1cm. She recalled that when the plaintiff came to make his fourth attempt, having previously done three successful jumps, he ran at the jump and planted his right foot on the ground and then lifted off into the air. While in the air, he let out a cry and landed on the mats on the far side of the jump. She knew that the plaintiff was injured and he appeared to be in severe pain. She went to his assistance and tried to reassure him. She sent one of the students to fetch Mr. Bergin, the Principal.

33. After some moments, Mr. Bergin arrived. He sent for a Mr. Ryan, who was another teacher, who they thought would have some knowledge of sporting injuries, as he had been an inter-county hurler. He also arrived on the scene. Mr. Bergin then left to telephone the plaintiff's mother. He opened the school gates so that she could drive up to the gym. He then returned to the hall. Ms. Mahoney stated that she stayed with the plaintiff at all times.

34. The plaintiff was placed sitting on a chair until his mother arrived. She recalled that there was some discussion about the injury and it was agreed that the plaintiff's mother would take the plaintiff to the A&E Department of Portlaoise Hospital.

35. Later that day, Mr. Bergin asked Ms. Mahoney to fill in the parts of the accident report form relating to the circumstances of the accident. In that form, she had given the following description of the accident:-

"Mitchell was taking part in the high jump. He had completed three jumps with ease. On his fourth jump, he did his run up and just as he (was about to) [that portion crossed out] jumped, he felt something crack and he just fell onto the crash mat in severe pain."

36. In relation to the plaintiff's weight, the witness stated that the two photographs which had been submitted in evidence showed the plaintiff as he was on the morning in question. She stated that she did not think that he weighed anything like 17 stone at that time. She stated that he had been a good participator in PE class prior to the accident. He had also been a keen and active sportsman, playing on the school Gaelic football team and on an informal school rugby team. He also played basketball.

37. In cross examination, Ms. Mahoney reiterated that she had done a demonstration of the step-over technique after she had given instruction as to from where they should start their run up and where they should start their jump over the rope. She then did a demonstration by stepping over the rope, which was then at knee height. She was definite in her recollection that it was the plaintiff's fourth attempt at jumping when he met with his accident. She denied that any of the students had approached the jump by running straight at it. They all ran at an angle, as shown in figure 3. She accepted that the plaintiff had planted his right foot in order to lift off and had then met with his accident. She accepted that in doing that, he had done the very opposite to what she had instructed, which had been to lead with his right leg and plant the left foot on the ground and lift off from that.

38. She denied that it was compulsory for the pupils to participate in the particular exercise. She stated that on that occasion, the girls had elected not to participate in the class. She operated a policy of "*challenge by choice*", which meant that the students were encouraged to push themselves and try new sporting activities, but were not forced to do so. She did accept that if pupils wished to be excused from PE class generally, this would only be allowed if they supplied a note to that effect from their parents. She stated that that was standard practice in relation to any of the subjects on the school curriculum.

39. She did not accept that she had failed to do any warm up, or give any demonstration of the correct technique. She stated that she did both of those things, as she regarded safety of the students as being a primary concern.

40. Evidence was given by Mr. Brian Bergin, the Principal, at the defendant's school. He stated that on being notified of the accident, he attended at the gym. He saw that the plaintiff was seriously injured. It was agreed that he would telephone the plaintiff's mother. Having done that, he opened the school gate so that she could drive in close to the gym. He then returned to the gym. He stated that Ms. Mahoney had remained with the plaintiff all of the time.

41. He recalled that the plaintiff played football and basketball on the school teams. From the photographs submitted and from his memory of the plaintiff, he thought that the plaintiff was lighter than 17 stone at the time of the accident.

42. On the day of the accident, he asked Ms. Mahoney to fill in the relevant portions of the accident report form concerning the circumstances of the accident itself. He had completed the remainder of the form. He accepted that he had signed it, but had put the incorrect date alongside his signature. He stated that the form was filled in on the day of the accident, but the date opposite his signature may have been put in retrospectively. It may have been for that reason that the wrong date was inserted.

43. Finally, evidence was given by Dr. Giles Warrington PHD, FACSM, Sport and Exercise Physiologist and Sport Science Specialist. He stated that he has acted as a consultant in sports physiology and related matters for over 30 years. He is a lecturer in Dublin City University and in the University of Limerick. He stated that he examined the gym and the equipment as shown in the photographs appended to his report. He found both the premises and the equipment to be in satisfactory condition.

44. He stated that at the experts' meeting, which had been held at the locus on 27th October, 2017, the plaintiff had told him that the accident had occurred on his first attempt at jumping the rope. At this, the plaintiff's mother had stated "*I thought he had done more*", meaning more jumps. However, the plaintiff stated that it had been on his first attempt that he met with his accident.

45. Dr. Warrington stated that the scissors or step-over technique was the appropriate technique to use for people who are beginning the high jump. He also stated that it was appropriate to start the jump at knee height and thereafter increase it gradually, as the students got more proficient in doing the high jump. If the rope was at mid-thigh level as described by the plaintiff, which was approximately 80cm or 2.5 feet in height, that was appropriate for beginners.

46. He stated that if Ms. Mahoney was found to have conducted a warm up, given a detailed instruction in relation to the technique to be followed, had given a demonstration and had asked for questions, that was the appropriate procedure to follow when introducing the high jump to beginners of the plaintiff's age.

47. He stated that to approach the high jump at an angle, in the way described to him by Ms. Mahoney and depicted in his figure 3, was the appropriate way to approach the high jump. He stated that the use of an elasticated bar or rope, as shown in figure 6, was appropriate for use by beginners. It had the advantage that it was not rigid and if knocked, would deflect on impact, and then return to its designated position.

48. In cross-examination, the witness accepted that the method of taking off from the ground when doing the jump was important. It was put to him that the teacher should not have allowed a pupil to attempt to take off with their right foot, when they are approaching the jump from the right side. The witness stated that when doing beginner jumps, novices will only develop proper technique by trial and error. He did not agree that this meant that it was obvious that the plaintiff had not been properly instructed in relation to the correct technique just because he had pushed off with the incorrect foot, as beginners will only develop the skill required by trial and error.

49. It was put to him that if the cone had been placed beneath the basketball net and the students told to assemble there and begin their run from there, this meant that they were likely to run straight at the jump, because the basketball net was directly in front of it affixed to the centre of the rear wall. The witness disagreed that having the students assemble there meant that they would necessarily run at the jump head on. It was possible that they had been told to line up at that position, so as to be out of the way and would make their run and approach the high jump from an angle as shown in figure 3.

Conclusions

50. There is a direct conflict of evidence in this case between the account given by the plaintiff as to what happened in the PE class on the morning in question, and the account given of the same class by the teacher Ms. Mahoney. In looking at the credibility of these competing accounts, the court has had regard to the evidence given by these witnesses on surrounding facts.

51. Firstly, in relation to the issue of the plaintiff's weight, I prefer the evidence of Ms. Mahoney and Mr. Bergin to the effect that the plaintiff was not 17 stone in weight in May, 2014. Even allowing for the fact that the plaintiff is quite tall, I think it is very clear from the two photographs submitted in evidence, being the photograph of the under 16 Gaelic football team in November, 2013 and the picture of the plaintiff and three other students in science class, taken in January, 2014, that on the balance of probabilities he was not 17 stone in weight at that time. I am of the view that he was probably of a substantially lower weight. Having regard to the fact that he was an active sportsman, playing on the school Gaelic football team, the informal school rugby team and he also played Gaelic football for his club, playing in an outfield position, I think it is very unlikely that a sixteen-year-old would have been 17 stone at that time. Accordingly, I do not accept the plaintiff's evidence that he was 17 stone at the time of the accident. I note that the two experts had a similar opinion of the plaintiff's weight from the photos.

52. Even if I am wrong in that, I accept the evidence of Dr. Warrington that, having regard to the plaintiff's participation in other sports, participation in the high jump was not contraindicated.

53. The plaintiff also made the case initially that he had been forced to participate in the high jump exercise. It was only when it was put to him in cross-examination that the girls had not participated in the high jump that morning, that he conceded that it was not in fact compulsory for him to do so. The fact that if a pupil wished to be excused from PE class generally, he would require a note from his parents, does not mean that participation in each specific activity in PE class was compulsory. I accept the evidence given by Ms. Mahoney that she operated the principle of "*challenge by choice*", whereby students were encouraged to challenge themselves by trying new activities, but it was not compulsory for them to participate in each and every activity. That was evident from the fact that the girls were excused participation on this particular morning. Accordingly, that assertion made by the plaintiff must also be discounted.

54. Complaint was also made initially that Ms. Mahoney, and indeed the other teachers, had been remiss in their care of the plaintiff after the accident. In particular, it had initially been asserted that the plaintiff had been left alone when Mr. Bergin went to make the telephone call from his office and that he had been placed into the car by his school friends. This was designed to give the impression that the school authorities were not concerned about his health after the accident. I think that that was a very unfair accusation to level against Mr. Bergin, and in particular against Ms. Mahoney. The fact that it was withdrawn in the course of the hearing, does not take away from the fact that it was initially part of the plaintiff's case.

55. Turning to the core conflict in the case, I note that in relation to the alleged lack of a warm up at the beginning of the class, the plaintiff conceded in cross-examination that in other classes Ms. Mahoney usually held a warm up. As that was the usual practice, it seems to me implausible that Ms. Mahoney would depart from her usual safe and proper practice and fail to carry out a warm up on the day of the accident. I prefer the evidence of Ms. Mahoney in this regard. Accordingly, I find that there was a warm up of the type described by Ms. Mahoney in evidence on the morning of the accident.

56. In relation to the plaintiff's account that he had only participated in one jump, which was the jump on which he had met with his accident, I prefer the evidence of Ms. Mahoney in this regard. I find her evidence credible and compelling that the plaintiff had in fact participated in three jumps without incident, prior to the jump on which he met with his accident. Her evidence in this regard is supported by the content of the accident report form filled out by her on the day of the accident. It is also supported by the evidence of Dr. Warrington that when the plaintiff stated that the accident had occurred on his first attempted jump, his mother had stated that she thought that there had been previous jumps.

57. In relation to the core conflict between the plaintiff and Ms. Mahoney, if I were to find for the plaintiff, I would have to hold that on the day in question, Ms. Mahoney was grossly negligent, indeed verging on reckless in relation to the safety of her students, in her conduct of the PE class that morning. The plaintiff's account is that they arrived in the gym, Ms. Mahoney set up the equipment, told

them were to start their run and where to start their jump and other than that left them at it. She did not give any adequate instruction, she did not give a demonstration and she allowed them to run straight at the jump head on. Having watched Ms. Mahoney give her evidence and having listened carefully to that evidence, I am satisfied that she has told the truth. She gave her answers in a clear and confident fashion. She did not dodge or avoid any questions that were put to her in cross-examination. I prefer her account of the PE class that morning, to that given by the plaintiff. I am satisfied that Ms. Mahoney is a competent PE teacher, who takes pride in giving her students the best possible instruction.

58. That being the case, I am satisfied that Ms. Mahoney's account is the correct version of what occurred that morning. I find that she directed the pupils to the gym, she put them through a comprehensive warm up, she instructed them in relation to the step-over or scissors technique, she did a demonstration with the rope set at knee height and she then asked for any questions. I am satisfied that she also told them that they should approach the high jump from an angle, along the route as shown in figure 3 of Dr. Warrington's photos. She then positioned herself at an appropriate place to monitor the students carrying out their attempts at the jump. She put the rope initially at an appropriate height and only raised it by small increments thereafter.

59. Both of the expert witnesses were essentially in agreement that this was the proper technique to follow when introducing young people to the high jump. I do not think that Ms. Mahoney could have done any more to properly instruct the students. The fact that the plaintiff had done three successful jumps prior to the jump on which he injured himself, showed that he was more than able for the task at hand. Accordingly, I find that there was no negligence on the part of Ms. Mahoney in the way that she carried out the PE class on the morning in question. The plaintiff undoubtedly suffered a nasty injury. However, such injuries occur when one is participating in a sporting activity. I am satisfied that that injury was not caused by any negligence or want of care on the part of Ms. Mahoney or the school authorities. Accordingly, I dismiss the plaintiff's action against the defendants.