[Neutral Citation Number: 2005 IEHC 419]

THE HIGH COURT

Record Number: 2002 No. 10338P

BETWEEN

MARY SHEEHY

PLAINTIFF

AND

LAURENCE RYAN AND JAMES MORIARTY

DEFENDANTS

Judgment of Mr Justice Michael Peart delivered on the 14th day of December 2005

1. This matter comes before me on foot of a Notice of Motion dated 30th September 2005 and in which the plaintiff seeks the same relief which she unsuccessfully sought by way of Notice of Motion to the Supreme Court dated 11th July 2005.

2. By way of some background, the situation is that the plaintiff commenced proceedings arising out of the termination of her employment as Diocesan Secretary to the Diocese of Kildare and Leighlin. On the 29th August 2002 I granted certain interlocutory relief to the plaintiff in the usual way until the trial of the action. That action came on before Ms. Justice Carroll in November 2003, on which occasion the plaintiff was represented by solicitors and Counsel, both Senior and Junior, none of whom are currently representing her. Having reserved her judgment, Ms. Justice Carroll dismissed the plaintiff's claim in its entirety by order dated 13th February 2004.

3. Against that dismissal, the plaintiff has, as she is entitled to do, filed and served a Notice of Appeal to the Supreme Court. That appeal has not yet been heard. I am not appraised at the moment as to whether the required Books of Appeal have been lodged and whether the appeal is ready to be heard. That is not a matter of concern to this Court at this stage.

4. But for some reason the plaintiff seeks further relief from this Court even though she has filed her appeal. The relief she has sought, and as I have said, has sought also unsuccessfully in the Supreme Court is as follows:

> "1. A declaratory order that the learned High Court judge Carroll erred at law in setting aside the Chancery High Court Order against the first named defendant, in circumstances when he was deceased at the time of that hearing and was not appropriately legally represented by his Personal Representatives at that hearing.
>
> 2. Any further and other order that is deemed lawful to enable Due Process of proper litigation in respect of the important substantive issues herein and/or Orders that are considered just and equitable in all the circumstances."

5. While not worded in an identical fashion to that which was refused by the Supreme Court there is no meaningful distinction.

6. The first grounding affidavit sworn by the plaintiff recites some history of the proceedings including my interlocutory order dated 29th August 2002. She recites the joining of the 2nd named defendant who has on the 31st August 2002 been installed as Bishop of the diocese due to the illness of the first named defendant. She says that while he entered an appearance (the same solicitors as were acting for the first named defendant, and now act for his estate since he is since deceased) no Defence was delivered on behalf of the second named defendant. In fact I notice from the Pleadings before me on this motion that an Amended Defence was delivered and that the plaintiff's then solicitors delivered an Amended Reply thereto. These latter documents refer to both defendants as relevant therein.

7. The grounding affidavit goes on to state in the following numbered paragraphs:

> *"13. Despite the sad death of the originating offending defendant, Laurence Ryan, a High Court hearing at Common Law took place which purportedly heard evidence solely on behalf of the 2nd named defendant since he was the only defendant in being at the time.*
>
> *14. Consequently, at the time of that hearing, an order issued by Ms. Justice Carroll proceeded to dismiss the entire proceedings together with the Chancery interlocutory order in existence against Laurence Ryan at the time of his demise.*
>
> *15. Issues in relation to these matters were before the Supreme Court on the 22nd July 2005 and this resulted in the (ex tempore) judgment of that Court……*
>
> *16. The Honourable Supreme Court Judge stated (obiter) that the entitlement of the 2nd named defendant to present at hearing as if 'One' with the first named defendant (deceased) such as to answer the case in respect of the deceased, was founded on the legal concept of 'Corporation Sole', thus rendering these two Bishops as one 'perpetual being' at law."*

8. Essentially the plaintiff is trying to set up an argument that there has been no substantive hearing of the issues as between her and the first named defendant, now deceased, and that therefore the interlocutory order made by me in August 2002 is somehow extant until she has had a substantive hearing of her claim against the now deceased first named defendant.

9. I have looked at the Notice of Appeal, and cannot find therein any ground which suggests that the plaintiff is appealing the decision on the basis that the plaintiff's claim was dismissed as against the first named defendant without same having been heard unless perhaps it can be brought under the general umbrella of ground (1) namely that "the learned High Court judge erred in law and in fact in dismissing the said action, or perhaps ground (3) which states "It was not open to the learned High Court judge to determine that a valid or lawful decision has been made in relation to the termination of the appellant/plaintiff's employment on the grounds of redundancy (or otherwise) in the evidence from the decision-maker." The latter of course is now deceased.

10. Ms. Heavey on behalf of the plaintiff wants this Court now to re-instate the case against the first named defendant for hearing, and that the interlocutory injunction which I granted and under which the plaintiff continued to be paid her salary until the trial of the

case would be reinstated pending the further hearing taking place. It is clear, however, from the ex tempore judgment of Geoghegan J. in the Supreme Court to which the plaintiff has referred (and with respect it could not be otherwise) that the interlocutory injunction ceased to exist after the completion of the hearing before Ms. Justice Carroll. If there was to be any extension of that injunction it would have to be by way of an order of the Supreme Court pending the determination of the appeal.

11. But the plaintiff seeks to establish to me that issues which I referred to in my judgment as issues in the case have not in fact been heard, and that she is entitled to have that dealt with by a second hearing in relation to the first named defendant. Thomas Mallon BL for the defendants resists such an application on the basis that the application is both ill-founded and without any merit in any event.

12. When this matter came before me on the return date for the motion, I heard lengthy submissions from Ms. Heavy and in which matters were submitted which in my view went far beyond matters stated and sworn to in the grounding affidavit. Indeed it is not going too far to say that the manner in which these submissions were made was unusual, and even unacceptable, as many allegations and suggestions were made by Counsel which bore no relation to affidavit evidence, and related to apparent allegations of perjury and frauds and suchlike by and on behalf of the defendants. I adjourned the motion so that if Ms. Heavey on behalf of the plaintiff was seriously contending matters of that kind and simply articulating them by way of oral submissions in open court with reporters present, the least that the Court should require was that the matters should be put on affidavit so that they could be appropriately responded to. Ms. Heavey took that opportunity, but in an affidavit sworn subsequently by the plaintiff, the plaintiff has not stated anything of the nature suggested by Ms. Heavey. Instead the force of the affidavit is to say that there is in existence a document which the plaintiff refers to as *"my Contractual Executive Pension Document of Policy, which was put in place, albeit belatedly, in July 2000 (my employment having commenced in 1974)".* She refers to the fact that this document apparently refers to her retirement age to be 65 years and other matters relating to salary levels. The affidavit alleges that this document has been "suppressed". Ms. Heavey has stated that she wants this document to be produced by the defendants, so that the allegations of fraud and perjury can be followed up. This latest affidavit requests that this Court should *"give serious consideration to reinstating myself to my position, in keeping with the Special Terms of my Contract and in keeping with Ordinary and Constitutional Justice and Equity."*

13. In my view the present application is entirely misconceived, and has put all concerned to a great deal of trouble and expense. The central matter is that the proceedings which came before the learned Carroll J. were fully heard by her and she made her determinations. Inevitably the party against whom the decision went will feel aggrieved and in those circumstances may decide that an appeal should be lodged with the Supreme Court. That is something which the plaintiff has decided to do, and has engaged new lawyers for that purpose, although I notice that the Notice of Appeal was signed by her previous Counsel and was filed by her previous solicitors. Now, it appears that one of the grounds of appeal will be that the learned Carroll J. was not entitled to dismiss the plaintiff's claim against the first named defendant, since in some way the case against the first named defendant, as opposed to the second named defendant, was not properly before the judge in November 2003.

14. Ms. Heavey is entirely in error when she states that this Court can and should direct the re-instatement of the interlocutory relief and direct a further hearing of the plaintiff's issues as against the first named defendant. Even if I was of the view that there was any merit in the suggestion that the issues as between the plaintiff and the first named defendant were not properly before the learned judge when the trial commenced before her, that is not something in respect of which I can intervene. There is no Rule of Court or any inherent jurisdiction, either in Common Law or in Equity, which entitles me to act as any form of appeal against another order made by a High Court judge. The only manner in which such a complaint can be made under our system of law is by way of an appeal to the Supreme Court. The learned High Court was certainly of the view that she was dealing with the case which was set down by the plaintiff. She was perfectly entitled to have that view since the plaintiff herself, through her legal advisers, had served Notice of Trial "of this action", and Messrs. Arthur Cox were served with that Notice of Trial in their capacity as "solicitors for the defendants". That is referred to specifically in the Notice of Trial. In addition both defendants are named in the title of the proceedings in the Notice of Trial. If the hearing was intended by the plaintiff to be limited to an airing of the issues as between her and the second named defendant only, the Notice of Trial would have been worded so as to give notice of trial "of this action as against the second named defendant only". This did not happen in this case.

15. This action has therefore been heard as against both defendants in the High Court. This may be something which the plaintiff never intended, or that she now thinks should not have happened, but, be that as it may she cannot now attempt to breathe new life afresh into the action against the deceased first named defendant, and seek to revive also the interlocutory order. The High Court's function has ceased, and the Supreme Court has seisin of the matter. Until the Supreme Court decides that some aspect of the case ought to be remitted to the High Court for determination, the matter is at an end.

16. It is worth noting again at this stage that the plaintiff has already attempted unsuccessfully to obtain this sort of relief in the Supreme Court. To attempt to do so again in the High Court, albeit based on a proposition which is wholly without merit, namely that I in some way directed that certain issues should be tried and which the plaintiff says have not been tried, is, to put it at its kindest, misconceived, and is doomed from the start. I am refusing the relief sought.

17. It does appear that the plaintiff, as presently advised, is set upon bringing applications which cannot be properly brought and thereby putting the other side to considerable and unnecessary expense. This has occurred already in the venture to the Supreme Court in July 2005, and in this Court on foot of this motion, which should never have been advised as having any chance of succeeding, and should never have been brought. The plaintiff's correct course, and in my view, only course, is to pursue with all possible speed her appeal to the Supreme Court. The High Court cannot intervene in any way, and I am therefore, at the invitation of the defendants, and on foot of their motion in that regard making an order restraining the plaintiff from issuing any Notice of Motion in the High Court, or making any further application to the High Court prior to the determination of the Supreme Court appeal, without first making an ex parte application for leave to do so. I make that order in circumstances where I am satisfied that it is necessary in order to prevent the processes of the Court being abused. The defendants are entitled to be protected from an unnecessary exposure to costs arising on such applications pending the outcome of that appeal. Any further attempt to make application to the High Court is an abuse of process. The Court must not allow its processes to be abused in this way. Not only is there the interest of the defendants to be protected in relation to costs incurred, but there is a public interest to be protected in as much as the time of the Court and the Court's staff is an expensive and scarce resource, and the Court is entitled to ensure as best it can that these resources are spent wisely and not wasted on giving considerable time to applications which ought not to be brought, and which amount to an abuse of process. There are many cases waiting to be heard in many different lists, and it is unfair that a delay is caused to these cases by the Court being at risk of having to deal with applications as unmeritorious as the present one, and spend several hours hearing and determining same.

18. In relation to the defendant's motion to dismiss a further set of High Court proceedings commenced by this plaintiff against two different defendants, which proceedings bear Record Number 2005 No. 2809P on the grounds that the proceedings are frivolous and vexatious and an abuse of process, and on the basis that in any event the matters pleaded are res judicata, I will adjourn that

application so that the plaintiff can have a reasonable opportunity to file a replying affidavit in order to resist the application.