

## THE HIGH COURT

BETWEEN Record No. 2013/5146 P

EDWARD KEOGHAN

PLAINTIFF

AND

NICHOLAS POWER

DEFENDANT

## JUDGMENT of Mr. Justice Bernard J. Barton delivered the 1st July 2015

1. The plaintiff was born on the 28th of February 1975. He is a married man and is a department store manager by occupation. He and his wife Carmel have two children aged ten and fifteen.

2. The plaintiff's evidence to the court was that he had a happy childhood until he got to a certain stage in his life, namely nine years of age. From a reading of the medical reports and from listening to him, he appears to have reached the age of nine with what is euphemistically referred to as "childhood innocence". He clearly had loving parents. He developed a close relationship with his father with whom he worked for some years. At the age of nine the defendant commenced an abuse, the sexual abuse of the plaintiff, which has had devastating life affecting consequences.

3. It was not one or two episodes of abuse. The court is not privy to the charges proffered against the assailant but there were multiple charges. The defendant pleaded guilty to these not only in respect of the plaintiff, but also in respect of interference with other children. The plaintiff described in graphic detail one of the consequences with which he still lives, nightmares. Nightmares of being in an orchard with four walls, going around that orchard, running around that orchard. Climbing up a wall to get out of the orchard. This orchard is not in his head. It is visible from his father's house, from his family home, and the nightmare is not just being caught up in the orchard, it is of the hand of the defendant coming up to pull him back down off the wall. That is a nightmare which all these years later continues to be experienced by the plaintiff. As a stranger to those offences, one has to ask the question, what were they like in order to create such an affect on someone and which has lasted for so long?

4. They betrayed trust, as counsel for the plaintiff has said, trust in a neighbour, a close neighbour, who happened to be a very close neighbour, and it appears someone who was friendly with the plaintiff's father. The betrayal lasted from the age of nine to almost thirteen years or certainly twelve years of age; at least three years in duration. The abuse was continuous, persistent and degrading. Eventually that abuse stopped, but not before the impact of it had and was to have life changing consequences for the plaintiff.

5. He did not tell his father or his mother or his sisters or anybody at the time. Instead he fairly says here in his evidence that he simply suppressed it. That was how he dealt with his feelings, and what had happened to him. He tried to get on with his life as best he could, except that he could not face school. He didn't like school, but he's not on own in that regard. It was, however, the affect of the abuse on him which was the instrument which finally decided him on leaving school.

6. He has tried to pick himself up the best way he could; he suppressed those feelings as long as possible. He kept them to himself throughout his teenage years but clearly, at one stage, commenced a relationship with the person who is now his wife, Carmel. However, it was not until 2000 or just shortly after 2000 or 2001 as I understand the evidence that he finally decided to tell her what had happened to him.

7. It took another number of years, nearly another decade before he actually found the courage to do something more than just share the pain which he was suffering with his wife. 2009 was the start of a process which ultimately ended up with the trial of his assailant in 2011.

8. In one respect, fortunately for him, the assailant pleaded guilty to the charges, but the torment which was being suffered by the plaintiff as he approached having to give evidence at the trial, not knowing of course whether his assailant would plead guilty, got to such a point that he felt he could not go on. He used the phrase himself "*I don't think I would be here today if it wasn't for Carmel. She sat me down*" and I asked him about that. I said what do you mean by this, and he said "*I think I would have committed suicide, that is how I felt.*" It was her support which drew him back from the brink. She clearly had to put up with a person who was drowning his sorrows, his pain, and the agony of what had happened to him in drink, something to which he freely admits. One of the reasons he drank so heavily, he says, is because at least when he drank very heavily he would sleep at night and wouldn't have nightmares.

9. This aspect of his life is very well dealt with in the medical reports. I don't propose to go into that in any further detail. Suffice it to say that that is a problem which he got under control through the support of his physicians and through the support, in particular, of his wife Carmel. He credits her with a lot, and I think it is only right that the court should acknowledge that even though I haven't heard from her, which is her right, but it suffices for my purposes to know from senior counsel for the plaintiff, Mr. Maher, that she is happy and she is content that everything which needs to be said about or of her husband has been said. I am content with knowing that.

10. He had hoped, as indeed his physicians had hoped, that the trial would be the end of his torment. That he would get relief, and that that would be the end of the chapter. Sadly, that has not turned out to be the case.

11. Family relationships have been badly affected. At one moment the plaintiff showed an immense emotion in the witness box; it was at a moment with which any parent can identify, going to confide in a father, in his case going to his father. As he said himself, when he finally told his father and plucked up the courage to tell his father, knowing that his father was a neighbour of the assailant, he expected his father to put his arms around him and to give him love and support. The reaction was completely contrary to what the plaintiff thought he was going to receive. What he expected was understandable as they were a close family in which there were also two sisters. As he said he had worked together for a long time with his Dad. His father's reaction was completely unexpected. It was that *those things happened back then* and the shock of that is still with the plaintiff to this day. The plaintiff says that the reaction of his father had a huge and profound affect on him.

12. He also had to face the situation where his sister did not want him to say anything to their father. Because he went and spoke to his father he finds himself in a situation where the relationship between himself and his father is profoundly strained and so too with his sister because he went and did something which she didn't want him to do.

13. His father is now ill, and there is a problem with him seeing the grandchildren. Enquiring in relation to that one discovers that the father, who suffers with and is being treated for cancer, is still living in close proximity to the plaintiff's assailant.

14. On one previous occasion when the children went to visit their grandfather, the assailant, who worked as a nurse and was driving an ambulance, invited the plaintiff's own children to get into the ambulance. Now knowing that, knowing what had happened and that the invitation had been issued by a person who abused him for three years, or nearly four years, was bound to have a profound affect and still has a profound affect on the plaintiff. He is terrified of going to visit his father whom he freely accepts has reached out and continues to reach out to him. Having been asked why that was the plaintiff says that that was because he feels that the father realises that his response to his son was inappropriate.

15. The plaintiff, understandably, simply cannot bring himself to go into that vicinity for fear that either himself or his children will encounter the assailant who, as I say, is a close neighbour. At this point in time, of course, the assailant is incarcerated, serving a sentence. So that doesn't exist at this moment in time, but as before the trial, it will when the assailant is released from prison.

16. So it is not just the plaintiff's life that has been very badly affected, but his relationship with others too. This claim of course is not about the suffering which other people have experienced. It is not about his wife, Carmel, nor about his sister, nor about his father but about him. One of the affects on him of the abuse which he suffered was the relationship with people closest to him, his wife, his father and his sister. His wife's response has been heroic. She has been a tremendous strength and obviously a wonderful support to the plaintiff.

17. What is the future? What is the future for this man? The court has been told that the future for him is that it is hoped that today will bring closure. That is the hope he had at the criminal trial but which did not happen; he still has nightmares. He has done other things to try and rehabilitate himself, tried to face life. He cannot face the idea of counselling. It must have been immensely difficult for him to come here today to give evidence. He doesn't feel counselling would benefit. He himself clams up, as he said. He just cannot talk about it, and that is a terrible thing. It is terrible to think that counselling and the benefits of counselling which are available to him are not something which he himself sees will be beneficial or something that he can bring himself to undergo.

18. He has got a post traumatic stress disorder, it is well established, and if one thinks about it, being born in February 1975, the events of which we are talking all occurred in the late 1980s. So we are talking about a long period of time of suffering which has already taken place and with no significant medical prognosis that life is going to be much better. At its best the medical evidence is that it is hoped that with his attitude and the support of his wife things will improve but that is about as much as can be said. I earnestly hope that, when these proceedings are finished today, the expectation and hope which attended the criminal trial will actually manifest itself.

19. I have no doubt and accept the evidence of the physicians, Dr. Horgan and Dr. Collins, in relation to the profound effects which these events have had on the plaintiff and that they are life impacting. This man is psychologically scarred and the likelihood is that he will always remain so.

20. He has to be commended for the courage that he has shown in getting on with his life, including attending a course last year, which he said he found beneficial but he has got a monkey on his back in a way which he does not see as ever going to get off his back. He is never going to escape from the horrible picture, the horrible nightmare. He is still trapped in the orchard. He is still climbing the wall. The defendant's hand is still coming up to drag him back down there. That is the terrible picture for the future, and that has been the picture up until now.

21. The court is tasked with assessing damages to compensate somebody who finds himself in that position. It is in cases such as this that, what is now I think a trite observation about damages, that they can never mend broken bones. Damages are an inadequate method to compensate somebody for injuries which they have suffered.

22. I remember in this court addressing a jury in the late 1980s and telling the jury that, in another sad case actually, that the only way they could compensate the plaintiff was in money, that that was the only means available to them and that what they had to try to do was to provide a figure to repair the damage done to the plaintiff, insofar as money could do that. It seems to me that no amount of money that I could think of today would be adequate to compensate the plaintiff for what he has been through and what he is likely to go through in his future life, but that is the only means by which the court system or law provides whereby amends may be made for the injuries that the plaintiff has suffered and will suffer.

23. A woman suffered serious grievous sexual abuse over a five year period and found herself in a position somewhat like the plaintiff, with her life devastated. A jury awarded her €600,000 and the Supreme Court of this land took €300,000 of that away. I have never fully understood the jurisprudence which has allowed the courts to interfere with the awards of the jury system. This is the 800th anniversary of Magna Carta. Enshrined in Magna Carta is an article which guarantees the subject, as was then the case, England being a kingdom, to trial by ones peers ; in short the right to trial by jury. Therefore, the court should be extremely slow to interfere with the decision of the citizens, ones own citizens.

24. That is the job I am now charged with. The Oireachtas, in its wisdom, abolished the citizen's right to a trial by jury in civil matters such as this, and placed that in the hands of the judges. So I am obliged by the law to discharge the function, which formerly had been discharged for 500 years by juries. As I sit here I wonder what, if twelve men and women were sitting over there, as they would have been up until 1988, what would they have done in a case like this? How would they have dealt with the matter?

25. Any decision of theirs could only be set aside it seems to me, if I remember the law correctly, where on all the evidence being taken into account the decision was plainly perverse. I certainly don't want to find myself getting into that situation, but I understand Mr. Maher's submission very well, that the so called cap on general damages which has been placed by the Supreme Court on awards for personal injury actions is, and so it seems to me, sometimes misunderstood. That cap, which was revised recently, in the sense that in a High Court case the judge took evidence from economists on foot of which the judge was able to come to a figure which in real terms reflected the decision of the Supreme Court some 25-30 years earlier in Sinnott and Quinsworth.

26. So to in that case the Supreme Court substantially reduced the award of the jury. What the trial judge, Mr. Justice Quirke, was called upon to ascertain was what that figure would amount to in real terms today. € 500,000 was the evidence but because of the terrible circumstances in which the country found itself at the time I think he reduced the amount. Referring to extracts from the

judgments in that and other cases and having regard to all the social and economic factors then prevailing I think he reduced it to €450,000.

27. What is sometimes lost sight of is that this so called cap on general damages is applicable, properly applicable, when the law is looked at and considered in its entirety, to cases where there is a substantial claim for special damages, such as where somebody has suffered catastrophic injuries. Their life has been grossly affected, but where every aspect of their life from now on is going to be catered for by a very substantial award of special damages.

28. So, for example, we often see cases where people, and indeed I am involved in them myself as a judge, and was as a barrister, where people end up getting what appears to be millions of euro. They do, but they are not getting the millions of euro for their injuries. They will get €450,000 for their injuries. The millions of euro are to look after them for the rest of their lives; the care and attention which has to go with looking after them.

29. So it is understandable why, in a case like that, damages should reflect the fact that such provision is also being made. That doesn't apply in this case. It seems to me that the proper jurisprudence is that the so called cap doesn't apply in circumstances where there is no substantial claim for special damages.

30. So the court has got to find a figure which has got to be fair and reasonable, which has got to be just. I ask myself what is just in respect of the plaintiff and defendant in the circumstances of a case such as the present. Counsel for the plaintiff, Mr. Maher, in his address to the court, in his submission to the court, said that this is a particularly nefarious case. All abuses are terrible, but the abuse which occurred in this case, the way in which it occurred, when it occurred, the age at which it occurred, the person that visited the abuse on the plaintiff are all matters which need to be taken into account when the court is exercising its judgment. I accept that submission.

31. It seems to me that the appropriate award in a case where there has been a persistent abuse of the plaintiff, as there was in this case and having, as I say, an impact and likely to have an impact on him for the remainder of his life with no apparent end in sight and bearing in mind that he has already had to bear the consequential pain and agony for so long, would be €500,000.