Neutral Citation Number: [2010] IEHC 383

THE HIGH COURT

2009 8581 P

BETWEEN

THOMAS TALBOT

PLAINTIFF

AND

McCANN FITZGERALD SOLICITORS, AVIVA PLC AND

UNITE THE UNION

DEFENDANTS

JUDGMENT of Mr. Justice Hanna delivered the 8th day of October, 2010

The plaintiff in this case is a lay litigant. While he describes himself as a "self litigant", he has been described by others as a "serial litigant" (Kearns J., Supreme Court) and a man with grievances.

The background to the plaintiff's woes has already been extensively described in the following judgments:-

> (i) *Thomas Talbot v. Hibernian Group plc & Amicus the Union* [2007] IEHC 385, (Unreported, High Court, Irvine J., 14th November, 2007);
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> (ii) *Thomas Talbot v. Hibernian Group plc & Amicus the Union* [2009] IESC 27 (Unreported, Supreme Court, 26th March, 2009) – Judgment of Kearns J. on appeal from the foregoing decision of Irvine J.
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> (iii) *Thomas Talbot v. McCann Fitzgerald Solicitors, Mrs. Thérése Talbot, Judge Michael White, Judge Jacqueline Linnane, Courts Services, Chief State Solicitor* [2009] IESC 25 (Unreported, Supreme Court, 26th March, 2009) – Judgment of Denham J.

I do not propose to set out in detail yet again the factual background to this case although it is important that I map out how we come to be where we are now. It should be noted that in the Supreme Court, on appeal from the decision of Irvine J., it was noted by Kearns J. that, apart from one minor matter, the plaintiff did not raise any significant dispute with the factual background as described by Irvine J. Very briefly, the plaintiff has been engaged on several fronts in legal disputes over the past three decades. Firstly, he has to deal with the undoubted trauma of family law proceedings leading to judicial separation and ultimately divorce from his wife, with the attendant significant ramifications. He then came into dispute with his employer, Hibernian plc. (now Aviva plc), leading, *inter alia*, to a situation where he was unfairly overworked and considerably underpaid (as he would see it) given his seniority, in contrast with others engaged by his employer. Thirdly, he has been engaged in litigation with his trade union, formerly Amicus the Union and now Unite the Union, complaining, *inter alia*, about the failure of the union to represent his interests and the conduct of the union and the solicitors at one stage engaged on his behalf. The issue of his pension entitlements spans all the proceedings.

In the above proceedings, the plaintiff now seeks to involve the first named defendants, Messrs. McCann Fitzgerald Solicitors, who previously acted for Mrs. Talbot in the matrimonial proceedings to which I have earlier referred. Although this is the first time the plaintiff has sued them in plenary proceedings, he did previously seek to involve them in judicial review proceedings. Along the way, he became involved in litigation involving his Golf Club. The details of this do not concern us here.

A Brief History of the Litigation to Date

The plaintiff's family law litigation took up the 1990s and spilt into the new millennium. He was legally represented at one stage, but his solicitor and counsel came off record at some undefined point (he sought to lay blame for this on the first named defendant in the current proceedings). Otherwise, he has represented himself. He has appeared before a number of judges both in the High Court and Circuit Court, a few of whom he regards reasonably highly. To others, however, he attributes base motives for the decisions they have made, such decisions being adverse to him. The final act in the family law litigation was an appeal from a pension adjustment order made in the Circuit Family Court and which was rejected by Abbott J. on the 26th June, 2002.

The plaintiff then sought judicial review of that order and applied to Quirke J. on the 7th September, 2003, at which point his application was already significantly out of time. Quirke J. refused the order. The plaintiff then made a further application *ex parte* for judicial review citing McCann Fitzgerald Solicitors, the first named defendant herein, and his former wife as respondents. This application was made on the 12th December, 2005, (nearly three years out of time) to Peart J., who reserved judgment and refused leave on the 6th February, 2006. The judicial review application was given Record No. 2005 No. 1423 J.R. A copy of Mr. Justice Peart's judgment was not made available to me but an extract from it is contained in a judgment of the Supreme Court delivered by Denham J. (see below). The plaintiff seems to have been somewhat confused as to what was going on and, at one stage at least, was of the view that he had been granted leave. At one stage he even suggested that some person had interfered with Peart J.'s judgment. However, it is abundantly clear that Peart J. refused leave.

This refusal was appealed to the Supreme Court which, in an *ex tempore* judgment delivered by Fennelly J. on the 29th June, 2007, dismissed the appeal. On the 11th January, 2008, the plaintiff brought an *ex parte* motion seeking on order vacating the order of the Supreme Court of the 29th June, 2007. At this stage, according to the written judgment, a number of other parties appear to have been added to the proceedings. This relief was refused by the Supreme Court. The appeal and the application to vacate bear Record Number 2006 No. 114 and the judgment of the Court was handed down by Denham J. on the 26th March, 2009 (see [2009] IESC 25 (Unreported, Supreme Court, 26th March, 2009)). The application was refused.

While all of the foregoing was taking place, the plaintiff was active on another front. He commenced proceedings in April, 2006 against Hibernian Group plc. (now Aviva plc.) and Amicus the Union (now Unite the Union). These proceedings bear Record Number 2006 No.

I will return later to the nature of proceedings authored by the plaintiff. These proceedings were met by a motion from Amicus the Union seeking to have the proceedings struck out on the grounds that they disclosed no reasonable cause of action and that they were frivolous and vexatious. On the 11th January, 2007, Dunne J. struck out the proceedings on the former but not on the latter ground. A note of the judgment was made by Ms. Aileen Fleming, a solicitor in the above third named defendant's solicitors firm, Messrs. Donal Spring & Co., to which the plaintiff appeared to take some exception during the hearing of this matter. Having read it, it appears to me to be a complete and professionally prepared note of an *ex tempore* judgment in which it is clear that the learned judge had considerable compassion for the plaintiff's plight. Nonetheless, since he has some objection to it, I will not cite it. There can be no doubt, however, as to the terms of the order granted by Dunne J. The plaintiff did not appeal that decision.

It is of some note that Hibernian Group plc. did not bring a motion seeking relief along the lines sought by Amicus the Union.

The plaintiff then proceeded to issue a further set of proceedings against the same defendants later in January, 2007, such proceedings bearing Record Number 2007 No. 433 P. These proceedings came before Irvine J. In her written judgment delivered on the 14th November, 2007, the learned judge ordered that the proceedings against Amicus the Union be struck out as disclosing no reasonable cause of action. She further ordered that the plaintiff's claim against Amicus the Union be dismissed as frivolous or vexatious. It was that order that was appealed unsuccessfully to the Supreme Court. Again, no motion appears to have been brought by Hibernian Group plc. seeking similar relief.

The order of Irvine J. was appealed to the Supreme Court unsuccessfully by the plaintiff (see judgment of Kearns J. referred to above).

Thus we arrive at the current proceedings.

The Present Proceedings
I earlier stated that I would return to the nature of the "proceedings" brought by the plaintiff and it is useful at this juncture to deal with same. I have taken some time to read through the variety of documents, some typed and many handwritten. I have also heard the plaintiff's oral submissions, which lasted for a period of approximately two and a half hours. This exceeded the time taken up by counsel for the first and third named defendants combined, the third named defendant's counsel, Mr. Devlin S.C., having opened the pleadings during the course of his submissions. Like other judges before me, I have found great difficulty in trying to glean from the documents and from the oral submissions precisely what the nature of the plaintiff's complaints in law against the various parties are. It is, however, abundantly clear, as has been noted by other courts, that the plaintiff is a person with many grievances relating to his matrimonial proceedings and his relationship with his former employer and trade union. It was readily apparent to me during the course of his oral submissions that he was fighting past battles yet again.

The following citations exemplify the problems in dealing with the plaintiff's proceedings. Denham J. in her judgment in the *ex parte* judicial review proceedings, *Talbot v. McCann Fitzgerald Solicitors & Ors.* [2009] IESC 25, (Unreported, Supreme Court, 26th March, 2009), cites Peart J. at p. 11 as saying:-

> "I will not attempt to try and set forth the grounds upon which the applicant seeks to rely in the papers prepared by him since the contents are so incomprehensible that such a task is impossible. But it is without any doubt in my view that it is an attempt to impugn orders of the Circuit Court made several years ago and in respect of which appeals have been heard and adjudicated upon."

In his judgment on the appeal from Irvine J. in the case of *Talbot v. Hibernian Group plc. & Amicus the Union* [2009] IESC 27 (Unreported, Supreme Court, 26th March, 2009), Kearns J. (as he then was) says at pp. 12-13 of his judgment:-

> "The learned trial judge was, in my view, restrained in her characterisation and comments about the documentation furnished by the plaintiff. I am in this context adverting (*sic*) not only to the seven statements of claim advanced by the plaintiff, but also to his voluminous submissions, including those filed following the conclusion of the appeals herein. The same are in my view prolix, unfocused and irrational to a high degree and almost entirely unrelated to the issue before the Court. There is no attempt made to engage with the reasoning of the learned trial judge or to provide grounds for challenging her conclusions both that the proceedings are frivolous and vexatious and that they fail to disclose a reasonable cause of action."

In the current case, the plaintiff issued a plenary summons. This was then followed by three documents which he refers to as being statements of claim, but which appear to be more in the format of statements *per se*. Insofar as one can ascertain precisely what reliefs the plaintiff is seeking, each of the three "statements" is prefaced with the following:-

> "Application for Breaches of Constitutional and Legal Rights Concerning Perversion of Justice, Fraud, Theft, Conspiracy, and Defamation before Judge and Jury in High Court, Dublin 7."

I must invoke the spirit of the remarks of Peart J. and Kearns J. I find myself in no stronger position than they in identifying the case advanced by the plaintiff. As in the previous proceedings, it appears to me, as urged upon me by counsel for the first and third named defendants, that the plaintiff is seeking to revisit and reopen litigation long since concluded.

The Present Application
The three defendants have brought motions seeking to have the plaintiff's claim dismissed or struck out pursuant to O. 19, r. 29 of the Rules of the Superior Courts, 1986 and/or pursuant to the inherent jurisdiction of this Court on the ground that the proceedings disclose no reasonable or sustainable cause of action. They further make the case that the plaintiff's claim is frivolous or vexatious. The first named defendant urges that the proceedings constitute an abuse of process. That defendant also seeks a declaration that the issues between the plaintiff and that party are *res judicata* as a consequence of the *ex parte* hearings in the Supreme Court in the judicial review application. The defendants also rely on the fact that the proceedings are statute barred. Finally, all defendants seek what is colloquially known as an "Isaac Wunder Order" seeking to restrain the plaintiff from taking any further proceedings against the named defendants without leave of the High Court.

The third named defendant did not rely on want of form on the part of the documents served by the plaintiff. However, the first named defendant did object to the documents on these grounds.

During the course of submissions on behalf of the second named defendant, it was drawn to my attention that that defendant had

not previously brought a similar application seeking the reliefs now sought in either of the two previous sets of proceedings brought by the plaintiff against it. It struck me that it was appropriate that the second named defendant's application should be joined with similar applications in respect of the other proceedings. The second named defendant's application was then adjourned generally and since the matter may proceed by way of further application I will refrain from further comment.

I propose to deal with the applications of the remaining defendants in reverse order as they were opened to me. I should observe that the plaintiff also brought a motion, the purport of which is unclear to me. It appears to be something in the form of a motion in default of defence. In any event, that motion was left in abeyance pending the outcome of the motions brought by the defendants.

The Third Named Defendant's Application
Having read the papers and having heard the legal submissions in this case advanced by the plaintiff, I am satisfied that the case he seeks to make against his trade union is substantially the same, if not identical, to the case he sought to advance in two previous sets of proceedings. The plaintiff did not, in my view, make any effort to attempt to identify some new or fresh cause of action. Thus, we are left in a situation where two sets of previous proceedings levelling much the same case against the third named defendant have been struck out by the High Court. The most recent (the 2007 proceedings) were struck out on the grounds that the pleadings failed to disclose the cause of action and the proceedings were frivolous and vexatious and an abuse of process of the courts. The correctness of this decision by Irvine J. has been endorsed by the Supreme Court. As regards the case brought against the third named defendant, I am of the same view. In my view the case is unsustainable and is frivolous and vexatious. It is my opinion that the plaintiff seeks to use the courts of Ireland as a battlefield to wage unrelenting war against, *inter alia*, the third named defendant. It is my view that such recycling of an unsustainable case is both oppressive of the third named defendant and abuse of the processes of this Court.

This Court has jurisdiction pursuant to O. 19, r. 28 of the Rules of the Superior Courts, 1986, to strike out any pleading on the grounds that it discloses no reasonable cause of action or is frivolous or vexatious or an abuse of the process of the courts (see McCracken J. in *Fay v. Tegral Pipes Ltd.* [2005] 2 I.R. 261 and Costello J. in *Barry v. Buckley* [1981] I.R. 306). Further, where the court is of the view that a party persistently engages in vexatious or frivolous civil proceedings, it can order that the offending party be restrained from so acting. In *Riordan v. Ireland (No. 5)* [2001] 4 I.R. 463, Ó Caoimh J. states at p. 465:-

> "Where the court is satisfied that a person has habitually or persistently instituted vexatious or frivolous civil proceedings it may make an order restraining the institution of further proceedings against parties to those earlier proceedings without prior leave of the court. In assessment of the question whether the proceedings are vexatious, the court is entitled to look at the whole history of the matter and it is not confined to a consideration as to whether the pleadings disclose a cause of action. The court is entitled in the assessment of whether proceedings are vexatious to consider whether they have been brought without any reasonable ground."

The courts are not a forum for the ventilating of lost causes (see McCracken J. in *Fay v. Tegral Pipes Ltd.*, cited above).

As regards the third named defendant, I am satisfied that the proceedings against it should be struck out both pursuant to the Rules of the Superior Courts and by way of exercise of the inherent jurisdiction of this Court to do so upon the grounds that the pleadings disclose no sustainable cause of action and that they are bound to fail and that the proceedings are frivolous and vexatious and constitute an abuse of the process of this Court. I am satisfied from the way the plaintiff has conducted the litigation over the years that he is likely to attempt yet again to bring proceedings under some other form or guise. It is, in my view, of importance to note that when his 2006 proceedings were struck out by Dunne J. his almost immediate reaction was not to seek to appeal her decision, but to issue fresh proceedings levelling, in effect, the same allegations, *inter alia*, at the third named defendant. I am fully conscious of the fact that the court must exercise great caution in considering any act restraining the citizen's right of access to the courts. Nonetheless, the third named defendant comes before this court with rights certainly no greater than, but at least equal to those of the plaintiff and, most importantly, is entitled to the benefit of finality of litigation and protection from oppressive litigious conduct by another party (see judgment of Keane C.J. in *Riordan v. An Taoiseach* [2001] I.E.S.C. 83 (Unreported, Supreme Court, 19th October, 2001)).

Accordingly, I will accede to the third named defendant's request for an order restraining the plaintiff from taking any further proceedings against it unless so permitted by this Court.

The First Named Defendant's Application
The legal principles which I have enunciated obviously govern the first named defendant also.

The allegations levelled at the first named defendant are to be found principally in the second of the plaintiff's "statements". These "statements", in turn, rehash many of the allegations made in previous cases to which the first named defendant was not party and, to some extent at least, were made in the two *ex parte* hearings before the Supreme Court.

The family law proceedings in this matter constitute the parameters of the plaintiff's grievances against this defendant. These commenced in 1989 and were heard by a number of Circuit Court judges and by the High Court on appeal from the Circuit Court. As noted above, the last act in that sequence was the order of Abbott J. on the 26th June, 2002, refusing the plaintiff's appeal from the pension adjustment order of the Circuit Family Court. Thus over eight years have elapsed since this matter was concluded. In his oral submissions and in the documents prepared by him in this and in the previous cases, the plaintiff repeated a number of allegations against the first named defendant and, indeed, several members of the judiciary. Of course, one must accept the factual matrix, i.e. that the plaintiff was engaged in no doubt torrid and upsetting litigation over a period of some twelve or thirteen years. His wife was legally represented and so was he at one stage but, as noted above, his solicitors and counsel came off record. A number of court orders went against him and, no doubt, this weighed heavily on him then and still does. But that does not mean that this Court must go on to accept the inferences, some of them quite scandalous, which he invites the courts to draw from the sequence of events, which undoubtedly took place, namely the conduct of family law proceedings. The Court is not obliged to accept the inferences of corruption and impropriety levelled by the plaintiff.

The family law proceedings were conducted before judges of Circuit Family Court and the High Court, as I have said. They are at an end and have been since 2002. No appeal lies to any court from the various decisions of the High Court judges who became engaged with the plaintiff's litigation. This Court is entitled to assume, and does assume with utter confidence, that proceedings conducted before the various learned judges were done so wholly in accordance with the law and with due regard to the rights of the unfortunately conflicting parties.

In my view, the documents, insofar as they set out allegations against the first named defendant, disclose no reasonable cause of action against it and are unsustainable in law and are frivolous and vexatious. In my view, they constitute a vehicle whereby the

plaintiff seeks to vent his spleen and frustration in respect of legal "reverses" which he cannot otherwise reopen. It was apparent in his oral submissions to me that the plaintiff availed of the court time to recite in full his complaints in respect of the family law proceedings, his union representative and his employer (even though their legal representatives were no longer present).

I therefore accede to the first named defendant's application to strike out the proceedings for the reasons stated.

Two further matters remain. Firstly, the first named defendant seeks a declaration that the issues raised by the plaintiff in these proceedings are *res judicata*. I fear that such a declaration would be legally unsound. In the first instance, the first named defendant did not engage in the judicial review proceedings at any stage. This is confirmed in the affidavit grounding the first named defendant's application. Secondly, and more importantly, the issue with which both the High Court and the Supreme Court on appeal were confronted was whether or not to grant leave to bring judicial review proceedings. In the Supreme Court, additionally, the issue of whether or not that Court ought to vacate its order was also litigated on the plaintiff's application. Although some comments may have been made concerning the plaintiff's allegations against the first named defendant, it seems to me that any such comments were obiter and that there was no definitive ruling on the plaintiff's case against the first named defendant. For that reason I decline to make a declaration as sought.

As regards the "Isaac Wunder Order", having regard to what I have said in relation to the issue of *res judicata*, I feel I must treat these present proceedings against the first named defendant as the first (and hopefully the last) such proceedings. The mere suspicion (however strong) that the plaintiff might yet again attempt to sue the first named defendant notwithstanding the finding of this Court is not, in my view, sufficient to justify making an Isaac Wunder Order. I feel that something more by way of a track record would be required involving this Defendant to lay the grounds for fettering the plaintiff's constitutional right of access to the courts. It may well be that the plaintiff will now lay down his pen. I do not know.

I have little doubt, however, that were he to seek again to sue the first named defendant, that defendant may well find itself on significantly stronger ground in seeking the said relief.