Neutral Citation Number: [2011] IEHC 260

THE HIGH COURT

2008 8087 P & 2009 1669 & 1670 P

BETWEEN

MARGARET MCCOY

EDWARD MCCOY AND PATRICK QUINN

PLAINTIFFS

AND

KEVIN KEATING AND SOUTH TIPPERARY COUNTY COUNCIL

DEFENDANTS

JUDGMENT of Mr. Justice Brian J. McGovern delivered on the 28th day of June, 2011

1. Each of these cases arises out of a road traffic accident that occurred on the 20th March, 2006 at Ballydonnell, Mullinahone, County Tipperary. In the accident, Natalie Horan Quinn (the deceased) and another child were killed and Natalie's brother received serious injuries. The deceased was a granddaughter of Margaret and Edward McCoy. Mr. Patrick Quinn is and was at all material times a partner of the mother of the deceased and acted in *loco parentis* to her. In each of these cases, the plaintiffs claim damages for psychiatric injuries and nervous shock caused by the shock and trauma of coming upon the aftermath of the road traffic accident.

2. Margaret McCoy and Edward McCoy (the grandparents) took a telephone call shortly after the accident and they went to the scene. They could see the car in which the deceased had been travelling was stuck in a drain at the side of the road. Some time later, they were allowed through an area which was cordoned off and saw the deceased's body and the body of the other child lying at the side of the road. The deceased children were removed by ambulance from the scene.

3. Patrick Quinn was at home with the deceased' s mother when she was informed by telephone that there had been an accident involving the deceased and other children. He drove to the scene with the deceased's mother and her other daughter where they found the car on its side in a deep dike or ditch at the side of the road. There was a stream flowing though the ditch and the water level was rising and Patrick Quinn attempted to help the trapped children by communicating with them and preventing other members of the public from interfering with the rescue scene. While he was there, the deceased and the other child who died in the accident were trapped at the back of the car and he attempted to speak to them. He saw their bodies being removed from the scene and taken to hospital and he also saw the deceased's brother in a seriously injured state at the scene.

4. Liability is not an issue in any of these cases. However, in each case a plea is raised that the actions are barred by virtue of the provisions of s. 3(1) of the Statute of Limitations (Amendment) Act 1991 as amended by s. 7(a) of the Civil Liability and Courts Act 2004 and s. 50 of the Personal Injuries Assessment Board Act 2003.

5. The parties are agreed that the following timelines apply in these cases:

(a) Margaret McCoy

PIAB application acknowledged 25/02/2008.

Authorisation 28/02/2008.

Expiration of time limit (accrual of cause of action is 20/03/2006) 20/09/2008.

Personal injuries summons issued 20/02/2009.

The summons is *prima facie* out of time by five months.

(b) Edward McCoy

PIAB application acknowledged 25/02/2008.

Authorisation 06/03/2008.

Expiration of time limit (accrual of cause of action is 20/02/2006) 29/09/2008.

Personal injuries summons issued 20/02/2009.

The summons is *prima facie* out of time by approximately four months and twenty two days.

(c) Patrick Quinn

PIAB application acknowledged 18/03/2008.

Authorisation 19/03/2008.

Expiration of time limited (accrual of cause of action is 20/03/2006) 20/09/2008.

Personal injuries summons issued 02/10/2008.

The summons is *prima facie* out of time by approximately twelve days.

The law

6. Allowing for amendments made to date, s. 3(1) of the Statute of Limitations (Amendment) Act 1991, provides, *inter alia*, that an action in respect of personal injuries caused by negligence or breach of duty shall not be brought after the expiration of two years from the date on which the cause of action accrued or the date of knowledge, if later, of the person injured. Section 2(1) of the Act provides that references to a person's state of knowledge or references to the date on which he first knew that the injury in question was significant. Section 2(2) provides:

> "For the purposes of this section, a person's knowledge includes knowledge which he might reasonably have been expected to acquire –
>
> (a) from facts observable or ascertainable by him, or
>
> (b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek."

In *Byrne v. Hudson* [2008] 3 I.R. 106 (at p. 115) Macken J. stated:

> "Since the provisions of s. 2 are, in reality, an exception to the normal provisions concerning the obligation to commence proceedings for relief in respect of a tort causing personal injuries within a three year period, it is correct to apply the provisions of the section literally and not benignly or with an unduly lax interpretation."

In *Bolger v. O'Brien* [1999] 2 I.R. 431 (at p. 440) the Supreme Court held that the question of prejudice suffered by a defendant or the shortness of time by which the limitation period has expired is irrelevant to the interpretation and/or application of s. 2 of the 1991 Act.

7. In *Whitely v. Minister for Defence and Ors*. [1998] 4 I.R. 442, Quirke J. noted the absence of any express definition of a "significant" injury under the 1991 Act and held that in Irish law the test was primarily subjective with the qualification of the provision contained in s. 2(2). He held that this sub-section introduced:

> "… a degree of objectivity into the test and potentially requires the additional consideration of whether or not the particular plaintiff at the particular time ought reasonably to have sought medical or other expert advice having regard to the symptoms from which he was suffering and the other circumstances in which he then found himself".

This test was applied by the Supreme Court in *Bolger v. O'Brien*. In that case, the plaintiff claimed not to have realised that a back injury was "significant" until October 1992, at which time an X-ray confirmed the presence of a non-displaced fracture of the sacrum. In the Supreme Court, Hamilton C.J. said:

> "The learned trial judge had held that the full significance of the plaintiff's injuries were not brought home to him and that he did not understand them until in or about October, 1992 but that is not the test.
>
> The test is when he knew or ought reasonably have known 'from facts observable or ascertainable by him' that he had suffered a significant injury. …
>
> The fact that the plaintiff did not realise the full significance of the effect of such injury is not of relevance once it is established that he knew the injury was significant."

Application of the law to the facts

8. In this case, each of the plaintiffs gave evidence that they suffered significantly from shock and distress from the time they attended upon the immediate aftermath of the accident and saw the bodies of the children on the side of the road.

9. In the case of Mrs. Margaret McCoy, the evidence established that she suffered significantly after the accident, but by the time she had seen Dr. Morrison, a consultant psychiatrist, her symptoms had improved. She continued to improve since that time. Dr. Morrison made no reference to any past relevant history, but Dr. Richard Horgan, a consultant psychiatrist called on behalf of the defendants, noted that she had developed agoraphobia with depressive features in the 1960s and sought treatment for that condition. This evidence establishes that she had an awareness of her symptoms on that earlier occasion and sought appropriate medical treatment.

10. In the case of Edward McCoy, he came across as a highly sensitive individual. Dr. Morrison, consultant psychiatrist, said that he was affected greatly by the accident and developed a severe Post-Traumatic Stress Disorder with depression, loss of interest, lack of energy, anger, irritability, hyper-vigilance, and other symptoms but noted that he was not anxious to take any medication and did not believe in having counselling. Dr. Morrison felt he would never make a full recovery. On follow-up visits to Dr. Morrison, he found that he was not showing any improvement. But on the last examination of him, on 24th May, 2011, he felt that he had improved slightly and he felt that he would make some progress although he would never make a full recovery. Dr. Richard Horgan was of the view that this plaintiff suffered primarily a prolonged grief reaction with some overlapping symptoms of Post-Traumatic Stress Disorder. But he felt that, primarily, he had a prolonged grief reaction which was complicated by anger against the County Council for the state of the road at the site of the accident and the fact that the ambulance personnel laid the bodies of the children on the side of the road. He felt that after the legal proceedings there would be some closure for Mr. McCoy.

11. Patrick Quinn was in *loco parentis* to Natalie Horan Quinn, one of the children killed in the accident. He was in a long-term relationship with Natalie's mother at the time. Dr. Morrison gave evidence that Mr. Quinn was suffering a Post-Traumatic Stress Disorder and that he had also developed depressive symptoms. It seems he had some bereavement counselling after the accident. Dr. Horgan said that when he examined this plaintiff on 26th August, 2010, he did not appear to be very distressed and there was no evidence of a panic disorder but there were some features of an Obsessive Compulsive Disorder. He also felt that while this plaintiff

developed some features of a Post-Traumatic Stress Disorder, these symptoms had largely cleared up by then. His main difficulty was one of a prolonged grief reaction. Of some significance is this plaintiff's past history which establishes that in 2003, he was an in-patient for two weeks in the Psychiatric Unit in Waterford Regional Hospital suffering from depression. Subsequent examinations by Dr. Morrison showed that Mr. Quinn continued to improve.

12. These cases are somewhat unusual in that none of the plaintiffs sought medical help for their mental state soon after the accident. It was only after they had gone to a solicitor with a view to commencing proceedings, that their solicitor referred them to Dr. James P. Morrison, a consultant psychiatrist. In the case of Patrick Quinn, he stated, in evidence that he attended with his partner at her appointment with her solicitors in connection with her legal action arising out of the accident. He gave evidence that her solicitor asked him how he was and suggested it might not be a bad idea to see Dr. Morrison. The plaintiffs allege that it was only when he told them that they were suffering from Post-Traumatic Stress Disorder that they became aware of the significance of their injuries. Dr. Richard Horgan, a consultant psychiatrist, on the other hand, was of the view that while there was some element of Post-Traumatic Stress Disorder in the history, as given by the plaintiffs, their primary symptoms were one of prolonged grief reaction to what was undoubtedly a most upsetting event. It appears that none of the plaintiffs wanted to take any medication or were put on any course of medication. Mrs. Margaret McCoy gave evidence that some time after the accident, she attended her GP for matters unrelated to the accident and he discussed her general wellbeing with her. But he did not refer her for psychiatric assessment. Mr. Edward McCoy said he did not think he had a problem until diagnosed by Dr. Morrison. Yet, he saw his GP, Dr. Quirke, on one occasion, and he told the court that there was nothing Dr. Quirke could do for him. He said he was offered sleeping tablets but did not take them and he was not prescribed antidepressant medication. He had gone to a solicitor because he felt that he and his wife should have a case for the loss of their granddaughter, and when asked by counsel what injury he suffered, he stated it was the loss of his granddaughter. He said that he was angry that the bodies had been placed on the roadside and also angry with the condition of the road.

13. In my view, it is significant that two of the plaintiffs (Mrs. Margaret McCoy and Mr. Patrick Quinn) had a prior history of some depressive symptoms so they would have been aware of the opportunities available to have symptoms of depression and related symptoms treated.

14. I am satisfied, from the evidence of the plaintiffs and from the medical evidence, that each of the plaintiffs was aware that they had a condition (whether it was a grief reaction and/or Post-Traumatic Stress Disorder) but that they did not become aware that part of their condition was a Post-Traumatic Stress Disorder until Dr. Morrison informed them of the fact. But as Hamilton C.J. stated in *Bolger v. O'Brien*, that is not the test to be applied in determining the date of knowledge for the purpose of the Statute of Limitations. The test is when each of these plaintiffs knew, or ought reasonably to have known from facts observable or ascertainable by each of them, that they had suffered a significant injury. The fact that each of the plaintiffs did not realise the full significance of the effect of their injury is not of relevance once it is established that they knew that the injury was significant. Further, knowledge of the nature of their injury could have been acquired from facts ascertainable by each of the plaintiffs with the help of medical or other appropriate expert advice which it was reasonable for them to seek. In the case of two of the plaintiffs (Margaret McCoy and Patrick Quinn), they had already sought treatment for psychiatric conditions in the past, and in the case of Mr. Edward McCoy, Dr. Morrison said that he had a serious condition since the date of the accident. Thus, all of the plaintiffs ought to have known from facts observable or ascertainable by each of them that they had suffered a significant injury. As between the evidence of Dr. James Morrison and Dr. Richard Horgan, I prefer the evidence of Dr. Horgan who was of the opinion that each of the plaintiffs had suffered a prolonged grief reaction with some element of overlay from a Post-Traumatic Stress Disorder.

15. The plaintiffs had been referred to Dr. Morrison because it is clear they would not have had a cause of action unless a diagnosis of a recognisable psychiatric condition was made. All that happened when he made his diagnosis was that a name was put on the condition from which each of the plaintiffs had been suffering since the date of the accident. They clearly knew that they had been suffering from a condition even if they did not know what the medical term for that condition was. Margaret McCoy and Edward McCoy did not to seek a medical opinion until after they had visited their solicitor with a view to commencing proceedings. Patrick Quinn had gone to the solicitor, not to commence proceedings himself, but to accompany his partner who was commencing proceedings arising out of the death of her daughter, Natalie. It was then suggested by her solicitor that he might be seen by Dr. Morrison, and following his diagnosis of Post-Traumatic Stress Disorder, he also brought proceedings in his own name.

16. In the case of Margaret McCoy and Edward McCoy, the court was furnished with copies of the application forms for assessment of damages under s. 11 of the Personal Injuries Assessment Board Act 2003. In the case of Margaret McCoy, she stated that she first sought medical attention in April or May 2006, and the name and address of her medical attendant was given as Dr. Mike Quirke, Gladstone Street, Clonmel. In the case of Mr. Edward McCoy, he stated that he first sought medical attention in April 2006, and the name of the same doctor was given. Both these forms were signed in February 2008. By that time, they had already seen Dr. Morrison, yet there is no reference to him on the form. In the course of her evidence, Margaret McCoy said that she attended her GP within two or three months of the accident, but did not attend him for grief or complaints associated with witnessing the accident. I accept her evidence on that point. But that raises an issue as to the information given in the form because the question asking on what date she first sought medical attention is raised in the context of the 'Injury/Claim Details'. Mr. Edward McCoy's evidence was that the injury he suffered was the loss of his granddaughter and his angry feelings about the way in which the bodies were laid out on the roadside and the condition of the road itself. Although he saw Dr. Quirke once, he never took any medication or went for counselling. There is no mention in either PIAB application form of Dr. Morrison. Furthermore, in the course of the hearing in respect of all three plaintiffs, there was no evidence of a referral of any of the Plaintiffs by their GP to a psychiatrist, nor did Dr. Morrison prescribe a course of treatment for any of the plaintiffs. Neither did he furnish a letter to the GP informing him of his findings in relation to each plaintiff, which would be the usual practice if he had been their treating psychiatrist. But, of course, he was not their treating psychiatrist. He had only become involved at the behest of the plaintiffs' solicitor at a time when Margaret McCoy and Edward McCoy had already gone to their solicitor with a view to commencing proceedings, and after Patrick Quinn had attended his solicitor with his partner in connection with her proceedings.

17. This is a very sad and tragic case. I am satisfied that each of the three plaintiffs suffered a significant grief reaction with some overlay of Post-Traumatic Stress Disorder as a result of what they witnessed on the night of the accident. I am also satisfied that insofar as they suffered a grief reaction or Post-Traumatic Stress Disorder, that their symptoms arose in the immediate aftermath of the accident and that they knew, or ought reasonably have known from facts observable or ascertainable by them, that they had suffered a significant injury.

18. In the circumstances, I hold that the plaintiffs have not established that the date of knowledge applicable in each of their cases is the date on which they were diagnosed by Dr. Morrison. I therefore hold that the plaintiffs' claims are time-barred.