

**THE HIGH COURT**

**2007 3554 P**

**BETWEEN**

**ALBERT GEORGE SUGG**

**PLAINTIFF**

**AND**

**LEGAL AID BOARD**

**DEFENDANT**

**JUDGMENT of Mr. Justice Feeney delivered on the 13th day of May, 2009**

Mr. Albert Sugg is the plaintiff in these proceedings. These proceedings arise out of Mr. Sugg's attempt to obtain legal aid to assist in prosecuting a Supreme Court Appeal in earlier proceedings he brought against Dr. O'Keeffe and St. Michael's Hospital in relation to the alleged negligence by them in the treatment of his late wife.

Mrs. Sugg, who was 59 years old at the time, suffered a severe heart attack in November 1997, and was admitted to St. Michael's Hospital under the care of Physician Geriatrician, Dr. O'Keeffe. She never recovered, and after eight days in intensive care, she died.

Mr. Sugg was convinced that his wife's death was caused by the treatment and management his wife received. As he stated on page 1 of his first affidavit herein:

"Over 11 years ago, I wanted to know how and why food got into mouth because I thought food caused death. I now know that food in mouth caused death and if instruction for feeding programme on Day 5 had not been given by Dr. Shaun O'Keeffe, then my wife, Margaret, would have remained alive."

That belief caused Mr. Sugg to investigate and pursue a claim in negligence against the doctor and the hospital. He also complains that Dr. O'Keeffe was a Physician Geriatrician and that no Cardiologist was involved in the treatment of his wife, nor was an intensive care specialist as the treatment was under Dr. O'Keeffe who is a qualified medical practitioner and a specialist physician attached to the hospital.

Mr. Sugg investigated his wife's death through obtaining the medical records and engaging a solicitor. That solicitor, Murphy's of Dun Laoghaire, obtained an expert medical report, part of which is available to this Court, from Dr. Stephen Webster, Consultant Geriatrician in Cambridge. The report concluded:

"Mrs. Sugg's final illness was sudden, tragic and traumatic for everybody involved. The staff at St. Michael's worked hard to give supportive treatment and management during the time of crisis, but were, unfortunately, unsuccessful. I can see no evidence of negligence in their management of Mrs. Sugg. I, personally, do not feel there is a case to be pursued, but if a further opinion is required, I would suggest seeking one from a specialist in intensive care."

That report, in its conclusion, indicates that a further opinion can be obtained but it does not recommend the obtaining of a further medical opinion as urged by Mr. Sugg during his argument before this Court.

Mr. Sugg changed solicitors and the new solicitor was involved for a short number of weeks and no further report was sought. Mr. Sugg pursued the civil claim as a lay litigant. The defendant brought an application to the High Court to have those proceedings dismissed as being unstatable, as disclosing no reasonable cause of action, and/or as being frivolous and vexatious. That application was successful and an order was made dismissing the proceedings.

At the High Court hearing, the medical report Mr. Sugg had from Dr. Webster was not produced or referred to. Mr. Sugg acted as a lay litigant in resisting the application and appeared in person. After the case was dismissed, an appeal was lodged. Mr. Sugg then sought legal aid from the Legal Aid Board.

In July 2003, Mr. Sugg attended at Gardiner Street Law Centre, indicating that he wished to make an application for legal services in respect of the claim which had been dismissed by the High Court and which was under appeal to the Supreme Court. The order of the High Court of 23rd June, 2003, that the proceedings be struck out as failing to disclose a cause of action was under appeal as on 16th July, 2003, Mr. Sugg had lodged an appeal to the Supreme Court. It was within the context of that appeal to the Supreme Court that Mr. Sugg sought legal aid from the Board.

Mr. Sugg was advised by the solicitor who dealt with his application for legal aid, that is, Ms. Avril Sheridan of the Gardiner Street Law Centre, that it was unlikely that a Legal Aid Certificate would be granted to him in relation to his Supreme Court Appeal on the basis that based on the information in her possession, she believed that Mr. Sugg did not have reasonable grounds for the prosecution of the appeal to the Supreme Court.

The Legal Aid Board is a body corporate established by the Civil Legal Aid Act 1995. It is a statutory body and can only operate in accordance with the provisions of the Act and the Civil Legal Aid Regulations made thereunder 1996 to 2006.

Under s. 5 of the Act, the Board is charged with:

"...the principal function of providing, within its resources and subject to other provisions of the Act, legal aid and advice to persons who satisfy the requirements of the Act."

Section 24 of the Act sets out the criteria for the grant of legal aid and advice it provides as follows:

"Without prejudice to the other provisions of this Act, a person shall not be granted legal aid or advice unless, in the opinion of the Board -

(a) a reasonably prudent person, whose means were such that the cost of seeking such services at his or her own expense, while representing a financial obstacle to him or her would not be such as to impose undue hardship upon him or her, would be likely to seek such services in such circumstances at his or her own expense, and;

(b) a solicitor or barrister acting reasonably would be likely to advise him or her to obtain such services at his or her own expense."

Section 28 of the Act sets out the criteria for obtaining legal aid. Legal Aid is defined within s. 27 of the Act as meaning:

"Representation by a solicitor of the Board, or a solicitor or Barrister engaged by the board. In any civil proceedings to which s. 27 applies, it includes all such assistance as is usually given by a solicitor and, where appropriate, a Barrister in contemplation of, ancillary to or in connection with such proceedings.

Section 28(2) provides that:

"Subject to s. 24 and s. 29..."

I should interject at this stage that s. 29 deals with financial eligibility and there is no issue in relation to this matter as it is common case that Mr. Sugg would have been eligible from a financial standpoint if his case satisfied the other statutory criteria.

Section 28(2) provides that subject to s. 24 and s. 29 and to the other provisions of the Act and the regulations, the Board shall grant a Legal Aid Certificate to a person if, in the opinion of Board..." *inter alia*;

(b) the applicant has as a matter of law reasonable grounds for instituting, defending, or, as may be the case, being a party to, the proceedings the subject matter of the application.

(c) the applicant is reasonably likely to be successful in the proceedings, assuming that the facts put forward by him or her in relation to the proceedings are proved before the court or tribunal concerned.

(e) having regard to all the circumstances of the case (including the probable cost to the Board, measured against the likely benefit to the applicant) it is reasonable to grant it."

Under that statutory scheme, an applicant for legal aid will only be granted legal aid by the Board in the event that the Board is of the opinion that the applicant satisfies the requirements of the Act and the regulations.

In the light of that statutory framework, the solicitor dealing with the matter formed the view that Mr. Sugg did not have reasonable grounds for his appeal and Ms. Sheridan advised Mr. Sugg that, in her view, his application for a Legal Aid Certificate would not be successful.

Mr. Sugg subsequently provided further documentation to the Legal Aid Board and ultimately, by letter of 29th November, 2004, the Board refused Mr. Sugg's application for legal aid. Initially, Ms. Sheridan proceeded on an incorrect basis and wrote on 3rd August, 2004, stating that she would not be seeking a Legal Aid Certificate, given her view of the prospects of whether the claim was likely to succeed or not. At the time of the writing of that letter of 3rd August, 2004, the author did not appreciate that although she was of the view that a Legal Aid Certificate would not issue in respect of Mr. Sugg's appeal to the Supreme Court, that an application to the Board seeking such Certificate ought, nevertheless, to be made upon the applicant's request.

Following further correspondence between Mr. Sugg and the Gardiner Street Law Centre and the Legal Aid Board, Ms. Sheridan rectified the issue, and by letter dated 18th October, 2004, she wrote to the applicant advising him that:

"As requested I have made an application for a Legal Aid Certificate to the Board on your behalf."

Ultimately, when she was informed of the Board's decision, she wrote on the 30th November, 2004, to the plaintiff advising him that the Board had arrived at a decision to refuse legal aid. Mr. Sugg appealed that decision to the Appeal Committee of the Board and on the 31st January, 2005, the Legal Services section of the Board wrote to Ms. Sheridan advising that the Appeal Committee had considered Mr. Sugg's application and had refused the application. On 7th February, 2005, Mr. Sugg was notified of that matter by Ms. Sheridan.

Mr. Sugg responded to the letter informing him of the refusal of legal aid by letter dated 15th December, 2004. In that letter, he stated that he wished to have the decision of the Board reviewed by an Appeal Committee of the Board. On 5th January, 2005, it was referred to the Board for review by the Appeal Committee and that fact was confirmed to Mr. Sugg by letter of the same date. On 31st January, 2005, the Legal Services section of the Board wrote advising that the Appeal Committee had considered Mr. Sugg's application at its meeting on 20th January, 2005, and had refused the application on the same ground and for the same reasons as set out in the Board's letter of 29th November, 2004.

On the 7th February, 2005, Ms. Sheridan wrote to Mr. Sugg advising him of the Appeal Committee's decision contained in their earlier letter. She advised Mr. Sugg that his application for legal aid had been refused and she would be proceeding to close her file in the matter. Mr. Sugg was, therefore, not represented in the Supreme Court when his appeal came on for hearing.

The Appeal was heard on 14th October, 2005, by the Supreme Court and following a hearing, a judgment (*ex tempore*) was given by the President of the Court. There is a short *ex tempore* judgment and it is appropriate for the purposes of this judgment that I should read the entire of the judgment. The judgment is in the case which Mr. Sugg had brought against the doctor and hospital. Geoghegan J. in his judgment stated as follows:

"This is an appeal brought by the plaintiff, Mr. Sugg, in this action against an order of Mr. Justice de

Valera in the High Court dismissing his action which essentially is a medical negligence action. He is unhappy about that terminology. It is more a question of nomenclature. In legal language, it is essentially a medical negligence action. The statement of claim in the action was struck out and then the action was dismissed. That was in these circumstances: the defendants brought a motion to strike out the action as not showing any cause of action effectively. That got adjourned from time to time. There were all sorts of opportunities given by Mr. Justice de Valera to Mr. Sugg but, ultimately, Mr. Justice de Valera refused an adjournment and in a sense nothing much on this appeal has turned on that actual refusal of the adjournment, though that is what, in fact, happened. It was in circumstances where apparently Mr. Justice de Valera was given some indication that an English solicitor might take up the case. It then emerged there was really no named or no actual English solicitor in the background at all. Obviously, Mr. Justice de Valera regarded the matter as far too speculative. The motion went on and Mr. Justice de Valera then dismissed the action on foot of the motion that had been brought. This action would have been regarded by all courts as, in fact, an abuse of the process of the courts and at the very least as unsustainable once there was not some backup evidence in the form of a report obtained in advance of the action or certainly obtained in advance of that motion from a medical expert that supported the plaintiff's claim. It has emerged in the light of the papers lodged before this Court that actually, a medical report from a Dr. Webster was obtained and that Dr. Webster was not able himself to find any negligence. He did suggest that some other specialist could be obtained but that was never taken up though or never done. In fact, Mr. Justice de Valera was never told about that so far as he was concerned there never was any expert evidence of any kind supporting the claim. In those circumstances, the claim was dismissed. I believe that that order of Mr. Justice de Valera was absolutely correct. In saying that, I am in no way criticizing the *bona fides* of Mr. Sugg. Even before we heard him today in court and from reading the papers and, indeed, from the remarks made by Mr. Justice de Valera, it is quite clear that he has prosecuted this action in a perfectly courteous manner. I have absolutely no doubt about the sincerity of his belief that there was negligence in the care of his wife and that that led to her tragic death. He claims there were inaccurate medical reports, among other things. It is the difficulty always with a lay plaintiff, unrepresented by lawyers, that no matter how many times they may be told, they do not fully appreciate the requirements of a court. A court will never hold a professional person guilty of negligence without professional evidence from another professional supporting the assertion of the claim of negligence and that is wholly absent here. There is nothing to support the claim. There are a number of so-called statements of claim and I do not intend to parse those. I think it is inappropriate, anyway, in an unrepresented person's action to make any pleading points as such. We know what the claim essentially is that has being made by Mr. Sugg but, unfortunately, his negligence claim is unsupportable and cannot stand up and is, in fact, an abuse of process given that he had no expert medical backup. As far as I am concerned, I am quite satisfied that the order of Mr. Justice de Valera was correct and that the appeal must be dismissed."

This finding, following a hearing before the Supreme Court was, to the effect, in legal words, the claim in relation to Mrs. Sugg's death was an abuse of process and that there was nothing to support the claim. That finding is binding on this court. The legal principles which resulted in that finding are the same as this Court must consider and apply when dealing with the application herein.

In February 2007, Mr. Sugg applied to the Solicitors' Disciplinary Tribunal for an inquiry into the conduct of Ms. Avril Sheridan, who was the solicitor who had dealt with Mr. Sugg's application for legal aid. He applied on the ground of alleged misconduct. That complaint was grounded on an affidavit sworn by him on 28th February, 2007. A second complaint was made by Mr. Sugg against Ms. Sheridan with the solicitor disciplinary body, which complaint was grounded on an affidavit sworn by Mr. Sugg on the 5th April, 2007. Both complaints were dealt with together. By letters dated 18th October, 2007, the Tribunal confirmed its finding to the effect that there was no *prima facie* case of misconduct on the part of Ms. Sheridan for an inquiry in respect of both of the complaints.

On 31st October, 2007, Mr. Sugg initiated proceedings before the High Court seeking to challenge both decisions of the Solicitors' Disciplinary Tribunal. Those proceedings are entitled: "In the matter of Avril Sheridan, Solicitor and in the matter of Albert George Sugg and in the matter of the Solicitors Act 1954 to 2001, Record No. 2007/56 SA."

Those proceedings came on for hearing before Johnson P. on 12th February, 2008. Johnson P. affirmed the decision of the Disciplinary Tribunal and dismissed the appeal.

Mr. Sugg has appealed against that decision to the Supreme Court. That appeal is pending. On 8th May, 2007, Mr. Sugg issued these proceedings. The nature of Mr. Sugg's claim in these proceedings is set out in the plenary summons where it is stated:

"I say the Legal Aid Board were wrong to deny me legal representation in the Supreme Court. Because of this, I claim from the Legal Aid Board admission and damage."

This claim is repeated in Mr. Sugg's affidavit sworn in relation to the application currently before the court and in relation to this notice of motion where he avers:

"The Legal Aid Board were wrong to deny me legal representation in the Supreme Court for my appeal."

It is this claim that this Court must consider and it does so in circumstances where the claim relates to the refusal of legal aid, and damages allegedly arising therefrom, and does so also in circumstances where there is no challenge to the statutory provisions under which the Legal Aid Board operates, nor are there any judicial review proceedings. These proceedings are not judicial review proceedings, but rather proceedings brought by plenary summons. The only issue in these proceedings relates to the refusal to grant legal aid under the statutory provisions and, therefore, that is the only actionable decision that the court must consider. The basis for the decision is not in dispute and is set out in the letter of 29th November, 2004. That letter, which was sent to Ms. Avril Sheridan, and later the information therein contained, was passed on to Mr. Sugg, states:

"I refer to an application made on behalf of Mr. Sugg for legal aid to institute an appeal to the Supreme Court. This application is refused under s. 24(a) and (b) and s. 28(2)(b), (c) and (e) on the grounds that the applicant is unlikely to be successful in proceedings as there is no evidence of negligence to suggest that the Supreme Court would overturn the High Court's decision. It is also considered that the costs of the proceedings would outweigh the benefit to the applicant."

That letter went on then to recite the relevant statutory provisions contained in the Act. The letter also dealt with the issue of the submission of further information for the purposes of review or the lodgment of an appeal in the final paragraph.

The defendant has brought a notice of motion seeking to have these proceedings dismissed under O. 19, r. 28 and/or as being frivolous and vexatious under the inherent jurisdiction of the court. There is further claim that these proceedings are *res judicata* arising out of the Supreme Court's decision in High Court proceedings 1999 No. 11344P and Johnson's J. decision in 2007 56 SA. That is the decision which is under appeal.

This Court does not have to consider that second or alternative relief as the court is satisfied that the defendant is entitled to an order for the relief sought in paragraph 1. of the notice of motion dismissing this claim under O. 19, r. 28 and pursuant to the inherent jurisdiction of the Court that the claim discloses no reasonable cause of action and, also, that on the uncontested facts, the plaintiff is bound to fail.

The Court has considered all the pleadings, affidavits and documents and there is no issue but that the Legal Aid Board refused legal aid on the basis set out in correspondence. This Court must consider has Mr. Sugg shown any grounds as to why that decision might be wrong or be impugned? He says it resulted in him being unrepresented in the Supreme Court and that if he had been represented, he either would or might have succeeded. That argument fails to recognise the basis upon which the Supreme Court determined his appeal. It exercised the court's inherent jurisdiction to strike out where there is no reasonable cause of action and where there was no evidence to support the claim. A litigant's opinion or view, no matter how strongly felt or held, is not evidence. The jurisdiction exercised by the Supreme Court is a jurisdiction which is only exercised sparingly and in clear cases. This is clear from the legal authorities. On that basis, the Supreme Court held that the claim should be dismissed without any hearing. That decision was on the basis of all the information Mr. Sugg provided to the Court and in circumstances where it was clear that the plaintiff could not succeed. The Court recognised that its decision was made taking into account that pleading points were and would not be used against Mr. Sugg, and where the position was that if Mr. Sugg had identified any matter or point that would have allowed his claim to proceed to a hearing, that that would have been permitted by allowing the proceedings to be amended. The Supreme Court decision is clear. The claim concerning Mrs. Sugg's death was unsupportable and any evidence of negligence was entirely absent and the proceedings were a legal "abuse".

Against that finding, this Court cannot see any basis to support a claim that the Legal Aid Board was wrong or committed a wrongful act in refusing legal aid. The Board did so in exercise of its admitted statutory power. The Board concluded that Mr. Sugg was unlikely to be successful in proceedings. Those proceedings have been held by the Supreme Court to be an abuse of process and were struck out *in limine*.

In those circumstances, this Court can identify no basis, either in fact or logic, to support a claim that the Legal Aid Board was wrong or committed a wrongful act in holding that Mr. Sugg's claim was unlikely to succeed. It had to consider, under its statutory obligations, the very question as to whether Mr. Sugg was likely to succeed in his claim, that is, in his appeal. All the material available to Mr. Sugg to try and persuade the Board to that effect was also available to Mr. Sugg at the Supreme Court hearing. Mr. Sugg had the opportunity of producing and referring to all matters and documents in the Supreme Court. That entitlement was in no way dependent upon legal representation; and having done so, the Court held that evidence of negligence was entirely absent. The Legal Aid Board was legally obliged to consider the likelihood of success. It did so, having given Mr. Sugg the opportunity to produce any information or documents he desired, and the consideration of those led to a decision that the claim was unlikely to succeed. That decision was clearly made within the legal discretion of the Legal Aid Board and there is no fact identified to indicate it was wrong.

Mr. Sugg's belief that he might have obtained a different result in the Supreme Court, if represented, is not a fact but an opinion, and one which fails to recognise the obligations on a court and the basis upon which the court decides to exercise its inherent jurisdiction. The legal basis on which this Court approaches this application is identified from the following authorities:

Order 19, rule 28 of the Rules of the Superior Courts provides that a court may order a pleading to be struck out on the grounds that it discloses no reasonable cause of action or answer and that, in any case where the action or defence is shown by the pleadings to be frivolous or vexatious, the court may order that an action be stayed or dismissed or that judgment may be entered accordingly.

In the regularly quoted case of *Barry v. Buckley* [1981] I.R. 306 Costello J. stated at p. 308 as follows:

"The court can only make an order under this Rule when a pleading discloses no reasonable cause of action on its face."

That is the position in this case. No reading of the plaintiff's statement of claim identifies any matter which discloses a reasonable cause of action. Even if the court were to consider the application on the wider basis of the inherent jurisdiction of the court, the decision would be the same. The inherent jurisdiction of the court, that is, the power to dismiss pursuant to Rule 28, has been interpreted restrictively. The courts also possess an inherent jurisdiction or power to strike out claims on similar grounds. In exercising this jurisdiction, the court is not limited to considering the pleadings of the parties but is free to hear evidence on affidavit relating to the issues in the case. This inherent jurisdiction may be used to dismiss an action on the basis that on admitted facts, it cannot succeed.

O'Higgins C.J. identified in the case of *McCabe v. Harding* [1984] I.L.R.M. 105 at page 108/109, that where vexation is established by undisputed facts which explain the nature of the claim made or pleading that the court has an inherent jurisdiction to strike out the proceedings. The rationale behind that jurisdiction had been was identified by Costello J. in the following terms in *Barry v. Buckley* at p. 308 where he stated:

"Basically, its jurisdiction exists to ensure that an abuse of process of the courts does not take place. So, if the proceedings are frivolous or vexatious they will be stayed. They will also be stayed if it is clear that the plaintiff's claim must fail."

In arriving at that view, Costello J. relied on the statement of law by Buckley Lord J. in the case of *Goodson v. Grierson* [1908] 1 K.B. 761 at 765.

The court is aware that this inherent jurisdiction should be exercised sparingly and only in clear cases. As was stated by McCarthy J. in *Sun Fat Chan v. Osseous Ltd* [1992] I.R. 425 at 428:

"Generally, the High Court should be slow to entertain an application of this kind."

However, as in the case herein where there is no evidence to support the claim and it is clear that the claim must fail, then the court should proceed to strike out. As stated by Macken J. in the case of *Supermacs Ireland Ltd v. Katesan (Naas) Limited* (an Unreported decision of 15th March, 1999) "... while the facility to strike out a case *in limine* on grounds that it cannot possibly succeed is one from which the court should shirk."

Mr. Sugg has embarked on yet another action which is bound to fail. He has identified the desire to have questions answered concerning his wife's treatment but a court does not and cannot consider the issue of the desire to have questions answered but must look to whether or not a legal claim has been made which identifies a cause of action. Absent a reasonable cause of action, the court has no power to address or consider any matters.

This Court is satisfied that the defendant has established an entitlement both under O. 19, r. 28 and under its inherent jurisdiction to have this claim struck out and the court will so order.