

THE HIGH COURT

2009 5788 P

BETWEEN

J. O'M.

PLAINTIFF

AND

MARY O'NEILL AND URSULA REGAN

DEFENDANTS

Judgment of Mr. Justice Lavan delivered the 4th day of June 2010

Issues

1. This matter arises out of an application by the defendants to have the Court, pursuant, to its inherent jurisdiction, strike out proceedings, as an abuse of process on the basis that the plaintiff's claim is unsustainable.

Background

2. The background of the case is as follows: The plaintiff was married on the 16th March, 1998, to L.O'M. There was one dependant child of the marriage, who was born on the 30th August, 1999. L.O'M commenced separation proceedings in 2000, during the course of which the matter appeared before the court for more than 100 days spanning more than 5 years. A final separation order was granted by Peart J. on the 4th August, 2004. The Dublin Regional Tribunal of the Catholic Church issued a decree of nullity on the 11th April, 2005.

3. By plenary summons the plaintiff brought an action against the defendants, claiming that Mary O'Neill and Ursula Regan, solicitors for L.O'M. engaged in a criminal conspiracy with L.O'M to defraud the plaintiff of monies and property. The plaintiff claims that they deliberately abused their position as solicitors in order to extort as much money as possible from the situation, with no regard for the welfare of the family as a whole causing a devastating emotional and financial impact on the life of the plaintiff and extended family. The plaintiff claims damages of €6,000,000 for the financial losses suffered as a result of O'Neill, Regan & Co. Solicitor's alleged criminal activities.

4. By way of notice of motion the first and second named defendants seek an order pursuant to Order 19, Rule 28 of the Rules of the Superior Courts 1986 ("the Rules"), or under the inherent jurisdiction of the court, striking out the proceedings against them on the grounds that they are an abuse of the process of the court, disclose no *bona fide* or stateable cause of action as against the defendants, are frivolous and vexatious, and are unnecessarily prolix, argumentative and designed to cause scandal and opprobrium to the defendants.

Submissions of the Defendant

5. At the outset, Counsel for the defendants denies that the defendants engaged in reprehensible and criminal conduct whether by allegedly abusing their position as family law solicitors, or otherwise to take advantage of a dispute that had arisen between the plaintiff and L.O'M. The defendants maintain that they behaved in an honourable and professional manner.

6. Counsel for the defendants vehemently argues that the invalidity of the marriage appears to be the only material fact upon which the plaintiff relies in his pursuit of this action. It was asserted that aside from this the plaintiff makes no more than unsubstantiated bald assertions in his pleadings. Counsel contends that the plaintiff's allegation that he was a victim of the defendants' greed and that he suffered financial damage cannot be sustained and that the only financial damage he suffered was his liability to meet the obligations imposed on him by order of the court.

7. Counsel for the defendants argues that the proceedings should be struck out under Order 19, Rule 28 of the Rules of the Superior Courts 1986, which states:-

"The Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer and in any such case or in the case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."

8. It was submitted by Counsel for the defendant that the plaintiff's claim discloses no *bona fide* or stateable cause of action against the defendants. Counsel noted that the issues which may guide the court in determining whether or not to strike out proceedings in the circumstances envisaged by Order 19, Rule 28 have been set out in a series of judicial authorities. In *D.K. v. A.K.* [1994] I.R. 166 Costello J. at p. 171 noted:-

"What I am required to consider therefore is whether any of the claims against all or any of the defendants is so clearly unsustainable that I should strike it out."

9. Counsel submitted that the proceedings herein are not sustainable, and are frivolous and vexatious. The Court was directed to the case of *Farley v. Ireland* (Unreported, Ex tempore, Supreme Court, 1st May 1997) where Barron J. at p.2-3 set out what was meant by frivolous and vexatious in the following terms:-

"So far as the legality of the matter is concerned frivolous and vexatious are legal terms, they are not pejorative in any sense or possibly in the sense that Mr Farley may think they are. It is merely a question of saying that so far as the plaintiff is concerned if he has no reasonable chance of succeeding then the law says that it is frivolous to bring the case. Similarly, it is hardship on the defendant to have to take steps to defend something which cannot succeed and the law calls that vexatious."

10. The Court's attention was drawn to Shiels, *Abuse of Process: Unjust and Improper Conduct of Civil Litigation in Ireland*, (Dublin: 2002), at p. 9 which reads:-

"Thus, in simple terms the meaning of the words would appear to be as follows: where a cause of action cannot succeed it is

- 1. frivolous for a plaintiff to bring proceedings based on it; and*
- 2. vexatious for a defendant to have to defend proceedings based on it.*

Put differently, a cause of action may be frivolous or vexatious because of its contextual basis- i.e. where the facts do not support the cause of action."

11. In the present case, Counsel argues that the plaintiff's claim has no reasonable prospect of success and is therefore frivolous and vexatious.

12. Furthermore, Counsel for the defendants asserted that the plaintiff's statement of claim was no more than a series of bald assertions. The court was referred to *Adam and Iordache v. Minister for Justice* [2001] 2 I.L.R.M. 452 where Hardiman J. at p. 478-479 described proceedings as "of the baldest kind, without any basis in law or fact" and "scarcely recognisable as legal proceedings at all".

13. Counsel for the defendants referred to the court's inherent jurisdiction to strike out proceedings on the basis of an abuse of process. Under this jurisdiction the court has greater discretion and can look beyond the pleadings and into the evidence contained in the affidavits placed before it. The Court's attention was drawn to *McCabe v. Harding* [1984] I.L.R.M. 105, at p.108 where the relief claimed by the defendants could not have been granted under Order 19, Rule 28 of the Rules of the Superior Courts, 1986 as:- "*for this rule to apply vexation or frivolity must appear from the pleadings alone.*" An order was instead granted pursuant to the inherent jurisdiction of the court, it having been "*necessary to adduce evidence in explanation of the pleadings.*" In the present case, Counsel for the defendants argues that the plaintiff did not submit any evidence which could be deemed to support his allegations of criminal conspiracy.

14. Counsel noted that an attempt to re-litigate an issue is a classic example of an abuse of the process of the court. Counsel contended that the plaintiff had ample opportunity to litigate all issues relating to his marriage at the family law proceedings which occupied approximately 100 days in court over a five year period. The final outcome was the granting of a judicial separation, but the marriage between the two parties was recognised as valid throughout. Counsel for the defendants argues that notwithstanding this determination, the plaintiff seeks to pursue a collateral attack on the said determination through an apparent attempt to establish that the Church annulment rendered the family law proceedings invalid and was thereby the basis for the perpetration of a fraud on him. A number of cases are cited as authority for the proposition that an attempt to re-litigate an issue is an abuse of the process of the court, namely: *Hunter v. Chief Constable of West Midlands Police* [1982] A.C. 529; *Kelly v. Ireland* [1986] I.L.R.M. 318 and *Breathnach v. Ireland (No. 2)* [1993] 2 I.R. 448.

15. Again, Counsel referred the Court to Shiels, *Abuse of Process: Unjust and Improper Conduct of Civil Litigation in Ireland*, (Dublin: 2002), who comments on p. 31 at paragraph 3.11 that:-

"A 'collateral attack' is, as has been pointed out in Bradford and Bingley v. Seddon (1999) 4 All E.R. 217 one of the 'additional elements' which will indicate that proceedings may be an abuse of process. The leading case on that element is the case of Hunter v. Chief Constable of West Midlands Police [1981] 3 All E.R. 727. In Hunter, the case before the House of Lords involved one of the Birmingham six who had been arrested and eventually charged and convicted for murder following the bombing of two public houses in Birmingham. The conviction was made on foot of a confession which he had made to the police. At trial, the six had claimed that they had been beaten up and forced to make the confessions and that therefore they were inadmissible. The trial judge, however, accepted the evidence of police officers that no such beatings had taken place. On appeal to the criminal division of the Court of Appeal no further arguments had been made by the six on the question of the admissibility of their confessions. Instead the plaintiff brought an action against the Chief Constable in charge of the police claiming damages for assault, upon which the Chief Constable applied to have it struck out on the ground that it raised an issue identical to that which had been finally determined at the plaintiff's murder trial. Lord Diplock giving judgment of the court described the case as concerning:

....the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute, among right-thinking people. "

16. Counsel for the defendants contends that the plaintiff has not limited his attempt to launch a collateral attack on the determination of the said family law proceedings. The Court's attention was drawn to the fact that the plaintiff has, simultaneous to these proceedings, caused proceedings to be issued in the name of his infant son seeking €150,000 in damages, has issued proceedings against L.O'M, and has threatened to sue the psychiatrist who prepared a report under Section 47 of the Family Law Act 1995, pursuant to a court order, namely Dr. Helen Connisky.

17. Finally, Counsel for the defendants refer to Order 19, Rule 27 of the Rules of the Superior Courts 1986 which reads:-

"The Court may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if it shall think fit, order the costs of the application to be paid as between solicitor and client."

18. Counsel contended that subject to Order 19, Rule 27 paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the statement of claim, should be struck out as being unnecessary, scandalous and tending to prejudice and embarrass the defendants.

Submissions of the plaintiff

19. The plaintiff Mr. J.O'M., representing himself, chose not to enter any written submissions. The various oral submissions the plaintiff made to the Court, all of which concerned the history of the family law proceedings, highlight that he was merely re-litigating the

family law case.

Conclusion

20. The court is conscious that its inherent jurisdiction to strike out proceedings must be exercised sparingly, but given that the plaintiff's submissions were dominated by reference to the family law proceedings, and the remainder of arguments were unsubstantiated allegations without basis in fact, the Court cannot proceed with this case. The content of the submissions confirm that this was merely an attempt to re-litigate the family law proceedings and as such is an abuse of process which cannot be tolerated by the Court. The continued existence of these proceedings cannot be justified and accordingly, in relation to the statement of claim, by order of the Court paragraphs 1-10 are struck out as being unnecessary, scandalous and tending to prejudice and embarrass the defendants.

21. Furthermore, in the unhappy circumstances of the case the Court deems it appropriate to issue an order to have the plaintiff restrained from bringing any further proceedings against the named defendants - commonly referred to as an Isaac Wunder order.