

THE HIGH COURT**2008 4425 P****BETWEEN****KEVIN TRACEY AND KAREN TRACEY****PLAINTIFFS****AND****IRELAND, THE ATTORNEY GENERAL, THE MINISTER FOR JUSTICE,****EQUALITY AND LAW REFORM, MICHAEL McDOWELL, THE DIRECTOR OF PUBLIC PROSECUTIONS, JAMES HAMILTON,****MICHAEL LIDDY, DAVID SCANLON, MICHAEL WHITE,****GABRIELLE SKINNER, TOMAS SKINNER,****CONOR PARKINSON, THE COMMISSIONER OF AN GARDA SÍOCHÁNA, THE GARDA COMPLAINTS BOARD, ANTHONY DUGGAN,****EDWARD FINUCANE, PAUL GILLEN, JOSEPHINE DOWLING, EUNAN DOLAN, JOHN KEENAN, THE COURTS SERVICE BOARD,****MICHAEL CONNELLAN AND CORNELIUS MURPHY****DEFENDANTS****JUDGMENT of Mr. Justice Charleton delivered on 29th day of June 2010**

1. The defendants seek to strike out the pleadings of the plaintiffs against them on the basis that the claims are frivolous and vexatious, do not disclose a cause of action, and are an abuse of the process of the Court.

The Background

2. The basis for the very lengthy statement of claim in this case, which is dated the 9th July, 2009, was elucidated in argument by the plaintiff Kevin Tracey. In summary, all of the claims of conspiracy, assault and sundry breaches of constitutional rights arise out of small boys playing with a football on the road in a cul de sac of houses in which Kevin Tracey and Karen Tracey have their family home.

3. The front garden of Kevin Tracey's house is very small. On the 19th of May 2003 some small boys were out on the road kicking a football. These small boys included Tomas Skinner and Conor Parkinson, and they have been joined in these proceedings as the 11th and 12th named defendants. They were eleven years old and twelve years old at the time. Conor Parkinson is not represented by the State but it is only fair to include him in this ruling. Neither was sued on the basis of the nomination of a next friend. On one occasion their ball hit the porch of his house rattling, but not shattering, some glass. Kevin Tracey came out of his house, but, according to him, the small boys had completely disappeared. There was no sign of them or of anyone looking after them either, he says; and certainly not his neighbour Gabrielle Skinner, the 10th named defendant and the mother of Tomas Skinner. He claims he then took the ball from his garden, not from the roadway, and put it in the porch of his house, shutting the door. A number of hours later, Eunan Dolan, the 19th named defendant, who lives in the general vicinity, and who happens to be an inspector in An Garda Síochána, called to the front door of the plaintiff. According to Kevin Tracey, he put his foot in the door, pushed Kevin Tracey aside, retrieved the ball and left.

4. Almost immediately, Kevin Tracey went to the local garda station and spoke with Josephine Dowling, the 18th named defendant and a member of An Garda Síochána, who was on duty there on the same day. He complained about Inspector Dolan, the football, the foot in the door and the push. About a month later, on the 12th May 2003, having been given a form in that regard by Josephine Dowling, Kevin Tracey went to the Garda Complaints Board and made a formal complaint against Inspector Eunan Dolan. On 2nd January 2004, a summons was issued against him over an incident he claims never happened. This charged him with a simple assault on Gabrielle Skinner alleging, it appears, that he assaulted her by way of a shove in the context of retrieving the football from the small boys on the road outside his house. On the 5th February 2004, the Garda Complaints Board dismissed the complaint of Kevin Tracey against Eunan Dolan. The letter from them states that this was on the basis that he would not co-operate with their inquiries.

5. The summons against Kevin Tracey, alleging an assault on Gabrielle Skinner, came on for hearing in the District Court before Judge Michael Connellan, the 22nd named defendant, over two separate dates. The case was heard on 15th March 2004 and on 6th September 2004. Kevin Tracey was not at all satisfied with this hearing. He says it was unfair. He claims that all of the events to which I have referred, including the court case, were orchestrated or exploited by Judge Michael White, a neighbour of his, the 9th named defendant. While he cannot, and does not, say that Michael White organised the small boys to play with the ball outside his house or kick the ball against his porch, or that he orchestrated the arrival of Eunan Dolan to collect their ball, he does claim that Michael White conspired with Eunan Dolan to have a summons falsely issued against him alleging a push on Gabrielle Skinner. According to him, it was all invented because of his complaint to the Garda Complaints Board. As to him pushing Gabrielle Skinner on the roadway, he is adamant that it never happened and could not have happened because she was never on the roadway with the small boys and their ball. The District Court found against him on the summons charging him with assault. The judge believed the witnesses who said that Gabrielle Skinner was there and that Kevin Tracey shoved her. The Probation of Offenders Act 1907 ("the Probation Act") was applied without proceeding to a conviction. He is unhappy with that order. According to him, the unsatisfactory result of the District Court prosecution was yet another manifestation of a wide ranging conspiracy that, by this stage, was virulent in its attacks on him. As to the involvement of the various defendants in this conspiracy, the plaintiff Kevin Tracey alleges that each defendant either committed perjury against him in order to bring home the limited result of this prosecution, or that they conspired against him. He says that the conspirators can be proved to be such either because they knew of the wrongs being conducted against him but did nothing, or because they laughed about him in his presence, or because, from time to time, they were seen in the

company of each other.

6. The formal order on the summons against Kevin Tracey adjudicated on by Judge Michael Connellan, the 22nd named defendant, in the District Court on 4th December 2004, was that the Court did not proceed to conviction but dismissed the information by applying the Probation Act, recording that the facts alleged were proved. This order was made under s. 1(1) of the Probation Act 1907. This provides:-

"Where any person is charged before a court of summary jurisdiction with an offence punishable by such Court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to conviction, make an order either -

(i) dismissing the information or charge; or

(ii) discharging the offender conditionally... to be of good behaviour... as may be specified in the order."

7. Kevin Tracey appealed that finding and order to the Circuit Court. The case came on for hearing on the 8th November 2005, before Judge Cornelius Murphy, 23rd defendant. Kevin Tracey was not satisfied with that hearing, either. He claims that he was bullied by the judge, that the judge never made an order in relation to the appeal, and ran out the door of the court, his wife Karen Tracy, the 2nd named plaintiff, having fainted. In fact, the Circuit Court, as a matter of record, affirmed the District Court order.

8. No judicial review proceeding was ever commenced in relation to the trial in the District Court and the order of the 6th September 2004, resulting in facts amounting to the elements of charge having been found to have been proved against Kevin Tracey: nor was a judicial review taken in respect of the alleged behaviour of the Circuit Court judge on 8th November 2005 in affirming the District Court order. No judicial review was taken in relation to the decision of the Garda Complaints Board on 5th February 2004 to dismiss the applicant's complaint against inspector Eunan Dolan because of his non co-operation. No application was ever brought to overturn the summons issued on 2nd January 2004 alleging a push by Kevin Tracey against Gabrielle Skinner, the 10th named defendant. Instead, there was a valid judicial hearing and determination in the District Court and, on appeal, in the Circuit Court in relation to the incident involving the ball, the alleged push and the allegations made by Kevin Tracey that surround this incident in the cul de sac.

9. What Kevin Tracey now seeks to do is to revisit the entirety of this matter by alleging, through plenary proceedings, various torts, including conspiracy and assault, as against twenty-three defendants.

The Defendants

10. The first three defendants are Ireland, the Attorney General and the Minister for Justice Equality and Law Reform. These are the parties alleged to be vicariously responsible for the torts committed by the defendants who are in some way working for the State and are not just neighbours of Kevin Tracey or small boys. In addition, however, the then Minister for Justice, Michael McDowell, the 4th named defendant, is sued in a personal capacity for not having done enough to stop the conspiracy, or for being involved in it. The Director of Public Prosecutions, as an office holder and personally, together with two of his officials, Michael Liddy and David Scanlon, the 5th to 8th named defendants, are sued for being aware of the conspiracy and encouraging it through inaction, structured neglect or malice. Judge Michael White, the 9th named defendant is, or was, a near neighbour of Kevin Tracey and every single thing that the plaintiff claims to believe is laid at his door through allegations of conspiracy, and malicious prosecution under the guise of allegations of the orchestration and manipulation of truly fantastic events. Gabrielle Skinner, the 10th named defendant, is supposed to have given perjured evidence in relation to her having been pushed in the context of the ball playing in the cul de sac. Her son, and another small boy are sued as the 11th and 12th named defendants as being part of the conspiracy; putting together statements at the behest of the Gardaí, says Kevin Tracey, in order to blacken the plaintiff's character and cause professional and personal damage.

11. Supposedly, Gabrielle Skinner, Tomas Skinner and Conor Parkinson, the 10th to 12th defendants have all made false statements, and given evidence, whereby Judge Michael Connellan, the 22nd named defendant, became satisfied in the District Court on 6th December 2004 that the facts alleged in the summons alleging assault on Gabrielle Skinner against Kevin Tracey were proved. Eunan Dolan, the 19th named defendant, is supposed to have orchestrated the 10th to 12th named defendants to make these false allegations, in order to cover up for him pushing Kevin Tracey in his doorway in order to recover the ball belonging to the small boys. Not alone he, but the Garda Complaints Board, the 14th named defendant, and many others, are alleged to have been party to this. In addition, the Commissioner of An Garda Síochána, Anthony Duggan, of the Garda Complaints Board, Garda Edward Finucane, Garda Paul Gillen, Garda Josephine Dowling and Garda John Keenan are alleged to have participated in the conspiracy against Kevin Tracey. These people are the 15th to 20th named defendants. I have already outlined the role alleged against Eunan Dolan, the 19th named defendant, in this. The Courts Service Board were also involved in the conspiracy, according to Kevin Tracey; they are the 21st named defendant. Judge Michael Connellan and Judge Cornelius Murphy, the 22nd and 23rd named defendants did not act, according to Kevin Tracey, in good faith in making the orders that they did, but were, instead, inspired by, and became part of, the conspiracy against him.

Motion to Dismiss

12. Litigation is a hardship. Anyone who has to defend a legal proceeding will find their lives and their finances bound up in a process that is worrisome, unusual, uncertain and intimidating. To bring proceedings against parties against whom there is no reasonable cause is vexatious. The court has an inherent jurisdiction to strike out any pleading which is bound to fail. Ultimately, the jurisdiction of the court exists in order to strive towards justice: necessarily, the powers of the court must be exercised in order to ensure that no abuse of the process of the court takes place. This jurisdiction must be exercised sparingly. A plaintiff has a right to litigate genuine claims before the courts. This is enshrined in the purpose for which Article 34 of the Constitution established the courts. In declaring rights, such as in Article 40, the Constitution also proclaims the availability of remedies whereby injustice may be righted. The courts provide remedies in law for genuine wrongs. The courts are, however, not to be abused through being used as an instrument of aggravation. The courts are there, rather, to assist in the resolution of disputes under the rule of law. It would be contrary to the purpose for which the Constitution was enacted, as stated in the Preamble, for the establishment of a true social order, were the right of access to the courts to be unfettered. In appropriate cases defendants are entitled to call for vexatious claims against them to be dismissed. The courts are not an open house for the airing of causeless grievances, albeit that these are draped in legal language and parcelled inside a form of apparently valid legal pleading such as a statement of claim. It is part of the valid exercise of the function of the courts to look at allegations and to see whether they are brought based on some genuine allegation of fact and for a proper purpose, or are instead brought in order to abuse blameless parties or to upset the constitutional

scheme of the ordered disposal of litigation that is set out within the Constitution.

The Claim

13. There is no part of the narrative of the plaintiff which is capable of being divorced from his central allegation of conspiracy. His pleadings cannot be separated into a valid element and an element which is not vexatious, or not an abuse of the process of the Court. Paragraph 13 of the statement of claim of Kevin Tracey and Karen Tracey, dated 9th day of July 2009, alleges that they:-

"... were subjected to a particular conspiracy and collusion with intention to falsely convict, serious abuse of legal process, including a false and malicious summons, a false, malicious and unlawful prosecution, forcible entry and trespass to their property, trespassed person (assault and battery) of the first named plaintiff by an off-duty member of An Garda Síochána (police) including *mala fides* and perjury by members of the Garda Síochána. The said action is caused by misfeasance/malefeasance and *mala fides* in public office, conspiracy and collusion to pervert the course of justice and violations of the principles of natural justice, constitutional justice and human rights. In consequence of the negligence and breach of duty the plaintiffs sustained personal injury, pain and suffering, severe personal distress, damage to character with resulting loss of work, personal and financial distress, emotional and psychological damage, trauma, anxiety, mental distress, post traumatic stress, hurt, shock, damage, loss, inconvenience, nuisance, upset and expense and acute and continuous disruption to their home and family life."

14. The particulars pleaded in the statement of claim make it clear that all of the facts alleged are intricately and inextricably connected with each other. Whereas it is claimed in argument, in order to save some part of these pleadings, that the case really concerns the alleged push at Kevin Tracey's front door, this is not so. All of the events, about the alleged push on Gabrielle Skinner and the false evidence supposedly given by her, and by her small son, and his small friend, the actions of the Garda Complaints Board, the Director of Public Prosecutions, the Minister for Justice, and the members of the judiciary are woven together by Kevin Tracey's pleadings in the conspiracy which is alleged to encompass them all. This made was clear in the particulars. There it is alleged that a malicious prosecution, that of the assault summons concerned with the push by Kevin Tracey in the cul de sac outside the home of Gabrielle Skinner, was mounted despite being entirely false and that it was organised by a combination devoted to malicious lies. Specifically, all of this was pleaded to be centered around the person of Michael White, the 9th named defendant, who is proclaimed to be "the orchestrator of all crimes and malice against Kevin Tracey and Karen Tracey where he arranged the criminal onslaught on Kevin Tracey" by local gardaí. Specifically, Kevin Tracey claims that multiple defendants wove a fantastic web of perjury claiming that he had pushed Gabrielle Skinner in order to cover up, and distract from, the fact that Eunan Dolan had pushed him in order to retrieve the football belonging to the small boys. These claims are not severable.

Principles

15. Order 19 r. 28 states that:-

"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 the 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."

16. Order 19 r. 27 states that:-

"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 who may in any such case, if it shall think fit, order the costs of the application to be paid as between solicitor and client."

17. In judging a pleading in a motion to dismiss a vexatious or improper action, the court is not obliged to attempt to salvage from it some portion that may possibly, if properly put, be valid. Instead, I would adopt as correct what McGovern J. stated in *Daniel Doherty v. The Minister for Justice Equality and Law Reform and Others* (Unreported, High Court, McGovern J., 15th May 2009), IEHC 246 para. 14:-

"Where the extent of the scandalous or vexatious pleadings is sufficiently gross and extensive, it seems to me that it is not function of the court to sift through the material in the statement of claim to see if, perhaps, somewhere within it, a claim can be found in the proper form. The court is entitled to have regard to the document as a whole. There might well be cases where there is an isolated pleading here or there which may be scandalous or vexatious, but the greater part of the document contains pleadings in a proper form. In those cases, the court strikes out the offending portions of the pleadings. But that is not the case here."

18. In determining whether a claim is frivolous or vexatious, Ó Caoimh J. in *Riordan v. Ireland* [2001] 4 I.R. 463 adopted the principles set out by the High Court of Ontario in *re Lang Michener and Fadin* [1987] 37 D.L.R. (4th) 685 at p. 691. I would agree that the principles are useful, though I would exercise particular care not to automatically shut someone out from litigation just because of the non-payment of an order for costs. Ó Caoimh J. approved the judgment to the following effect at p. 466:-

"(a) the bringing up on one or more actions to determine an issue which has already been determined by a court of competent jurisdiction";

(b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief;

(c) where the action is brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;

(d) where issues tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;

(e) where the person instituting the proceedings has failed to pay the costs of unsuccessful proceedings;

(f) where the respondent persistently takes unsuccessful appeals from judicial decisions."

Respect for Court Decisions

19. By virtue of the order of the District Court made on the 6th September 2004, applying the Probation Act, it was judicially recorded as a fact that the summons for assault brought against Kevin Tracey was proven as to the facts thereof. Since these facts involved him pushing Gabrielle Skinner, the 10th named defendant, this is a judicial determination against Kevin Tracey. That determination was affirmed on 8th November 2005, by the Circuit Court. Neither court proceeded to conviction and dismissed the summons. That order, however, was not a finding of not guilty. If it had been, the order of the Court would have reflected that finding, and the Court would have been debarred from any other order. The jurisdiction actually exercised by the Court depended, however, on the invocation of s. (1)(1) of the Probation of Offenders Act 1907, as recorded in the relevant court orders. The order made, finding the facts proved, was only possible because the Court regarded the charge as having been proved, but was of the opinion, that, having regard to the character, antecedents, age, health, or mental condition of the persons charged, or the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it was inexpedient to inflict any punishment or any other than a nominal punishment, or that it was expedient to release the offender on probation.

20. That is the order of the Court and, as a matter of legal record, what happened as to the facts alleged is that they were found to be proven. The summons alleging a push on Gabrielle Skinner did not arise out of any visit by Inspector Eunan Dolan, the 19th named defendant, to the house of Kevin Tracey, if it happened, or to any minor altercation in the doorway. The shoving of Gabrielle Skinner came first. Kevin Tracey may claim to believe that because he protested to the Garda Complaints Board about this minor altercation with Eunan Dolan, that all of the defendants in this case conspired together to bring a false charge against him: that of assaulting Gabrielle Skinner by pushing her. That is not the case. As a matter of judicial determination that charge was not false because the District Court, and the Circuit Court on appeal, took the view "the charge is proved". There were therefore no false allegations by Eunan Dolan, the 19th named defendant, orchestrated through Gabrielle Skinner, her son, and her son's small friend, the 10th to 12th named defendants. Nor did this happen because the Garda Complaints Board and its employee, the 14th and 15th named defendants, thought it expedient to deal with Kevin Tracey's complaint in any inappropriate way; and nor did it happen that any of the other State parties, or the garda who dealt with his immediate complaint against Eunan Dolan on the day of the ball bouncing incident, namely Josephine Dowling, the 18th named defendant, joined in this alleged conspiracy. Kevin Tracey argues that no court convicted him of pushing Gabrielle Skinner. As a matter of law, he was not acquitted and nor was he convicted. The facts of the charge were found proven beyond a reasonable doubt. In consequence of that finding, the Probation Act allowed the District Court to put him on probation or released him on condition. No court has that power unless a charge is proven. A merciful view was taken as to the consequences of this finding of fact and he was treated in a less onerous manner.

21. The entirety of this case is an abuse of the process of the Court. It is born of a motivation to overcome the finding of fact by the District Court, and the affirmation of that finding of fact by the Circuit Court. No part of the case can be removed as a valid separate plenary proceeding. The plaintiff, Kevin Tracey, says that he didn't push Gabrielle Skinner. Yet, the District Court and the Circuit Court have found that he did. They proceeded not to impose a penalty but to deal with his case humanely. That is the record of the court. A collateral attack cannot be mounted on that finding and consequent order by claiming that neighbours of the plaintiff, and two small boys, were somehow put up to a claim against him by a member of An Garda Síochána, Eunan Dolan, because he wished to deny or obscure that he had later pushed him in his doorway. These facts are not separable. The action also has the feel of multiplicity and vexation about it; since anyone who dealt with the plaintiff, in any way, such as Josephine Dowling, the garda who first received a complaint from him on the day of the ball bouncing incident, now finds herself a party to these proceedings. It is clear to me that all relevant issues have been determined by a court of competent jurisdiction. This is that on 14th April 2003 that Kevin Tracey assaulted Gabrielle Skinner. For this, the Probation Act was applied. That finding is not to be overturned by a collateral attack alleging false allegations being brought against Kevin Tracey through an alleged, and very minor, wrong supposedly committed elsewhere by a garda officer. This can be tested by asking what was the defence in the District Court to the summons. The answer is that the Kevin Tracey claimed that it was perjury and conspiracy, and not truth, that comprised the evidence of the prosecution witness all of whom were motivated by their membership of this alleged conspiracy. All were party to the conspiracy, according to Kevin Tracey, because of the malice of Eunan Dolan and what he wanted to cover up.

22. If there was anything wrong with the manner in which the Court proceeded to find facts against Kevin Tracey on 6th September 2004, a judicial review application should have been brought against the District Court judge. Instead that judge now finds himself at the receiving end of civil proceedings. Similarly, if there was anything wrong with the manner in which the Circuit Court dealt with the appeal on 8th November 2005, that should have been the subject of judicial review proceedings. Another judge is, instead, added to these plenary proceedings.

23. I feel that I should add that there is nothing in this case to suggest to me that the Garda Complaints Board or the Courts Services Board, or any of the other defendants, joined together in order to attack the constitutional rights of Kevin Tracey and Karen Tracey. In fact, they did not join together at all save by being made defendants in this action. There is not a scred of evidence to suggest that any of the defendants in any way planned together in order to undermine any right to which the plaintiffs are entitled. Rather, the defendants have the right not to be at the receiving end of scandalous, elaborate and fanciful litigation that is based entirely on supposition and the patching of disconnected facts for the purpose of overturning a legitimate court judgment and order.

Result

24. This action is dismissed.