Neutral Citation Number: [2011] IEHC 131

THE HIGH COURT

2008 1936 P

BETWEEN

BRIDGET SWEENEY

PLAINTIFF

AND

THE BOARD OF MANAGEMENT OF

BALLINTEER COMMUNITY SCHOOL

DEFENDANTS

JUDGMENT of Mr. Justice Herbert delivered the 24th day of March 2011

1. Between September 2005 and September 2006, a series of decisions affecting the plaintiff, approximately six in number were taken by Dr. C. as principal teacher of a large community college (hereinafter referred to as B.C.C.), in which the plaintiff was a senior member of the teaching staff. It is not for this Court in these proceedings to decide whether these decisions were correct or incorrect, justified or unjustified. A report of an Investigating Officer appointed pursuant to the provisions of the Code of Practice of March 2003, for "dealing with complaints of bullying and harassment of staff in community and comprehensive schools", subscribed to and relied upon the plaintiff as a member of the Teachers Union of Ireland and, by the Board of Management of B.C.C. found that the plaintiff had not established that these decisions amounted to bullying or harassment of her by Dr. C.. This finding was sustained by an Appeal Board duly constituted under and in accordance with the terms of the Code of Procedure, on foot of the plaintiff's appeal dated the 9th March, 2010, from the decision of the Investigating Officer. I have already ruled during the course of this action that to the extent that these decisions of Dr. C. were the subject of inquiry by the Investigating Officer and subsequently by the Appeal Board, this Court would not permit the plaintiff to challenge these findings in the instant case and, would accept the finding that these decisions taken by Dr. C. did not amount to bullying or harassment of the plaintiff.

2. However, these decisions and the facts surrounding them have a residual importance to the present case. The plaintiff did not accept these decisions of Dr. C. and, in each case, to re-echo her own words under cross examination, "went beyond and outside him". In so doing she knew that she was taking, what she herself described, as a "drastic step". She accepted in evidence that on the 2nd September, 2005, she told Dr. C. that unless she received what she believed was promised funding from B.C.C. for the second year of her four year degree course in counselling and psychotherapy, "she would do something drastic". In cross examination the plaintiff denied that she had threatened to take sick leave for a year and insisted that by saying that she "would do something drastic" she meant that she would, "go beyond and outside him".

3. It is not for this Court to decide in the present case whether or not the plaintiff was entitled to "go beyond and outside" Dr. C. in relation to these decisions or, even if such recourse existed whether she employed correct procedures in availing of it.

4. However, what is important in my judgment to the proper understanding and determination of this action is that these decisions of Dr. C. and the plaintiff's reaction to them resulted, I find, in escalating mutual distrust between them as disagreement followed disagreement. Eventually, I find that the plaintiff came to believe that every action or omission on the part of Dr. C. whether actually or, as she perceived it, affecting her, was part of a conscious and deliberate campaign by him to bully and harass her.

5. These most regrettable circumstances caused her on the 4th October, 2006, to make a formal complaint of bullying and harassment through a firm of solicitors to the Rev. Chairman of the Board of Management of B.C.C.. I accept the evidence of the Rev. Chairman that this was the first he had heard of the allegation. He was very shocked and he took legal advice before acknowledging this letter by a letter dated the 16th October, 2006. He accepted that he had been aware since October 2005 that the plaintiff and Dr. C. had not been speaking to each other but he told the court that this was not at all unusual amongst teachers. I find that prior to this, in May and June 2006, three teachers on the staff of B.C.C. who were the then serving committee of the Teachers Union of Ireland in B.C.C. had attended a number of meetings with Dr. C. in which they had put to him the plaintiff's concerns about his behaviour towards her. I am satisfied that at least one of these meetings Dr. C. behaved very aggressively towards a female teacher almost resulting in physical intervention by the two male teachers present. It is not necessary for the purpose of deciding the present action to determine whether Dr. C. is correct in his recollection that no express allegation of bullying or harassment by him of the plaintiff was raised at any of these meetings and accordingly that the contents of the letter of the 4th October, 2006, came as a very great surprise to him. By a letter dated the 7th November, 2006, Dr. C. denied these accusations and furnished particulars to the Board of Management of B.C.C. of what he alleged was bullying of him by the plaintiff.

6. Following a considerable exchange of views in correspondence, which on occasion became unnecessarily acrimonious, on the 13th November, 2006, a practising junior counsel with extensive experience and with an area of specialisation in the Law relating to Education in Ireland was appointed under the Code of Practice as "Investigating Officer" to inquire into these very serious complaints by the plaintiff of bullying and harassment on the part of the Dr. C.. In furnishing very belated details of her claim to the Investigating Officer and to Dr. C. in April 2007, the plaintiff claimed that she had been bullied and harassed by Dr. C. since 1992. However, at the hearing of the instant case, she accepted that this alleged behaviour on the part of Dr. C. only commenced in October 2005, following her appeal against the filling of four "A" posts of responsibility in B.C.C.. The Investigating Officer furnished her report on the 26th October, 2007 and a copy was furnished to the plaintiff.

7. At this point a few biographical details of the plaintiff and of her career are in order. The plaintiff was born on the 8th July, 1954. She separated from her spouse after, what I was informed, was for her a very traumatic marriage followed by a very difficult court separation. She has two children who are now young adults. She qualified as a teacher in 1975. After qualifying she taught in Dublin until 1979 and in Lisbon from 1979 to 1980. In 1980 she became a permanent member of the staff of B.C.C.. In 1993, Dr. C. was appointed principal of B.C.C.. In 1999 the plaintiff became Home-School Liaison Coordinator at B.C.C.. In the circumstances of this case I find it to be of considerable significance that the duties of the holder of this important and responsible post were spelled out in

the "job description" as being, *inter alia*, "to consult, liaise and collaborate with the Principal" of B.C.C.. It is further of significance that the plaintiff told the court that she regarded these as merely guidelines and not necessarily as binding on her. In May 2002, the plaintiff was elected to and served a three year term as a member of the Board of Management of B.C.C., as one of two teacher representatives on that Board. In October 2004, she commenced a four year degree course in counselling and psychotherapy. This involved some limited absences from work. Over the years from 1980 onwards the plaintiff had, through evening courses, obtained diplomas in work related skills such as drugs awareness and personal development counselling. In September 2005, she was appointed learning support teacher at B.C.C.. I find that the evidence clearly establishes that up to this point the plaintiff was regarded by her colleagues at B.C.C. including Dr. C. as a most dedicated and progressive teacher who had done enormous work in extending the educational services provided by B.C.C. to deprived families and especially to children at risk.

8. Unfortunately, all of this came to an end in October 2005, when the plaintiff was unsuccessful in her application for one of four category "A" posts of responsibility within B.C.C.. I find that the plaintiff consider it most unjust that she should have been passed over for these posts having regard to her qualifications, her seniority and her record of exemplary and innovative service as Home-School Liaison Coordinator. She attributed her lack of success to the malign influence of Dr. C.. I accept the evidence that Dr. C. took no part whatever in the actual decision making and, had no vote in the selection of the successful candidates. I accept that he was present at the meetings of the Appointments Committee as secretary and to keep the record. However, there was compelling evidence before the court which I accept that even if Dr. C. took no part in the selection process he totally approved of the result, which he did not wish to see changed. He then made what can only be described as a series of calamitous blunders which would cause a reasonable observer, reasonably to conclude that he was determined that the plaintiff would not under any circumstances be awarded one of these category "A" posts of responsibility in B.C.C.:-

> He advised the plaintiff incorrectly, though I am quite satisfied not maliciously, that she could not appeal this decision.
>
> On the 9th November, 2005, a letter under his signature was sent congratulating the successful applicants when, I am satisfied he knew of the plaintiff's appeal against the decision. I find his explanation for this action unconvincing. In a letter of equal date he apologised to the plaintiff, but then cast doubt on the sincerity of this apology by notifying these teachers of meetings involving "A" post issues on the 16th November, 2005, and the 23rd November, 2005.
>
> He prevailed on a member of the teaching staff of B.C.C. who had been a friend of the plaintiff for more than twenty years to endeavour to persuade her to withdraw her appeal and to apply for a "B" category post which he indicated she could be assured of getting. This offer was very properly declined by the plaintiff. This other teacher, very moved, told the court that she realised in hindsight that she should not have done this as it would probably result, as it did in the loss of the plaintiff's friendship.

9. I find on the evidence that the plaintiff, who with very good reason, regarded herself as a very senior and experienced teacher who had contributed greatly to the work of B.C.C. felt deeply hurt, disappointed, humiliated and betrayed by these actions of Dr. C.. I find that the plaintiff reacted by deciding to have as little personal contact with Dr. C. as possible. On the 30th October, 2005, the plaintiff appealed successfully against the procedure adopted in filling these "A" posts. The plaintiff was not successful in obtaining one of these posts in the subsequent re-selection process. For his part, I am satisfied, that Dr. C. perceived the plaintiff's appeal against the "A" post appointments, which I am satisfied on the evidence was entirely unprecedented, as a further going "beyond and outside him" by the plaintiff and, as a challenge to his authority as Principal of B.C.C.. I find that his reaction was to behave thereafter towards the plaintiff in a hostile and dismissive manner and to disparage and marginalise her in the eyes of other teachers and members of the non teaching staff at B.C.C.. Unfortunately also, those colleagues whose promotions to "A" posts of responsibility was jeopardised by the plaintiff's appeal and their friends on the teaching staff also ostracised the plaintiff.

10. Specific events of which the plaintiff complains and which occurred between October 2005 and September 2006, - the music examination incident; being urgently summoned to Dr. C.'s office during an inspection by an Inspector of the Department of Education; unwarranted requests to attend at the college office and, especially the forcing open of the door of her office and the removal to a different room of her effects including very confidential files in July 2006, during the summer vacation, - an action which elicited a letter of complaint from the college committee of the Teachers Union of Ireland dated the 11th December, 2006, - all served to worsen this totally undesirable state of affairs.

11. I do not accept the *bona fides* of the explanation offered for the admitted entry by one of the college caretakers, acting on the instructions of Dr. C., into the plaintiff's office in B.C.C. by slipping the lock with a knife and, the moving of the contents of that office to the Home-School Liaison room. Absent any emergency, ie. fire or flood or, faced with an inability after reasonable and proper attempts to contact the plaintiff and a pressing need in the interests of the college to have the rooms interchanged, what was done on this occasion on the instructions of Dr. C. was high handed and inexcusable. The fact, which I accept, that the college caretaker moved everything very carefully and put everything in exactly the same position in the other room and did not open anything does not mitigate the enormity of this conduct in the least. Neither does the fact that the other teacher made no complaint or that the plaintiff was in any event returning to the Home-School Liaison room at the start of the new term.

12. In addition, the plaintiff in retrospect, now regarded the September 2005, problem in securing what she regarded as promised funding by B.C.C. for the academic costs of the second year of her degree course in counselling and psychotherapy, as yet a further example of harassment and bullying of her by Dr. C.. The Investigating Officer and the Appeal Board appointed and constituted in accordance with the terms of the Code of Procedure held that these events were not shown to have involved bullying and harassment as defined in the Code. It is there defined as a, "destructive and malicious attempt to target a particular individual". I have already ruled that so far as these events are concerned the plaintiff is bound by these findings of the Investigating Officer and the Appeal Board which, if the issue had fallen to be determined by it, are in accordance with the evidence led before this Court.

13. As almost invariably occurs in such divisive situations some teaching staff members of B.C.C., some members of the Board of Management of B.C.C. and, even some persons from outside B.C.C. who in the course of their official duties became involved in these events, came to take a partisan stance in favour of the plaintiff or of Dr. C.. I found the evidence of a number of witnesses in this case to be unreliable and therefore unhelpful for this reason.

14. Between the 31st August, 2006 and the 27th March, 2007, the plaintiff was absent from work and furnished each week a medical certificate from her General Medical Practitioner, Dr. Philip McMahon, that she was suffering from work related stress. The quite extraordinary manner in which these certificates were furnished, - they were found by the clerical officers each Monday morning pushed under the door of the general office and not given or sent to the Deputy-Principal the person entitled to require and to receive them, - demonstrates in my judgment the continuing concern on the part of the plaintiff to avoid any risk of having to communicate personally with Dr. C., even to the extent of refusing to furnish these very important documents from her own perspective directly to management. The clerical officers further informed the court that each Monday morning a man or a woman

would telephone the general office and state that the plaintiff would be absent from work that week. These callers never identified themselves to the clerical officers.

15. I find utterly indefensible, the manner in which the plaintiff chose to return to work at B.C.C. on the 28th March, 2007. She must have realised that this was bound to be seen by Dr. C. with every justification as a calculated and wholly deliberate insult to him as Principal of the college. I accept the evidence of the Rev. Chairman of the Board of Management of B.C.C. at the time, and, the evidence of the present Chairperson of the Board who between them have each 30 years experience in community/comprehensive schools and large private schools that the manner of the plaintiff's return to B.C.C. after an absence of 209 certified days was "unbelievable and totally unacceptable". On the 27th March, 2007, the plaintiff's present Solicitors acting, one must infer on her instructions or with her consent, sent by Email a letter to the Rev. Chairman of the Board of Management of B.C.C. at his private address notifying him of her intention to return to work on the following day. I accept the evidence of the addressee that he did not receive this communication until after the plaintiff had in fact returned to work. By a letter dated the 12th April, 2007, he wrote to the plaintiff's Solicitors notifying them of this and asking why no notice of her intended return to the college had been given to Dr. C..

16. I find on the evidence of Dr. C., the former and the present chairpersons of the Board of Management of B.C.C. and the Deputy-Principal of B.C.C. that Dr. C. was entitled to receive at least some days advance notice that the plaintiff intended to return to work on the 28th March, 2007. I find that he was in fact entirely unaware that she had done so until they met accidentally in a corridor some 30 minutes, on her own evidence, after she had entered the college. On the balance of probabilities I am prepared to find that this extraordinary behaviour on the part of the plaintiff was not, as Dr. C. perceived it, a conscious and deliberate attempt on her part to insult him and to undermine his authority as Principal of the College but was a further indication of her anxiety about communicating with him. In my judgment her failure to notify D. C. in advance of her intention to return to work is not explained or excused by her having proffered a medical certificate of fitness to return to work and a further certificate from Dr. McMahon covering her absence from work in the previous week, to the Deputy-Principal in the staff room earlier that morning and, being told by him to give them in at the office later in the day. I am satisfied on the evidence that apart from her failure to give proper notice to Dr. C. the plaintiff's return to work did not in fact give rise to any staffing or rescheduling difficulties in the college on that day.

17. I accept the plaintiff's evidence that Dr. C. said to her, "What's this, what are you doing here, who knows you are back, did you inform the Board of Management". There can be no doubt but that Dr. C. was entitled to put these questions to the plaintiff and even though the manner in which they were put may have been lacking in diplomacy and somewhat brusque, nonetheless I do not consider that in the extraordinary circumstances it amounted to bullying or harassment of the plaintiff. I am prepared to accept the plaintiff's evidence that Dr. C. spoke loudly on the occasion and even turned red in the face, even though I have had an opportunity of closely observing him in various circumstances throughout the trial of this action and I never noticed him becoming red in the face. However, there was evidence which I accept, from a number of teachers who as members of the Teachers Union of Ireland had occasion to become involved in these differences between Dr. C. and the plaintiff, that on a number of occasions in meetings with Dr. C. he behaved with considerable and in their opinion unwarranted aggression towards them. However, unlike the case of the plaintiff, these exchanges all appear to have ended amicably and with handshakes all around. Given the sudden unexpectedness of his encounter with the plaintiff, his immediate assumption that she was back at work and, his almost certain anger and resentment at not having been notified in advance by the plaintiff that she was coming back to work, I think it not all unlikely that Dr. C. spoke loudly and aggressively as the plaintiff alleges. I do not however, accept that he became physically aggressive and, "came right up against her" as she claimed in her evidence. I find this to be improbable. In describing the difficulties which arose in September 2005, in relation to the provisions of funding for the second year of her degree course, the plaintiff claimed that during a meeting with Dr. C. in his office, he had become aggressive, had flung down his keys, had jumped up from the table, red faced and with eyes blazing and had invaded her body space. However, she made no complaint about this alleged behaviour at the time. In fact she agreed that things were good with Dr. C. at that time. On the 28th March, 2007, the confrontation with Dr. C. had occurred in an open corridor in what appears to have been the most public part of the College, where everything occurring was capable of being observed by other teachers, non teaching staff, pupils or even parents of pupils. Regardless of how he may have felt on the occasion, I do not regard it as credible that Dr. C. if he had any thought at all for his position as Principal of B.C.C. would have behaved in such a place in the manner suggested by the plaintiff.

18. The plaintiff gave evidence that her answer to these questions by Dr. C. was to say "I am not talking to you unless someone else is present". She explained this answer by telling the court that she needed another person to be present so that person could be a witness to what Dr. C. was saying and doing as he would later deny both. The plaintiff denied that this was a pre-meditated response on her part. I am unable to accept this. The evidence adduced in relation to other incidents after the 28th March, 2007, together with this incident satisfied me that the plaintiff returned to B.C.C. with a plan to avoid contact with Dr. C. wherever possible and where not possible to stand up to him and insist that any communication between them take place in the presence of some third party acceptable to her. I find it also of significance that this incident was immediately followed by a letter from the plaintiff's solicitors to the Board of Management of B.C.C. dated the 30th March, 2007.

19. After this exchange the plaintiff told the court that she noticed that the door of the business studies room, about ten feet away, was open. She entered this room where a male colleague, (and one of the Teachers Union of Ireland College Committee), was teaching a class. She told the court that her purpose was to ask this teacher to watch while she went down the corridor as she felt stressed and afraid. I am unable to accept that this as the reason why the plaintiff went into her colleague's room. I am satisfied that she went there, not as Dr. C. perceived it to convey negative information about him in front of a class, but pursuant to her plan to involve a third party immediately in all confrontations which she might have with Dr. C.. I am satisfied on the evidence that this colleague was discomfited by the plaintiff's sudden intrusion into his class and was most anxious that she should not linger in the room. I accept this teacher's evidence that the plaintiff was quivering and appeared to be fighting back tears and had said to him, "He is at me again, its happening again". I also accept this teacher's evidence that as they were speaking a knock came to the door and Dr. C. put his head into the room, beckoned this teacher over to the door and said to him "You cannot have people invading your room, you'd want to look after yourself".

20. I am satisfied that this teacher, who had been a member of the Teachers Union of Ireland Committee that had spoken to Dr. C. in 2006, on behalf of the plaintiff, reasonably and rationally interpreted this statement by Dr. C. as a threat, that he would suffer some detriment for speaking to the plaintiff and not insisting that she leave his room immediately. I find that Dr. C. had full authority to circulate a notice to all the teachers that they should not enter a colleague's classroom while a class was in progress. I am satisfied that on this occasion Dr. C. was referring solely to the plaintiff whom he disparagingly described as having "invaded" this other teacher's classroom. I find that this intervention at this time and in these terms by Dr. C. was a destructive and malicious targeting of the plaintiff and amounted to bullying of the plaintiff within the definition of the March 2003 Code of Practice to which both Dr. C. and the plaintiff had subscribed and had invoked. But apart altogether from that definition in my judgment these words were hostile, offensive, unnecessary and disparaging to the plaintiff who was a very senior teacher in the college and would amount to "bullying" within the meaning of the 2002 (now 2007) Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying At Work, or even within the ordinary dictionary definition of that word. In my judgment a particularly vicious form of bullying involves

isolating the victim in the work place by influencing others by actual or suggested threats to their own interests and by undermining the victim's standing in the organisation and amongst colleagues by disparaging references. In my judgment this was the first indication of a firm determination on the part of Dr. C. to brook no positive interference, as he saw it, by the plaintiff in his management of the college.

21. The plaintiff told the court and, this teacher accepts, that the plaintiff left his classroom and ran down the corridor and into the ladies restroom which was about twenty feet away. He said that Dr. C. was not in the corridor at this time. I accept the evidence of Dr. C. that he had gone back to his office and had telephoned the Deputy-Principal and the Rev. Chairman of the Board of Management to advise them of what had occurred. I accept his evidence that he did not know when the plaintiff had left the classroom or where she had gone. The plaintiff gave evidence that when she emerged from the ladies restroom Dr. C. was waiting outside the door. She said that she walked down the corridor and he followed. She then ran into the home-School Liaison room and into her office adjoining that room and locked the door. Using her mobile telephone she immediately contacted two female colleagues, who were the then teachers' representatives on the Board of Management of B.C.C. When they arrived she unlocked the door and told them what had occurred.

22. I reject as utterly improbable this evidence of the plaintiff that Dr. C. had waited outside the ladies rest room for ten minutes until the plaintiff re-emerged. Dr. C. told the court that the first time this suggestion had been made was during the hearing of the action. I doubt very much if even the most crass and insensitive pupil would do such a thing. While in that room the plaintiff could not have known where Dr. C. was. I believe that it was entirely coincidental that Dr. C. was walking down the corridor when she re-emerged from the ladies restroom. Dr. C. is a married man. He is, as the Rev. former Chairman of the Board of Management very aptly described him, "the Managing Director" of a considerable enterprise. The door to the ladies restroom is on a corridor of the college along which all manner of persons pass and re-pass. It is in my view therefore, an indication of what Dr. Mohan described as "disturbed perceptions" that the plaintiff should make such an allegation against Dr. C..

23. Unfortunately, the matter did not end here. The plaintiff and one of the other teachers whom she had summoned gave evidence that after the plaintiff had unlocked the Home-School Liaison room door, they saw Dr. C. looking in the window of the room from the yard outside the window. I am satisfied that the evidence establishes that this window is approximately eight feet in length and eighteen inches in height. It is made of Perspex, approximately one third of an inch thick which over the ten years of its existence had become discoloured, yellowed and clouded. In addition this window is covered throughout its length by very old and dusty thick net curtains hung in place in the 1970s. Further, the window is generally very dusty on the outside. I am satisfied on the evidence that during daylight hours a person inside this room looking out could only see the shadow of someone outside the window looking in with not even sufficient outline definition to determine whether that person was male or female. If the plaintiff and this other teacher saw someone outside the window on this occasion, I am satisfied that because of the previous events they surmised that it was Dr. C.. I accept his evidence that he did not go out into this yard and look in the window of the Home-School Liaison room.

24. I am satisfied that the events of the 24th October, 2007, when the plaintiff was recorded in the college attendance book as having been absent from work when she was in fact attending an authorised "In-school training course" and ought to have been marked "In service" was a simple mistake. I am also satisfied on the evidence that this mistake was rapidly corrected and that the plaintiff suffered no financial loss as a result of the error. I do not accept that this incident was deliberately contrived by Dr. C. to bully or to harass the plaintiff.

25. On the 20th November, 2007, a further confrontation occurred between the plaintiff and Dr. C.. The parent of a pupil in the school was loudly abusing another teacher for disciplining her son, (he had told that teacher to "shut up"). I find on the evidence, particularly by reference to a contemporaneous note made by the teacher in question and to a letter written by her to the Board of Management and dated the 13th December, 2007, that Dr. C., who just happened to be in the vicinity, heard the noise and came into the classroom and tried to mediate between this teacher and the parent. I accept the evidence of the teacher that she then noticed the plaintiff, with whom she was not on speaking terms, standing in the doorway of the classroom. Dr. C. gave evidence, which I accept, that the plaintiff ought not to have been there at all. I accept the evidence of this teacher and of Dr. C. that he was insisting that the parent go with him to his office to discuss the matter. Instead this parent ran over to the plaintiff who asked her if she was all-right to which the plaintiff replied, "Do you see what's happening here". The plaintiff told the court that as Home-School Liaison Coordinator she considered that she had a duty to represent all disadvantaged parents. I accept the evidence of Dr. C. that the plaintiff then advised the parent not to go with Dr. C. to his office unless someone else also went and that she should write to the Board of Management of B.C.C. about the matter. I am satisfied on the evidence that the parent then said that she would not go with Dr. C. to his office unless the plaintiff accompanied her. This was not acceptable to Dr. C.. I find on the evidence that he went over to the plaintiff in the doorway and said to her, "I am giving you an order, I am directing you to return to your room". The plaintiff returned to her room and the parent went with Dr. C. to his office. Later the teacher was sent for and the parent apologised to her and they shook hands. I find that the plaintiff had no reason to come to or to remain in the door of this teacher's classroom and, had no right or duty to interfere as she did. Her advice to the parent in the circumstances was grossly irregular, offensive to Dr. C. and, a challenge to his authority as Principal of the College. I find that Dr. C. on this occasion acted properly and proportionally and entirely within the scope of his authority as Principal of B.C.C. I find that on this occasion he neither bullied nor harassed the plaintiff.

26. I find that the quite extraordinary events which occurred at B.C.C. on the 26th November, 2007, came about because the plaintiff was by this time in effect working entirely independently of Dr. C. and the Deputy-Principal of the College. An aspect of this unsatisfactory state of affairs was that the plaintiff was seeking to adhere to a time-table which she had operated prior to September 2005, or, to a new time-table prepared for her by another teacher, but which had not been approved by the Deputy-Principal or even seen by him. I find that the Deputy-Principal, whose sole prerogative it was to approve the daily time-table for the entire College was now also being avoided by the plaintiff who had come to regard him as a supporter of Dr. C.. I find that the Leaving Certificate class which was scheduled, by reference to the college time-table, prepared by the Deputy-Principal, to use the computer room in the College at the time was unable to enter this room because the door was locked and the room was occupied by the plaintiff who was teaching computer skills to three parents of pupils at the college as part of the Home-School Liaison programme. I do not consider it necessary to determine how to by whom the door came to be locked. One of the school caretakers gave evidence that and had unlocked the door to this room. He saw the plaintiff entering the room and he had informed her that by reference to the daily time-table which he had been given that morning by the Deputy-Principal that another class was due to use the room. This class of about fifteen pupils had then arrived. The caretaker said that he went and told the Deputy-Principal that there seemed to be a double booking and that this class was unable to access the computer room and was standing about in the corridor. Significantly, the Deputy-Principal told the court that he had said to Dr. C. that he would deal with the matter as it was his problem and, accompanied by the caretaker immediately went to the area. For some unstated or unexplained reason, Dr. C. had followed. There can be no doubt on the evidence that the door of the computer room was now locked and that the Deputy-Principal knocked loudly on the door which was not opened. As neither the Deputy-Principal nor Dr. C. had keys with them, the caretaker who had a key then unlocked the door to this classroom. I am satisfied that the Deputy-Principal entered the room first followed by Dr. C. I am satisfied on the evidence that they did not "bang" into the room shouting and waving their hands about as alleged by the plaintiff.

27. I find on the evidence, with particular reference to a contemporaneous note made by Dr. C. on the 26th November, 2007, that as soon as he and the Deputy-Principal entered the room, the plaintiff, who had been standing beside a parent at a computer console, turned towards them saying loudly, "Here's the Principal and the Deputy-Principal coming to bully me". I am satisfied that the Deputy-Principal then told the parents that there had been a misunderstanding over booking and asked them to turn off the computers and to leave the room as another class was waiting. The parents hesitated, - a wholly natural reaction in the circumstances, - and I accept that Dr. C. and the Deputy-Principal then moved around the room saying "Come on, come on, out you go, out you go". The plaintiff then protested that they were properly in the room as she had booked it and she pointed to a time-table fixed to the back of the door. The Deputy-Principal told the court that he had examined this A-4 size document and that he had never seen or approved of it. The plaintiff then told the parents not to leave the room and to continue with their work. Dr. C. pointed out that he was the Principal of the College and insisted that they leave. One of the parents told the plaintiff to telephone the Department of Education and the plaintiff had replied that she did not know the number. The evidence clearly establishes that Dr. C. then said to this particular parent, "Turn off that computer or I will call the gardaí". To this the parent responded, "Well get them then". The plaintiff then used her mobile telephone to summon the two teachers who were then serving as Teachers Representatives on the Board of Management of B.C.C.. Dr. C. said to the plaintiff "Don't get another teacher out of her class". One of these ladies then arrived followed very shortly by the other. One of them suggested to Dr. C. that perhaps both groups could use the computer room simultaneously. Dr. C. would not agree to this proposal and I am satisfied that his reasons for not agreeing were rational and reasonable. The parents then left the computer room and went with the plaintiff to the Home-School Liaison room. One at least of the parents wrote to the Board of Management of B.C.C. about this incident.

28. In my judgment, the behaviour of Dr. C. towards the plaintiff on this occasion was oppressive and bullying. However extremely provocative the plaintiff's own behaviour may have been and however much her actions may have been interfering with the smooth running of the college on the 26th November, 2007, she should not have been publicly disparaged and humiliated by Dr. C. in front of the parents present. Her countermanding his direction to the parents to leave the computer room may properly be regarded as a amounting to scandalous insubordination. However, in my view it did not cause the bullying but was a consequence of it. I find that there was no necessity at all for Dr. C. to have been in the room on this occasion. The Deputy-Principal could have dealt with the matter as a simple double booking of the computer room, something which the evidence showed had happened in the past. But having chosen to enter, Dr. C. should have disregarded, for the moment at least, the locked door and the plaintiff's first remarks, explained the position to her with regard to the other class and asked her to inform the parents present of the difficulty and invite their cooperation in the matter. In the event, he treated her and the parents as trespassers and trouble makers. It is significant that Dr. C. told the court that he had felt slandered and undermined and that the plaintiff was embarking on a course of confrontation with the management. Dr. C. later telephoned the Rev. Chairman of the Board of Management who promised to raise the matter at the meeting of the Board scheduled to take place on the 12th December, 2007. If it was raised no action was taken. By letters dated the 28th November, 2007, and the 14th December, 2007, Dr. C. invited the plaintiff to meet him and the Deputy-Principal to discuss the incidents of the 20th November, 2007 and the 26th November, 2007. However, the plaintiff was unable to see her way to attending such a meeting insisting that the matter was something which required to be dealt at Board of Management level and involving her solicitors.

29. The evidence in this case establishes, in my judgment, that the plaintiff considered that she was entitled to very considerable autonomy in the running the Home-School Liaison Programme at B.C.C.. It was never suggested by anyone during the course of the hearing that the plaintiff was anything other than a skilled, experienced and dedicated teacher. However, she no longer communicated with Dr. C. the Principal of the College or with the Deputy-Principal of the College. Having retaken her place on the C.A.R.E. Team on the 17th April, 2007, on resuming her position as Home-School Liaison Coordinator, the plaintiff, following a number of disagreements with other members of the Team who had complained that she was dominating the proceedings at meetings and, because she said that the "body language" employed by other Team members was discouraging her at these meeting, ceased to attend the meetings or to report to the CARE Team after the 13th October, 2007. The effect of this was that from the 13th October, 2007, onwards nobody in authority in B.C.C. really knew where the plaintiff was or what she was doing during her working day. I am however satisfied that she was carrying out her duties as Home-School Liaison Co-Coordinator with the same dedication as she had always devoted to her work.

30. Dr. C. for good and sufficient reasons in my judgment, in September, 2007, had declined to permit the plaintiff to function in the college in the specific role of a Counsellor/Psychotherapist. He advised her that it was ultimately a matter to be decided by the Board of Management of B.C.C., but that he would feel obliged to argue against such an appointment. I do not accept the plaintiff's contention that by permitting her to do the degree course, Dr. C. had thereby agreed that she would become a Counsellor in the College. Unfortunately, the plaintiff saw this as yet another form of bullying of her by Dr. C. I am quite satisfied that it was not. His decision was taken within the scope of his authority and, as I have already found for reasons which were both rational and reasonable.

31. I find that since her return to B.C.C. on the 28th March, 2007, the plaintiff had been continuously treated by Dr. C. in a bullying and aggressive manner. She had been marginalised and treated by him with unrelenting hostility and contempt. This "freezing out" as she aptly described it caused the plaintiff anxiety and stress. She found particularly hurtful and damaging the fact that when addressing others in her company Dr. C. totally ignored her as if she was not there at all. For anybody, but especially a woman and a senior teacher in the college, this was a particularly savage form of bullying, targeting her and clearly designed to break her will to disagree with any future decisions of his. In all his dealings with the plaintiff after the 28th March, 2007, I find that Dr. C. behaved like an offended tyrant and not as a fellow teacher and long time colleague of the plaintiff who had been appointed to the senior management position in the college. It is certainly not an excuse for this conduct on his part that the plaintiff's own behaviour in this period, in general and towards him in particular, was inappropriate and, should not have been tolerated by the Board of Management of B.C.C..

32. I find, that at the end of November 2007, Dr. C. had started to become anxious and concerned because of his almost total lack of information as to where the plaintiff was or what she was doing during college hours in her capacity as Home-School Liaison Coordinator. I accept his evidence that he had come to be concerned that the college and its Board of Management might become involved in legal or other problems arising out of the plaintiffs' unreported and unsanctioned activities as Home-School Liaison coordinator. I accept his evidence that he was particularly anxious because were such to occur he considered that he would be criticised or held responsible because as Principal of the college he had an obligation to the Board of Management of B.C.C. and to the Department of Education to ensure that all teachers were fully and properly discharging their duties. In these litigious and confrontational times I am satisfied that this was a genuine and reasonable concern on the part of Dr. C..

33. Considerable controversy arose during the hearing of this action as to whether a letter dated the 15th December, 2007, from Dr. C. to the Rev. Chairman of the Board of Management of B.C.C. setting out in detail the problems he was experiencing with the plaintiff in the day to day management of the college, was in fact written on that date or whether it was written later and backdated in order to justify his employment of a private investigator to carry our surveillance on the plaintiff. I am satisfied on the evidence, particularly

by reference to the contemporaneous diary entry by the Rev, Chairman of the Board of Management that this letter was handed to him by Dr. C. in the college on Wednesday, 19th December, 2007. I am also satisfied that the Rev. Chairman adverted to this letter at the meeting of the Board of Management held on the 10th January, 2008, and, that incomplete transcripts of this letter on yellow paper were on the Board table at this meeting but were not actually distributed to the individual Board members. I am satisfied that there was a brief discussion about this letter at the meeting and that the Board decided to invite Dr. C. and the plaintiff to attend a meeting of the Board on the 17th January, 2008 and explain their respective difficulties. I am satisfied on the evidence that Dr. C. was willing to adopt this course. However, by a letter from her solicitors, the plaintiff indicated that she was not prepared to attend at such a meeting without her solicitor being present as she had concerns about the impartiality of the Board. This was unacceptable to the Board and the meeting did not take place and no further action was taken by the Board of Management.

34. The letter dated the 15th December, 2007, again came before the Board of Management of B.C.C. when a further letter of complaint dated the 2nd April 2008 from Dr. C., and which referred to his earlier letter of the 15th December, 2007, was placed before the Board of Management by its solicitors. However, by this time the matter had passed into the field of litigation and the Board of Management did not consider it further until the 1st October, 2008. On that date the Board of Management under its present Chairperson, having taken advice from the National Coordinator of Home-School Liaison Schemes wrote to the plaintiff seeking details of plans, records, identity of families visited and other matters. After further written requests the matter concluded with a letter from the solicitors for the plaintiff to the Board of Management stating that, "As soon as she is medically fit we will hold a consultation to deal with your queries". This quite extraordinary situation was resolved by the plaintiff requesting and being granted permission by the Department of Education to take early retirement.

35. This problem as to the authenticity of the letter dated the 15th December, 2007, of the letter dated the 2nd April, 2008, and of the minutes of the meeting of the Board of Management on the 5th December, 2006, all arose because several different texts of these letters and of these minutes were disclosed and put in evidence before the court during the course of evidence. While I consider that the trenchant criticism and close scrutiny by Senior Counsel for the plaintiff of what appears to have been a quite extraordinary practice on the part of Dr. C. of adding to these documents after they had been sent or circulated was entirely justified, I am not satisfied that this was done with a deliberate intent to mislead, though in fact that could well have been the result. I accept that the partial transcription of the letter of the 15th December, 2007, on yellow paper was simply that and nothing more and that it is quite unnecessary to endeavour to discover why or by whom this was done. I am satisfied that this letter of the 15th December, 20007, was a wholly genuine attempt on the part of Dr. C. to persuade the Board of Management of B.C.C. to take action in the matter. I am equally satisfied that what they did, though well intentioned, was altogether too little and too late.

36. It is unnecessary for me to consider what other course Dr. C. might have adopted in these circumstances. I am satisfied that he had endeavoured but with no success to persuade the Inspectorate of the Department of Education to become involved. Suffice it to say that I find that the course which he did in fact choose to pursue was wholly inappropriate. I find that the decision of Dr. C. on the 10th January, 2008, to engage the services of a private investigator for four days in early February 2008, to carry out a covert surveillance on the plaintiff during college hours amounted to a most serious harassment of the plaintiff by him. The activities of this private investigator were brought to an end by the intervention of An Garda Síochána and by an Order of this Court (Laffoy J.) made at the suit of the plaintiff on the 10th April, 2008. I find that the plaintiff has not established on the balance of probabilities that on the 15th September, 2008, and the 16th September, 2008, Dr. C. in breach of the Order of this Court made on the 10th April, 2008, again himself followed the plaintiff.

37. I accept the evidence of the plaintiff that on a number of occasions in December 2007, in the course of her work as Home-School Liaison Coordinator at B.C.C. she found it necessary to drive to the two Resource Centres associated with the college. She claims that on a number of these occasions she was followed by Dr. C. in his motor car. I am satisfied that she reported her concerns to the two teacher representatives on the Board of Management of the B.C.C. and to the three college committee members of the Teachers Union of Ireland. They do not appear to have taken any action in the matter. One must acknowledge the right of Dr. C. as Principal of B.C.C. to visit these Resource Centres whenever he saw fit or the occasion required. Dr. C. denied that he followed the plaintiff on any occasion. There seems little doubt that on one occasion when the plaintiff claims Dr. C. had followed her to one such Resource Centre that he was in fact there to meet members of An Garda Síochána in relation to a break-in and serious vandalism at the centre. I am not satisfied that the plaintiff has discharged the onus on her of establishing on the balance of probabilities that she had been bullied by Dr. C. by being monitored and stalked by him in this fashion.

38. I am satisfied from the evidence and, from my observations of the plaintiff in giving evidence, that she is a lady well capable of asserting and defending what she considers to be her rights. Nonetheless she is still a woman and for a woman on her own to have two men following her about in a car during her working day must be been a truly terrifying experience for her. I unhesitatingly accept her evidence with respect to these events. It is necessary to give a brief summary of what I accept occurred on the 7th February, 2008, and some other days.

39. When the plaintiff drove away from her home on the 7th February, 2008, at 09.15 hours she felt that she was being followed by another motor car with two occupants. She took various evasive measures but this care remained following hers. She made a mobile telephone call to her daughter who appears to have taken the not unreasonable view that her mother was suffering from over vigilance due to work related stress and sought to reassure her. The plaintiff was not reassured and made a mobile telephone call to her brother and explained her fears to him. He advised her to keep a close watch on this car and to keep in contact with him. When the plaintiff parked her motor car at B.C.C. she observed this other car being parked nearby.

40. On entering the college the plaintiff told one of the teachers representatives on the Board of Management whom she felt she could trust, what was occurring. She then informed one of the clerical staff in the college office that she was going to one of the Resource Centres. On arrival at this Resource Centre the plaintiff noted the same motor car parked nearby. On concluding her business at the Resource Centre the plaintiff carried out about seven home visits as part of her duties as Home-School Liaison coordinator. This car continued to follow her even when the house being visited by the plaintiff was situated in a cul-de-sac.

41. The plaintiff noted that one of the men in this car was wearing a yellow coloured helmet of a type worn by builders. I accept the plaintiff's evidence that she felt hunted, threatened and terrified. She made another mobile telephone call to her brother. Acting on his instructions she noted the registration number of the car that was following her and telephoned the emergency number and explained the situation to An Garda Síochána. Subsequent Garda intervention ascertained that the plaintiff was being followed a private investigator personally employed by Dr. C. without the knowledge or approval of the Rev. Chairman or of the Board of Management of B.C.C..

42. Despite being fully aware of the plaintiff's long and totally uncharacteristic absences from work, in 2005, 2006 and 2007, medically certified on each occasion as being due to work related stress, which he knew, or would have known had he chosen to consider the matter, rendered the plaintiff very vulnerable to some form of mental illness such as nervous breakdown, Dr. C. arranged for this single

lady to be stalked by a private investigator. I find that it was reasonably foreseeable by him, that if the plaintiff for whatever reason, accident, her own hyper vigilance or the ineptitude of the investigator, became aware of being pursued by an unknown male the effect upon her was likely to be so traumatic as to precipitate her, vulnerable as she was, into mental illness. It was not necessary that he should have been able to foresee the actual injury ultimately suffered by the plaintiff. For Dr. C. to have so acted, whether deliberately or with reckless indifference even though he was or ought to have been aware that mental harm to the plaintiff might result from his actions, amounted in my judgment to malicious targeting and harassment of the plaintiff. I find it significant that Dr. C. did not seek prior sanction from the Board of Management of B.C. C. for this extraordinary course of action. Even if he believed that members of the Board whom he considered to be well disposed towards the plaintiff might warn her of his intentions, he did not consult the Rev. Chairman of the Board as he had in the case of other difficulties with the plaintiff since the 28th March, 2007.

43. It is well established in this jurisdiction, both at common law and now by s. 15 of the Employment Equality Act 1998, that even if the Board of Management of B.C.C. did not know or could not reasonably have known (which was not the situation in the present case), that the plaintiff was being bullied and harassed by Dr. C. in the course of her work, it is still vicariously liable for the wrongful acts of Dr. C. once those acts were committed by him within the scope of his employment. If find that the Board of Management of B.C.C. did not authorise any of the acts of Dr. C. which I have held amounted to bullying or harassment of the plaintiff. The Board of Management of B.C.C. was not aware that Dr. C. had engaged the services of a private investigator to carry out covert surveillance of the plaintiff during the course of her work which I have found amounted to harassment of the plaintiff. However, all these acts took place during the official school day and, in my judgment were related to his work and were a wrongful way of performing the task which Dr. C. as principal of B.C.C. was authorised to perform, that is, to manage the business of the college. This involved ensuring that teachers were present and were carrying out their duties properly and responsibly. The Board of Management of B.C.C. decided at its meeting on the 6th March, 2008, having queried Dr. C. at length about the matter, that he had acted within the scope of his employment in engaging the services of the private investigator and in paying for those services out of a college fund administered by Dr. C. Therefore, the vicarious liability of the Board of Management of B.C.C. for the acts of Dr. C. is not an issue in this case. What are involved are issues of foreseeability, causation and damage.

44. On the 22nd December, 2006, Dr. McMahon who had been the plaintiff's General Medical Practitioner since 1980 concluded that the plaintiff was then suffering from anxiety disorder: prior to this his diagnosis had always been one of stress due to being bullied at work. On the 1st September, 2006, he had advised the plaintiff to take time off from work to recover from this stress which he attributed to being bullied and harassed at work by Dr. C.. On the 27th March, 2007, Dr. McMahon was satisfied that the plaintiff was sufficiently recovered to return to work and he noted that she was very keen to do so. The plaintiff did return to work on the 28th March, 2007, and, despite the events described previously in this judgment, it was not until the 1st April, 2008, that she again felt a need to consult Dr. McMahon.

45. On this occasion the plaintiff complained of being very anxious, unable to sleep, distressed and worried. Her complaint was that she had been followed on her house visits as Home-School Liaison Coordinator by a private investigator engaged by Dr. C.. She felt very despondent that the Board of Management of B.C.C. would do nothing. On this occasion, Dr. McMahon formed the opinion that the plaintiff was bordering on depression. However, he did not prescribe anti-depressants or anti-anxiety medication. He told the court that this was his normal practice as he considered that drug therapy should always be the option of last resort because of the danger of a patient becoming drug dependent.

46. The plaintiff presented again on the 28th August, 2008, following the death of her father, to whom she was very close. On that occasion she told Dr. McMahon that she was, "still fighting for her work conditions and trying to reinstate her service to pupils and parents". On the 2nd October, 2008, the plaintiff next visited Dr. McMahon. He found her depressed. She asked to be referred to Dr. Abbie Lane, a consultant psychiatrist. Dr. McMahon agreed. He told the court that since she had first become his patient in 1980 and despite a difficult marriage and a very traumatic separation, the plaintiff had never previously needed such a referral. Department of Education sick leave records show that Dr. McMahon issued medical certificates to the plaintiff on the following dates: 9th September, 2008, 10th September, 2008, 2nd October, 2008, 20th October, 2008, 27th October, 2008, 17th November, 2008, 24th November, 2008, 10th December, 2008, 22nd December, 2008, 9th January 2009, 19th January, 2009, 26th January, 2009, and finally on the 9th February, 2009.

47. In cross examination Dr. McMahon accepted that he had never diagnosed the plaintiff as suffering from clinical depression or from any form of psychological or psychiatric illness. He considered that the plaintiff was suffering from severe stress and anxiety which he considered to be a psychological crisis but not an illness. He considered that the plaintiff should see a consultant psychologist, but she asked to be referred to Dr. Lane. She was seen by Dr. Lane on the 10th November, 2008. Dr. McMahon told the court that he had last seen the plaintiff on the 4th December, 2008. On that occasion she had told him that she had decided that resuming work was out of the question. He said that he was not at all in favour of this. He hoped that the plaintiff would resume her work as a teacher which she obviously enjoyed and he tried to persuade her to this effect. He considered that it was too early for her to retire and that it was not in the best interests of her own psychological welfare to retire. He felt that on this occasion she could overcome her problems just as she had done in relation to the very traumatic separation in 1999/2000.

48. Dr. Lane, a consultant psychiatrist, told the court that she saw the plaintiff for the first time on the 10th November, 2008, on referral from Dr. McMahon. On presentation, the plaintiff appeared stressed and pale and wept frequently during the consultation. The plaintiff complained of down mood present all day every day for more than two weeks, lack of interest in or enjoyment of everyday things, disturbed sleep, loss of appetite, constant fatigue, lack of motivation and, poor concentration. Dr. Lane concluded that the plaintiff was suffering from severe clinical depression with an overlay to post traumatic stress disorder. Because of the plaintiff's description of feeling hopeless and worthless, Dr. Lane considered that there was a possible risk of self-harm and endeavoured, unsuccessfully, to persuade the plaintiff to undergo a period of in-patient treatment. She therefore prescribed anti-depressant and anti-anxiety medication, - Lustral, - at the maximum permitted dosage.

49. Dr. Lane reviewed the patient at two monthly intervals thereafter. By March 2009, she noted that the plaintiff's mood had improved somewhat, but that she was still anxious, depressed and tearful. Dr. Lane considered that the plaintiff was just about able to cope with the normal chores of day to day living and was not fit to return to work. Throughout 2009, Dr. Lane provided the plaintiff with cognitive behaviour therapy. By June 2010, Dr. Lane was satisfied that the plaintiff was considerably recovered: her mood was up, she had recovered motivation and interest in things, her enjoyment of life had returned and she felt more hopeful. However, she remained anxious at times and was subject to occasional flashbacks and nightmares of persons following her. Dr. Lane concluded that the plaintiff was no longer depressed and was able to go out on her own without being overanxious or over vigilant. At this time Dr. Lane considered that the plaintiff was physically and mentally able to return to work at B.C.C. but she remained, very concerned that the plaintiff might become re-traumatised by a classroom incident, a difficulty with a parent or, continuing friction with the college administration or with colleagues on the teaching staff.

50. Dr. Lane produced in evidence the referral letter dated the 3rd October, 2008, sent to her by Dr. McMahon. This letter referred to

bullying and harassment at work and to the fact that the plaintiff's father had died recently. Dr. McMahon also referred to the fact that on the previous day he had detected what he considered to be signs of a depressive illness. It was Dr. Lane's expert opinion, which I accept, that given the plaintiff's history, the death of her father was not the cause her symptoms, though it probably added to her low mood. The fact that these symptoms had continued even though the plaintiff was away from the work environment since the 1st October, 2008, was an indication to Dr. Lane of the severity of the plaintiff's depressive illness. I am satisfied that Dr. Lane was not shaken in her opinion that there was no other reasonable or rational explanation for the plaintiff's illness in her history, other than the alleged bullying and harassment. Dr. Lane told the court that the plaintiff had informed her that on the 20th October, 2007, the Investigating Officer under the Code of Procedure had found that she had not been harassed or bullied at work in relation to the matters then at issue. The plaintiff told Dr. Lane that she did not accept this conclusion and that the bullying and harassment by Dr. C. had continued despite the investigation. Dr. Lane conceded that the investigation and its outcome would have had a traumatic effect on the plaintiff. However, she stated that she was quite satisfied by reference to the entire history that this was not what had caused the plaintiff's illness: in her opinion that was the workplace situation. Dr. Lane accepted that prior to 1st April, 2008, there had been no diagnosis of depression in the plaintiff's case. She told the court that constant stress and anxiety can lead to depression and that when she saw the plaintiff for the first time on the 10th November, 2008, she had no doubt whatever but that the plaintiff was then suffering from a psychiatric illness, - serious depression.

51. Dr. Lane told the court that in order to form a diagnosis that the plaintiff was suffering from severe depressive illness on the 10th November, 2008, she had to be satisfied that her symptoms had commenced no later than two weeks prior to the date of the consultation. However, given the severity of the plaintiff's illness on that date she was satisfied that the plaintiff must have been suffering from depression for a very considerable time before that, probably for as long as two years. I find it very significant that on the 1st April, 2008, - almost five moths before her father died on the 25th August, 2008, - the plaintiff was diagnosed by Dr. McMahon as "bordering on depression this time". Dr. Lane stated that she was aware that the plaintiff had applied to the Department of Education in 2009, for leave to retire on the basis of, "permanent ill health". Dr. Lane stated that she was not aware that Dr. McMahon had strongly urged the plaintiff not to retire. Dr. Lane told the court that she did not have any role whatever in the plaintiff's decision to retire.

52. Dr. Lane told the court that she was satisfied that the plaintiff was also suffering from post traumatic stress disorder. She said that the causative trauma was the threat to the plaintiff's career and therefore her security, the feeling of helplessness in the face of the continuous bullying and harassment and, the profound threat to her core values. Dr. Lane considered that the accumulation of these matters would be sufficiently traumatic to induce post traumatic stress disorder in the plaintiff. In the plaintiff's case she felt that all the classic symptoms of post traumatic stress disorder had become evident within the expected period: the plaintiff had intrusive memories of the events, nightmares and flashbacks, she was hyper aroused and tense which manifested itself especially in the form of hyper vigilance and hyper alertness, she avoided returning to the College, going out on her own, or anything which reminded her of the trigger events. However, Dr. Lane did not give evidence that the plaintiff had suffered a psychiatric injury because of an immediate fear for her own safety consequent on being followed by the two men. Dr. Lane admitted that she did not seek copies of Dr. McMahon's' clinical notes. I accept her explanation that she would not do so unless the plaintiff had a history of mental problems in the past. Dr. McMahon told the court without any reservation or equivocation that the plaintiff, in his medical opinion had not suffered from any psychiatric injury while she was under his care. No medical data studies or literature was advanced in support of the contention that a feeling of helplessness in the face of a perceived threat, not to one's personal safety but to one's career and not from a single traumatic event but from an accumulation of events over a period of nineteen months would be a sufficient trauma to give rise to post traumatic stress disorder.

53. It is significant that in the work, "*Understanding Mental Health* (Blackhall Publishing: 2006), which she produced in evidence by her, Dr. Lane at chap. 2, p. 27 states in respect of "post traumatic stress", that:-

> "This is a common condition which occurs some weeks after a person has been involved in or has witnessed a traumatic event. Examples include being involved in a road traffic accident, being held at gunpoint, being involved in a fire or an explosion. Symptoms come on between two and six weeks following the trauma . . . (etc.)."

54. In the circumstances and having regard to the decision this Court in *Mullally v. Bus Éireann* [1992] I.L.R.M. 722 and of the Supreme Court in *Kelly v. Hennessy* [1996] 1 I.L.R.M. 312 I find that the plaintiff has not established, - the onus of proof being on her, - on the balance of probabilities, that she suffered post traumatic stress disorder as a consequence of bullying or harassment by Dr. C..

55. Dr. Mohan a consultant forensic psychiatrist, who gave evidence in the case for the defendant, told the court that he had a consultation with the plaintiff on the 2nd December, 2008, and that he had also considered the following documents: the Report of the Investigating Officer dated the 26th October, 2007, the Pleadings in the instant case, the Clinical Records of Dr. McMahon, Dr. Lane's Report, the Department of Education Attendance records relating to the plaintiff and, the views of Dr. C. and of his Solicitors. He accepted that the plaintiff did not have a personality disorder. However, he considered that she demonstrated an impaired judgment and a distorted interpretation of work place events, coupled with a tenacious sense of personal rights out of keeping with reality and, an excessive regard for her contribution to B.C.C.. Dr. Mohan agreed that he had come to this opinion principally from his analysis of the report by the Investigating Officer.

56. Dr. Mohan accepted that stress and anxiety, such as that reported by Dr. McMahon in his clinical notes relating to the plaintiff could be a significant causative factor in the onset of depression. However, he felt that the fact that the plaintiff had continued to work after the incident involving the private investigator in early February 2008, until the 1st October, 2008, with only very few days absent was, more consistent with stress than with clinical depression. Dr. Mohan told the court that if the plaintiff was in fact suffering from severe depressive illness on the 10th November, 20008, as was the opinion of Dr. Lane, he considered that evidence of the onset of that illness would have to be sought at least six months prior to that date, but not as far back as two years. He noted that the plaintiff had received no medical treatment for depression prior to the 10th November, 2008. Dr. Mohan considered that the very considerable emotional stress and feeling of victimisation reflected in Dr. McMahon's clinical records, compounded by feelings of disappointment and anger on the 26th October, 2007, following receipt of the Investigating Officer's report, followed by the death of her father, to whom she was very close, on the 25th August, 2008, could be capable of causing the plaintiff to become depressed. However, he considered that there was no evidence on the medical record of severe and persistent symptoms, at any rate prior to the 1st April, 2008. It was his opinion that the plaintiff was suffering from anxiety and stress as a normal response to the pressures and problems in the work place.

57. I find on the balance of probabilities that the plaintiff has discharged the onus on her of establishing that she did suffer a psychiatric illness, in the form of clinical depression and, that a direct causative connection existed between that injury and the continuous bullying and harassment of her by Dr. C. from the 28th March, 2007, onwards. The evidence established that Dr. McMahon considered that the plaintiff was fit to return to work on the 28th March 2007, and he furnished a medical certificate to that effect. I

accept his evidence that the plaintiff was herself most anxious to return to work at that time. On the 1st April, 2008, Dr. McMahon found the plaintiff to be, "bordering on depression". This was almost five months before her father died. Undoubtedly she continued to work, but it is not at all unusual for persons suffering from depression to continue to work and from what I observed of this plaintiff, I am satisfied that this would be entirely in keeping with her character. I am prepared to infer that the distress which the plaintiff experienced following the death of her father as noted by Dr. McMahon in his clinical notes for the 25th August, 2008, may have temporarily lowered her mood further, if it was already low. However, I am satisfied from her personal and medical history and from the evidence of Dr. McMahon based upon his unique insight into her character and psyche, as her general medical practitioner for over 30 years, that this bereavement did not cause or materially contribute to the onset of her depression which was noted for the first time by Dr. McMahon a few weeks later on the 2nd October, 2008.

58. Dr. Lane treated the plaintiff for depressive illness from the 10th November, 2008, to June 2010, by which time she considered the plaintiff was fit to return to work. Dr. McMahon agreed and Dr. Mohan accepted that the onset of depressive illness would be consistent with the sort of work place problems which the plaintiff claimed she was experiencing at the hands of Dr. C.. There was no evidence at all to suggest that the plaintiff had a pre disposition to depression even if an older sibling suffered from that illness. The evidence of Dr. McMahon, in my judgment, entirely disposes of that suggestion. I find that Dr. Lane is correct in her conclusion that apart from the constant stress and anxiety suffered by the plaintiff between the 28th March, 2007 and the 7th February, 2008, culminating in the traumatic events of the 7th February, 2008, there is nothing in the plaintiff's life to otherwise account for the clinical depression suffered her. It was not suggested during the course of the action that the plaintiff was feigning illness or exaggerating her symptoms.

59. Whatever would have been the position in 2005 or 2006, I am satisfied, and I so find, that on the 28th March, 2007, Dr. C. knew or ought reasonably to have foreseen that any bullying or harassment of the plaintiff carried a "materially substantial risk" of the plaintiff suffering a mental injury as a result and could by the exercise by the reasonable care have avoided that result. Dr. C. and the Board of Management of B.C.C. knew that the plaintiff had been absent from work for a number of weeks in November and December 2005, certified by Dr. McMahon as suffering from work related stress. They knew that between the 31st August, 2006 and the 27th March, 2007, the plaintiff had been certified by Dr. McMahon as unfit for work due to work related stress. In my judgment this history of occupational stress put Dr. C. on notice that the plaintiff was vulnerable to some form of mental injury if she was subjected to further stress arising from such as would inevitably follow from bullying or harassment at work. Dr. C., despite the poor start on the 28th March, 2007, could have apologised to the plaintiff for his outburst, welcomed her back and sought to effect a reconciliation between them or if that was not possible, to at least try to work out a *modus viviendi* with her. If it proved impossible to re-establish even a professional working relationship with the plaintiff, then Dr. C. should have immediately called on the Board of Management of B.C.C. to intervene and to insist that the plaintiff cooperated fully with him in carrying out her duties as Home-School Liaison Coordinator. This is something which a reasonable and prudent manager would have done in the circumstances. Dr. C. ought reasonably to have known in commissioning the surveillance, that if the plaintiff became aware that she was being followed about in public by two unknown men and became frightened as a result, there was a clear and substantial risk that she would suffer a nervous breakdown, post traumatic stress disorder, depression, illusional disorder or some other form of mental illness.

60. Apart from being vicariously liable for the actions of Dr. C. the Board of Management of B.C.C. owed the plaintiff a direct duty of care, as her employer, both at common law band by virtue of the provisions of the Safety Health and Welfare at Work Act 2005, to take reasonable care to prevent her suffering mental injury in the workplace as a result of being harassed or bullied by other employees if they knew or ought to have known that such was occurring. (*Quigley v. Complex Tooling and Moulding Limited* [2009] I.R. 349). I am satisfied that in the post 28th March, 2007, period the Board of Management of B.C.C. ought to have known, from correspondence from the plaintiff's solicitors, correspondence from the parents of pupils in the college and, from the personal knowledge of several members of the Board involved in the day to day business of the college that the plaintiff was continuing to claim that she was being victimised, bullied and harassed by Dr. C.. For the same reasons to which I have adverted in the case of Dr. C., the Board of Management ought reasonably to have foreseen that there was a materially serious risk that the plaintiff would suffer some form of mental illness if the situation between her and Dr. C. was permitted to continue.

61. Despite this, the Board of Management of B.C.C. took no reasonable or proper steps as the plaintiff's employer to address the situation. Following receipt of the letter dated the 15th December, 2007, from Dr. C. the Board of Management following its meeting on the 10th January, 2008, did invite Dr. C. and the plaintiff to meet the Board on the 17th January, 2008, and set out their respective grievances. I am prepared to accept the evidence of the Rev. former Chairman and of the current Chairperson of the Board of Management that the Board was not aware of the full extent of the problems existing and that neither the teacher's representatives nor the Union representatives on the Board had formally raised the matter before the Board. Nonetheless, between April 2007 and the 10th October, 2008, the Board was aware that the plaintiff and Dr. C. were not communicating with each other, that confrontations were taking place between them and that this was essentially the same sort of situation which had formed the basis for the plaintiff's complaint of bullying and harassment by Dr. C. on the 4th October, 2006. However, was apart from the single offer to meet the parties on the 17th January, 2008, the Board of Management took no positive action whatsoever to deal with the situation which the Deputy Principal in evidence described as "catastrophic, totally strange, unusual and unreal". I find that this failure of the Board of Management to act as a reasonably careful and prudent employer would have acted permitted the continuous bullying and harassment of the plaintiff by Dr. C. to continue to the point where the plaintiff began to suffer clinical depression. Dr. C. told the court that he was driven by desperation to engage the services of the private investigator because of the failure to the Board of Management and the Department of Education to take any action in the matter. The evidence of the Rev. former Chairman of the Board of Management and the evidence of the current Chairperson of the Board suggests that the reason why the Board did not act prior to the 10th October, 2008, was that the procedures under the Code of Procedure were slow and complex and, "the lawyers had turned the whole affair into a procedural wrangle and a legal morass". Certainly the correspondence admitted or proved in evidence in the course of the trial might afford a reasonable basis for that belief. However, this does not provide a reasonable or proper ground for taking no action at all for ten months. In my judgment the Board of Management of B.C.C. was in breach also of the direct duty of care, which, as her employer, it owed the plaintiff.

62. In my judgment the evidence establishes that the plaintiff was subjected to deliberate and continuous bullying and harassment by Dr. C. as a direct consequence of which she suffered mental injury in the form of clinical depression, a result which was reasonably foreseeable. I am satisfied that from some short time after the 7th February, 2008, until June 2010, the plaintiff suffered a serious depressive illness. She has now recovered from this, but I accept Dr. Lane's evidence that she remains at present anxious at times, is subject to occasional flashbacks and nightmares of persons following her and is vulnerable to becoming re-traumatised by any form of significant confrontation. However, neither Dr. Lane nor Dr. McMahon advised the plaintiff not to return to work or to take early retirement from teaching. On the contrary, Dr. McMahon strongly advised her against such a course. There was no evidence which would lead me to conclude that it would be irrational and unreasonable to expect the plaintiff to continue to serve as Home-School Liaison Coordinator or in some other teaching capacity in B.C.C.. She did so between the 7th February, 2008 and the 1st October, 2008 and with very few days absent from work. There is nothing I can see on the facts in this case which would in any way inhibit a simple and just resolution of the difficulties which have arisen between Dr. C. and the plaintiff which would enable them to continue to

work efficiently together as professional colleagues, even if not as friends. The evidence in this case clearly established that it is quite usual for some teachers in large schools and colleges not to be on speaking terms with other teachers in the same school or college.

63. The court has already held that the defendants were negligent in causing or permitting the plaintiff to be harried, watched and beset in the course of her employment with the Board of Management of B.C.C.. I find that the same acts or omissions may form a basis for an action for breach of an implied term of contract. In *Matthews v. Kuwait Bechtel Corporation* [1959] 2 Q.B. 57, Sellers L.J. delivering the judgment of the Court of Appeal held at p. 66 as follows:-

> "It is perhaps sufficient if I say that, in my view, this question is a somewhat artificial one. The existence of the duty arising out of the relationship between employer and employed was recognised by the law without the institution of an analytical inquiry whether the duty was in essence contractual or tortious. What mattered was that the duty was there. A duty may exist by contract, express or implied. Since, in any event, the duty in question is one which exists by imputation or implication of law and not by virtue of any express negotiation between the parties, I should be inclined to say that there is no real distinction between the two possible sources of obligation. But it is certainly, I think, as much contractual as tortious. Since in modern times the relationship between master and servant, between employer and employed, is inherently one of contract, it seems to me entirely correct to attribute the duties which arise from that relationship to implied contract. It is a familiar position in our law that the same wrongful act may be made the subject of an action either in contract or in tort at the election of the claimant, and, although the course chosen may produce certain incidental consequences which would not have followed had the other course been adopted, it is a mistake to regard the two kinds of liability as themselves necessarily exclusive of each other."

64. In the instant case I think it will be found that the plaintiff elected to present her case in tort. In these circumstances I feel that it can only lead to confusion to deal further with implied contractual terms and remedies for breach of contract.

65. In my opinion the actions of Dr. C. in this case do not amount to what Griffin J. described in *Conway v. I.N.T.O*. [1991] 2 I.R. 305 at 323 as, "wilful and conscious wrongdoing in contumelious disregard of another's rights". In such circumstances the court is not disposed to awarding exemplary, otherwise punitive damages to the plaintiff. In the same case Finlay C.J. defined "aggravated damages" as compensatory damages increased by reason of:-

> "(a) The manner in which the wrong was committed involving such elements as oppressiveness, arrogance or outrage or,
>
> (b) Conduct of the wrongdoer after the commission of the wrong: refusal to apologise or ameliorate the harm done, or threatening to repeat the wrong, or
>
> (c) The conduct of the wrongdoer or his representatives in defending the claim up to and including the trial of the action."

66. In my judgment the behaviour of Dr. C., towards the plaintiff in the present case was oppressive and arrogant and, I find caused her additional hurt and insult. I therefore consider that this is an appropriate for the court to mark its abhorrence of such conduct by awarding aggravated damages to the plaintiff. The court will therefore award damages to the plaintiff for the personal injuries which she has suffered to the date of this judgment in the sum of €60,000 of which the sum of €5,000 represents the increased amount of the compensatory damages. The court will award the plaintiff additional damages in the sum of €15,000 in respect of personal injuries which she may suffer in the future. €13,625 agreed specials.

Other Cases Referred to in Arguments

Educational Company of Ireland Ltd & Anor. v. Fitzpatrick & Others [1961] I.R. 345.

Kennedy & Others v. Ireland and the Attorney General [1987] I.R. 587.

Allen (Claimant) v. Dunnes Stores Ltd. (Jan. 1995) [1996] Employment Law Reports 203.

The Health Board v. B.C. & The labour Court (Jan. 1994) Employment Law Reports.

Maher v. Jabil Global Services Ltd. [2005] I.E.H.C. 1310.

McGrath v. Trintech Technologies Ltd. [2005] 4 I.R. 382.

O'Keeffe v. Hickey & Others [2009] 1 I.L.R.M. 490.