

THE HIGH COURT
IN THE MATTER OF THE SOLICITORS ACTS 1954-2011

[2015 No. 9SA]

AND
IN THE MATTER OF MICHAEL FITZPATRICK

ON THE APPLICATION OF JOAN MALONE

A SOLICITOR
APPELLANT

JUDGMENT of Kearns P. delivered on the 20th day of April, 2015

The appellant appeals against the decision of the Solicitors Disciplinary Tribunal dated 12th January 2015 that the respondent solicitor was not guilty of misconduct.

BACKGROUND

The appellant is a retired radiographer. In 2004 she contacted the respondent solicitor in relation to a number of issues she was experiencing in the course of her employment by what was then the Eastern Health Board at Naas General Hospital. She sought advice from the respondent in relation to alleged workplace bullying, violation of various codes of practice by staff at the hospital, breaches of data protection by staff at the hospital, non-compliance with regulations in relation to the MRSA infection and alleged violations of child care legislation and procedures.

Prior to contacting the respondent solicitor, the appellant had instituted proceedings against the Eastern Health Board personally and had submitted a plenary summons and statement of claim to the firm of solicitors representing the defendant in those proceedings. A detailed defence to these proceedings was subsequently delivered and the defendants also issued a motion to determine as a preliminary issue whether or not the appellant was barred from pursuing the proceedings by virtue of an agreement entered into between the parties on 29th January 1999 after a hearing before the Rights Commissioner. Under this agreement the appellant apparently accepted a sum of £5,000 in full and final settlement of the dispute.

The High Court proceedings progressed and ultimately a settlement agreement was entered into on 26th October 2007. A handwritten copy of the terms of settlement has been exhibited which states that the appellant agreed to accept €10,000 in full and final settlement and that the proceedings would be struck out with no order. This agreement is signed by the appellant and witnessed by Ms. Caitríona Healy, who was at that time a trainee solicitor with the defendants firm. Due to an existing commitment, the respondent solicitor was not present on this occasion.

Subsequently, in or around November 2007 the appellant made a complaint to the Bar Council concerning the conduct of senior and junior counsel who acted for her in the case. Correspondence between the appellant and the respondent solicitor continued in November and December 2007 before the appellant made a complaint to the Law Society regarding the respondent solicitor dated 18th December 2007 which complaint was rejected. Some time in 2011 the appellant sought to renew her complaint and a letter to the appellant dated 17th November 2011 from Mr. Tony Watson in the Complaints and Client Relations Section of the Law Society advised the appellant that the Society does not investigate allegations of professional negligence. She was also advised of the possibility of having the situation reviewed by an independent adjudicator.

The complaint the subject matter of these proceedings issued on 17th January 2013. Affidavits were filed by the appellant and the respondent. The Tribunal considered the complaint on 13th March 2014 and found that there was a prima facie case of misconduct against the respondent solicitor in respect of one of the allegations set out in the complaint form, namely, that the respondent failed to reply to a number of e-mails sent by the appellant. The Tribunal found that:-

"This matter had not been adequately rebutted by the respondent solicitor."

An inquiry was subsequently held by the Tribunal on 12th November 2014. The aforementioned allegation was the only matter which was before the Tribunal and a full transcript of that inquiry has been exhibited. The appellant appeared on her own behalf while the respondent was represented by Mr. Seán Sexton.

The Tribunal found that there was no misconduct on the part of the respondent solicitor. It was held that –

"Ultimately the issue before the Tribunal which eventually came out in evidence was not just simply the complaint that there was not a response to the four letters that are referred to in the prima facie finding but in effect the issue was, or became apparent as a result of this hearing, that the applicant says she did not receive the written terms of settlement which had attached to it a written reference which was to be produced."

"Having considered all matters, the Tribunal accepted the evidence of the respondent solicitor that he enclosed a copy of the written settlement and attachment with his letter of 16th November. In any event even if the terms of settlement were not enclosed the Tribunal did not accept in all the circumstances of this case that it amounted to professional misconduct. As a result, the Tribunal found the respondent solicitor was not guilty of professional misconduct."

THE PRESENT APPEAL

The appellant appeals the finding of the Tribunal dated 12th January, 2015 and has exhibited a lengthy affidavit and large number of exhibits running to several hundred pages. While the respondent submits that the appeal has been taken out of time, the Court is of the view that the short delay has been adequately explained and will exercise its discretion to allow the appeal to proceed.

The appellant sets out the background to her dealings with the respondent solicitor and describes in exhaustive detail the various issues she was experiencing during her time as a radiographer at Naas General Hospital and which formed the basis for the High Court proceedings against the Eastern Health Board. Various medical guidelines and policy booklets, individual case studies of patients, correspondence between the appellant and various medical professionals and staff of the hospital, and lengthy clinical and technical

discussions of various medical conditions are all referred to in the appellant's affidavit. A large amount of the appellant's affidavit is focused on reiterating her complaints against her previous employers and does not relate to her complaints against the respondent solicitor.

A number of allegations are also made against the appellant's legal team in relation to consultations which took place at the Four Courts in or around 27th October 2007. The appellant describes her personal circumstances around this time as being extremely difficult and expresses her dissatisfaction with the behaviour of her own senior and junior counsel. However, none of these complaints relate to the respondent solicitor, who was not present on the relevant dates.

The appellant states that she did not receive a copy of the settlement agreement which was signed on 27th October and that she subsequently sent a number of emails to the respondent solicitor on 16th November 2007, 17th November 2007, 15th January 2008 and 21st January 2008. She states that she received no reply to any of these emails.

The appellant alleges that senior counsel forced her to sign this settlement agreement and that her signature was obtained "unfairly, unjustly, improperly, and surreptitiously". While discussed in detail in the appellant's affidavit, this allegation has no relevance to the respondent solicitor. Various complaints are also made regarding the alleged misconduct of Ms. Healy. However, these allegations are also entirely irrelevant to the present appeal. Indeed, the respondent solicitor states that *"this appeal to the High Court is not made personally against Solicitor Fitzpatrick...I am merely looking for justice."*

The respondent solicitor has also filed a lengthy affidavit in this appeal. He asserts that the appellant's affidavit and exhibits *"runs to hundreds of pages of material entirely and utterly irrelevant to the issues before this Honourable Court"* and that *"there is nothing in the said affidavit to ground this motion or to justify this appeal."*

The respondent states that he has been forced to defend a number of complaints made against him by the appellant, including a complaint to the Equality Tribunal, and that the present appeal is *"vexatious and a flagrant abuse of the Court process."* The respondent solicitor expresses his belief that *"the multitude of grievances and the sense of being wronged which the appellant clearly bears against the Health Board, her former employer, has, unfortunately, become transmogrified into a relentless and vindictive campaign against her legal team, none of whom has received any fees whatsoever from her..."*

The respondent submits that the only matter before this Court is the complaint investigated by the Tribunal that he failed to respond to certain correspondence. He states that in relation to the 16th November 2007 email, he wrote to the appellant on that date for the purpose of replying to emails from her on both 10th and 16th November. This letter sets out in detail what had transpired at the settlement of the action based on the notes of Ms. Healy and counsel who had negotiated the settlement. He states that he is satisfied that a copy of the settlement agreement was enclosed with this letter.

The respondent states that he received a further email from the appellant dated 17th November 2007 which was identical in content to the 16th November email. He received no response to his 16th November letter and wrote to the appellant again on 20th November. No response to this letter was received.

It is submitted that an email from the appellant of 15th January 2008 is almost identical to the 16th and 17th November emails. By this time the Law Society had rejected a complaint by the appellant against the respondent. He wrote to the appellant on 15th January 2008 advising her that he had received correspondence from the defendants' solicitor that she had acted in breach of the settlement agreement by contacting the Minister for Health and various staff at the hospital in relation to her complaints.

The respondent states that he wrote subsequent letters to the appellant on 21st January 2008 and again on 16th April 2008, when he again enclosed a copy of the settlement agreement. He states that all correspondence has been adequately replied to.

DISCUSSION

The Court has carefully considered the voluminous documentation exhibited in this case including the transcript of the Tribunal hearing and the impugned decision of the Tribunal.

The majority of the documentation exhibited by the appellant has no relevance whatsoever to the present appeal. A large amount of complaints are made against the appellant's previous employer and associated persons. It is clear that, regrettably, the appellant remains extremely upset regarding various aspects of her previous employment and feels that she was treated unfairly. Lengthy complaints are also made regarding senior and junior counsel and a second solicitor who were involved in the appellant's case.

However, for the purposes of this appeal, the Court has no role in determining these complaints or making any comment as to their veracity. The only matters relevant to these proceedings are the allegations of misconduct against the respondent solicitor which were investigated by the Tribunal. All of the other complaints and applications are entirely misconceived.

The Court is satisfied that the respondent solicitor has adequately rebutted the complaint that he failed to reply to certain emails and that he did in fact properly respond to all correspondence. Having examined the transcript of the Tribunal hearing and the impugned decision, the Court accepts that the Tribunal had due regard to all of the evidence before it and arrived at a reasoned decision. No fresh evidence has been adduced by the appellant which would warrant a departure from this decision and the Court affirms the decision that the respondent solicitor was not guilty of misconduct.

DECISION

For the reasons outlined above the appeal is dismissed.