

## THE HIGH COURT

[2013 No. 12527 P.]

## BETWEEN

ABC

PLAINTIFF

AND

DEF

DEFENDANT

**JUDGMENT delivered by Mr. Justice Michael White on the 24th day of June, 2014**

1. By *ex parte* docket of 13th November, 2013, the plaintiff, ABC, applied urgently for an interim injunction preventing the defendant from issuing defamation proceedings which would identify the plaintiff.
2. An interim order in those terms was granted by Hogan J. on 13th November, 2013.
3. The plaintiff issued a plenary summons on 14th November, 2013, and a motion on notice to the defendant the intended plaintiff in the defamation proceedings.
4. The interim order has remained in place pending the interlocutory hearing which took place on 13th and 14th March, 2014. Further legal submissions were invited primarily in respect of a judgment delivered on the morning of 14th March, by Gilligan J. in *Mooney v. Commissioner of An Garda Síochána*. These submissions were finalised on 9th May.
5. The plaintiff and the defendant are known to each other.
6. The plaintiff in April/May 2013, found it difficult to cope psychologically and was admitted to hospital for psychological and psychiatric care in June 2013.
7. During this prolonged admission in the course of her therapy, the plaintiff alleged that she had been the victim as a child of sexual abuse by the defendant. The defendant denies this.
8. On disclosure to a counsellor at the hospital, the matter was reported by the counsellor to An Garda Síochána and HSE. The plaintiff gave a written statement to gardaí on 17th July, 2013.
9. The HSE in turn informed a designated officer appointed to deal with allegations of sexual abuse within the Catholic Church and the defendant was subsequently suspended from active ministry pending the outcome of the complaint. The defendant alleged that this occurred in a manner which disclosed identity and caused considerable trauma and damage.
10. The designated diocesan officer met with the plaintiff on 28th October, 2013.
11. On 4th November, 2013, the defendant's solicitor wrote to the plaintiff alleging that the complaint amounted to malicious lies and unless retracted, High Court proceedings for defamation would issue. The letter of 4th November, 2013, stated as follows:-
 

"I act for (redacted) You have made utterly false and profoundly defamatory complaints against my client (redacted) to a diocesan designated officer for child protection in the diocese of (redacted). She in turn communicated these to (redacted). As a result of your malicious lies my client has been stood down from ministry and your malicious lies have attracted significant media attention.

Unless you immediately retract your baseless complaints against my client and unless you apologise to him on terms to be agreed with this office, which apology shall be disseminated by him as he sees fit, my instructions are to institute High Court proceedings in defamation against you and this letter will be relied on for costs. You must reply to my client's satisfaction on or before close of business on 7th November next."
12. The plaintiff's solicitors replied on 7th November, seeking an immediate undertaking not to name or identify the plaintiff in the intended proceedings. The letter stated:-
 

"At no time did our client seek to publish her complaints in the public domain thereby seeking to expose and/or defame your client. The complaints were made in private in a manner sanctioned by the Catholic Church."
13. The letter went on to say:-
 

"Given the nature of the complaint should your client issue the proceedings referred to in your letter, our client's constitutional right to privacy will be breached. In light of your correspondence, we are gravely concerned about our client's right to privacy. We require your client to provide an undertaking that in the event that he issues proceedings, he will not name and/or identify our client and/or in the alternative, your client will take all necessary and reasonable steps to protect our client's privacy."
14. The defendant's solicitors replied on 11th November, 2013, refusing to give the undertaking but postponed the issue of proceedings until 14th November. The plaintiff then applied for the interim injunction.
15. The psychiatric evidence presented to this Court revealed the plaintiff to be a person of fragile mental health, who nevertheless

functions well in a demanding career. The psychiatric opinion is stark. Mr. James Morrison, Consultant Psychiatrist, in an affidavit of 11th March, 2014, stated at para. 3:-

"I say that on examination, I found the plaintiff to be depressed, extremely anxious and I noted that she complained of having suffered panic attacks with palpitations, sweating tremors, difficulty in swallowing, weakness in her limbs and pressure on her head, all of which symptoms the plaintiff found very frightening. I further found from my examination of the plaintiff that she has frequent suicidal ideation and she feels that she and everybody else would be better off if she were dead. She has a marked loss of self confidence and self esteem and she also has a good deal of guilt feelings that she did not do something about the abuse to which she alleges she was subjected when it was happening to her."

16. At para. 7, Mr. Morrison went on to swear:-

"I say further that from my recent examination of the plaintiff, it is clear to me that the plaintiff feels that if her name becomes public knowledge in the context of the childhood sexual abuse which she alleges that she suffered at the hands of the defendant, she would not be able to continue with her career and she is convinced that the only course which would be left open to her in those circumstances would be to commit suicide. I say that it is my professional opinion that there is most unfortunately and regrettably a high probability of such an eventuality occurring in the event that the plaintiff's name is disclosed in the context of the present proceedings or in any defamation proceedings intimated by the defendant against her and I would earnestly appeal on her behalf to this Honourable Court that her name be withheld and not be publicly disclosed in order to prevent, as far as possible such a high probability eventuating or worst till such an occurrence taking place. I further hereby confirm that it is my professional opinion that the plaintiff is currently clinically depressed and that there is now a real and substantial risk to her life if her name and identity are publicly disclosed in these proceedings or in any proceedings for defamation instituted by the defendant."

## The Legal Principles

### Injunctive Relief

17. The court on an application for an interlocutory injunction must be satisfied that the well tried and trusted principles for seeking injunctive relief are complied with.

18. Those were approved in *Campus Oil Limited v. Minister for Industry and Energy* [1983] I.R. 88 at 110, approving *American Cyanamid v. Ethicon Limited* [1975] A.C. 396.

19. Griffin J. at p. 110 of the judgment stated:-

"The principles upon which interlocutory injunctions are granted are well established and a Court will grant one when a case has been made out for the preservation of the property in *statu quo* pending the trial of the action if it is of opinion that there is a substantial question to be tried."

20. He went on to state:-

"The question was also considered by the House of Lords some ten years later in *American Cyanamid v. Ethicon Ltd.* It was there laid down that a court, in exercising its discretion to grant or to refuse an interlocutory injunction, ought not to weigh up the relative strengths of the parties' cases on the evidence available at the interlocutory stage – that evidence being then necessarily incomplete. Lord Diplock, with whose speech the other members of the House agreed, referred at p. 407 to what he called 'the supposed rule that the court is not entitled to take any account of the balance of convenience unless it has first been satisfied that if the case went to trial upon no other evidence than is before the court at the hearing of the application the plaintiff would be entitled to judgment for a permanent injunction in the same terms as the interlocutory injunction sought.'

21. Lord Diplock continued at pp. 407 and 408 of the report:-

"Your Lordships should in my view take this opportunity of declaring that there is no such rule. The use of such expressions as 'a probability', 'a *prima facie* case', or 'a strong *prima facie* case' in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried. It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial."

22. The principles concerned are,

- (i) Is there a serious issue to be tried?
- (ii) Where does the balance of convenience lie?
- (iii) Are damages an adequate remedy?

23. A person has a right to apply anonymously in proceedings to restrict publicity.

24. This was approved in *Doe v. Revenue Commissioners* [2008] 3 I.R. 328. It stated at para. 6:-

"That a party was entitled, without revealing its identity, to apply to court for permission to maintain proceedings anonymously or in a manner designed to maintain confidentiality. The nature of the substantive application should only be considered to the extent that it was necessary to enable the court to rule on an entitlement to bring the proceedings in confidence."

25. The relevant constitutional provisions are Article 34.1 which states:-

"Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public."

26. Is it an absolute right of a litigant to have the other party or parties to the proceedings identified, as part of the requirement to have justice administered in public?

27. The relief sought here by the plaintiff is not to have the proceedings heard *In Camera* or to restrict contemporaneous reporting but to preserve anonymity.

28. There have been developments in this area.

29. In *Doe v. Revenue Commissioners* already referred to in an *obiter dicta* remark, Clarke J. stated:-

"That there could be circumstances where publicity attaching to civil proceedings could prevent a court from reaching a just determination and those circumstances might confer on the court a jurisdiction to restrain in a proportionate manner the publicity concerned, such as in proceedings before a jury, where a trial within a trial was possible. It was difficult to envisage similar considerations applying to a trial by a judge alone."

30. In another judgment, *Mooney v. Commissioner of An Garda Síochána & Ors* delivered on 14th March, 2014, when this case was at hearing, Gilligan J. at para. 36 stated:-

"This Court accepts that the general trend of the authorities to date is to the effect that the order which is being sought in these proceedings can only be made in exceptional circumstances, to avoid prejudice to the interests of justice which is not capable of being remedied by the trial judge, either by appropriate directions to a jury or otherwise. But this case must be decided on its own unique facts."

31. At para. 37, he stated:-

"Article 34.1 of the Constitution, while quite clear in its meaning as was indicated by Denham J. at p. 399 of the *Irish Times*, does not exist in a vacuum and clearly in the present instance there are competing constitutional rights relating to other persons and in addition, the Court has duties under the Constitution. In this instance there is the right of the plaintiff to have his case heard and reported upon in public. There is also, however, the right of An Garda Síochána to carry out their duties for the general welfare of society and to ensure that the law is upheld at times in potentially very difficult circumstances, particularly when dealing with subversives and organised crime. The Programme has been put in place in order to assist with the prosecution of alleged serious offenders. As referred to by Denham J. making reference to *The People v. Shaw*:-

"None of the rights in consideration are absolute. Where there are competing rights the court should give a mutually harmonious application. If that is not possible the hierarchy of rights should be considered both as between the conflicting rights and the general welfare of society."

32. Gilligan J. went on at para. 40 to state:-

"In my view Clarke J. [*Doe v. Revenue Commissioner*] was leaving open at least the possibility that in certain circumstances consideration could be given to proceedings being heard otherwise than in public in respect of a civil matter."

33. The right of a litigant to have the other party or parties to the proceedings identified is not an absolute right.

34. The court has to balance the constitutional rights of the parties and in exceptional cases the court has the right to preserve anonymity.

35. The appropriate test is that set out in *X.Y. v. Clinical Director of St. Patrick's University Hospital* [2012] 2 I.R. 355 where at para. 15, Hogan J. stated:-

"As Walsh J. pointed out in *In re R. Ltd* [1989] I.R.126, the open administration of justice is a vital component of a democratic state. This constitutional value is especially important in the case of Article 40.4.2

, since it is vital that the complaints of those detained - whether justified or not - are ventilated in public. Moreover, as I observed in *D.X. v. Judge Buttner* [2012] IEHC 175, (Unreported, High Court, Hogan J., 25th April, 2012), Article 34.1 reflects the Constitution preference for the open administration of justice, so that any exceptions to that rule must be capable of objective justification and must be proportionate in themselves: cf. here by analogy the comments of Denham C.J. in *The People (Director of Public Prosecutions) v. Kavanagh* [2012] IECCA 65, (Unreported, Court of Criminal Appeal, 24th May, 2012) in relation to any exceptions to Article 40.5."

36. This is a case which has been referred to the DPP where if the defendant is charged, s. 7 of the Criminal Law Act 1981, as amended, will apply and the complainant cannot be named.

37. The plaintiff does not seek to have an *In Camera* hearing but to restrict disclosure of name or identity.

38. The court notes that the plaintiff did not publish the identity of the defendant, beyond certain designated persons. Contact was limited to people in authority who had an interest in receiving the complaint, An Garda Síochána and the HSE. It is the court's understanding that it was the HSE who initially contacted the designated diocesan officer.

39. In weighing up the balance of convenience it is an important factor that the plaintiff did not seek to publish nor was the plaintiff responsible for the decisions which led to the unnecessary publicity for the defendant.

40. I fully understand the defendant's anger and frustration where innocence is maintained but compromised when suspension from ministry occurred. In the hierarchy of constitutional rights, the undoubted risk to the plaintiff's life takes precedence.

41. I will continue Hogan J's order to the hearing of the substantive action.

