

BETWEEN

KEVIN TRACEY AND KAREN TRACEY

PLAINTIFFS

V.

IRELAND, THE ATTORNEY GENERAL, THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, THE COMMISSIONER OF AN
 GARDA SIOCHANA, THE DIRECTOR OF PUBLIC PROSECUTIONS, THE DUBLIN METROPOLITAN DISTRICT COURT, THE COURTS
 SERVICE, EDWARD FINUCANE, KEVIN GROGAN, DAVID REYNOLDS, PADGRAIG O'MEARA, RONAN COFFEY, JASON COURAGE
 AND MICHAEL FITZPATRICK

DEFENDANTS

JUDGMENT of Mr. Justice Robert Eagar delivered on the 5th day of April 2019

1. This is a judgment of an application for discovery made by the plaintiffs in this case.
2. The plaintiff is not professionally represented and represented himself at the time of this application.
3. The plaintiffs issued a plenary summons on behalf of himself and his wife on the 23rd December 2008, seeking: -
 - (i) Damages for malicious prosecution and serious abuse of the legal process, conspiracy and collusion to falsely convict, conspiracy and collusion to pervert the course of justice, conspiracy and collusion to damage the good name of the plaintiffs, *mala fides* and malfeasance in public office, violations to the principles of natural justice, constitutional justice and human rights, intimidation, intentional infliction of personal and extreme distress and loss, post-traumatic stress, acute and continuous disruption to the lives of the plaintiffs, intentional infliction of emotional and psychological distress and harm on the plaintiffs by the wilful infringement of and failure to vindicate the constitutional, European Convention on Human Rights (ECHR) and other rights.
 - (ii) Damages for loss, inconvenience and expense occasioned by the breach of contract and negligence including breach of duty by the defendants, their officers, servants or agents and each of them.
4. The action for damages relate to: -
 - (a) Malicious prosecution of the plaintiff by the State, alleging that he did not wear a vehicle safety belt on the 23rd November 2005 in the cul de sac leading to his home. This case was dismissed by Judge Cormac Dunne in the District Court on the 6th November 2008.
 - (b) Malicious prosecution by the State for alleging threatening, abusive and insulting behaviour on the part of the first named plaintiff Kevin Tracey (P1) on the 11th September 2005, again in the cul de sac where the plaintiff lives. This case was dismissed by Judge McMahon in the District Court on the 19th March 2008, the District Judge adding an admonishment to the Gardai for having brought the prosecution without any evidence.
 - (c) Related consecutive and ensuing malicious actions by the State its servants and agents.
5. The case has progressed by way of plenary summons, appearances by the Chief State Solicitor on behalf of the first, second, third, seventh, eighth, ninth, tenth, eleventh, twelfth and thirteenth defendants, and on behalf of the sixth named defendant, the Courts Service, by the Chief State Solicitor, on the 17th April 2010.
6. Prior to this matter being sent to the High Court Civil Jury List, the applicant seeks discovery by way of notice of motion dated the 22nd February 2018 grounded on his affidavit. He sets out the basis of the claim in the civil proceedings and raises an issue in relation to the Chief State Solicitor acting on behalf of the Courts Service. The court is satisfied that it is a matter for the Attorney General and the Courts service to decide whether or not they are separately represented or represented by the Chief State Solicitor. He sought discovery in terms of a letter to the Chief State Solicitor on the 5th March 2017 and subsequently to the Chief State Solicitor on the 22nd December 2017. In that correspondence he sought voluntary discovery of the following: -
 - (i) A copy of all official record documents in respect of the issuing of the summons including any application for a decision to issue same, together with any document upon which the defendants intends to rely on.
 - (ii) A copy of the charge sheet in the possession of the Gardai in relation to the alleged offence of failing to wear a seat belt.
 - (iii) A copy of the declaration of service for the summons in connection with the alleged offence of failing to wear a seat belt.
 - (iv) A copy of the Garda Siochána log for Sgt. Kevin Grogan and Gda. David Reynolds of Ballyfermot Garda Station on the 23rd November 2005.
 - (v) A copy of the notebook entries taken on the 23rd November 2005 by Sgt. Kevin Grogan and Gda. David Reynolds of Ballyfermot Garda Station.
 - (vi) A copy of the Garda PULSE record relating to the alleged offence of driving without a seat belt on the 23rd November 2005.
7. In a letter to A&L Goodbody solicitors dated the 22nd December 2017, Mr. Tracey sought the following documents over and above those which he had sought from the Chief State Solicitor: -

(a) A copy of the order of Judge Cormac Dunne of the Richmond District Court dated the 6th November 2008 and any District Court document upon which the defendant intends to rely upon in relation to the alleged failure to wear a seatbelt and in relation to the alleged threatening abusive and insulting behaviour.

(b) Items sought by way of discovery against the Chief State Solicitor were recited.

8. The State defendants indicate that they will provide the following: -

(i) A copy of any application for and decision to issue summonses for the charges of threatening abusive and insulting behaviour on the 11th September 2005 and for driving without a seat belt on the 23rd November 2005. In this Court's view this is sufficient information by way of discovery to enable the plaintiff to identify what may be used by the defendants.

(ii) A copy of the charge sheet in the possession of the Gardai for the charge of threatening abusive and insulting behaviour on the 11th September 2005 and for the charge of driving without a seat belt on the 23rd November 2005.

(iii) A copy of the declaration of service for the summonses in connection with the charges of threatening abusive and insulting behaviour on the 11th September 2005 and for the charge of driving without a seat belt on the 23rd November 2005.

(iv) A copy of the Garda Station log for Gda. Padraig O'Meara of Ballyfermot Garda Station on the 11th September 2005 and for Sgt. Kevin Grogan and Gda. David Reynolds of Ballyfermot Garda Station on the 23rd November 2005.

(v) A copy of the notebook entries for Gda. Padraig O'Meara of Ballyfermot Garda Station on the 11th September 2005 relating to the charges of threatening abusive and insulting behaviour brought against the defendant.

(vi) A copy of the notebook entries Sgt. Kevin Grogan and Gda. David Reynolds of Ballyfermot Garda Station relating to the charge of driving without a seat belt on the 23rd November 2005 brought against the plaintiff.

9. The three other matters which the State defendants (including the Courts Service) dispute relate to the PULSE records, the file sent to the DPP and the statement regarding the alleged taking of photographs of the child on the 11th September 2005. In relation to Garda PULSE records (Police Using Leading Systems Effectively) subject to the Data Protection Acts, and the General Data Protection Regulation an individual can in certain circumstances apply for PULSE records. The plaintiff is seeking copies of Garda PULSE records relating to the charge of threatening abusive and insulting behaviour on the 11th September 2005 and for the alleged offence of driving without a seat belt on the 23rd November 2005. The court will direct discovery of personal data limited to what is necessary in relation to the purpose for which they are processed.

10. In relation to correspondence sent to the DPP, this is clearly privileged information between the Gardai and the DPP, and the court will not direct discovery of those documents.

11. In relation to the Garda copy of the "complainants" statement regarding the alleged taking of photographs of the child on the 11th September 2005 this was not raised in the statement of claim and formed no part of the claim of the plaintiff and in these circumstances the court will refuse to grant an order of discovery in relation to this statement.

12. Finally, in relation to the Courts Service defendants, the defendants have agreed to produce a copy of the relevant orders of Judge McMahon dated the 19th March 2008 for the charge of threatening abusive and insulting behaviour and of Judge Cormac Dunne of the 6th November 2008 for the charge of driving without a seatbelt on the 23rd of November 2005.

13. The Court does not see any reason why the Chief State Solicitor's office should not represent the Courts Service in relation to this matter. The fact that a private firm of solicitors were engaged by the Courts Service in other proceedings has no relevance to the decision by the Courts service to be represented by the Chief State Solicitor in this case.

14. An order will be drawn up in due course in respect of the judgment of this Court.