

THE HIGH COURT

2001 12014 P

BETWEEN

DOLORES MORAN

PLAINTIFF

AND

THE MINISTER FOR HEALTH AND CHILDREN

DEFENDANT

Judgment of Mr. Justice de Valera delivered on the 19th day of March, 2009.

The plaintiff herein commenced this action by issuing a plenary summons on the 27th July, 2001.

A statement of claim was subsequently delivered on the 15th February, 2002.

Previously judicial review proceedings by the same plaintiff against the same defendant (Record No. 1997 – 383 J.R.) had been issued and a judgment delivered by the President of the High Court, the Honourable Mr. Justice Frederick Morris, on the 15th December, 1998.

On the 17th November, 2003 following a motion by the defendant, the Honourable Mr. Justice Kelly directed that a preliminary issue be tried as follows:-

"(1) Whether the plaintiff's claim herein and/or each several aspect thereof is barred and/or whether the plaintiff is estopped from maintaining same by virtue of the same arising out of matters which might have been brought forward at the time of and in the course of High Court Judicial Review Record No. 1997 – 383 J.R. between the plaintiff herein as applicant and the defendant herein as respondent together with the Minister for Finance as co-respondent heard by the High Court (Morris P.) and dismissed on or about the 15th December, 1997.

(2) Whether the maintenance of the plaintiff's claim herein amounts to an abuse of process and/or is contrary to public policy and in consequence whether the plaintiff's claim and/or the several parts thereof should be dismissed."

On foot of this order, this matter came before me on 10th October, 2006 by way of oral argument with comprehensive written submissions from both parties.

Having considered these submissions, both written and oral, I am satisfied that the defendant is entitled to an order striking out the contents of the statement of claim (delivered on the 15th February, 2002) save for paragraphs 1 to 4 therein and paragraph 17 with the exception of the first sentence thereof and all particulars contained in the said statement of claim relevant thereto.

It is well settled law since the judgment of Wigram V.C. in *Henderson and Henderson* [1843] 3 H.A.R.E. 100 at 114 and 115 that a plaintiff will not be permitted to introduce into subsequent proceedings matters which could have been included in initial or previous proceedings save in exceptional circumstances. This judgment states (*inter alia*):-

"I believe I state the rule of the Court correctly when I say that where a given matter becomes the subject of litigation in, and adjudication by, a Court of competent jurisdiction the Court requires the parties to that litigation to bring forward their whole case and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward, only as part of the subject in contest, which was not brought forward, only because they have from negligence inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce judgment, but to every point which properly belonged to the subject of litigation and which the parties exercising reasonable diligence might have brought forward at the time."

This dictum has been relied on in a number of recent Supreme Court cases including, *inter alia*, *Eamon Carroll and Anor. v. Chris Ryan and Ors.* [2003] 1 I.R. 309 and *A.A. v. Medical Council* [2003] 4 I.R. 302.

In the instant case there are two matters to which I attach particular importance.

(a) The absence of any explanation by the plaintiff as to why matters on which she now seeks to rely were not included in the original judicial review proceedings.

(b) The absence of any appeal from the decision of Morris P. and/or the apparent absence of any application to revisit or review his judgment (for purposes of clarification).

I accept the contention by the defendant that the plaintiff's failure (or inadvertence) to seek relief in relation to the "Acting Up" does bring the plaintiff within the scope of the "Rule" in *Henderson v. Henderson*. This case, of course, does contemplate the existence of "special circumstances" and "special cases" but no such circumstance or case have been opened to me in this matter.

It has also been suggested that because of the nature of the defendant the plaintiff is entitled to proceed despite the "Rule" in *Henderson v. Henderson*, because a Government department cannot be subject to "unjust harassment" (Johnson v. Gore Wood [2002] W.L.R. 72). I do not accept this submission. Government departments, like any other defendant, personal or corporate, are entitled to the protection of the law.

To conclude, it was open to the plaintiff in her judicial review application to seek relief in relation to the "Acting Up" agreement but this she did not do. Judgment was granted, as noted above, by Morris P. and no appeal was brought against that judgment. There is no special reason why the "Rule" in *Henderson v. Henderson* should not apply. Again as indicated above I am satisfied that paragraphs 5 to 16 inclusive and paragraph 18, and the particulars relevant thereto, be struck out.