

THE HIGH COURT

NO. 2005/690P

WILLIAM P. JOYCE

PLAINTIFF

AND
HEALTH SERVICE EXECUTIVE

DEFENDANT

Judgment of Finnegan P. delivered on the 27th day of May 2005

1. The Plaintiff is a Consultant Surgeon in the employment of Cavan General Hospital. On this application he seeks certain injunctive relief which I will outline hereafter. There is considerable background to these proceedings.

2. On the 18th August 2003 the Plaintiff was suspended by the North Eastern Health Board the predecessor of the Defendant pursuant to section 22 of the Health Act 1970. On the 24th September 2003 the Minister for Health and Children established a committee pursuant to section 24 of the Health Act 1970 in respect of both the Applicant and a colleague who had been suspended at the same time. That committee was unable to act and a second committee was established. The second committee commenced its enquiry on the 17th February 2004 and hearings continued for some 41 days. On the 30th July 2004 the High Court by Interlocutory Order restrained further hearings by that committee. By letter dated the 11th January 2005 the Minister for Health and Children informed the Plaintiff that the Minister had decided to terminate the Plaintiff's suspension pursuant to the Health Act 1970 section 22(3). The Plaintiff therefore considered himself entitled to resume his duties. The Minister's decision was followed by correspondence between the Plaintiff's and the Defendant's solicitors. Ultimately on the 20th January 2005 the Defendant's solicitors wrote to the Plaintiff's solicitors in the following terms –

"Our clients will facilitate the return to duty of your client subject to the conditions set out in the attached document. I would be obliged for your early confirmation of your client's agreement to these conditions. Upon receipt of this agreement arrangements will be put in place to facilitate an early return to duty."

3. The attached document set out 18 conditions and required acceptance of the same in writing and 3 additional requirements which were subsequently withdrawn. For present purposes I am concerned with the 18 conditions. At this time without acknowledging the entitlement of the Defendant to impose the conditions or any of them the Plaintiff is prepared to submit to 6 of the same and return to work but reserves his position in relation to those to which he is submitting for the trial of the action.

4. For much of the Plaintiff's suspension he was suspended without pay although some payments were made to him. At present he is suspended on pay. The Plaintiff's position is that the Defendant is attempting to impose upon him a number of conditions which unilaterally change his existing contract and working conditions and that there is no legal basis for this. The Defendant's position is that having regard to what it describes as a long history of interpersonal difficulties with senior colleagues in Cavan General Hospital and a lack of co-operation by the Plaintiff with his consultant colleagues and the management of Cavan General Hospital the conditions sought to be imposed are necessary: the Defendant claims to be entitled to impose the conditions as it is an implied term of the Plaintiff's contract with the Defendant that he will co-operate with the management of the hospital. The conditions, the Defendant contends, are necessary to ensure the smooth running of the hospital in the interest of the staff and patients and the safety and welfare of patients. It is contended that the presence of the Plaintiff in the workplace without adherence to the conditions has the potential to place patients at risk as interprofessional conflict in a hospital poses a major threat to the delivery of safe, quality care and affects staff morale and public confidence. The Defendant places particular reliance on what is said in a letter of the 4th May 2004 written by Mr. F. Lennon, Medical Advisor to the North Eastern Health Board to the Minister. In the letter he has this to say –

"The working environment within the Cavan Surgical Unit at consultant level had become fractious and divisive and as a result the provision of safe patient care was constantly being put at risk. The ongoing peer conflict was adversely affecting the clinical practices and performance of the surgical junior hospital doctors who were being drawn into the conflict on one or other side. Even the nursing staff were not immune to the above. The resulting tensions and pressures on other departments particularly anaesthesia were clearly evident. The working relationships within the Unit had progressively disimproved over four years and had become a major source of concern within the hospital."

5. The Plaintiff relies upon an Affidavit by Donal Duffy, Assistant General Secretary of the Irish Hospital Consultants Association in which he deals with the conditions sought to be imposed. He considers many of the conditions to be inappropriate.

6. Counsel on behalf of the Plaintiff summarises the Plaintiff's objection to the conditions. He does not object to the conditions or to many of them per se. He objects to them being imposed unilaterally and as a condition of his return to duty. These should he believes be a matter for negotiation.

7. The Plaintiff I am satisfied has established a case to a sufficient standard to enable the Court to grant interlocutory relief. In these circumstances it falls to me to consider two matters only as determinant as to whether or not an injunction in the terms sought or some modification of the same should be granted –

(i) The adequacy of damages.

(ii) The balance of convenience.

8. As to the adequacy of damages two matters were urged upon me. The Plaintiff has been excluded from engaging in his surgical practice at Cavan General Hospital from the date of his initial suspension. He runs the risk of becoming deskilled. Secondly he will suffer in his reputation. As to becoming deskilled I note that the Plaintiff is engaged in practice in a private clinic in Galway. I accept however that the level and nature of his practice there may not be sufficient to sustain his skills he being engaged in minor operative procedures. I accept that his suspension both at its initiation but also in its continuance will affect his reputation amongst his colleagues, his patients and potential patients. I am satisfied in respect of both these matters that an award of damages at an appropriate level will remedy these injuries.

9. As to the balance of convenience I must take into account the convenience of the parties. The inconvenience to the Plaintiff is that he is precluded from pursuing his profession. He is precluded from carrying out the terms of his contract of employment. He runs the risk of becoming deskilled. He runs the risk of losing or having further damaged his reputation which must of necessity have been damaged by his suspension and the publicity which attended the enquiries and previous litigation between the parties and indeed also by publicity which attended proceedings taken by a colleague in the Surgical Department at the hospital. In terms of convenience

these matters weigh heavily. On the other hand the Defendant has the responsibility for the efficient running of the Surgical Unit at the hospital. It has the responsibility for the safety and welfare of patients attending there. The Defendant has concerns as to the effect which the Plaintiff's return to the hospital will have on morale within the Surgical Department and the hospital generally and the potential effect of this upon patients and their safety. In considering convenience I must also take into account the convenience of persons who may be affected by any order which I might make. It is appropriate that I have regard to the welfare and wellbeing of patients. Indeed in the unusual circumstances of this case the public interest in the safety and welfare of the patients should, I believe, be paramount. If the Defendant's contention is correct that the safety and welfare of patients demands that the return of the Defendant to his work at Cavan General Hospital can only be permitted on the stipulated conditions then he should not be allowed to return without submitting to the same. I cannot at this stage of the proceedings determine whether the Defendant's contention is factually correct or not. However at the interlocutory stage I should not expose patients to the risk which on the Defendant's case exists. For this reason I refuse the Plaintiff the relief sought on this Notice of Motion that is that he should be permitted to return to his work without first submitting to the 18 conditions. I should say that the risk is not posed by any want of skill or competence on the part of the Plaintiff. The risk is in consequence of the long history of interprofessional difficulties within the Surgical Department of Cavan General Hospital and the effect that the same has had on medical and nursing staff within that Department.

10. I do see merit in the Plaintiff's contention that the condition should be a matter for negotiation and if possible agreement. Good will on each side could, I am satisfied, result in a large number of the conditions, either as existing or in some slightly modified form, being agreed. It is possible that a return to work by the Plaintiff could be negotiated in advance of the hearing of this action. There would appear to be a reluctance on the part of the Defendant to negotiate and if this is indeed the case I would urge them to reconsider their position. Negotiations might well result in a reduction of the matters which will concern the Court on the hearing of this matter if not resolve the issues completely. In refusing to grant an injunction I have considered the possibility open to the Plaintiff to submit to the conditions pending hearing of the action notwithstanding his principled objection to so doing. This would go some way towards ameliorating the effect of the suspension upon his skills and reputation. It would also evidence his stated willingness and indeed anxiety to co-operate with the Defendant and the hospital management to ensure the smooth running of the Surgical Unit at the hospital. It may be too much to hope that the first of these courses will be pursued or that the second will be adopted. For this reason and having regard to the consequences of the suspension from which the Plaintiff is suffering I propose subjecting this action to case management, directing short and rigid timescales for the taking of steps including the making of discovery if appropriate and ensuring that the action receives an early date for hearing as soon as the parties are in a position to proceed.

11. My determination of this application turned very largely on what I perceive to be the public interest in the safety and welfare of patients attending Cavan General Hospital rather than the interest of either of the parties. It seems to me most appropriate that the costs of this application should abide the outcome of the action.