Neutral Citation: [2014] IEHC 61

THE HIGH COURT

[2010 No. 4094 P.]

BETWEEN

CATHAL BRENNAN

PLAINTIFF

AND

KEVIN MULLAN

DEFENDANT

JUDGMENT of Mr. Justice Cross delivered on the 18th day of February, 2014

1. The plaintiff is a detective garda who was born on 13th November, 1971. The defendant is sued representing the relevant Christian Brothers Congregation.

2. The plaintiff claims that while a student in a local national school, his class was visited by a Christian Brother, Br. F. who asked for assistance from a boy to work in the monastery garden which was situate nearby at St. David's Christian Brothers Secondary School to which Br. F. was attached. The plaintiff, a bright lad, volunteered. He had the support of his parents and family who believed that Br. F. would be a good influence on him. This occurred in 1980 when the plaintiff was approximately eight years old. The plaintiff alleges that for a number of years following, up to at least 1986, he was subjected to grooming and sexual assaults involving fondling, masturbation, oral sex and anal sex by Br. F. The assaults were progressive commencing with Br. F's hand being placed on the plaintiff's knee and escalating as previously described. The assaults took place when the plaintiff would call on a regular basis to the monastery and would be admitted by various brothers upon him asking to see Br. F. The plaintiff visited Br. F. on almost a daily basis and the abuse would take place on almost every occasion the plaintiff visited the monastery. It took place in the brother's bedroom and in areas of the monastery building which were not generally open to members of the public. The abuse continued until the brother fell ill and was taken to a nursing home in Sutton when the plaintiff visited him there where he was further abused.

3. The plaintiff claims that up to the commencement of the abuse he was a typical young lad who had great friends at school and after the abuse, he found himself not fitting in that the was without friends and he felt isolated and indeed guilty. The plaintiff had no formal sex education at the time and he felt responsible for what had happened.

4. The plaintiff gave evidence of his isolation the fact that his youth and adolescence and adulthood after the abuse stopped were miserable. He has been diagnosed as suffering from depression and chronic post traumatic stress disorder as a result of child sexual abuse and personality trait disorder with sensitivity preoccupation, rumination inadequacy, isolation and a sense of rejection.

5. The plaintiff joined An Garda Síochána in June 1992 and though the plaintiff is and was clearly very intelligent he only graduated from the garda training college, with an average grade. He also feels he got a generally bad reputation in Templemore due to his isolation and self preoccupations. The plaintiff recounted that he continued to get on badly with his peers but had a few girlfriends though he withdrew into himself and felt unable to fully develop any relationships at the time. He did not get on well in the gardaí in terms of promotion which he applied for but felt that his previous reputation in Templemore and afterwards as a loner or difficult person in the force, militated against any promotion. He is still at the rank of garda. In 2008, the plaintiff was accepted for study into King's Inns to lead towards the degree of Barrister at Law, however, he was unable to for financial reasons to avail of this opportunity.

6. The plaintiff did commence rowing with the famous garda rowing club and was proficient at this, and later became rowing captain in 2001, and this gave him a comradery and some support though the first person he could tell about the abuse was his first serious girlfriend but he later broke off his relationship with her as she was looking for commitment.

7. He also informed a few of the other girlfriends with whom he was in a serious relationship about the abuse and one of the girls, an American, who advised him that she had been herself raped insisted that he go to the Rape Crisis Centre in 1995. He was given some five or six sessions of counselling at their centre in Molesworth Street and they advised him to go to the Christian Brothers but he did not feel able to go. The plaintiff was given the name of a well known solicitor by the Rape Crisis Centre and he went to the solicitor who advised him that as the person was dead that he "didn't have a case". He also made an anonymous complaint in the late 1990s to An Garda Síochána but he did not feel able to follow this up.

8. The plaintiff's injuries as described continued and he first met his wife in 1998 and he commenced going out with her 2000. The relationship broke up but they got together again on the condition that the plaintiff would go to regular counselling. The plaintiff felt that this counselling transformed him from being an isolated person and opened him up and resulted in some improvement of his symptoms.

9. The plaintiff claims that before the counselling he was very insecure and volatile he used to take his insecurities out on his wife. He later heard an item on the wireless in 2009 to the effect that a religious order had been successfully sued notwithstanding the death of the abuser and he recalled the advice that he got from the solicitor in 1995 which now appeared erroneous.

10. The plaintiff then went to the One in Four Organisation and he met his present solicitor, Mr. Mehigan in June 2009 who advised that a claim would have to be first brought before the Personal Injuries Assessment Board (PIAB) and authorisation was issued on 31st March, 2010 and the proceedings herein followed in the normal way.

11. The plaintiff recounts that when it became clear that the case would proceed to a full trial in this Court, he had the very painful task of first informing his siblings one after another of the fact of his abuse and of the fact that he was taking the case. This was only done shortly before the case was first listed for trial. The plaintiff advised that he still has not had the courage to tell his parents and hoped that his name would not be published during the case. It is clear that the informing of his siblings about the abuse was still

a very difficult and traumatic event for the plaintiff. The plaintiff hoped that his parents would not hear of the case in the media.

12. I note that due to the good officers of the media, no publication of the plaintiff's name has to my knowledge taken place.

13. In the proceedings, the plaintiff claimed against the defendant for damages for injury caused by the negligence of the defendants in their failure to take reasonable steps to ensure that the plaintiff would be safe and protect him from harm. In particular the plaintiff claims that the defendants were in breach of their duty of care as they were aware, or ought to have been aware than on 8th December, 1960, Br. F. had been furnished a formal Canonical Warning by his superiors on account of him "interfering incorrectly with boys who had been in your class".

14. The defence in this matter was a complete denial of the fact of the sexual assaults of any loss or damage or the fact that Br. F. was under the control of the defendants or the fact that the defendant owed any duty to the plaintiff. It was further pleaded that any injury or loss was not caused by reason of the matters complained of and that the defendant was a nominee of the Irish Congregation of Christian Brothers, an unincorporated community of religious brothers and that neither the defendant nor any other members of the community had a responsibility for any of the acts alleged to have caused the personal injuries. It was denied that the defendant or any other member of the Congregation could be personally or vicariously liable in respect of the conduct of Br. F. There was also a plea in reliance of the provision of s. 35(1)(i) of the Civil Liability Act 1961.

15. It was then pleaded that the plaintiff's claim was statute barred and the claim should be struck out due to the inordinate and inexcusable delay to institute proceedings.

16. The trial proceeded on 4th, 5th and 6th December, 2013, on this basis but on its resumption on 10th December, 2013, by agreement between the parties, an issue paper was furnished which narrowed the issues in dispute between the parties and read as follows:-

> "(1) In this case, the defendant has not contested the fact that the plaintiff was sexually abused by (Br. F.).
>
> (2) The defendant does not in this case rely on the defence that the Christian Brothers Congregation European Province is an unincorpate body which is incapable of being sued.
>
> (3) The defendant does not in this case rely on the defence under s. 35(1)(i) of the Civil Liability Act 1961, as amended.
>
> (4) The plaintiff raises no claim based on vicarious liability.
>
> (5) The remaining issues in this case fail that fault to be determined are:-
>
> (i) the plaintiff's claim in negligence;
>
> (ii) the denial of the allegations made by the plaintiff that he has suffered personal injuries, loss and damage;
>
> (iii) the defence on the statute of limitation; and
>
> (iv) the defence based on delay.
>
> The above issues only relate to the within case and are strictly without prejudice to the Congregation's full defence in other cases."

17. Accordingly, up to the last day of the hearing, although the defendant had not questioned the plaintiff's account of the abuse by Br. F., this had not been admitted by the defendant.

18. Before dealing with the issues in the order that I propose to do so, I want to make it clear that I accept the plaintiff's evidence in full, I believe that he is a truthful witness who has been severely abused by Br. F. in a manner that has caused him significant trauma and I note that it is only with the issue of these proceedings that these matters came to be acknowledged on the last day of the hearing.

19. I believe that the plaintiff in no way exaggerated, the injuries and the trauma that he has suffered.

20. I propose to deal with the issue in the following manner:-

> (a) Were the defendant's negligent?
>
> (b) Should the plaintiff's claim be dismissed for inordinate and inexcusable delay?
>
> (c) Had the defendant a defence under the statute of limitations?
>
> (d) If appropriate, the issue of damages?

Negligence

21. The defendant representing the Congregation of Christian Brothers is, in my view, negligent in its failure to take any steps whatsoever to supervise Br. F. or to prevent him from access to vulnerable child such as the plaintiff in the full knowledge that Br. F. had been, in the past, guilty of child abuse of young boys.

22. I fully accept that up to reasonably recently, the knowledge as to the addictive propensity of abusers to resume their abusive actions was not widely appreciated. Accordingly, it would be entirely inappropriate to view any negligence of the defendant with the hindsight of the years since the last decade of the twentieth century.

23. It remains to be said, however, that as early as 1960, the defendant's predecessors were aware that Br. F. was a person guilty of sexual abuse. In the light of that knowledge, the members of the defendant's Congregation allowed the plaintiff unfettered access to

Br. F., members of the Congregation opened the door of the monastery to him, allowed him to wander about the inner sanctum of the monastery and to visit Br. F. in his bedroom unsupervised on a regular basis. I hold that even by the standards of the 1980s, the defendants ought to have put in place a system to watch and monitor Br. F. to ensure that he did not have such access to the plaintiff or to others. The calling by the plaintiff on a regular basis every day to assist Br. F. in the cultivation of the monastery garden or otherwise, must have been known and must have been remarked upon and ought to have resulted in measures being put in place to watch Br. F. and to prevent him having access to the plaintiff so that he could abuse him on a regular and continuous and sustained basis. There is absolutely no evidence of any system being put in place by the defendant in relation to Br. F. or any treatment of Br. F. that differentiated him from the vast majority of non-abusive brothers. If there was any such evidence it could have been produced by the defendants and no evidence has been furnished that any lapse of time has prevented the Congregation giving evidence of any differentiation of the treatment of Br. F. from other members of the Congregation. It seems clear that having given the Canonical Warning in 1960 the defendants proceeded to treat Br. F. in precisely the same manner as every other member of their Congregation.

24. The defendant initially pleaded provision of s. 35(1)(i) of the Civil Liability Act 1961, attempting to visit the plaintiff with the actions of Br. F. but have quite properly withdrawn such a plea. There is no question of contributory negligence in this case.

Delay
25. The defendant contends that the proceedings ought to be struck out due to the delay in maintaining the action by the plaintiff. The court has an inherent jurisdiction to strike out proceedings for an inordinate and inexcusable delay as was established by the Supreme Court in *Primor Plc v. Stokes Kennedy Crowley* [1996] 2 I.R. 459.

26. In *Primor*, Hamilton C.J. in the course of delivering his judgment (at pp. 475 and 476) stated as follows:-

> *"(a) the courts have an inherent jurisdiction to control their own procedure and to dismiss a claim when the interests of justice require them to do so;*
>
> *(b) it must, in the first instance, be established by the party seeking a dismissal of proceedings for want of prosecution on the ground of delay in the prosecution thereof, that the delay was inordinate and inexcusable;*
>
> *(c) even where the delay has been both inordinate and inexcusable the court must exercise a judgment on whether, in its discretion, on the facts the balance of justice is in favour of or against the proceeding of the case;*
>
> *(d) in considering this latter obligation the court is entitled to take into consideration and have regard to*
>
> > *(i) the implied constitutional principles of basic fairness of procedures,*
> >
> > *(ii) whether the delay and consequent prejudice in the special facts of the case are such as to make it unfair to the defendant to allow the action to proceed and to make it just to strike out the plaintiff's action,*
> >
> > *(iii) any delay on the part of the defendant — because litigation is a two party operation, the conduct of both parties should be looked at,*
> >
> > *(iv) whether any delay or conduct of the defendant amounts to acquiescence on the part of the defendant in the plaintiff's delay,*
> >
> > *(v) the fact that conduct by the defendant which induces the plaintiff to incur further expense in pursuing the action does not, in law, constitute an absolute bar preventing the defendant from obtaining a striking out order but is a relevant factor to be taken into account by the judge in exercising his discretion whether or not to strike out the claim, the weight to be attached to such conduct depending upon all the circumstances of the particular case,*
> >
> > *(vi) whether the delay gives rise to a substantial risk that it is not possible to have a fair trial or is likely to cause or have caused serious prejudice to the defendant,*
> >
> > *(vii) the fact that the prejudice to the defendant referred to in (vi) may arise in many ways and be other than that merely caused by the delay, including damage to a defendant's reputation and business."*

27. In a number of recent cases referred to in their submissions by the defendant (e.g. *Gilroy v. Flynn* [2005] 1 ILRM 290 and *W. v. W.* [2011] IEHC 201), the Supreme Court and the High Court referred to Article 6 of the European Convention on Human Rights suggesting that the courts independently of the actions or inactions of the parties have an obligation to ensure that the rights and liability, civil or criminal are determined within a reasonable time.

28. Be that as it may and accepting that certain periods of delay would now held to be inordinate that would not have been held inordinate in times gone by, the law still requires the court to be satisfied by the *Primor* principles (above). Indeed, it could hardly be otherwise. The right to a speedy trial must, in my view, be subsidiary to the overriding right of a litigant to a trial in the first place. The right and indeed the obligation on the courts to dismiss cases for inordinate and inexcusable delay is contingent upon a finding of inexcusability. This, of course, involves culpability on the part of the plaintiff or the plaintiff's legal advisers. Even if "inexcusability" is found a balancing exercise must take place before a case could be dismissed.

29. Turning to the instant case, I accept the submission on behalf of the defendants that the delay in this case is indeed inordinate. The lapse since the date of abuse may not be "more than 30 years" identified by the defendants in their submissions but it is at least 25 years and indeed it by any stretch to the imagination inordinate.

30. The defendants contend that the delay is inexcusable and rely upon the observations of Hogan J. in *I. v. J.* [2012] 1 IEHC 327 (20), in which he referred to the delay in which the plaintiff took from her initial legal complaints to the initiation of the proceedings and then her failure to pursue the proceedings with despatch.

31. The defendants contend that as the plaintiff in this case sought legal advice and was in a position to attend a solicitor's office in 1995 to discuss a potential case against Br. F. that it was the legal advice which prevented him from initiating proceedings in 1995 and not any incapacity.

32. The issue of the plaintiff consulting a solicitor in 1995 and any incapacity that he suffered or may have suffered at that time or since that time will be further discussed under the heading of the statute of limitations but the issue before me on the question of delay is not the cause of the plaintiff's delay in issuing proceedings but whether the delay was excusable or inexcusable. In this case there is no question of any post procedural delay on the part of the plaintiff or his solicitors. I am of the view that the defendants who have the obligation to make the case have failed to establish that the plaintiff's delay was, in all the circumstances, inexcusable.

33. It is clear that the plaintiff was, long after his consultation with a solicitor in 1995, and indeed is still, despite the counselling, suffering under the after effects of the abuse. On receiving advice in 1995, that he had no case against Br. F. (the question of whether he had any case against the Congregation was not, it seems, canvassed), the plaintiff quite naturally did not issue proceedings. It may well be that in 1995, a prudent solicitor would have correctly advised the plaintiff that the state of the law as it then was that he would have great difficulty, to say the least in any case against the Congregation due to the then effects of the statue of limitations, but as I said this issue does not seem to have been canvassed with the solicitor.

34. *Stephens v. Paul Flynn Ltd* [2008] 4 I.R. 31 and other cases, are clear authority for the proposition that a party acting through a solicitor is to an extent vicariously liable for the activity or inactivity of the solicitor in relation to the length of delays in litigation. Accordingly, a plaintiff cannot escape the fact that he may be guilty of inordinate delay when the delaying party was his solicitor. The issue to be determined here is entirely different, it is whether the plaintiff's delay in commencing the proceedings was in the circumstances inexcusable and I have come to the conclusion that the defendants have failed to establish that fact. When ascertaining excusability, the court is performing an entirely different function from the ascertaining of the inordinate nature of the delay. Even if a prudent solicitor in 1995 would have advised issuing proceedings against the Congregation (and given the nature of the statute at the time that has not been established), when it comes to assessing whether the failure to initiate the proceedings was inexcusable, I must assess the plaintiff's mind and I hold that his delay was entirely reasonable. At worst, from the plaintiff's point of view, he was given not unreasonable advice and acted upon it.

35. However, I do not accept that the defendants have established on the balance of probabilities that even had the solicitor advised the plaintiff that he had a good case in 1995 that he would necessarily have taken one. It is clear that the plaintiff did not continue with any counselling after his initial visits to the Rape Crisis Centre in 1995 and his injuries and disabilities were continuing. I am not satisfied that he would have had the capacity to bring proceedings in 1995 had he been advised he could do so. It is noteworthy that he failed to heed the Rape Crisis Centre's advice that he should go to the Congregation and reveal his abuse. The plaintiff also was unable to further his anonymous complaint to An Garda Síochána.

36. If I am incorrect in my reasoning, I have no hesitation in deciding that the balance of justice clearly lies in allowing the case to proceed.

37. No allegation of prejudice is alleged other than the possibility that Br. F. and other brothers could have given evidence. Given the fact that the defendants, who are well advised, did not dispute the fact or nature of the abuse perpetrated by Br. F., the absence of Br. F. is therefore not material. The same point answers any question of prejudice due to the probable absence of any of the other brothers in the monastery who could arguably have given evidence contrary to the plaintiff's version of how he gained access to the building. I do not believe that any of these evidential lacunae are relevant to the plaintiff's case, once the admissions that were made on the last day of the hearing applied. Even without these admissions as my principle finding of negligence against the defendant is the failure to have any system in place that could or did supervise or watch the activities of Br. F. in the light of the Canonical Warning no question of prejudice could arise as such evidence could have been given from the records of the defendant or indeed from other members of the Congregation still alive.

38. Even if the delay were both inordinate and inexcusable (which I have not found) I would hold that the balance of justice should allow the case to proceed and the defendant should fail on that defence.

The Statute of Limitations

39. Section 3(1) of the Statute of Limitations (Amendment) Act 1991, as amended by s. 7 of the Civil Liabilities and Courts Act 2004 provide that a plaintiff has two years from the accrual of his cause of action to bring a personal injuries action.

Section 3(1) of the 1991 Act provides that an injured party has two years from his "date of knowledge" within which to institute proceedings if this is later than the date of the accrual of his cause of action.

40. A person's date of knowledge is the date in which he was aware of the five matters contained in s. 2(1) of the 1991 Act which provides as follows:-

> (Reference is to that person's date of knowledge) "*are references to the date on which he first had knowledge of the following facts*:-
>
> *(a) that the person alleged to have been injured had been injured,*
>
> *(b) that the injury in question was significant,*
>
> *(c) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty,*
>
> *(d) the identity of the defendant, and*
>
> *(e) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant;*
>
> *and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant."*

41. The plaintiff would have reached his majority in November 1989. In 1989, he would have had irrespective of any subsequent enactments, three years from his majority date to initiate proceedings. In *Delahunty v. South Eastern Health Board* [2003] 4 I.R. 361, the plaintiff alleged that he had been sexually abused by a house master while visiting an industrial school in 1976 when he was 11 years of age. The plaintiff claims that the abuse had caused him to suffer from psychological problems which he only later realised were attributable to the abuse and proceedings were issued in 1997. The defendants said the proceedings were statue barred. Having heard detailed expert medical evidence, O'Higgins J. held that the proceedings were not statute barred and that the plaintiff only

became aware of the facts constituting his date of knowledge within the meaning of s. 2 of the Statute of Limitations (Amendment) Act 1991 within a period of three years prior to the proceedings being brought. He was aware of having been assaulted and the identity of his perpetrator but it was held that he was not aware of the significance of the assault nor was he aware that his significant psychiatric and psychological injuries were attributable to the sexual assault until 1996 and that knowledge was only ascertainable with the help of psychological and psychiatric medical experts and the plaintiff had taken all reasonable steps to obtain that device.

42. In this case, however, the plaintiff was aware that his significant psychological and psychiatric injuries were attributable to his abuse certainly from 1995 and accordingly, I hold that the plaintiff cannot avail of the provisions of this Act and he does not fall within the terms of the *Delahunty* judgment (above).

43. It remains to be considered whether the plaintiff is or was under a disability as defined in the Statute of Limitations (Amendment) Act 2000 or is otherwise entitled to the benefits of that Act.

44. Section 49(1)(a) of the 1957 Statute of Limitations, coupled with the provisions of s. 5(1) of the 1991 Act as amended by s. 7 of the Civil Liability and Courts Act 2004, provided a two year period from the date when a person ceased to be under a disability subject to a number of not relevant exceptions.

45. The Statute of Limitations (Amendment) Act 2000 was introduced to deal with perceived injustices of the then existing law in relation to the Statute of Limitations in light of the mounting issue of sexual abuse.

46. Section 2 of the 2000 Act amended the 1957 Act by inserting the following section after section 48:-

> *"Disability of certain persons for purpose of bringing certain actions arising out of acts of sexual abuse.*
>
> *(1) A person shall, for the purpose of bringing an action –*
>
> > *(a) founded on tort in respect of an act of sexual abuse committed against him or her at a time when he or she had not yet reached full age, or*
> >
> > *(b) against a person (other than the person who committed that act), claiming damages for negligence or breach of duty where the damages claimed consist of or include damages in respect of personal injuries caused by such act,*
> >
> > *be under a disability while he or she is suffering from any psychological injury that –*
> >
> > > *(i) is caused, in whole or in part, by that act, or any other act, of the person who committed the first-mentioned act, and*
> > >
> > > *(ii) is of such significance that his or her will, or his or her ability to make a reasoned decision, to bring such action is substantially impaired.*
>
> *(2) This section applies to actions referred to in subsection (1) whether the cause of action concerned accrued before or after the passing of the Statute of Limitations (Amendment) Act, 2000, including actions pending at such passing.*
>
> *(3) An action referred to in subsection (1), that but for this subsection could not, by virtue of this Act, be brought, may be brought not later than one year after the passing of the Statute of Limitations (Amendment) Act, 2000, provided that, after the expiration of the period within which such action could by virtue of this Act have been brought, but prior to 30 March, 2000 …"*

47. The remainder of the section does not seem to be of relevance.

48. It is submitted on behalf of the defendants that the effect of s. 48A was "simply to introduce a once off extension of time, running for one year from 21st June, 2000". In this regard, the defendants place reliance upon the decision of *O'Dwyer v. McDonnell* [2006] IEHC 281 and suggested it is also the interpretation given by the learned author in *Cany Limitation of Actions* (2010)at para. 9.18.

49. I am urged by reason of the doctrine of Stare Decisis as eloquently articulated by Clarke J. in *Worldport Ireland Limited (In Liquidation)* [2005] 1 IEHC:-

> *"It is well established that, as a matter of judicial comity, a judge of first instance ought usually follow the decision of another judge of the same court unless there are substantial reasons for believing that the initial judgment was wrong… Amongst the circumstances where it may be appropriate for a court to come to a different view would be where it was clear that the initial decision was not based upon a review of significant relevant authority, where there is a clear error in the judgment, or where the judgment sought to be revisited was delivered a sufficiently lengthy period in the past so that the jurisprudence of the court in the relevant area might be said to have advanced in the intervening period. In the absence of such additional circumstances it seems to me that the virtue of consistency requires that a judge of this court should not seek to second guess a recent determination of the court which was clearly arrived at after a thorough review of all of the relevant authorities and which was, as was noted by Kearns J., based on forming a judgment between evenly balanced argument. If each time such a point were to arise again a judge were free to form his or her own view without proper regard to the fact that the point had already been determined, the level of uncertainty that would be introduced would be disproportionate to any perceived advantage in the matter being reconsidered…."*

50. I have read the judgment in the case of *O'Dwyer v. McDonnell*, which I have been referred to. This case consisted of an application by the defendants to dismiss the plaintiff's claim against the State on grounds of inordinate and inexcusable delay in which the learned judge made passing reference to the Statute of Limitations (Amendment) Act 2000 and the quotation to which I am referred to arises:-

> *"The effect of provisions of s. 48A of the Act of 2000 was to permit certain categories of person (a), who were suffering from psychological injury, (b) which had been caused, (in whole or in part), by alleged sexual abuse committed when the*

person had not reached full age and, (c) who would otherwise have been barred by the positions of the Statute of Limitations, 1957, to bring an action founded on tort against the alleged perpetrator of the abuse within one year after the passing of the Act of 2000.

Such an action could be brought provided inter alia that, prior to the 30th March, 2000, the person concerned had either, (i) obtained professional legal advice which has caused him or her to believe that the action was barred by the provisions of the Act of 1957 or, (ii) had made a complaint to the Garda Síochána in respect of the abuse."

51. It is absolutely clear that the learned judge was not interpreting the provisions of s. 48A of the 2000 Act and in particular he did not examine the provisions of s. 48A(1) of the Act. The learned judge was considering the issue under the *Primor* principles as defined above and reference to the 2000 Act in that judgment were clearly obiter and indeed it is clear that insofar as the learned judge referred to s. 48A at all, he was referring to s. 48A(3) as he makes reference to the provisos in relation to legal advice etc. In that case there was no question of the plaintiff being somebody who may have suffered under a disability at law.

52. I do not therefore find that the principles of Stare Decisis in any way is invoked by virtue of the decision in *O'Dwyer* (above). Contrary to the submissions on behalf of the defendant, I do not accept that the learned author in *Cany Limitation of Actions* (2010) at para. 9-8 interpreted the Act in the manner as contended for by the defendant either.

53. In the effect of the 2000 Act was, in my view, to do two things. First of all, s. 48A(1) stated that a person who satisfied its provisions would be considered to be a person under a disability within the meaning of the Statute of Limitations Act 1957, as amended, (i.e. have two years after the end of the disability period to bring the action) and further under s. (3), if the plaintiff were not under a disability in the case of an action claiming damages for sexual abuse *etc*. then that person had a once off period of one year after the passing of the 2000 Act to bring his proceedings provided certain conditions were met. It is clear that s. 48A(1) and s. 48A(3) are creating separate rights or entitlements to a victim of sexual abuse.

54. It is clear that the plaintiff cannot qualify under the one year period. The issue before me is to whether or not the plaintiff has demonstrated that he is indeed a person under a disability as defined by section 48A(1).

55. In order to qualify as being under a disability under s. 48A(1) the plaintiff must be suffering from any psychological injury that is caused in whole or in part by the act of sexual abuse or any other act of the person who committed the act of sexual abuse and that injury is of such significance that "his or her will, or his or her ability to make a reasoned decision to bring such action is substantially impaired".

56. It is clear that any disability that the plaintiff is suffering from was caused in whole or in part by the act of Br. F. and accordingly the issue before me is whether that the ability of the plaintiff to make a reasoned decision to bring the action is "substantially impaired".

57. The defendants submit that the plaintiff in 1995 went to see a solicitor and indeed counsel and returned on a second occasion took legal advice about the case and followed that advice. It is submitted by the defendant that at that point in time at the very latest, the plaintiff was not under any disability and had the capacity to institute legal proceedings. It is submitted that the plaintiff had the will and ability to attend a solicitor with a view of instituting a case and the only reason that he did not actually institute the case at the time because he was legally advised that it would not succeed. In this regard, the defendant relies upon their expert witness Dr. Sheehan who was of the view that the plaintiff had capacity from 1995 to instruct a solicitor and makes the point that "there was no psychological disability be treated or anything, it was a legal impairment that was taken away and he subsequently pursued the case".

58. The plaintiff relies upon the evidence of Dr. Paul McQuade who established that the plaintiff suffered post traumatic stress, depression, he had a need to be secretive and control his memories and an ability to fit in with his peers, difficulty in relation to friendship and social withdrawing and vivid memories of the sexual abuse he suffered, rejection of his religion, immature sexualisation, doubt and insecurity, personality trait disorder, preoccupations and ruminations and feelings of inadequacy and isolation and rejection.

59. The plaintiff further relies upon the judgment of Ryan J. in *Doherty v. Quigley* [2011] IEHC 361, delivered on 5th July, 2011, in which he correctly identified that impairment, not prevention as the determining factor in assessing capacity under the 2000 Act. In that case, the plaintiff had been abused in the 1980s when the statute in the normal course would have expired in the early 1990s and proceedings were initiated in 2007 and the plaintiff in this case relies upon the following passage from the judgment:-

"The section provides for impairment, not prevention, of capacity. It seems obvious that one cannot simply say that a person who brings an action is necessarily outside the scope of the provision. Nor will it always be possible to say with any confidence when impairment ended. The fact that the plaintiff did actually bring proceedings or have them instituted on her behalf in 2007 does not mean that she is obliged to prove that there was a date when her condition changed from previous impairment to non-impairment. It seems to me that some such proposition is implicit in the defendant's approach in submissions and cross-examination. And it does not have to be at a particular level all the time; that would not make sense because there must be very few conditions, whether psychological or physical, that do not wax and wane over time. It follows that the section may apply in a wide range of circumstances, including episodic reduction of capacity if that means it is substantially impaired."

60. If I accept for the purposes of this judgment that in 1995, had the plaintiff been furnished with advice that he had a good cause of action, he would have initiated proceedings, it does not necessarily follow from that fact the plaintiff's capacity was not "substantially impaired" in 1995 or subsequently.

61. I find that after the 1995 advice the plaintiff continued and continues to be suffering from a disability that has substantially and is still substantially impairing his ability to bring the proceedings. The fact that he has now managed to does not alter the essential facts about the plaintiff's psychological situation. The plaintiff has on the advice of his wife been attending intensive counselling in recent years. This has been of great assistance to him and alleviated the problems that he is suffering from to a considerable degree. Notwithstanding that fact, I accept the medical evidence of Dr. McQuade and the evidence of the plaintiff as to his present situation. He was still clearly psychologically considerably damaged after 1995 and indeed still is damaged. He was unable to make a formal complaint to An Garda Síochána. He could not bring himself to confront the Congregation as he had been advised. Accordingly, though he had been given much good advice in 1995 and indeed later, he was unable to follow that advice. He did not persist with his counselling and his problems with relationships, friends and generally with his life persisted. Even after the support of a loving wife and family and after extensive counselling and after the launching of proceedings he still does not have the capacity to inform his parents that he was abused. He had to undergo a considerable regime of planned preparation before he could inform his siblings. In order to

inform his siblings, he had to construct a regime whereby he first told the sibling he considered the strongest and relied upon the support of already informed siblings to notify the rest of his large family.

62. I have no hesitation following the judgment of Ryan J. (above) in holding that the plaintiff was prior to initiating of the proceedings herein suffering from psychological injury of such significance that his ability to make a reasoned decision to bring the action is substantially impaired within the meaning of section 48A(1).

63. Accordingly, the defence of the Statute of Limitations must fail.

Quantum

64. I have not been addressed by the parties in relation to quantum. The defendant was not the party who assaulted the plaintiff but the negligence of the defendant, as found, resulted in the plaintiff being grievously assaulted over a prolonged period of time with significant adverse consequences to the plaintiff.

65. Accordingly, I do not see any substantial difference between the general damages the plaintiff would be entitled to as against this defendant rather than had Br. F. been personally sued. The only difference is that the issue of aggravated or extemporary damages does not, in my view, arise.

66. Clearly the issue of aggravated or exemplary damages would arise against Br. F. had he been the defendant. In this case, the claim against the defendant is for damages for negligence and I do not find that the manner in which the defendants defended this case was such as to give rise to any aggravated or exemplary damages. I believe that the defendants were entitled to defend the case though the concessions made on the last day of the trial could properly have been made before its commencement without any difficulty to defendant and had that been so, I have no doubt but that the plaintiff's burden would have been easier.

67. As previously stated, it is only with the bringing of these proceedings and indeed of the fourth day of their trial that the plaintiff has received a helpful acknowledgement that what he has said is true.

68. I have previously discussed the nature of the abuse the plaintiff has suffered. I have also in the course of my judgment referred to the past and ongoing trauma that the plaintiff endured. I fully accept the plaintiff's evidence and the evidence of Dr. McQuade in this regard.

69. The sexual abuse suffered by the plaintiff is of the most extreme that I have seen in my career as a judge or earlier as a barrister. It is correct, of course, that the plaintiff was not physically attacked in a violent way but that does not make the abuse he suffered or its consequences any the less. Indeed, for someone who like the plaintiff has suffered abuse of a sexual nature after grooming and who as a young lad without any sexual experience went back time and time again to his abuser the ongoing psychological effects of such abuse can be far more serious than if someone is violently and sexually assaulted. The element of guilt and self doubt may exist to a far larger degree in someone who did not object or resist the abuse someone who was the object of a violent sexual assault. Such is my view of the plaintiff's situation. In my view, the plaintiff has suffered severe injury which have affected him throughout his life up to date and which are still affecting him. The plaintiff has been substantially rescued from his discomfort by the love of a good woman, the benefits of fatherhood and the beneficial effects of ongoing counselling which will, in my view, render his future far more hopeful than his past.

70. I note the opinion of Dr. McQuade that the plaintiff's prognosis is "guarded in terms of continuing potential for mood swings", which I accept. I also however accept Dr. McQuade's final conclusion "while he has been significantly damaged by virtue of his sexual abuse, as alleged, they are important indicators of favourable and more mature developments".

71. It remains to be said that the abuse the plaintiff suffered was over an extraordinary long period. The plaintiff is a most admirable individual who as essentially triumphed over adversity and is, I believe, a credit to his profession in An Garda Síochána.

72. A case is made out that the plaintiff has suffered some loss of promotion, opportunity and I think that a relatively modest sum of €20,000 in the general damages to date should make up for this. I would be hopeful that the plaintiff will, given the courage he has shown as well as his clear intelligence qualify for promotion in the near future.

73. I assess general damages to date to include a sum for loss of job opportunity at €320,000 and general damages into the future at €50,000 totalling together a sum of €370,000.