

## THE HIGH COURT

[2018 No. 1 P.]

BETWEEN

[B. W.]

PLAINTIFF

AND

IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

JUDGMENT of Mr. Justice Allen delivered on the 12th day of April, 2019

*Introduction*

1. This is an action which was commenced by plenary summons issued on 2nd January, 2018. The plaintiff acts for himself.
2. The general endorsement of claim starts with a statement, in bold type: "**N.B.: These proceedings originated from proceedings under the Child Care Act, 1991**".

*The plaintiff's claims in these proceedings*

3. The plaintiff claims two injunctions, two declarations and an order of *mandamus* by reference to alleged breaches by the State of Article 40.3 of the Constitution; two declarations, two injunctions and an order of *mandamus* by reference to alleged breaches by the State of the United Nations Convention Against Torture; an order pursuant to s. 3(5)(b) of the European Convention on Human Rights Act, 2003 extending the time for the institution of proceedings in respect of an alleged contravention of the State's obligations under the Convention; declarations that the State is in breach of four Articles of the European Convention of Human Rights; and a declaration that ss. 29 and 31 of the Child Care Act, 1991 and/or s. 40 of the Civil Liability and Courts Act, 2004 and/or the operation of those provisions, are incompatible with Article 40.3 of the Constitution and Articles 3 and 13 of the European Convention on Human Rights.

4. The statement of claim, which was delivered on 6th February, 2018, claims the same relief.

5. As presaged by the general endorsement of claim, the statement of claim shows that the proceedings originated in proceedings under the Child Care Act, 1991.

6. On 22nd February, 2008 child care proceedings were instituted against the plaintiff and his wife in the District Court and two of their children were taken into emergency care. Those proceedings were concluded in the District Court on 24th October, 2008.

7. The plaintiff took grave exception to the manner in which the District Court proceedings had been conducted and made a number of complaints to An Garda Síochána, the District Court, the European Court of Human Rights, [a foreign] government, and the Minister for Justice, Equality and Defence. He alleged that a number of offences had been committed in the course of the child care proceedings but that these were not, or could not be, investigated by reason of the operation or application of the *in camera* rule. Those offences are said to have been committed "*mainly*" in the period between 22nd February, 2008 and 24th October, 2008.

8. The statement of claim refers to "*High Court civil proceedings*" and "*High Court judicial review proceedings*", and a Supreme Court hearing of "*the High Court judicial review outcome*", but does not set out any details of what those proceedings were.

9. Apart from the difficulties said to have been encountered by the plaintiff and his wife, the statement of claim refers to several other instances where other parents are said to have had cause for complaint arising out of the conduct of child care proceedings, in particular by the application of the *in camera* rule.

*The defence and the defendants' application*

10. On 8th June, 2018 a defence was delivered which pleads that the plaintiff's claims are misconceived, unstateable and statute barred. Further, it is pleaded that the issues the subject of these proceedings are the same as those raised in ongoing judicial review proceedings under record no. 2011 No. 918 J.R., in which the plaintiff is the applicant and the Commissioner of An Garda Síochána is the respondent, and the Director of Public Prosecutions is a notice party; judicial review proceedings under record no. 2010 No. 590 J.R. and Court of Appeal record No. 2015/432, in which the plaintiff is the applicant and the Judges of the District Court Area of [ ], District No. [ ] and the Health Service Executive (now the Child and Family Agency) are respondents; and High Court plenary proceedings under record no. 2009 No. 9981 P., in which the plaintiff and his wife and two children are plaintiffs, and the Health Service Executive, Ireland, the Attorney General, and the Minister for Justice, Equality and Law Reform are defendants.

11. At the conclusion of the plaintiff's opening, counsel for the defendants applied to have these proceedings dismissed as frivolous and vexatious on the grounds that the several claims which the plaintiff seeks to advance in this action are in part *res judicata*, in part the subject of ongoing judicial review proceedings, and in part the subject of a previous settlement.

*The plaintiff's 2009 action*

12. On 5th November, 2009 plenary proceedings were instituted by the plaintiff, his wife, and his two children, against the Health Service Executive, Ireland and the Attorney General. The general endorsement of claim claimed damages for personal injury, damages pursuant to s. 3 of the European Convention on Human Rights Act, 2003 for the alleged failure of the defendants to perform their functions in a manner compatible with the Convention, and damages for misfeasance in public office. The plaintiff also claimed orders requiring changes to be made to the Child Care Act, 1991 to bring it into line with the Protection for Persons Reporting Child Abuse Act, 1998 and a variety of orders directed to preventing any further occurrence of the conduct complained of.

13. The statement of claim set out the history of the child care proceedings and complained of several breaches of duty. The plaintiff claimed that there were several alleged shortcomings in the structure and application of the legislation by reference to the

Constitution, the European Convention on Human Rights, the Human Rights Commission Act, 2000, the Criminal Justice (United Nations Convention Against Torture) Act, 2000, and the European Convention on Human Rights Act, 2003; and claimed various declarations, injunctions, and damages.

14. The plaintiff's 2009 action was heard by the High Court (Clark J.) on 24th October, 2011, 2nd November, 2011, 18th November, 2011, 1st March, 2012 and 29th March, 2012. By order made on 26th July, 2012 Clark J. directed an assessment of damages payable to the plaintiffs by the Health Service Executive and the action against Ireland, the Attorney General, and the Minister for Justice, Equality and Law Reform was struck out. The order recites that an application was made by the solicitor for the second, third and fourth defendants for an order striking out the proceedings against those defendants, and records that that was done by consent.

15. The order made by Clark J. on 26th July, 2012 appears to have been made following a written judgment which focussed exclusively on the plaintiff's complaints against the Health Service Executive. But if the court did not then specifically address the plaintiff's complaints against the other defendants, the judgment effectively disposed of the case in its entirety and the plaintiff agreed to the release of the other defendants from the proceedings.

16. On 26th November, 2012 the Health Service Executive appealed to the Supreme Court but the plaintiff's (and his family's) claim for damages was settled and the settlement was approved by order of the President made on 1st March, 2013. On the same day, a consent order was made by the Supreme Court allowing the appeal of the Health Service Executive.

#### *The plaintiff's 2010 judicial review proceedings*

17. On 14th June, 2010 the plaintiff applied to the High Court (Peart J.) for an order of *certiorari* by way of judicial review of the District Court orders made in 2008 in the child care proceedings, and of a refusal of [a named] District Court Judge on 19th October, 2009 to act on information from the plaintiff as a common informer in respect of offences allegedly committed under the Child Care Act, 1991, the Protection for Persons Reporting Child Abuse Act, 1998, and the Criminal Justice (United Nations Convention Against Torture) Act, 2000. He named the Judges of the District Court Area of [ ], District No. [ ] and the Health Service Executive as respondents.

18. On 28th June, 2010 Peart J. refused the plaintiff's motion. The plaintiff appealed to the Court of Appeal where his appeal stands adjourned generally with liberty to re-enter awaiting the outcome of other judicial review proceedings.

#### *The plaintiff's 2011 judicial review proceedings*

19. On 14th October, 2011 the plaintiff applied to the High Court (Peart J.) for leave to apply by way of judicial review against the Minister for Justice, Equality and Defence, Ireland, and the Attorney General for "*public law remedies including declarations and injunctions as discretionary remedies and ... the appropriate framework to review if the administration of justice has been conducted in good faith and general conduct*". He also sought leave to apply for an order of *mandamus* to compel those respondents to investigate and prosecute alleged offences, said to have been outlined in a 26 page "*Witness Statement*" dated 11th January, 2011, and a direction or declaration that prosecution for criminal conduct in a court held otherwise than in public is prosecutable as prescribed by law.

20. In support of his application, as "*grounds upon which such relief is sought*" the plaintiff invoked Articles 38 and 40 of the Constitution, Articles 3, 13 and 14 of the European Convention on Human Rights, and Article 12 of the United Nations Convention Against Torture, as given effect in Irish Law by the Criminal Justice (United Nations Convention Against Torture) Act, 2000.

21. The "*Witness Statement*" referred to in the statement of grounds closely chronicled the plaintiff's complaints in relation to the child care proceedings initiated against him in the period between 22nd February, 2008 and 24th October, 2008.

22. On 10th November, 2011, for the reasons given in a short written ruling, Peart J. refused the plaintiff's application. The written ruling shows that in the course of the judicial review application the plaintiff disclosed that he had commenced and was vigorously pursuing civil proceedings, which must have been the 2009 action.

23. The plaintiff appealed to the Supreme Court against the judgment and order of Peart J. and on 20th May, 2015 found a firm of solicitors to represent him on the appeal.

24. On 1st February, 2016 the Supreme Court (McKechnie, Dunne and O'Malley JJ.) allowed the plaintiff's appeal and granted leave to apply by way of judicial review for a declaration that a prosecution for a criminal offence allegedly occurring during the course of civil proceedings heard otherwise than in public is capable of being investigated and prosecuted as prescribed by law. The Supreme Court directed that the Commissioner of An Garda Síochána should be substituted as the respondent (instead of the Minister for Justice, Equality and Defence, Ireland, and the Attorney General) and that the Director of Public Prosecutions be made a notice party. The order permitted the plaintiff to issue an amended statement of grounds seeking, only, the relief for which leave was granted, and costs.

25. The Supreme Court order of 1st February, 2016 notes that judicial review proceedings with an incomplete record no. 2014 against the Child and Family Agency and the Attorney General were not being proceeded with. That appears to have been an application, or perhaps a draft application, for an order requiring those respondents to provide the plaintiff with a legal advisor.

26. On 14th June, 2016, pursuant to an order of McDermott J. extending the time, a notice of motion was issued, originally returnable for 26th July, 2016, seeking the relief permitted by the Supreme Court. At the same time the plaintiff issued his amended statement of grounds. Opposition papers were duly filed. On 27th November, 2017 Barrett J. made orders for discovery by the plaintiff (the applicant in the judicial review proceedings) and the Commissioner of An Garda Síochána, the respondent, and those proceedings are said to be ready, or almost ready, for a hearing date.

#### *Analysis*

27. The plaintiff has created quite a thicket of proceedings which are by no means always easy to follow. I have endeavoured to distil the gravamen of the several sets of proceedings which he has instituted.

28. What is quite clear, however, as the first line on the plenary summons says, is that the genesis of these proceedings is the child care proceedings instituted against the plaintiff in February, 2008 and which were concluded in October, 2008.

29. The plaintiff (as Peart J. observed in his ruling of 10th November, 2011) is, to say the very least, very aggrieved about what occurred.

30. In his plenary proceedings initiated on 5th November, 2009 the plaintiff claimed a variety of private law and public law remedies. Any claim for a public law remedy ought properly to have been made by way of an application for judicial review, and not by plenary summons. No less to the point, at the time of issue of the plenary summons, upwards of a year had elapsed since the child care proceedings had been disposed of. The plaintiff was not entitled to attempt to circumvent the time limit for an application by way of judicial review by issuing plenary proceedings.

31. The public law remedies then claimed by the plaintiff were not precisely, but were substantially, the same as those sought in these proceedings. The grounds on which those remedies were claimed in the 2009 proceedings, in the sense of the legislation and Conventions allegedly infringed, were precisely the same.

32. In any event, the plaintiff's 2009 action was finally disposed of, as far as Ireland and the Attorney general are concerned, by the order of Clark J. made on 26th July, 2012 and as far as the Health Service Executive is concerned by the orders of the President and of the Supreme Court made on 1st March, 2013.

33. The reliefs claimed by the plaintiff on his application in 2011 for leave to apply by way of judicial review were very vague. He sought leave to apply for public law remedies, generally, including declarations and injunctions. He did not articulate what declarations and injunctions he wished to apply for but he invoked the same legislation, Conventions and provisions of the Constitution as he seeks to invoke in these proceedings. It is clear beyond doubt from the "*Witness Statement*" which the plaintiff then put before the court that his claims and complaints were identical to those he now seeks to make in these proceedings.

34. The plaintiff's application for leave was heard and determined by Peart J. The plaintiff was entitled to appeal against the refusal of his application and did. The plaintiff's appeal was successful. The Supreme Court considered whether leave should be granted to apply for any relief on any of the grounds set out in the plaintiff's statement dated 3rd October, 2011 and gave leave to apply for a single declaration in the terms I have set out. The Supreme Court having refused leave to apply for any other relief, or for any relief against the respondents proposed by the plaintiff, including Ireland and the Attorney General, it follows that any claim by the plaintiff for any such relief has been heard and determined finally and that all such issues are *res judicata*.

#### *Conclusion*

35. It is an abuse of the process of the court to attempt to litigate again issues which have been finally disposed of by a court of competent jurisdiction.

36. The issues which the plaintiff seeks to raise in these proceedings are the same as those he raised in his 2009 plenary action and in his 2011 judicial review proceedings. The defendants in this action were defendants in the 2009 action and proposed respondents in his 2011 judicial review proceedings.

37. The claims the subject of the 2011 judicial review proceedings were heard and finally and conclusively determined by the Supreme Court.

38. The claims against Ireland and the Attorney General in the 2009 action do not appear to have been decided by the court, but it is well settled that a consent order raises an estoppel as to all matters in respect of which an estoppel would have been raised by a judgment.

39. For the reasons given I have concluded that the plaintiff, in this action, is attempting to re-litigate claims and issues which have been finally and conclusively disposed of by previous proceedings. He is not entitled to do that and his attempt to do so is an abuse of the process of the court.

40. I accede to the application on behalf of the defendants and will dismiss the case.