[2018] IEHC 439

THE HIGH COURT

[2018 No. 5 SA]

BETWEEN

ANGELA FARRELL

PLAINTIFF

AND

LAW SOCIETY OF IRELAND

DEFENDANT

***EXTEMPORE* JUDGMENT of Mr. Justice Kelly, President of the High Court delivered on the 20th day of April, 2018**

1. This is my judgment on the motion brought by the Law Society of Ireland its members and officers past and present, which seeks a twofold relief. The first order sought is one striking out proceedings brought by Ms. Farrell. That order is sought both pursuant to the provisions of Order 19, Rules 27 and 28, of the Rules of the Superior Courts and on foot of the inherent jurisdiction of the Court. The application is brought on the basis that these proceedings are scandalous, frivolous, vexatious, are bound to fail, and constitute an abuse of process.

2. The second relief sought is an Isaac Wunder type order restraining Ms. Farrell from instituting any further proceedings against the Law Society and its members past and present seeking to challenge before this court the validity of orders made by this court on 14th October, 2013, 16th December, 2013, and 24th June, 2014, or proceedings seeking, while she is not a solicitor, to compel the issuing to her of a practising certificate by the Law Society.

3. The application in suit arises on foot of a petition presented to the court by Ms. Farrell on 24th January, 2018. It is a most unusual document and describes itself as: "An originating petition for orders regulating the affairs of Angela Farrell, solicitor." The petition recites that Ms Farrell "is a solicitor" admitted in Easter term 1991. It then recites four orders dated, respectively, the 14th October, 2013, 16th December, 2013, 13th May, 2014 and 24th June, 2014. All those orders are orders of this court. They are described respectively by Ms. Farrell in her petition as the "appeal strike-out order", the "suspension order", the "contempt against the seal order", and the "striking-off order". They are then dealt with extensively in the course of the petition. All of those orders, with the exception of that of the 13th May, 2014, were made in proceedings involving the Law Society of Ireland. The so-called "contempt against the seal order" is an order made in bankruptcy. It is difficult to see how that can be the subject of this petition and be used as a vehicle seeking relief against the Law Society when that society was not party to those proceedings.

4. The petition then goes on to make allegations of alleged interference with the then President of the High Court, the jurisdiction of the Law Society and alleged acts of malice, misfeasance and malfeasance by officers of the Law Society. It concludes with the applicant praying for an order for her restoration to her "office, place, situation and benefit forthwith" together with an order of mandamus under the Common Law Procedure Act 1856 commanding the Registrar of Solicitors to issue an annual certificate so as to enable Ms Farrell to practise as a solicitor. This petition was presented, notwithstanding Ms Farrell's stated position under oath on occasions that she is neither a bankrupt nor has she been struck off the Roll of Solicitors.

Chronology

5. While four orders are recited in Ms. Farrell's petition, there are in fact six orders which are relevant to her case. I will deal with each of them in turn. Having received 28 complaints against Ms. Farrell in the preceding two years, the Law Society imposed conditions on her practising certificate to take effect from the 1st August, 2013. Those conditions required her to practise as a solicitor in the employment of and under the supervision of a solicitor of at least 10 years' standing to be approved in advance by the Law Society. She was also required to wind down her practice and not to accept any new business. She appealed the imposition of those conditions. On the 14th October, 2013 the then President of the High Court, Kearns P., struck out her appeal and directed her to pay the costs of the application. The Law Society has no knowledge of any appeal brought by Ms. Farrell against that order. However during the course of the hearing she asserted that she had appealed. This was news to the Law Society. I ascertained that she did indeed lodge a notice of appeal and made an *ex parte* application in January 2014 to the Chief Justice seeking a stay on the order. She was informed that any application for a stay must be by way of motion, be grounded on affidavit and that she could apply for short service of such motion. No record of any application for short service or of the issue of any motion is to be found on the record of the Supreme Court. The appeal was then transferred to the Court of Appeal when that court was set up. It was open to her to have the appeal listed for directions but she didn't do so and no steps have been taken with a view to prosecuting that appeal.

6. As a result of Ms. Farrell's failure to comply with the conditions imposed on her practising certificate an application was made by the Law Society *ex parte* to the High Court to suspend her from practice. Such an order was made on the 16th December, 2013. It was described by her in her petition as the "suspension order". The order prohibited her from practising in contravention of the provisions of the conditions imposed on her practising certificate and ancillary provisions and lasted for just a few days. The Law Society was given liberty to serve a notice of motion on the respondent, returnable on Friday, the 20th December, 2013. Although this order of the 16th December, 2013 is recited in her petition, it is one of the more bizarre features of the submissions made to me by Ms. Farrell that she alleges no such hearing of the court took place on the 16th December, 2013. When I pointed out to her that the necessary inference from that submission was that the court registrar must have been involved in a fictitious exercise of drawing up a court order in respect of a hearing that never took place, Ms. Farrell did not appear to be able to grasp that fact.

7. The matter came back before the court on 20th December, 2013. On that occasion Kearns P. continued the order until the 13th January, 2014 and gave Ms. Farrell leave to file a replying affidavit. On the 13th January, 2014 the previous orders were continued and the Law Society was given liberty to enter the premises of Ms. Farrell in North Great George's Street in order to take up the client files and documents there. None of these orders were appealed by Ms. Farrell.

8. In February 2014, the Solicitors Disciplinary Tribunal made findings of professional misconduct against Ms. Farrell and recommended that she be struck off the Roll of Solicitors. I should mention that on the 13th May, 2014 Ms. Farrell was adjudicated a bankrupt in proceedings to which the Law Society is not a party. This order is described by her in the petition as the "contempt against the seal order".

9. On the 24th June, 2014, the Law Society brought the reports of the Disciplinary Tribunal before this Court and on that occasion Kearns P. struck her from the Roll of Solicitors and directed her to make restitution in the sum of €40,600 to Ms. Dymphna O'Callaghan. She was also directed to pay the costs of the proceedings and the costs before the Solicitors Disciplinary Tribunal. No appeal was taken by her against that order. It is beyond argument that this order superseded and brought to an end her suspension from the Roll of Solicitors since it struck her off that Roll. This makes it difficult to understand why the suspension orders are referred to by her in her petition at all.

10. Further proceedings relating to five other reports making findings of misconduct by the Disciplinary Tribunal have been adjourned generally with liberty to re-enter.

11. On the 14th of November 2016, by order of Costello J, Ms Farrell's bankruptcy was extended for four years to the 29th of July 2020.

12. Finally, on the 31st of July 2017, Ms. Farrell applied to me *ex parte* seeking orders of *certiorari* against the Disciplinary Tribunal's findings of misconduct and for an order of mandamus directing the issue to her of an annual practising certificate. I refused that relief. No appeal has been taken against that order either.

13. On 24th January of this year the present petition was presented seeking to regularise her affairs, as she calls it. On 29th January 2018, she gave sworn evidence to me denying that she was a bankrupt. This is a truly bizarre situation given the orders of the court that are extant pertaining to her. On 1st February, 2018, she issued a motion seeking further relief including a "declaration of contempt, an order for security for costs, and denying the validity of the order striking her off the Roll and adjudicating her a bankrupt". She also sought relief against further members of the Society not named in her petition. In the course of a hearing before me on the 12th February of this year she denied that she was a struck-off solicitor and offered to give sworn evidence to that effect to the court. Finally, on the 19th February, 2018, she issued a further motion seeking inter alia leave to issue a notice of attachment and committal against members of the Complaints and Client Relations Committee of the Law Society.

14. The Law Society contends that the petition and the applications ancillary thereto are wholly defective in form and in substance and that there is no valid or proper cause of action by way of petition "to regularise the affairs of Angela Farrell". Furthermore, the Law Society contends that the proceedings are irregular in form in improperly naming officeholders and constituent members, past and present, of the Council of the Law Society when the petitioner seeks to challenge the functions and acts of the Society, which are lawfully performed by that entity in its capacity as a corporate body. It is said that no amendment could cure the want of form and substance of the proceedings. The proceedings, it is argued, are nothing more than a collateral attack on the four orders of the court mentioned in the petition and indeed the other orders, which I have mentioned earlier in this ruling. Those orders of this court either have not been the subject of any appeal on the part of Ms. Farrell or in the one instance when there was an appeal, the appeal has not been pursued by her. Insofar as the bankruptcy order is concerned, the Society was not a party to it. It is also to be borne in mind in the context of these submissions that on 31st July, 2017, on foot of the *ex parte* application made to me, leave of the nature sought on the petition was refused and my order remains unappealed. It is hard to see how any former solicitor could think that the relief which was sought before me, could have been granted *ex parte* in any event.

15. The motions issued subsequent to the petition are seeking what is said to be unstateable reliefs and consequently, it is said, in the exercise of its jurisdiction, both pursuant to the Rules of Court and the inherent jurisdiction, these proceedings ought to be struck out.

Jurisdiction

16. In *Barry v. Buckley* [1981] IR 306, Costello J. identified the relevant provisions of the Rules of Court in respect of which the application before him was brought seeking to strike out proceedings and he said:

> *"Apart from Order 19, the court has an inherent jurisdiction to stay proceedings and on application made to exercise it. The court is not limited to the pleadings of the parties but is free to hear evidence on affidavit relating to the issues in the case, see Wiley's Judicature Acts and the Supreme Court Practice. The principles on which the Court exercises this jurisdiction are well established. Basically its jurisdiction exists to ensure that an abuse of the process of the courts does not take place. So, if the proceedings are frivolous or vexatious, they will be stayed. They will also be stayed if it is clear that the plaintiff's claim must fail, per Buckley LJ in Goodson v. Grierson at page 765. This jurisdiction should be exercised sparingly and only in clear cases, but it is one which enables the court to avoid injustice."*

17. That decision in turn came to be considered by the Supreme Court in *Fay v. Tegral Pipes Limited* [2005] 2 IR 261 and the statement of Costello J. in *Barry v. Buckley* was approved and that court went on to say:

> *"While the words 'frivolous and vexatious' are frequently used in relation to applications such as this, the real purpose of the jurisdiction is to ensure that there will not be an abuse of the process of the courts. Such abuse cannot be permitted for two reasons. First, the courts are entitled to ensure that the privilege of access to the courts, which is of considerable constitutional importance in relation to genuine disputes between parties, will only be used for the resolution of genuine disputes, and not as a forum for lost causes which, no matter how strongly the party concerned may feel about them, nevertheless have no basis for a complaint in law. The second, and equally important, purpose of the jurisdiction is to ensure that litigants will not be subjected to the time-consuming, expensive and worrying process of being asked to defend a claim which cannot succeed."*

18. That line of jurisprudence was further considered by Clarke J. in *Lopez v. The Minister for Justice, Equality and Law Reform* [2014] IESC 21 where the inherent jurisdiction identified by Costello J. was reasserted and some further observations were made concerning the exercise of the jurisdiction. In the course of his judgment, Clarke J. cited from one of his earlier judgments in *Salthill Properties Limited and Another v. Royal Bank of Scotland* [2009] IEHC 207 where he said:

> *"It is true that in an application to dismiss proceedings as disclosing no cause of action under the provisions of Order 19 the court must accept the facts as asserted in the plaintiff's claim, but if the facts so asserted are such they would, if true, give rise to a cause of action, then the proceedings do disclose a potentially valid claim. However I would not go so far as to agree with counsel for Salthill and Mr. Cunningham to the effect that the court cannot engage in some analysis of the facts in an application to dismiss on foot of the inherent jurisdiction of the court. The whole point of the difference between applications under the inherent jurisdiction of the court on the one hand and applications to dismiss on the factual basis of a failure to disclose a cause of action on the other is that the Court can in the former look to some extent at the factual basis of the plaintiff's claim."*

He went on to say:

> *"The distinction between the two types of application is therefore clear. An application under the Rules is designed to deal with the case where, as pleaded and assuming that the facts, however unlikely that they might appear, are as asserted, the case nonetheless is vexatious. If even on the basis of the facts as pleaded the case is bound to fail then it must be vexatious and should be dismissed under the Rules. If however it can be established that there is no credible basis for suggesting that the facts are as asserted and thus the proceedings are bound to fail on the merits then the inherent jurisdiction of the court to prevent abuse can be invoked."*

19. I also think it is apposite to quote observations made by McGovern J. in the case of *Doherty v. The Minister for Justice and Others* [2009] IEHC 246 where he said as follows:

> *"In addition to not permitting the courts to be a forum for lost causes, the courts should not be used to facilitate general abuse of a person or a class of persons. The courts are not to be used as a forum for ventilating complaints but rather for resolving genuine disputes between parties to the litigation and, where appropriate, the granting of declarations and ancillary relief based on established right or entitlement. To permit the plaintiff's action to proceed would be to allow a parody of justice to take place. The claims, which he makes, are so outrageous and so varied and the number of defendants so large that it would be quite impossible to conduct an orderly trial of the issues, which he raises."*

And later he said:

> *"What the plaintiff is doing in this statement of claim is adopting a scattergun approach by which he hurls accusations and abuse at the numerous defendants, sometimes on his own behalf, but frequently on behalf of others who are not even parties to the proceedings. This is not permissible. The plaintiff has made no attempt to formulate a legal claim in the manner in which this is normally understood. He does not set out what duties each of the defendants owed to him or outline how that duty was breached and what consequences flow from the breach. Where the extent of the scandalous or vexatious pleading ... is sufficiently gross and extensive, it seems to me that it is not the function of the court to sift through the material in the statement of claim to see if perhaps somewhere within it a claim can be found in the proper form. The court is entitled to have regard to the document as a whole. There might well be cases where there is an isolated pleading here or there, which may be scandalous or vexatious, but the greater part of the document contains pleadings in a proper form. In those cases the courts can strike out the offending portions of the claim but that is not the case here."*

20. It is clear from those quotations that the jurisdiction under the Rules of Court is augmented by the inherent jurisdiction identified clearly by Costello J. as far back as 1981 and subsequently affirmed and confirmed by decisions of the Superior Courts, including the Supreme Court.

21. I turn now to an application of those legal principles to the material before me. At the hearing on Tuesday, Ms. Farrell addressed the court for the best part of two hours. For the most part she simply failed to engage with the issues on this motion and, despite my best efforts, failed to focus on them. She carried out extensive reading of the Charter of the Law Society with little reference to the very many statutory provisions, which are engrafted on to it. She appears to be obsessed with the fact that on a number of committees of the Law Society with whom she has had to deal there is lay representation, that is to say persons who are not solicitors. She appears to be particularly troubled by the fact that some such laypersons are allegedly members of a trade union or trade unions. Such lay representation is expressly provided for by statute. However, she made no reference to those statutory provisions. It was as though she remained in a Victorian time warp with little regard to all of the changes that have taken place by statute subsequent to the Charter being granted.

22. I have already pointed out her extraordinary view of the *ex parte* order made by this court on 16th December, 2013. When she contended that it was a bogus order and that in fact no such court sitting took place on the relevant date, I became really concerned that she had lost the grip of reality. I became concerned for her health and as to whether she is in need of any medical care. I raised these issues with her but she demurred and simply continued with her submissions. She remains obsessively of the belief that she is neither a bankrupt nor a struck-off solicitor, notwithstanding the orders in question. If the factual position, which she believes to be true, were correct, it is difficult to see why she presented a petition at all.

23. Having considered the petition, its contents and the ancillary applications, I am satisfied that the Law Society is entitled to succeed on this aspect of the motion, both by reference to the Rules of Court and the inherent jurisdiction of the court. This court cannot declare void or invalid prior orders of the court. The option of appeal was open to Ms. Farrell in respect of those orders and was either not availed of by her or, if availed of, not pursued.

24. This petition is nothing more than a collateral attack by her upon orders of the High Court, which are final and binding. This principle is well identified in Delaney and McGrath's work on *Civil Procedure in the Superior Courts*. There at paragraph 24.39, which comes under the heading "Amending and setting aside final judgments and orders" one finds the following:

> *"The general rule is that, in the absence of a clear provision to the contrary in a statute or a rule of court, once a final order has been made and perfected in the High Court the jurisdiction of the High Court as to the matters determined by that order is exhausted, save possibly to the extent that a subsidiary or supplementary order may be made subsequently by consent. It is important to distinguish in that regard between an application to amend a final order, in respect of which a Judge will be functus officio, which will generally not be permissible, and an application for an additional or supplemental order based on new evidence not involving a variation of the original order, which may be heard. The rationale for the finality of orders was set out by Murray J. in the case of Riordan v. An Taoiseach in which he stated that:*
>
> > *'If a party, solely because he or she disagreed with a judgment of the court of final appeal, could by one means or another restart the proceedings to have issues tried all over again, and perhaps even again, it would undermine the functioning of the administration of justice and weaken the authority of the law, which are there for the benefit, not of the Courts, but of citizens as a whole.'"*

Subsequently, in *Talbot v. McCann Fitzgerald*, Denham J. explained that:

> *"The principle of finality in litigation is to underpin certainty in the administration of justice. It is a fundamental principle*

for the common good. It ensures that litigation comes to an end and there is certainty in the situation."

The authors go on to say:

> *"Given the importance of this principle, the circumstances in which a final order may be amended or varied are quite limited."*

The authors go on between paragraph 24.43 and 24.81 to set out in considerable detail the very limited circumstances in which a final order of the High Court may be susceptible to challenge before this Court.

25. I am satisfied, having regard to the material which is contained in the petition and the ancillary documents, that none of the circumstances, which are identified in the relevant paragraphs from Delaney and McGrath obtain in the circumstances of this case. Thus the jurisdiction, that very limited jurisdiction, could not possibly be triggered in these circumstances. The purported alleged facts in support of the claim could not justify the making of orders of the type identified in that work. In addition, it has to be borne in mind that some of the facts, and these are allegations rather than facts, are entirely scandalous and vexatious. I refer to the claims of alleged interference with my predecessor as President of this Court; the allegation that he attended at the premises of the Law Society to give instructions, take instructions, or to review complaints or to give legal advice; the allegation that the Complaints and Client Relations Committee were acting under his advice and had an intention to do so and to carry out acts or a series of acts calculated to cause physical harm to Ms. Farrell; the bringing of a motion for attachment and committal, which she says represented an intention to terrify her for the purpose of obtaining an unlawful object of which the judge and officers were jointly concerned. These are instances of the many assertions made with no evidence to support them. Similarly, allegations of malice, malfeasance and misfeasance on the part of officers of the Society are liberally made as part of this collateral attack upon High Court orders, which remain extant, unappealed, and not subject to challenge on any of the very limited grounds, which might justify the institution of plenary proceedings.

26. I am satisfied that this petition is nothing more than an unlawful and unjustified attack upon orders of the High Court, which have not been appealed. The petition has been used, to quote the words of McGovern J., to "*facilitate general abuse of a person or class of persons*". This is not seeking to have the Court engage in a genuine dispute resolution but it is, on the part of Ms Farrell, an entirely vexatious exercise. I am therefore satisfied, applying the principles which I have identified from the case law to this piece of litigation, that the Law Society is entitled to the orders which it seeks. Consequently the petition and the subsequent interlocutory applications are all struck out *in limine*.

27. The Law Society, as the second relief, seeks an Isaac Wunder type order against Ms. Farrell. There is no doubt but that there is an inherent jurisdiction vested in the court to make an order restraining a person from instituting further proceedings against a party to earlier proceedings. As was said by Keane C.J. in *Riordan v. Ireland*:

> *"It is, however, the case that there is vested in this court, as there is in the High Court, an inherent jurisdiction to restrain the institution of proceedings by named persons in order to ensure that the process of the court is not abused by repeated attempts to reopen litigation or to pursue litigation which is plainly groundless and vexatious. The court is bound to uphold the rights of other citizens, including their right to be protected from unnecessary harassment and expense, rights which are enjoyed by the holders of public offices as well as by private citizens. This court would be failing in its duty, as would the High Court, if it allowed its processes to be repeatedly invoked in order to reopen issues already determined or to pursue groundless and vexatious litigation."*

28. While relief of this nature is granted sparingly, the ability to make such an order in an appropriate case is absolutely necessary. The right of access to the courts is an important constitutional right but it is not absolute. The court has an obligation to protect the rights of other parties, the finality of litigation, the resources of the courts, fair procedures and the integrity of its own processes.

29. The petition of Ms. Farrell is an attempt to attack the validity of final orders, which have conclusively determined the matters in question, and which are not, save in one instance, the subject of an appeal. The one case in which she did appeal is one which has been clearly overtaken by the order striking her off the Rolls. Years after the making of the relevant orders, she applied unsuccessfully to me to impugn their validity. Her application was refused by me on the 31st of July 2017. No appeal was taken against my order of that date. The motions, which she has instituted in these petition proceedings, make it clear that she persists in insisting that she is a solicitor of good standing and effectively denies the validity of the orders already made against her. Amongst other things, she seeks in these motions an order to compel the Society to produce evidence of the validity of the orders of the High Court together with an order requiring the Society to provide security for costs for her own action. She also seeks leave to attach and commit members of the committee of the Society as well as an order for unexplained and inexplicable reasons seeking to secure the attendance of a former solicitor and former judge, who was both struck off the Rolls and served a term of imprisonment.

30. During the conduct of these proceedings, Ms. Farrell has demonstrated her contempt for orders of the court by giving evidence that she is not a bankrupt in the teeth of incontrovertible evidence to the contrary. She also offered to do likewise in respect of the orders striking her off the Roll of Solicitors. Her persistent and vexatious applications satisfy me that the Law Society ought to be protected from further litigation at the suit of Ms. Farrell arising from the various orders made concerning her status as a solicitor. If such an order is not made I am satisfied that there is a likelihood that she will continue to abuse her right of access to the courts and in the circumstances I will grant the Isaac Wunder, which is sought.

31. Insofar as Ms. Farrell's conduct during the course of this hearing is concerned, I have to observe that she is a regular attender in this and indeed other of the Superior Courts. If she is not bringing applications of one sort or another against the Law Society, ever since she was struck off the Roll of Solicitors, she appears as a McKenzie friend to other litigants. Regardless of the role which she plays, it has to be said that her appearance in court is generally disruptive of the proceedings, unhelpful to the court, and an obstruction to the furtherance of the interests of justice. The hearing of this motion was no exception to that general approach on the part of Ms. Farrell. In this regard I call attention to the observations concerning her behaviour in the Supreme Court which is dealt with in the judgment of MacMenamin J. in the case of *O'Shea v. Butler* [2017] IESC 65. It is also clear that my predecessor, in the course of dealing with a number of the orders which are the subject of her petition, had to have her removed from court as a result of her misbehaviour. Whilst that did not happen in the present case, by times it came close to it.

32. As I pointed out in the course of this ruling, I am concerned at the really bizarre nature of some of the assertions made by Ms. Farrell and her apparent loss of any sense of reality. Her conduct in court causes me to be of concern concerning her welfare and I raised that issue with her. May I conclude this by suggesting to her, and it is a suggestion which I make to her in her own interest, that she should seek professional help from the point of view of her own good and her own welfare.

33. In these circumstances I make the orders sought and accede to the application of the Law Society. I will strike out these proceedings as being scandalous, vexatious, disclosing no reasonable cause of action, and constituting an abuse of the process of the court. I principally do that on the basis that they amount to a collateral attack upon binding orders of this Court, which are not susceptible to being set aside save by way of appeal, the time for so doing has long since expired, and in the one case where an appeal was brought it was not pursued. In any event, that order has long been superseded by the order striking her off the Roll of Solicitors.

34. Insofar as the Isaac Wunder order is concerned, I now order that Ms. Farrell be restrained from instituting any further proceedings against the Law Society of Ireland, its members past or present or any of them, seeking to challenge before this court the validity of the orders made on 14th October, 2013, 16th December, 2013 and 24th June, 2014, or seeking, whilst not a solicitor on the Roll, to compel the issuing of a practising certificate to her, without prior leave of the court. I have already pointed out that the order concerning her bankruptcy, which is recited in the petition, is not one to which the Law Society was a party. Consequently that matter does not arise insofar as the Isaac Wunder order is concerned. I want to make it clear that, if she were to seek to bring any proceedings against the Law Society in respect of that order, I would extend this Isaac Wunder to that also.