

THE HIGH COURT

2010 2910 P

BETWEEN

F.H.

PLAINTIFF

AND

L.S., COLETTE MCCARTHY AND WOLFE & CO. SOLICITORS

DEFENDANTS

Judgment of Miss Justice Laffoy delivered on the 15th day of November, 2010.

1. The proceedings and the application of the second and third defendants

1.1 The plaintiff is litigating these proceedings in person. The endorsement of claim on the plenary summons, which issued on 23rd March, 2010, is somewhat unconventional in form.

1.2 In the main, the plaintiff's complaints arise out of proceedings under the Guardianship of Infants Act 1964 brought by the first defendant (Ms. S.) against the plaintiff seeking leave to bring the infant daughter of Ms. S. and the plaintiff out of the jurisdiction on holidays. On 11th May, 2007 the Judge of the District Court who heard the application ordered that liberty was granted to Ms. S. to take the infant out of the jurisdiction for just over three weeks in July 2007 for family/holiday purposes only and that, on certain security being lodged by Ms. S. with the District Court Clerk, the plaintiff was directed to release the infant's passport to Ms. S. and to sign the necessary statutory declaration for the authorities in the jurisdiction to which the infant was to be taken. The plaintiff appealed that order to the Cork Circuit Family Court. On 8th June, 2007 His Honour Judge S. O'Donnabhain made an order varying the District Court order and dispensed with the consent of the plaintiff to allow the infant to be taken out of the jurisdiction and permitted Ms. S. to take her out of the jurisdiction for just over three weeks in July 2007. Further orders were made which are not relevant for present purposes and the matter was then adjourned to 31st July, 2007, reserving the costs until 31st July, 2007. When the matter was back before Judge O'Donnabhain on 31st July, 2007, he ordered that the plaintiff's appeal against the order of the District Court be struck out with costs to Ms. S.

1.3 The firm of Wolfe & Co., Solicitors, acted for Ms. S. in the proceedings in the District Court and on the appeal in the Circuit Court. The second defendant is a solicitor in that firm. The plaintiff has named the firm as the third defendant, rather than the members of the firm, but that point was not addressed at the hearing of this application. A summons to tax the costs of Ms. S. was issued by the County Registrar for County Cork. The taxation hearing took place on 4th November, 2008. The County Registrar issued a Certificate of Taxation on 4th November, 2008, in which it was recited that Wolfe & Co. had attended the taxation but there had been no appearance by the solicitors for the plaintiff, although, as I understand it, the plaintiff was present in person. The County Registrar certified that she had taxed the costs of Ms. S. pursuant to the order "dated 31/01/2007", which I am treating as an error for 31st July, 2007, in the sum of €4,042.16. Subsequently on 6th March, 2009, on the application of Ms. S., the County Registrar issued an execution order against the goods of the plaintiff in the sum of €4,042.16, after making deductions of €2,089.21.

1.4 Arising out of those facts, in the endorsement of claim on the plenary summons the plaintiff has asserted that –

- (a) the defendants are claiming sums not lawfully due from him,
- (b) there has been unlawful use and exploitation by the defendants of the legal process in violation by them of the good name of the plaintiff,
- (c) there has been unlawful use and exploitation by the defendants of the Circuit Court order of 31st July, 2007 to interfere with and to violate the good name of the plaintiff, and
- (d) there has been violation by the defendants of the good name of the plaintiff as guaranteed under the Constitution.

The reliefs sought by the plaintiff in the endorsement of claim are:

- (1) an order that "the matters pertaining to costs in the order of 31st July, 2007 be struck out";
- (2) an order that "the purported summons to Tax dated 20th October, 2008 is a false instrument" as defined in the Criminal Justice (Theft and Fraud Offences) Act 2001 (the Act of 2001), it purporting to be made in circumstances in which it was not in fact made;
- (3) an order that the certificate of taxation dated 4th November, 2008 is a nullity and void *ab initio*;
- (4) an order that the costs claimed on foot of the purported Certificate of Taxation dated 4th November, 2008 are sums not lawfully due to be paid by the plaintiff;
- (5) an order that the execution order is a nullity and void *ab initio*;
- (6) an order in relation to certain documents that they are false instruments as defined in the Act of 2001;
- (7) an order that the sum claimed as costs against the plaintiff on foot of the documents referred to at (6) are sums not

lawfully due;

(8) an order that allegations relating to the said document be referred to the Director of Public Prosecutions with a view to the Director instigating criminal proceedings;

(9) such order as is required to immediately vindicate and restore the good name of the plaintiff; and

(10) damages and exemplary damages.

In the interests of clarity I should say that the documents referred to in paragraphs (6), (7) and (8) above are two Bills of Costs issued by Wolfe and Co. to the plaintiff and what I would call a time sheet furnished by Wolfe & Co. to the plaintiff with a letter of 19th August, 2008 in which they give details of the time spent in relation to the business conducted for Ms. S. in the matter, which totalled 1,330 minutes. Allegations that the documents constituted false claims under the Act of 2001 were made by the plaintiff in a letter of 24th August, 2008 to the third defendant, which predated the taxation of costs.

1.5 The application before the Court is an application on foot of a notice of motion dated 5th May, 2010 in which the second and third defendants seek an order striking out the proceedings on the ground that –

(a) they disclose no cause of action as against those defendants or any of them;

(b) the matters referred to in the proceedings are *res judicata*;

(c) the pleadings are vexatious and frivolous; and

(d) the pleadings are an abuse of process.

The application is grounded on the affidavit of the second defendant sworn on 30th April, 2010, which exhibits what I consider to be the relevant documentation, including the order of 31st July, 2007 and the Certificate of Taxation dated 4th November, 2008. It is averred in the affidavit that the plaintiff has not appealed against the Certificate of Taxation.

1.6 The plaintiff has filed a replying affidavit in response to this application, which was sworn on 25th June, 2010 and runs to 155 paragraphs. It is noteworthy that in that affidavit, the plaintiff has averred that the order of 31st July, 2007 "is in itself a good order" but his complaint relates to the manner in which it was used, allegedly for an unlawful purpose. The plaintiff also furnished the Court with written legal submissions.

2. The plaintiff's application

2.1 There was a second application before the Court when the application of the second and third defendants was heard on 28th October, 2010. The Court had given the plaintiff leave to bring an application on that day in the matter of the Circuit Court proceedings between the plaintiff and Ms. S. (Record No. 2010 107 CAF). On that application the plaintiff sought "liberty to file a late appeal of part 1 of the Circuit Court Order dated 31st July, 2007, and of the whole of the Certificate of Taxation dated the 4th November, 2007".

2.2 That application is wholly misconceived. As regards the appeal against the order of the Circuit Court, which was made on an appeal from the District Court, it has been the case since the enactment of s. 84 of the Courts of Justice Act 1924 (subject to an amendment in s. 57 of the Courts of Justice Act 1936, which is not material for present purposes) that the decision of a Judge of the Circuit Court on an appeal in a civil matter from the District Court "shall be final and conclusive and not appealable". Accordingly, this Court has no jurisdiction to give the plaintiff liberty to appeal the order of 31st July, 2007. As regards review of the Certificate of Taxation, under the Circuit Court Rules 2001, as amended, an application for the review of a certificate of taxation issued by the County Registrar must be made to the relevant Judge of the Circuit Court within ten days of the date of the certificate (Order 18, rule 7 and Order 66, rule 6). The High Court has no jurisdiction to extend the time for bringing such an application, nor has it jurisdiction to entertain such an application.

2.3 Accordingly, the reliefs sought by the plaintiff on his application are refused.

3. Conclusions on the application of the second and third defendants

3.1 I am satisfied that the plenary summons does not disclose any cause of action by the plaintiff against the second and third defendants.

3.2 The order of the Circuit Court of 31st July, 2007 is a final, conclusive and unappealable order and it stands. The Certificate of Taxation of 4th November, 2008 has not been appealed and therefore remains in effect. In substance, what the plaintiff is doing in these proceedings is attempting to appeal the order of 31st July, 2007 and to have the Certificate of Taxation reviewed. While the plaintiff has presented his challenge to the enforcement of the costs found due on the Certificate of Taxation as being grounded on unlawful conduct allegedly perpetrated by the second and third defendants, the fact is that the order of 31st July, 2007 awarded the costs to Ms. S., the costs were taxed before the County Registrar in accordance with the Rules of the Circuit Court, and the County Registrar issued a Certificate of Taxation. In the absence of an appeal against that Certificate of Taxation, and on the failure of the plaintiff to pay the amount due thereunder, Ms. S. was entitled to execute on foot of it, and the plaintiff cannot complain that by attempting to do so she was wrongfully violating his good name. *Prima facie*, the entitlement of Ms. S. to costs against the plaintiff is *res judicata* on the basis of the order of 31st July, 2007. The quantification of the costs due to Ms. S. is *res judicata* by virtue of the Certificate of Taxation dated 4th November, 2008. For the reasons set out in refusing the extension of time to appeal the order of the Circuit Court and the Certificate of Taxation above, the Court has no jurisdiction to entertain proceedings which, in substance, constitute an attempt to set at nought the order of the Circuit Court and the Certificate of Taxation.

3.3 In relation to the invocation by the plaintiff of the Act of 2001 in relation to the Bills of Costs and the timesheet, in effect, the plaintiff seems to be inviting the Court to make a finding that the second and third defendants are guilty of criminal offences. The Court has no jurisdiction to make an order of the type sought by the defendants in civil proceedings. The Court finds it unnecessary to express a view on the contention made by the plaintiff in his replying affidavit that the stamp duty in relation to the summons to tax issued by the County Registrar involved the perpetration of a fraud on the Revenue. Ms. S. is entitled to rely on the Certificate of

Taxation.

3.4 Finally, for completeness, I would observe that the plaintiff cannot invoke the inherent jurisdiction recognised by the Supreme Court *In re Greendale Developments Ltd. (No. 3)* [2000] 2 I.R. 514, under which, having regard to Article 34.4.6° of the Constitution, the Court can afford a remedy in respect of its own orders in exceptional circumstances. Here the orders of which the plaintiff complains are not orders of this Court; they are an order and a certificate of taxation of the Circuit Court. To adopt the words of Murray J., as he then was, in *L.P. v. M.P. (Appeal)* [2002] 1 I.R. 219 at p. 232, the “appeal is the remedy”.

4. Order

4.1 As the proceedings disclose no cause of action against the second and third defendants, there will be an order that these proceedings be struck out as against those defendants.