

**THE HIGH COURT**

**[2001 No. 10310 P]**

**BETWEEN**

**A.M.G**

**PLAINTIFF**

**AND**

**M. H., D.C.,**

**C.M. O'C., BRIAN O'REILLY (AND HIS SUCCESSORS PROVINCIALS OF THE DIVINE WORD MISSIONARIES), THE FELLOWS AND  
THE BOARD OF MANAGEMENT OF  
ALL HALLOWS COLLEGE**

**DEFENDANTS**

**Judgment of O'Neill J. delivered the 15th day of December, 2006.**

1. The fourth named defendant in his notice of motion of the 21st November, 2005, seeks the following reliefs against the plaintiff:

1. An order pursuant to the inherent jurisdiction of the court, dismissing the plaintiffs claim as against the fourth named defendant, on the grounds that it is misconceived in law, frivolous, vexatious, and that same has no reasonable prospects of succeeding.

2. Further, and in the alternative an Order, dismissing the plaintiffs claim against the fourth named defendant on the grounds of inordinate and inexcusable delay.

2. In his statement of claim in these proceedings the plaintiff alleges that between 1981 and 1988 he was repeatedly sexually abused by the first named defendant. The plaintiff alleges *inter alia* negligence against the first named defendant who was from 1974 until 1981 a student for the priesthood with the Divine Word Missionaries. According to the undisputed evidence in this application the first named defendant did not continue his studies with the Divine Word Missionaries in September of 1981 by taking vows and in all probability ceased his involvement with the Divine Word Missionaries in June of 1981 at the end of that academic year.

3. The basis of the allegation of negligence against the fourth named defendant is set out at particulars (c), (d) and (e) of the particulars of negligence in the Statement of Claim and these are to the effect that the fourth named defendant or his predecessors failed to make any sufficiently detailed or valid assessment or evaluation of the first named defendant and caused him or permitted him to continue a path to ordination and subsequent ministry when they knew he was grossly unsuitable having regard to his homosexually abusive nature, and failed to take any precautions in regard to the monitoring, selection, ultimate ordination and employment of the first defendant.

4. The affidavit of K.M.G. the plaintiffs father establishes that the first named defendant was a friend of the plaintiffs family having been befriended by the plaintiffs father several years before the plaintiff was born and that he maintained a close relationship with the plaintiffs family over many years including staying in their home and going on holidays with the family.

5. The evidence also establishes to my satisfaction, that the plaintiff or his family had no connection whatsoever with the Divine Word Missionaries and that the Divine Word Missionaries played no part whatsoever in introducing the first named defendant to the plaintiff's family or in bringing about the first named defendants access to the plaintiff.

6. The most that can be said, as was averred to, in the affidavit of K.M.G. the plaintiff's father, namely, that because the first named defendant was a clerical student and because of the high level of respect and trust for clergy, that the plaintiff's parents were more disposed to be accommodating of the first named defendant and entirely trusting of him in his contact with their children.

7. In the course of his submissions Mr. Doyle S.C. for the plaintiff conceded that the plaintiff was not making the case that the fourth named defendant was vicariously liable for the actions of the first named defendant; that the plaintiff's case was simply that the fourth named defendants were negligent as set out above; that the plaintiff was a person who must have been or ought to have been in the contemplation of the Divine Word Missionaries as someone who would be injured as a result of the predatory activities of the first named defendant and hence the fourth named defendant had a liability of negligence to the plaintiff for the injury he has suffered.

8. It is submitted that the allegations of negligence set out above against the fourth defendant would be proved by expert evidence at the trial. In this application however no such evidence was tendered.

9. In order to succeed in the action the plaintiff must establish that the fourth named defendant owed the plaintiff a duty of care which was breached in the manner alleged in the particulars of negligence.

10. In light of the fact that the plaintiff or his parents had no connection whatsoever with the Divine Word Missionaries and in the absence of any evidence adduced in this application to establish that the Divine Word Missionaries were aware of the existence of the plaintiff or his family or had any knowledge of the first named defendant's connection with them and having regard to the fact that the undisputed evidence in this application establishes that the Divine Word Missionaries were educating the plaintiff and preparing him for membership of that society whose activities are dedicated solely to missionary activity, it could not in my view be said that they had any duty of care to the plaintiff arising out of the circumstances alleged, unless it could be said that they had a duty of care in general to all children that the first named defendant might come in contact with, regardless of how that contact might come about or in what circumstances it might come about. In my view such a duty of care (if any) could not go that far. As the evidence establishes that the fourth defendants did not in any way create or contribute to the access the first defendant had to the plaintiff, it cannot be said, that a duty of care, extended to the plaintiff, assuming that the plaintiff could establish by evidence, the content of the allegations of negligence made against the fourth defendant. Nor could it be said in my view that the fact that the first named defendants status as a clerical student, enhanced the trust that the plaintiffs family had in him, could give rise to such a duty of care, particularly in the absence of evidence to suggest that the first named defendant would have been treated any differently by the plaintiffs family had he not been a clerical student.

11. If it were the case that such a duty of care existed in law, it would necessarily apply to all institutions providing education which would lead to a qualification which could give the recipient of such qualification greater access to children than is the case for the

rest of society. It is hardly necessary to say that the law does not recognise such a wide ranging duty.

12. I have come to the conclusion that the action must inevitably fail because the plaintiff is unable to establish any breach of a duty of care on the part of the Divine Word Missionaries to the plaintiff, This brings me to the time issue.

13. In his notice of motion the fourth named defendant seeks at paragraph 2 an order dismissing the plaintiffs claim against the fourth named defendant on the grounds of inordinate and inexcusable delay. There is no prayer for a dismissal on the express ground that the plaintiffs claim is statute barred.

14. Nevertheless there is express reference to the seeking of this relief on the specific grounds that the plaintiffs claim is statute barred, in the affidavit of F.F.T which grounds the notice of motion at paragraph 3 therein. Further on at paragraphs 14 and 15 of this affidavit there are further averments relating specifically to the claim by the fourth named defendant that the plaintiffs claim is statute barred. This claim is expressly addressed and replied to in paragraph 7 of the affidavit of the plaintiff sworn on the 15th day of December, 2005. Here the plaintiff contends that his claim is not statute barred against the fourth named defendant as the plaintiff *"was labouring under a legal disability up to a point in time that was less than three years prior to the institution of the proceeding held herein."*

15. The issue of the Statute of Limitations was further raised by submission in the hearing of this notice of motion. In the light of the foregoing I am of opinion that the issue as to whether or not the plaintiffs claim against the fourth named defendant is statute barred is properly before me for determination on foot of the fourth named defendants notice of motion.

16. It is clear that the statutory time period permitted for the commencement of an action had expired from the time when the plaintiff had knowledge of the relevant factors until the actual commencement of the proceedings. The plaintiff said, at paragraph 7 of his affidavit contends, that he was, up to a point in time within three years of the institution of these proceedings, labouring under a legal disability. No details of the nature of that disability are set out in the affidavit of the 15th December, 2005. In his affidavit sworn on 21st March, 2006, at paragraphs 4, 5, 6 and 7 he gives a history of having suffered from a form of breakdown and as having been diagnosed as suffering from depression in or about May 1989. He then goes on at paragraph 5 of that affidavit to say that he consulted with a Mr. L, a child psychologist but he did not derive any benefit from this and was then referred to a clinical psychologist Dr. M.W. whom he attended for a number of years and as a consequence of which his memories of the acts allegedly perpetrated upon him by the first named defendant became *"clear"*.

17. The plaintiff does not give details of when he attended Dr. W or at what point in time he achieved this clarity of memory.

18. He then goes on at paragraph 6 of the affidavit to say that the alleged acts of abuse perpetrated on him by the first named defendant had a profound effect on him and that he suffered nervous breakdowns and depression as a consequence. He does not give any details of when or how often these events occurred or if they are separate from the one referred to, as occurring in May of 1989. He then says that he suffered a further breakdown which necessitated a referral by his GP to a Doctor A.L. Consultant Psychiatrist at the Dublin County Stress Clinic who diagnosed him as suffering from Post Traumatic Stress Disorder. At this stage the plaintiff began sessions of psychotherapy with a Dr. J.T.

19. The plaintiff goes on to say at paragraph 7 of this affidavit that as a result of the treatment he got in 1999, for the first time he felt able to take action and in July of 1999, he made the first of a number of statements to An Garda Siochána and later that year instructed solicitors to institute proceedings. He further avers that prior to this time, due to the illnesses that he was suffering from as a consequence of the alleged abuse perpetrated on him by the first defendant he did not feel he was in a position to so act.

20. The plaintiff's testimony as summarised above has not been supported by any evidence from any of the aforementioned doctors who treated him. This is surprising. The absence of any expert testimony to support the averments of the plaintiff together with the fact that from 1990 he had disclosed his allegations in regard to the first named defendant to his family leads me to conclude that on the balance of probabilities, his state of mind was not such as could be characterised as suffering from the kind of mental disability which would have the effect in law of exempting him from the normal running of the limitation period prescribed in the Statutes of Limitations.

21. I have therefore come to the conclusion that these proceedings as against the fourth named defendant are statute barred.

22. In the light of the foregoing conclusion, it is unnecessary for me to consider the issue as to whether or not there has been inordinate and inexcusable delay which would warrant a permanent stay on the proceedings against the fourth named defendant. However in deference to the submissions made and for the sake of completeness it is appropriate that I express an opinion on that issue.

23. The actual delay in this case is approximately 20 years from the first act of alleged abuse and 13 years from the last act of alleged abuse, to the institution of these proceedings. In my opinion either of these periods of delay could only be rightly regarded as inordinate.

24. Paragraphs 4, 5, 6, and 7 of the affidavit of the plaintiff sworn on 21st March, 2006, purport to excuse delay prior to the institution of proceedings and paragraphs 9 and 10 of that affidavit seek to excuse any delay in the conduct of the proceedings thereafter.

25. The commencement of proceedings merely requires the issue of a plenary summons, not an onerous task. To establish that the plaintiff was unable to do this by reason of some mental illness or psychological disorder would require cogent expert evidence, in my opinion. As already mentioned, notwithstanding the fact that the plaintiff attended a number of psychiatrists and psychologists, no such evidence has been tendered on this application.

26. I have come to the conclusion therefore that the evidence put before the courts on this application fails to excuse the delay in instituting the proceedings.

27. I am satisfied that the delay which has occurred since in prosecuting the proceedings has been largely the fault of the plaintiff. I appreciate the difficulties that would have been encountered in effecting service on the fourth named defendant, but that notwithstanding, there are significant gaps particularly between the entry of appearance and the delivery of the Statement of Claim and also the time taken in replying to the fourth named defendants request for particulars. These delays have not in my opinion been explained or excused.

28. The principles relevant to this issue have been considered by Kelly J. in the case of *Kelly v. O'Leary* [2001] 2 I.R. 226 in which he reviewed the relevant cases. In that case he applied the principle set down in the case of *Primor Plc v. Stoakes Kennedy Crowley* [1996] 2 I.R. 459 which may be summarised as follows namely that the court must consider first whether the delay has been inordinate. Secondly it must consider whether the delay has been excused and finally even if the delay has been found to be inordinate and has not been excused, the court must still consider whether the balance of justice lies in favour of halting the proceedings or allowing the plaintiff continue with the action.

29. I have concluded that the delay has been inordinate and has not been excused. Now I must consider whether the balance of justice lies either in favour of or against allowing the plaintiff to continue with the action.

30. In my opinion the passage of time would not prejudice the fourth named defendant in the conduct of its defence of these proceedings. The allegations of negligence against the fourth named defendant will be determined in all probability on the basis of expert testimony. Whether as a matter of fact the fourth named defendant has or had at the relevant time, any system of evaluation of students to detect persons with abusive tendencies is a question of fact which could in all probability be easily dealt with by way of evidence by the fourth named defendant at this stage. Whether any such system (if any) was adequate is a question which would be determined on expert evidence which would be available to the fourth named defendant. If no such evaluation was done the question of whether it should have been done is a mixed question of fact and law, and insofar as the former is concerned, it too would be determined on expert evidence of what processes of evaluation were available or appropriate at the relevant time.

31. As to the duty of care owed to the plaintiff, that too is a mixed question of law and fact. The relationship between the first named defendant and the plaintiff and his family, has being deposed to, on affidavit by the plaintiffs father. This affidavit was filed after the application had commenced and in response to a query or queries by me concerning the relationship or any connection between the plaintiff and his family and the fourth named defendant and whether the fourth named defendant had played any role in bringing the plaintiff and the first named defendant together. It is clear from the affidavit of the plaintiff's father that there was no connection between the plaintiff and his family and the Divine Word Missionaries. Thus the issue as to whether or not there was a duty of care would come down to an issue of law, as to the extent of any duty, on the basis of facts which now appear clear from the affidavits.

32. In my opinion, in these circumstances, a fair trial could take place in which all of the relevant issues would be subjected to the normal forensic inquiry and the fourth named defendant would not in my opinion be prejudiced by the passage of time in his defence.

33. Accordingly, if the plaintiff had a reasonable cause of action and were it not statute barred I would decline a permanent stay of the proceedings on the grounds of the inordinate and inexcusable delay on the part of the plaintiff.

34. However as I have already found that the plaintiffs Statement of Claim does not disclose a reasonable cause of action and also that any cause of action is statute barred, I must grant the relief sought by the fourth named defendant in his notice of motion, and dismiss the action.