THE COURT OF APPEAL

APPROVED
REDACTED
Record Number: 2022/267
High Court Record Number: [2018/7992 P]
[2023] IECA 233

Noonan J.

Haughton J.

Allen J.

BETWEEN/

M.N.

PLAINTIFF/APPELLANT

-AND-

THE HEALTH SERVICE EXECUTIVE

FIRST NAMED DEFENDANT/RESPONDENT

-AND-

THE COMMISSIONER OF AN GARDA SÍOCHÁNA

SECOND NAMED DEFENDANT/RESPONDENT

-AND-

NOVARTIS

THIRD NAMED DEFENDANT/RESPONDENT

JUDGMENT (*Ex Tempore*) of Mr. Justice Haughton delivered on the 4th day of May, 2023

[Plaintiff/appellant's name anonymised by direction of Court of Appeal]

1. This is an appeal from orders of the High Court (Heslin J.) of the 21st October 2022 dismissing the appellant's claims against each of the respondents, with costs.

2. The appellant issued a plenary summons on the 7th September, 2018 accompanied by a grounding affidavit sworn on 6th September. By order of 6th September, 2019 the summons was renewed for three months. Because the third respondent was not correctly named, on 24th September, 2020 the appellant obtained leave to amend to correct the title. A Statement of Claim was delivered on 6th April, 2021, and on 16th June, 2021 the appellant delivered a Statement of Claim Addendum, which were together treated by the High Court as the pleadings. Although the Addendum is later in time it does not constitute a formal pleading. At all times the appellant has acted as a lay litigant.

3. The pleaded claim against the HSE is for breach of care and safety while a patient of HSE and the Statement of Claim sets out a list of some 40 injuries which the appellant says she suffered at the hands of named HSE doctors or other staff, or as side effects of the drug Rasilez Aliskiren. However the Statement of Claim provides little detail and no conventional pleading of the basis for the claims and negligence or other wrongdoing on the part of the defendants their servants or agents.

4. According to para. 5 of the appellant's grounding affidavit the injuries commenced in July 2011 with the prescription of the hypertension drug Rasilez Aliskiren, manufactured by Novartis, and a litany of symptoms which first became evident a few days later. The affidavit also refers to the foot injury in 2013. The long list of pleaded claims include theft of various parts of her body under anaesthetic in 2013, involuntary detention in Tullamore Hospital (presumably under the Mental Health Acts – although this is not stated), assault and battery by forced use of drugs, and allegations against her sister of aiding involuntary abduction and administration of drugs by a hospital in 2016.

5. The pleaded claims against An Garda Síochána are set out in paras. 62 - 67 of the Statement of Claim and include complaints to An Garda Síochána concerning doctors that the appellant had made in 2016; the editing of the statement that she made before it was sent to the DPP; the closing of a file looking into the doctors since 2011; failure to take a statement for over a year in respect of the appellant's complaint of a violent rape which she pleads caused her spinal injury; alleged bullying by a Garda Sergeant; and gardaí in other stations covering up assaults on her by known criminals who were taken on as garda informers.

6. For the sake of completeness it should be added that the Plenary Summons refers in summary form to some of the injuries, including musculoskeletal disease caused by Aliskerin poisoning, and in handwriting it pleads a claim for damages for breach of care and safety whilst a patient of HSE, betrayal of trust, withholding of medical information, and defamation of name and character. There is no further reference to withholding of information or defamation in the Statement of Claim.

7. Each of the respondents issued motions grounded on affidavit seeking dismissal of the claims against them – on 6th August, 2021, 14th January, 2022 and 25th November, 2021 respectively. The appellant swore a replying affidavit on the 28th March, 2022. The motions were heard together in the High Court on 19th July, 2022. I pause here to mention in the affidavit of Mr Brian Malone, a solicitor instructed by Novartis and sworn to ground its application for a dismiss. Mr. Malone distilled more from the appellant's affidavit of 7th September, 2018 than from the Statement of Claim and Addendum of what he surmised to be the case against his client which was: that she had been prescribed Rasilez Aliskiren, had experiences of an adverse reaction four days later, had attended hospital and had been advised to cease taking the drug. He also identified a claim that Rasilez Aliskerin was a drug prescribed to forcibly break down a body so that Novartis-bribed doctors can use that body as a human subject, and general claims of inaction, lies, coverup of physical suffering

by the defendants, torture, covert clinical trials, criminality, and a claim that Novartis held the HSE and the Irish Government to ransom.

8. Mr. Malone pointedly did not make the point that the form of the proceedings – a Plenary Summons rather than a Personal Injury Summons – was wrong but he expressed the view that the Statement of Claim and Addendum disclosed no cause of action against Novartis and failed to meet the substantive requirements of s. 10 of the Act of 2004.

9. By reference to published information in relation to the medicine, a prescription only medicine, and the list of medical conditions of which the plaintiff complained, Mr. Malone pointed out that the symptoms of the plaintiff's adverse reaction matched the published possible side effects of the medicine. Accordingly he said, the only conceivable claim that the plaintiff could have was that she ought not to have been prescribed the drug. Such a claim, he suggested, would require an expert medical opinion on liability which the plaintiff did not have. Moreover he added, any cause of action which might have arisen out of the taking of medication in July 2011 would have been long since statute barred by the time the Plenary Summons was issued on 7th September, 2018.

10. In his judgment delivered on 30th September, 2020 Heslin J. correctly identifies the law relating to the dismissal of clams under O. 19, r. 28 of the Rules of the Superior Courts, quoting from Chap. 16 of Delaney & McGrath at paras. 16.04 and 16.05, and he also correctly identifies the law relating to the inherent jurisdiction to dismiss, quoting from the judgment of Clarke J. in *Lopes v Minister for Justice* [2017] 2 I.R. 301 at paras. 2 - 5. It is not necessary to replicate these extracts as the principles are well established and were not in dispute on this appeal. Heslin J. dismissed the claims against the HSE – firstly pursuant to s. 10.3 of the Civil Liability and Courts Act, 2004 on the ground that they were not brought by a Personal Injury Summons and failed to comply with the detailed requirements of s. 10; secondly, under the inherent jurisdiction of the court to dismiss in that the appellant had failed and effectively refused to obtain any medical opinion to support the allegations of wrongdoing

which he found to be an abuse of the process; thirdly, under the inherent jurisdiction because he found no credible basis for the claims which he considered were bound to fail; and fourthly, on the basis that the claims from 2011, 2012 and 2013 appear to be statute barred as not having been commenced within two years.

11. He then dismissed the claims against An Garda Síochána, firstly under O. 19, r. 28 of the Rules as not disclosing any reasonable cause of action. Secondly, he dismissed the claims under the inherent jurisdiction on the basis that there was no credible evidence to support the asserted facts and that they were scandalous, frivolous and vexatious. Thirdly, on the basis that evidence sworn in support of the application to dismiss by Inspector Keyes, which contested and refuted the allegations made in the Statement of Claim and Addendum, was uncontroverted, and the claims were scandalous and vexatious and/or did not, taken at their height, disclose any cause of action, and that further assertions made by the appellant in her oral submissions did not make any material difference to the pleadings, and that the claim could not be saved by an amendment.

12. Heslin J. also dismissed the claim against Novartis, which he – correctly in my view – treated as a claim in medical negligence similar to the claim against the HSE and relating to Rasilez Aliskerin which the appellant claimed ought not to have been prescribed. He found that the drug had marketing authorisation from 2007 and that the June 2016 European Public Assessment Report on the drug confirmed it was only available on prescription. Accordingly, he held:

(1) that the appellant had not identified any cause of action against Novartis, that no act or omission alleged to constitute wrongdoing was alleged against Novartis, nor was it alleged that Novartis prescribed the drug, and there was no independent medical opinion supporting the claim.

(2) that the claim of prescription derived from July 2011 and allegedly led to an adverse reaction within days and therefore the Statute of Limitations was engaged and insurmountable.

(3) thirdly, that accordingly there was no credible basis for the claim which was an abuse of the process.

13. In his judgment Heslin J. also refers to the correspondence sent by solicitors for the HSE and Novartis, *inter alia* requesting any medical opinion supporting the claims and clearly putting her on notice that this was a prerequisite and that in its absence applications would be made to dismiss the claims.

14. Having read the appellant's Notices of Appeal and considered her written submissions and her oral submissions today, and having considered the respondent's responses, I am satisfied that this is an appeal that must be dismissed for the following reasons:

(1) It is a requirement of O. 86A, r. 12 that the Notice of Appeal set out particulars of the decision which it is sought to appeal and the grounds of appeal. The single Notice of Appeal contains generalities; so it is pleaded that the appellant refutes Judge Heslin's order completely; she pleads that the barrister simply read out all of her Statement of Claim and did not deny or explain anything in that statement; she asserts that her rights as an Irish citizen to safety and freedom in all that is good and safe in Ireland have been minimised if not completely ignored and oppressed or suppressed by the gardaí; she pleads that her rights to safety in healthcare have been denied and totally suppressed by Novartis as to the side effects ignored by doctors repeatedly and that *"Novartis at all times were aware of my symptoms and suffering"*; she pleads that Novartis Basel Switzerland were in touch with her by phone and email outlining to her that *"Novartis Ireland were going to look after me"*; and she pleads that Novartis Ireland, a named

individual I think, Agron Hasani *"told me he would morally and ethically do what he could for me"*.

However, this discloses no grounds of appeal and it doesn't identify why the appellant maintains that the trial judge was wrong in law or in fact in respect of his findings on all three motions.

(2) Secondly, the appellant's lengthy written submissions do not assist the court. They consist firstly of an unsworn factual narrative covering her interaction with her sister, and allegations against her, and an account of being involuntarily attacked, injected, assaulted and later involvement or investigation by An Garda Síochána. Of course her sister is not a party to these proceedings. It moves on to claims concerning a complaint to An Garda Síochána in 2010 leading to distrust of Lucan Garda Station and members of An Garda Síochána allegedly covering up a crime against her. And this is also not part of her pleaded claim and could not give rise to a cause of action.

She refers at one point to side effects, and looking up Novartis in France. It appears that her knowledge of Novartis is based on Wikipedia and other such sources, and at any rate is not based on any expert independent medical opinion.

The next section sets out a violent incident or rape perpetrated by her partner that resulted in injury, and in Tullamore Garda investigating. A summary of this assault refers to it happening in 2015. Again, her former partner is not a party to these proceedings.

She queries in her submissions why the DPP did not prosecute but of course the DPP is also not a party to these proceedings.

There is then narrative concerning attending Tullamore Hospital and an account of being taken forcibly to Portlaoise Hospital by two psychiatric nurses and claims of assault and

battery in that hospital, seemingly dating to 2011. The narrative continues in relation to further interaction with named HSE staff, including writing to the CEO and being in and out of hospital, although dates are not given.

A section then deals with reports of a government investigation of Novartis, which I presume is related to Rasilez Aliskiren, although this is not clear, and general allegations relating to pharmaceutical companies, experiments and cover ups.

The appellant also complains that counsel for the HSE read out the list of injuries in the Statement of Claim and then sat down, but that cannot be a good ground of appeal.

The last two pages contain more narrative of what the appellant says occurred when meeting the Psychiatrist in Tullamore hospital an her involvement with an unnamed GP practice.

None of the foregoing constitutes a ground of appeal or sets out a legal basis upon which it could be said that the trial judge erred in law or in fact.

(3) Thirdly, in her oral submissions to this court the appellant did not identify how it could be said that the trial judge erred in fact or in law.

(4) Fourthly, in particular, the appellant did not address the failure to comply with s. 10 of the 2004 Act, the need for a supporting medical opinion in respect of the claims against the HSE and Novartis, the failure to provide particulars of any factual or legal basis for the claims against An Garda Síochána and Novartis, and the fact that most if not all of the personal injury claims would seem to be statute barred.

(5) Fifthly, her notice of appeal fails to set out any recognisable or substantive ground of appeal in breach of O. 86A of the Rules of the Superior Courts.

(6) Sixthly, it is clear from his comprehensive judgment that the trial judge correctly identified the relevant legal principles, engaged with the pleadings including the Addendum to the Statement of Claim, the appellant's grounding affidavit and the evidence before him on the motions including the appellant's replying affidavit. That affidavit set out a lengthy narrative account of her experiences and injuries but did not address the matters averred to by Inspector Keyes or the deficiencies in her pleaded claims. As a result there was ample material before the trial judge from which he could make the findings that are set out in his judgment and which led him to make the dismissal orders. I agree with his reasoning and conclusions.

(7) Seventhly, the onus is on the appellant to satisfy this court on an appeal that the trial judge was incorrect – see *Ryanair Limited v Billigfleuge GmbH & Ors*. [2015] IESC 11. The appellant has failed to identify any basis upon which this court should interfere with the trial judge's findings and orders, nor in my view do the papers disclose any basis which would justify this court interfering with those findings and orders.

15. It is undoubtedly the case that the appellant has had a difficult time over the past 12 years and the court does not doubt her account of her suffering. However that alone does not give rise to any cause of action. The court was pleased to be informed by the appellant that she is now on a new drug that is giving her some relief from her thyroid complaint and that she may be able to avail of cutting-edge computer chip surgery and we would wish her well for the future. However I consider that there is no option for this court but to dismiss her appeal.

16. Noonan J.: Yes I have listened carefully to the judgment that Mr. Justice Haughton has just delivered and I agree entirely with it. Like Mr. Justice Haughton I would like to say that I am very sorry for M.N., she has obviously endured a great deal of ill health over recent years which has caused her great distress and upset. She clearly has a wide range of concerns about events that she has perceived to have befallen her at the hands of others. But I am afraid that suing people in court about unsubstantiated concerns is not really the solution to her many problems. Our duty as a court is to uphold the law irrespective of our obvious sympathy for M.N. and doing so can only lead to one outcome. I hope that having had the opportunity to ventilate her concerns in a public forum on two occasions, that has hopefully helped give M.N. what is sometimes referred to in the hackneyed phrase as closure of a kind at least, but the court really can have no further role to play in this matter and I too would dismiss this appeal.

17. Allen J.: Yes, I have listened carefully to the reasons of my colleagues and for the same reasons I agree that the appeal must be dismissed.