

WALL v Feeley



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THE HIGH COURT

1983 No. 7014P

BETWEEN/

MICHAEL WALL AND OTHERS

Plaintiffs

-and-

FEELEY AND ANOTHER

Defendants

Judgment of Mr. Justice Costello delivered the 26th October, 1983.

Man P. O'Donoghue
Registrar

The Plaintiffs in these proceedings have been for some time living in caravans on part of a public road which has been built by the Defendant Council on lands vested in it at Tallaght, County Dublin pursuant to its statutory authority as the road authority for the area. It wishes now to open the road (known as the Tallaght bye-pass) for public use but cannot do so as long as the Plaintiffs caravans are parked on the road. The Plaintiffs having obtained an interim injunction sought interlocutory relief by a motion which I heard last Monday. They ask the Court to restrain their eviction pending the hearing of their case. The Defendants have brought a cross motion. They too seek an Order pending the trial of the action; they want the Court to order the Plaintiffs to leave the roadway and cease its obstruction forthwith.

I must stress at the outset that I will not today make any determination of the issues which arise in this case. I am only concerned with what relief should be granted, if any, between now and the trial. The Order for an injunction at

this stage of the action is a discretionary one, but the principles on which the Court will exercise its discretion are well established. In a case of this sort a Plaintiff seeking an injunction pending the trial, must firstly establish that he has raised a fair bona fide question for the decision of the Court (see judgments of the Supreme Court in Campus Oil Ltd. and Others -v- Minister for Industry and Energy of the Chief Justice and Griffin, J. (unreported), 17th May, 1983); he is not, it is important to note, required to establish that it is probable that he will win - only that the point or points he raises are fair and bona fide ones. If that is established then he must show that the balance of convenience in the case is in his favour.

The Plaintiffs have raised two separate legal issues. Firstly, they say that in evicting them from the bye-pass the Defendants are in breach of the statutory duty they owe to the Plaintiffs under the Housing Act, 1966 and that they should be enjoined from committing this breach. Secondly, they say that the Defendants are in breach of their duty not to infringe the Plaintiffs constitutional rights, rights

relating both to themselves and their children.

The claim that a breach of statutory duty has occurred is based on a judgment of the Supreme Court in a somewhat analogous case, McDonald -v- Feely and others (unreported) 23rd July, 1980. The Plaintiff in that action (like the Plaintiffs in this action) was a member of the travelling community and occupied lands as an encampment at the junction of two roads at Templeogue, Co. Dublin, described as a vacant plot the property of the County Council. It was acknowledged that she and her family were trespassers. The County Council passed a resolution authorising the County Manager to take immediate steps "to have two encampments of itinerants at the junction of Wellington Lane and Tallaght-Templeogue Road removed and the area properly fenced". Proceedings on her behalf were instituted and an application for interlocutory relief brought. She obtained an interlocutory injunction in the High Court and the matter was heard on appeal by the Supreme Court. The Plaintiff (like the Plaintiffs here) had applied to the Council for housing accommodation and the Chief Justice, who delivered the Courts judgment having referred to

the Council's duties under the Housing Act, 1966 turned to a consideration of what the Council, through its officials, was proposing to do and pointed out:-

"It appears that the intention on that day" (i.e. the 14th May 1980) "or certainly on the 17th May was, without regard to the housing needs of the Plaintiff and her family, without offer of alternative accommodation, without the slightest concern for what might happen to the young children affected, to move the Plaintiff and her family, if necessary with the aid of bulldozers, off the site where they had their family home and on to the side of the road. It is said, and indeed conceded, that the threat to do so was accompanied by an assurance that only such reasonable force as might be necessary would be used. It is said, and in fact also conceded, that the site was the property of the Defendants and the Plaintiff and her family were thereon as trespassers. Nevertheless, could such action, had it taken place, be regarded as proper for a Housing Authority to take, even against

trespassers on its property? More important, could action of that kind be regarded as lawful action, having regard to that Authority's Statutory duty to look to the housing needs of those unable to provide for themselves?

It does not seem to me to matter whether in fact the Plaintiff's husband had been born in the County of Dublin and thereby qualified his family for housing by the County Council or whether the family had been over four years resident somewhere in the County or whether in fact they were not qualified - at least their housing needs deserved consideration and attention if a scheme of priorities paying due regard to the primary objectives laid down in Section 60(3) were effectively to be operated".

The Chief Justice pointed out that questions such as he had raised would have arisen for decision had what was contemplated on the 14th May taken place. But he pointed out that they did not arise because the housing needs of the Plaintiff and her family did receive attention and consideration, and accommodation was offered to the Plaintiff by the Council. He

observed that the Court should have regard to the factual and legal situation obtaining when the application for an injunction came for hearing and to the situation then existing. As the Defendants had reasonably discharged their duty as a Housing Authority to the Plaintiff an injunction was not granted.

Applying the judgment in the McDonald Case to the facts of the present case it seems to me that even though each of the Plaintiffs herein are trespassers the Court must inquire in respect of each of them:

- a. Was it proper, i.e. legally proper, for the Council to require each of the Plaintiff families to leave the bye-pass, bearing in mind their statutory duty to look to the housing needs of those unable to provide for themselves?
- b. In answering question (a) did the Council give appropriate consideration and attention to the particular needs of each of the Plaintiffs paying due regard to the primary objectives of a housing scheme which they are required to operate, which primary objectives are to be found in section 60(3)

of the Housing Act, 1966?

The Plaintiffs say that the Defendants having permitted them to remain on the bye-pass for some considerable time, failed in their statutory duty to them in not giving appropriate consideration and attention to their housing needs before attempting to evict them. They do not say that they should have been rehoused in a dwelling house or even in a chalet. Their claim is a more modest one. They say that the Defendants should have at least offered to provide a site for their caravans with amenities similar to those they had ("enjoyed" would hardly be an appropriate word) at the Tallaght bye-pass; that is, a hard standing site, which had some lighting and an available water supply.

There is some difference as to length of time the Plaintiffs have been on the bye-pass, a point that is obviously of relevance in considering the nature and extent of the duty owed by the Defendants to the Plaintiffs. I cannot resolve that dispute today. I am satisfied, however, that at the trial of the action the Plaintiffs will be able to establish that for some considerable time they have been, perhaps not continually

but certainly over many months, living in caravans on the bye-pass. Without in any way deciding the issue now, I can however say that it would appear that they have established a fair and bona fide question as to whether in the particular circumstances of their case a breach of statutory duty has occurred.

In reaching this conclusion I have not overlooked the points submitted on the defendants' behalf by Mr. Cooke. At the hearing on Monday last, he informed me that the Defendants had no objection to the Plaintiffs parking their caravans on the hard shoulder of the roadway and off the carriage-way and that steps to eject them from this part of the bye-pass would not be taken. But I cannot now hold that that would effectively answer the Plaintiffs' point, because I do not think that in view of the enormous amount of traffic which will use the bye-pass this suggestion could be regarded as a fulfilment of the defendants' statutory duty to the Plaintiffs. It is also said that on the 12th October last there were 42 caravans on the bye-pass, that since the interim injunction was granted more have arrived and that there are now 68 and 58 families on

the bye-pass, that what has occurred has amounted to an offence under the Prohibition of Forcible Entry and Occupation Act, 1971 that the Plaintiffs as parties to this offence should be denied relief. But I do not think that it has been established on the evidence, presently before me that the Plaintiffs were involved in persuading others to come onto the bye-pass or in any actions which could be regarded as constituting an offence under the Act of 1971. I appreciate that the defendants may have experienced difficulties in obtaining accurate information as to the names of the families on the bye-pass at any given time and the duration of their stay and that they have considerable difficulty in carrying out their statutory responsibilities. Obviously if occupiers of the site failed to give information to the defendants or gave false information this would materially affect the question as to whether any breach of duty towards them had occurred. But that has not been established in the case of the present Plaintiffs.

Having decided that a fair issue has been raised that a breach of statutory duty may have occurred, I do not think that

it is necessary to consider whether in addition a fair question of breach of constitutional duty may also be involved.

As to the balance of convenience, it seems to me that very great hardship indeed would be caused to the Plaintiffs if they are ejected now from the bye-pass. In considering this question I think I am entitled to have regard to the public inconvenience, and not just the inconvenience to the defendants as a local authority. But even taking the public inconvenience into account, I do not think that I should order the eviction of the Plaintiffs from this site pending the trial of the issues in this case.

But because of the public interest in this case I think this case should get priority in the court's lists and I will fix it for hearing early next term. I will also give the defendants liberty to apply in the meantime. If they are in a position to make an offer of an alternative reasonably comparable site for the Plaintiffs caravans and if they consider that this is a compliance with their statutory duty to the Plaintiffs concerned they may re-enter the two motions and ask me to lift the injunction and give them the relief they seek

in their motion.

I wish to stress that I am only dealing with the five families in the proceedings before me. The duty of the Council to the other families on the bye-pass and the correlative rights of those families will depend on the facts of each individual case. And the view that I have expressed as to the operation of the Prohibition of Forceable Entry and Occupation Act, 1971 only applies to this case, and to the facts as presently established in evidence.

Approved
JL
 14-11-83