

THE HIGH COURT

[2020] IEHC 719

RECORD NO. 2017/5298P

BETWEEN

SIOBHÁN FREENEY

PLAINTIFF

AND

HEALTH SERVICE EXECUTIVE

DEFENDANT

**EX TEMPORE JUDGMENT of Ms. Justice Niamh Hyland delivered on 18 February 2020**

1. This is an application for a modular trial made by Mr. McCullough S.C. on behalf of the defendant in the context of this medical negligence action. Mr. McCullough S.C. points to the case law in this respect and, in particular, the decision of Charleton J. in *McCann v Desmond* [2010] IEHC 164. He points to the factors identified there and says that all the factors there are also present here. In particular, he says that in this case a splitting of quantum and liability means that there are issues capable of determination in isolation, i.e. in relation to liability. He says that there would be a clear saving of time and cost and in this respect, he points to the various witnesses on both sides. He identified the plaintiff's witnesses (although Mr. Maher S.C. for the plaintiff did not completely agree) as being two experts in respect of liability and I think seven in respect of quantum. In relation to the defendant's witnesses, he pointed to three witnesses relevant to liability and three relevant to quantum. He said that there was no prejudice to the plaintiff and it was not a device. He referred to the possibility of an appeal when he was discussing the issue of prejudice and said that, ultimately, although there was a possibility of two appeals, it would not nonetheless prejudice the plaintiff because of the conditions a court would impose if the plaintiff was successful in relation to the liability hearing and in respect of a quantum determination, relating to the payment of a sum pending an appeal.
2. Mr. Maher S.C. opposing the application, points to prejudice to the plaintiff and in particular, delay. He points to the decision of Clarke J. in *Cork Plastics and Others v Ineos Compound UK Ltd & Flopast Ltd v Cork Plastics* [2008] IEHC 93 and the well-known observation there that experience has shown that formal separation of a preliminary issue can often make the apparent shortest route the longest way home. He identifies the difficulties of rescheduling witnesses and he identifies two of his expert witnesses that will give evidence both in respect of liability and in respect of quantum.
3. I am conscious of the need to administer justice in the entire circumstances of the case as identified by Charleton J. I am conscious that this will undoubtedly be a difficult trial for the plaintiff and it is desirable that it would be disposed of as expeditiously as possible in the circumstances. However, I am also conscious that although there are two witnesses identified by the plaintiff that relate to both liability and quantum, there are very significant numbers of witnesses on both sides that are going to give evidence in respect of quantum only. If the liability issue is determined against the plaintiff, then the time and costs that have been incurred in hearing those witnesses and evaluating their evidence will be set at naught.

4. In those circumstances, it is necessary to strike a balance between the benefits of a split trial here, which appear obvious to me, and the necessity to avoid delay that would prejudice the plaintiff.
5. In those circumstances, I propose to grant a modified version of the split trial that has been sought. As discussed with the parties, I will direct that the trial takes place on a staggered basis whereby I hear the case on liability first and give a written ruling. If the ruling is in favour of the plaintiff and there is a finding of liability, then the quantum trial will commence immediately or as close to immediately as possible. No Order will be made by the Court so the time will not begin to run for the purposes of an appeal and the defendant is not constrained in any ultimate appeal it may wish to bring against liability and quantum.
6. If, on the other hand, the ruling is against the plaintiff on liability then the case before the Court concludes and the parties will be free to take whatever course they think fit.
7. In the course of the liability hearing, the plaintiff and her husband will be unconstrained in the evidence they wish to give. I have identified that there are three other factual witnesses listed in the plaintiff's schedule of witnesses at present. I do not know the evidence that they propose to give and therefore I propose that if they wish to give evidence in the liability hearing, I will give a ruling, if necessary, in respect of the matters that they seek to give evidence upon. The only evidence to be given by the experts on both sides will be in respect of liability.
8. I recognise that this may necessitate that two of the plaintiff's expert witnesses will have to be recalled in the case of a quantum trial, but it is to be hoped that the additional costs incurred in that respect will be relatively modest.