

**THE HIGH COURT**

[2022] IEHC 40  
[2014 NO. 5116 P]

**BETWEEN**

**LUCIA O'FARRELL**

**PLAINTIFF**

**AND**

**THE COMMISSIONER OF AN GARDA SIOCHANA, THE MINISTER FOR JUSTICE AND  
EQUALITY, THE DIRECTOR OF PUBLIC PROSECUTIONS  
AND THE ATTORNEY GENERAL**

**DEFENDANTS**

**EX TEMPORE JUDGMENT of Mr. Justice Allen delivered on the 14th January 2022**

1. Late on the evening of the 2nd August, 2011 Shane O'Farrell was cycling his bicycle on the public roadway at Tullyveragh, Carrickmacross, Co. Monaghan, when he was knocked down by a car and killed.
2. The car which struck Mr. O'Farrell was being driven by Zigmantas Gridzuiska but it was not his car. At the time of the accident, Mr. Gridzuiska was on bail on a number of offences.
3. In this action, which was commenced by plenary summons issued on the 6th June, 2014, Mr. O'Farrell's mother Lucia O'Farrell claims a declaration that the Garda Commissioner and the State were negligent and were guilty of misfeasance in public office by reason of their alleged failures which had the result that Mr. Gridzuiska was at liberty and was driving the particular car which he was driving.
4. The alleged failures relied upon by Mrs. O'Farrell are: -
  - (1) The failure of the Gardaí and/or the State to make any effort to revoke or to apply for the revocation of either or both of two court orders on foot of which Mr. Gridzuiska had been admitted to bail;
  - (2) The failure of the Gardai to seize the car which Mr. Gridzuiska was driving: specifically on either 6th of July 2011 or earlier in the evening of the day of the accident on 2nd August 2011;
  - (3) The failure of the Gardai to inform the judge of the District Court sitting at Ardee that Mr. Gridzuiska was on bail.
5. The court orders on foot of which Mr. Gridzuiska was admitted to bail were made in Cavan District Court in December, 2010 and in Monaghan Circuit Court in January, 2011.
6. In May, 2011 Mr. Gridzuiska was brought before Ardee District Court charged with the commission of a number of thefts earlier that year, that is while he was on bail. Mrs. O'Farrell's case is that the District Court Judge sitting at Ardee ought to have been told, but was not told, that Mr. Gridzuiska was on bail at the time of those offences.
7. What I will call the Ardee thefts were dealt with by the imposition of a suspended sentence. It is not absolutely clear from the amended statement of claim but I

understand it to be part of Mrs. O'Farrell's case that if the District Court had been told that the offences had been committed while on bail then Mr. Gridzuiska would have received a custodial sentence which would have seen him in prison on 2nd August, 2011.

8. Further, Mrs. O'Farrell makes the case that subsequent to the conviction and sentence in Ardee the Gardaí and the State authorities did not apply to revoke Mr. Gridzuiska's bail on the Cavan and Monaghan charges: not only by reason of his having committed the Ardee offences but by reason of his failure to abide by conditions of his bail that he should keep the peace and be of good behaviour and that he should sign on at a Garda station.
9. Mrs. O'Farrell's case is that if an application had been made to revoke Mr. Gridzuiska's bail it would have been revoked and he would have been in custody on 2nd August, 2011 with the consequence that Shane O'Farrell would now be alive.
10. The car which Mr. Gridzuiska was driving was not, as I have said, his car, but it was, on Mrs. O'Farrell's case, a car to which he had access and a car that the Gardaí knew he was using. Mr. Gridzuiska, on Mrs. O'Farrell's case, had a long criminal record in Ireland and Lithuania. It is Mrs. O'Farrell's case that on 6th July, 2011 Mr. Gridzuiska was stopped by the Gardaí in Monaghan while driving the car which had no NCT disc and a falsified insurance disc. Mrs. O'Farrell's case is that the car ought then to have been seized but it was not.
11. On the 14th July, 2011 Mr. Gridzuiska was arrested in Newry. His very presence there is said to have been another breach of his bail conditions. Mr. Gridzuiska was charged in Newry with a number of offences and given a five month suspended sentence. Mrs. O'Farrell's case is that the Police Service of Northern Ireland were in contact with the Gardaí who accordingly knew that he was and had been in Northern Ireland and that he had been convicted of theft offences there but did not act on that information by applying to have his bail revoked.
12. Earlier on the evening of the 2nd August, 2011, about an hour before the accident, the car which Mr. Gridzuiska was later found to be driving was stopped by the Gardaí. At that time, it is said, Mr. Gridzuiska was in the passenger seat. The other occupants of the car are said to have been Lithuanian nationals and, like Mr. Gridzuiska, are said to have been known heroin users. The driver is said to have been uninsured and there was no NCT disc on the car. Mrs. O'Farrell's case is that the car ought then to have been seized but was not, and that if it had been, Shane O'Farrell would be alive today.
13. The action is defended by the Garda Commissioner and the Attorney General on a number of grounds. It is pleaded that the statement of claim discloses no cause of action; that Mrs. O'Farrell has pursued and exhausted her legal rights by bringing and settling a case against Mr. Gridzuiska, and presumably the Motor Insurer's Bureau of Ireland; that the defendants did not owe Mrs. O'Farrell a duty of care; and that the case is statute barred.
14. All that is said as to the accident Mr. Gridzuiska being on bail; Mr. Gridzuiska having committed and been convicted of the Ardee and Newry offences; as to the breach of his

bail conditions; and as to the car having been stopped on 6th July and 2nd of August, 2011 is admitted, but the claim is said to be based on speculation and surmise. It is specifically denied that the Gardaí had the legal power at the time to have seized the car.

15. On 6th September, 2018 Mrs. O'Farrell's solicitors wrote to the Chief State Solicitor seeking voluntary discovery by the defendants of twelve categories of documents, said to be relevant and necessary for the fair disposal of the action and for saving costs. The request was very wide ranging calling for the disclosure of all documents and records held by the authorities in relation to Mr. Gridzuiska. It is now, implicitly at least, recognised that the voluntary discovery sought at that stage was too broad.
16. By the notice of motion now before the court, which was issued on 12th March, 2019, the plaintiff sought an order for discovery in the terms of the original request. The motion was resisted on the grounds of relevance, necessity and cost saving. Following an initial hearing of the motion before Reynolds J. on 25th March, 2020, the request for discovery was recast and reformulated with a view to tying the discovery sought to the pleadings, most obviously by limiting the time to 2nd August, 2011.
17. Following that reformulation there was – I cannot forebear to say, eventually – a close engagement between the solicitors which resulted in agreement as to what discovery was relevant and necessary, save in two respects.
18. The first area of contention was in respect of the cut-off date. It is agreed that the relevant cut-off date as far as Mr. Gridzuiska's antecedents is concerned is 2nd August, 2011 but it is contested that that should be the cut – off date for the records.
19. The defendants are agreeable to making discovery of all Garda PULSE entries and records and Garda notebook entries in relation to any criminal charges that were pending before the courts and in respect of any interaction between An Garda Síochána and Mr. Gridzuiska between 1st November, 2010 and 2nd August, 2011 but insist that this should be limited to entries made and created on or before the 2nd August. The plaintiff insists that this would not capture all relevant entries and the discovery should, although limited to offences committed or alleged to have been committed prior to 2nd August, 2011, extend to documents later created relating to offences or alleged offences within that period of time.
20. The justification offered by the plaintiff in support of its position is set out in a letter of 17th November, 2021 to the Chief State Solicitor's office. The plaintiff's solicitors refer back to para. 8 of the statement of claim which pleads that if the defendants had acted appropriately, correctly and in accordance with their duty, Mr. Gridzuiska would have had his bail revoked. An affidavit of Mr. James Barton, solicitor, which was sworn on 7th January, 2022 on behalf of the plaintiff, references an alleged incident which is not referred to in the statement of claim, namely that on 25th May, 2011 Mr. Gridzuiska committed a theft from the Lidl supermarket in Castleblayney which was not dealt with until 17th November, 2011 at Cavan District Court. The suggestion is that had Mr. Gridzuiska then been brought back to the Circuit Court his bail would have been revoked.

21. It seems to me that the Garda PULSE system and the Garda notebooks as of 2nd August, 2011 will show all that was known up to Shane O'Farrell's death as to Mr. Gridzuiska's prior history. It is not contended that there might have been any later entry in respect of anything previously known. The plaintiff's case being that what the Gardaí knew of Mr. Gridzuiska's behaviour ought to have promoted a court application before 2nd August, 2011, I am not persuaded of the relevance of any later entry.
22. As to category 1, there was some discussion also of the precise formulation of the category. The plaintiff's solicitors' revised request referred to offences committed or alleged to have been committed before 2nd August 2011. The defendant's formulation referred to criminal charges and extended to any interaction between the Gardaí and Mr. Gridzuiska. I am satisfied that counsel for the defendant is correct in his submission that a category extending to any interaction between the Gardaí and Mr. Gridzuiska is, if anything, wider than the plaintiff's formulation.
23. The second area of contention is common to categories 4, 5, 6 and 7.
24. The Chief State Solicitor's letter of 5th November, 2011 indicated that the defendants were agreeable to make discovery of all court attendances notes and orders held by the defendants in relation to category 4 – the charges for which Mr. Gridzuiska was convicted by Judge Clyne at Ardee District Court in May, 2011 – in relation to category 5 – any charges taken in Cavan in December, 2010 and still pending on 2nd August, 2011 – in relation to category 6 – the charges before Monaghan Circuit Court in January, 2011 – and in relation to category 7 – the charges and/or conviction in Newry in July, 2011.
25. Counsel for the plaintiff submits that each of these categories should extend beyond court attendances, notes and orders to all files and papers in respect of these matters. Counsel for the defendant submits that the plaintiff has failed to establish the relevance and necessity of the files and papers beyond what the defendants are agreeable to discover.
26. In the last affidavit of Mr. Bardon sworn on 7th January, 2022 it is suggested that the Garda prosecution file is more extensive than the court attendances and notes. That much is common case. But the plaintiff's case is not based on the detail of the evidence gathered by the Gardaí in relation to the various offences but the fact that Mr. Gridzuiska had been charged and the alleged failure of the Gardaí to provide the court with that information. It is significant that the defendants have agreed in the same category to add to the court attendance notes and orders, the transcript of the Digital Audio Recording (DAR) in respect of each attendance before the courts in Ardee, Cavan and Monaghan.
27. Mr. Bardon in his last affidavit, and counsel for the plaintiff on the hearing of the motion, suggests that the file generally will show whether any consideration was given by the Gardaí to whether an application should be made to either of the courts to revoke bail. As counsel puts it, the file generally is said to go to the decision making process in issue.
28. Counsel for the defendant on the other hand argues that the plaintiff's insistence on all Garda files slips back to the initial very general request for all records in the possession or

power of the defendants in relation to Mr. Gridzuiska and is not tied to the issues in the pleadings. Specifically it is said there is no issue in the pleadings as to whether the Gardaí did or ought to have given consideration to applying to have Mr. Gridzuiska's bail revoked.

29. I believe that counsel for defendant is correct in his submission. The case is about what the Gardaí knew and what they told the court. It is not pleaded by the plaintiff that the Gardaí should have considered applying to revoke bail, or to activate the suspended sentence but simply that they did not. On the defendants' side it is not pleaded that the Gardaí considered whether they should, and decided not to, apply to revoke Mr. Gridzuiska's bail. Thus, it seems to me there is no issue on the pleadings as to the rights and wrongs of the admitted fact that no such application was made.
30. I think that counsel for the defendants is probably correct in identifying the issues in the action as legal issues as to whether the defendants owed a duty of care to Mrs. O'Farrell and whether the manner in which Mr. Gridzuiska was dealt with amounted to misfeasance. Having regard to the very extensive admissions in the defence as to the facts alleged, I think that it is fair to say that the defendants' position in relation to discovery is generous and is calculated to allowing Mrs. O'Farrell to make the best case she possibly can.
31. On the two issues which the court has been asked to decide, I am satisfied that the plaintiff has not made out the relevance to the case pleaded of anything more than what the defendants have indicated in correspondence of their prepared discovery.