

**THE HIGH COURT**

**[2023] IEHC 67**

**[2022 No. 4507 P]**

**BETWEEN**

**THE BOARD OF MANAGEMENT OF WILSON'S HOSPITAL SCHOOL**

**PLAINTIFF**

**AND**

**ENOCH BURKE**

**DEFENDANT**

**DIRECTION of Mr. Justice Brian O'Moore delivered on the 10<sup>th</sup> day of February, 2023.**

1. On the afternoon of the 27th of January 2023, Counsel for the Plaintiff informed Mr. Justice Dignam that there had been errors in affidavit evidence given on behalf of the school, that this had been recently discovered, and that it was thought appropriate to bring this to the attention of the Court. No prior notice of this had been provided to Mr. Justice Dignam or, it would appear, to the Defendant, Mr. Burke.

2. On the evening of the 27th of January, the Chancery Registrar wrote to the parties requesting that the school provide an affidavit or affidavits explaining these errors. The letter specifically required that the school set out;

1. The precise affidavit or affidavits which contain these errors;
2. The precise portions of the relevant affidavits;
3. The use to which these affidavits were put by the School and, in particular, the orders sought or procured in reliance upon the erroneous Affidavits;
4. A comprehensive and precise explanation as to exactly how these errors occurred;
5. A precise and comprehensive explanation as to how and when these errors were discovered.

3. Four detailed affidavits were received on the afternoon of Wednesday the 1st of February 2023. The previous day, I had delivered a judgment in respect of Mr. Burke's application for a stay on proceedings before the High Court. This judgment also set out suggested directions which would see a trial of this action shortly after Easter. This judgment ran to 15 pages. It was the fourth written decision given by me in respect of these proceedings over a six week period. A further lengthy judgment was delivered by Mr. Justice Dignam within that time. The number of judgments gives some sense of the amount of court time and

resources that this case has absorbed. This attention is to the detriment of other litigants, who are patiently waiting for their own cases to get on.

4. On considering the four affidavits sworn on behalf of the school, it is clear that the earlier affidavits (which contain the errors brought to the attention of Mr. Justice Dignam) were relied upon for hearings before Ms. Justice Stack, Mr. Justice Barrett and Mr. Justice Dignam. According to the school, the earlier affidavits were not relied upon in any application before me. In order to check that this was the case, it was necessary to go through (inasmuch as they remain available) the various affidavits actually opened before me during the course of the numerous applications I have heard since early October of last year. As the erroneous affidavits appear not to have been deployed before me, the correct course of action is that these errors be brought to the attention of the relevant judges, which both the school and Mr. Burke are free to do. There must, of course, be some purpose in raising the disclosed errors before any one of the three relevant judges. It is neither necessary or appropriate that these errors (and the circumstances giving rise to them) be listed before me, at least at this point in time.

5. After the preparation of this Direction, but before its circulation to the parties, Mr. Burke attended the Chancery List at about 11 am on the 10th of February 2023. This was done without notice to the Court, without filling out any

of the relevant paperwork, and apparently without notifying the school's solicitors. Despite having the situation explained to him, and in particular despite being told that this Direction would be released this afternoon and that the school were entitled to notice of any application he might make, Mr. Burke behaved in such a manner that it was impossible to continue to deal with the List to Fix Dates and the other business due to be done on the day. Mr. Burke could have emailed the Chancery Registrar enquiring about the Direction or he could have made an application on notice to the school. Instead, he chose to court publicity by disturbing the efforts of other litigants to get their cases listed for hearing. Both Mr. Burke and one of his siblings had to be removed from the courtroom. Notwithstanding Mr. Burke's activities, thanks to the patience of the legal practitioners involved, the intervention of An Garda Siochana and the efforts of the court staff it was ultimately possible to deal with all matters listed for the day.