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Judgment: approved by the Court for handing down

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(subject to editorial corrections)\*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

2015 No. 53478

BETWEEN;

DANA ROSEMARY SCALLON

Plaintiff;

-and-

SUNDAY NEWSPAPERS LIMITED T/AS SUNDAY WORLD

Defendant.

**BURGESS J**

[1] This is a meaning application made by the defendant, Sunday Newspapers Limited T/as Sunday World, pursuant to Order 82 Rule 3A(1) of the Rules of the Court of Judicature (Northern Ireland) 1980 for the purposes of Sections 2 and 4(2) of the Defamation Act 1996 ('the 1996 Act'), determining whether the words complained of by the plaintiff in the Statement of Claim in this matter are capable of bearing the particular meanings attributed to them in the Statement of Claim insofar as those meanings go beyond the meaning set out in the defendant's offer of amends dated 29 September 2016.

[2] By writ of summons dated 3 June 2015 the plaintiff seeks damages, including aggravated damages, for libel, breach of the tort of misuse of private information, under Section 13 of the Data Protection Act 1998, costs and further or other Order as deemed appropriate by the court.

[3] The plaintiff's claim arises from the publication on 10 July 2014 on the Sunday World Newspapers own website ([www.sundayworld.com](http://www.sundayworld.com)) and on its Facebook page (<http://www.facebook.com/sundayworld1/>) an article entitled, in bold print, and in each case:

**“Dana says priest ‘cured’ brother who is charged with indecent assault against children.”**

[4] In the succeeding heading in the article, again in each case and again in bold print it stated:

**“Dana Rosemary Scallon has told the court that her brother, who is charged with indecently assaulting two children, was cured after going to see a priest”.**

[5] I have exhibited the full article in an appendix to this judgment, and I will refer to it hereafter as “the impugned articles”. It contains a photograph of the plaintiff who is a well-known and recognised figure, who is further identified in the impugned article as having stood in the election for the President of the Republic of Ireland. They clearly identify that the plaintiff is “the Dana” referred in the headlines and in the articles.

[6] On 20 April 2016 the plaintiff delivered her Statement of Claim. While this was later amended, the amendment is not relevant to this aspect of the proceedings.

[7] On 29 September 2016 the defendant made a qualified offer of amends pursuant to Section 2 of the 1996 Act in the terms set out below. This was rejected by the plaintiff on 11 October 2016, the plaintiff not accepting the meaning put forward by the defendants.

[8] The defendant’s Defence was served on 27 October 2016. In it the defendants confirmed the qualified offer of amends and that it had not been withdrawn.

[9] On 14 November 2016 the defendant issued to the present Notice of Motion asking the court to determine whether the words complained of by the plaintiff in the Statement of Claim are capable of bearing the particular means attributed to them in that document insofar as those meanings go beyond the meanings set out in the defendant’s offer of amends.

[10] The background to the impugned articles arose from criminal proceedings taken in England against the plaintiff’s brother, John Brown, a priest, alleging sexual abuse against two complainants, both minors at the time of the alleged offences. A jury in due course unanimously acquitted her brother of all charges. The position of her brother throughout had been that the allegations were malicious and false and the plaintiff in her Statement of Claim refers to remarks attributed to the judge at the conclusion of the trial that the complainant’s accounts had been false.

[11] A reading of the impugned articles appears to the court to show that they are based first on the opening speech of Crown prosecutor in the trial and secondly on the basis of some of the evidence given in the early day or days of the trial by one of

the complainants. These appear to be the two sources from which the reports in the articles refer to the plaintiff “subsequently telling the woman (one of the complainants) that she, the plaintiff, would find treatment for her brother”: and “telling the mother (of one of the complainants) that her brother had been cured after seeing a priest”. The complainant in her evidence is also reported as having said that during the campaign carried out by the plaintiff for the Presidency of the Republic of Ireland she had said on television that these allegations were lies. Indeed in her evidence the complainant is attributed as saying that she, the complainant, had taken defamation proceedings against the plaintiff and two television channels because of that allegation of lying.

[12] It is patently clear from reading the article that the plaintiff had not given any evidence at that stage: that she had not told the court anything, let alone what was set out in the headlines above referred: and whether the complainant’s evidence was accurately reported or not, the article attributes to her as saying that the allegations were false.

[13] As stated, the article was published in the Sunday World newspaper’s own website. It is not possible for any third party to make comment on that site. In counter distinction to that position its Facebook page has the facility, and indeed readers of the article on that website were invited, to make comment on the article. The court has had the opportunity of reading through hundreds of such responses, some of which are highly malicious and defamatory and expressed in terms which are abhorrent.

[14] As stated the purpose of this hearing was to attribute a meaning to the words in the articles, and in particular both whether or not the meanings attributed to them by the plaintiff in her Statement of Claim are sustainable and/or whether the meanings attributed to them in the offer of amends is sustainable – or some intermediary position.

[15] In arriving at its decision the court is invited by the plaintiff to consider those meanings not on the basis of the entirety of the contents of the articles but also the comments of third parties on the Facebook page.

[16] Turning first to the meaning attributable to the articles in the plaintiff’s Statement of Claim these are set out in paragraphs 14 and 15 with some of the comments on the Facebook page set out at paragraph 16. The paragraphs state:

“14. The words, by their natural and ordinary meaning, by publication specified at paragraph .... meant and were intended to mean:

- (i) That John Brown is a paedophile guilty of committing acts of sexual assault upon a minor and that the plaintiff knew that he was/is a

paedophile guilty of committing acts of sexual assault upon a minor (I will refer to this as Meaning 1).

- (ii) That the complaint conspired to prevent disclosure of the fact that John Brown is a paedophile guilty of committing acts of assault upon a minor. (Meaning 2).
- (iii) That the plaintiff by her previous public statements denying that John Brown was guilty of allegations of indecent assault upon minors had lied (Meaning 3).
- (iv) That the plaintiff is a religious zealot who laboured under the logical/delusional belief that John Brown's paedophilic tendencies could be cured by a priest (Meaning 4).
- (v) That the plaintiff was complicit with a priest within the Catholic Church in covering up historic acts of paedophilia perpetrated by her brother and did not take action to report such acts to the police (Meaning 5).

15. Further, or in the alternative, the articles further held the following innuendo meetings meaning:

- (i) That the plaintiff's public statements in her political life in respect of Christian values and the importance of family were hypocritical and false (Meaning 6).

16. In respect of the meaning specified in paragraphs 14 and 15 above the plaintiff will rely upon the 444 comments made upon the defendant's Facebook page, which were themselves republished and maintained by the defendant who controlled their Facebook page/profile pursuant to the terms and conditions of Facebook, and which are extremely abusive and libellous of the plaintiff and indicate what meanings readers of the publications attributed to it. The plaintiff schedules hereto at Schedule 1 the Facebook publications. The comment posted by Sharon Cleary "Dana should be facing charges herself

of covering this up and allowing him to abuse again”, Trevor Haden “So Dana is as sick as the paedophile scum”, Michelle Metcalfe “They formed a paedophile ring” and Pauline Whiteman “Dana is as sick as the Paedophile scum herself” are typical of the comments made upon Facebook and contained within Schedule 1.”

[17] The defendants in their qualified offer of amends stated that the defamatory meaning in which the offer of amends was made was that:

“Dana knew her brother was guilty of indecent assault and took him to a priest rather than reporting him to the police.”

### **The general principles**

[18] The general principles of construction have been the subject of well-trodden ground. The court is grateful to counsel for their focussed and extremely helpful skeleton arguments, expanded upon during oral submissions. The court can confirm having considered all of the authorities put forward but believes it can best distil them in the following terms, following the principles emerging from the speeches in Lewis v The Daily Telegraph [1964] A.C. 234 and the subsequent authorities. I take those principles to be:

- (i) The natural and ordinary meaning is that which the words convey to the ordinary reasonable persons.
- (ii) The ordinary reader is not avid for scandal but can read between the lines and draw inferences. Ordinary men and women have different temperaments and outlooks. Some are unduly suspicious and some are unusually naïve. One must try to envisage people between these two extremes and determine the most damaging meaning that they would put on the words. However, where there are a number of innocent interpretations, the ordinary reader will not seize on the only defamatory one.
- (iii) The effect on the publication on an ordinary reader is one of impression and the court should be wary of an over-elaborate analysis. The narrow and analytical construction put on words by a lawyer is inappropriate.
- (iv) The meaning the defendant intended to convey is irrelevant for this purpose. The court is concerned solely with the objective test of how the words would be understood.

- (v) Equally the way in which the words were in fact understood is irrelevant. No evidence can therefore be adduced of how the words were understood in relation to meaning. The parties cannot, for example, conduct readership surveys in support of their respective cases. However the way the words were understood is relevant in determining the extent of the injury to the claimant's reputation, and witnesses in a defamation claim may therefore give evidence of how they understood the words, but solely for that purpose. At the end of the day judges are simply to put themselves in the position of the ordinary reader, ignoring how anyone else has understood the words and form their view.
- (vi) The ordinary reader takes notice of the circumstances and manner of the publication, such as the prominence given to the allegations. Where a particular matter is given prominence in a newspaper it may be assumed that it is one of significance and is therefore more likely to convey a defamatory meaning to the ordinary reader.
- (vii) The ordinary reader is treated as having read the publication as a whole in determining its meaning as stated by Lord Bridge in Charleston v News Group Newspapers Limited [1995] 2 A.C. 65:

“It is often a debateable question which the jury must resolve whether the antidote is effective to neutralise the bane and in determining the question the jury may certainly consider the mode of publication and the relevance prominence to different parts of it.”

[19] Therefore, a newspaper publishing a defamatory headline is, according to Lord Bridge, “playing with fire” and any curative words in the text must be sufficiently clear and prominent. “Mud, in short, is likely to stick” and therefore any curative words in a text must be sufficiently clear and prominent to provide “an uncontestable antidote to whatever poison a jury may detect” - Jameel v Times Newspapers Limited [2004] EWCA Civ. 983.

[20] It follows that a claimant will only need to rely on an innuendo meaning (Meaning 6) where the ordinary reader, armed with his powers in interpretation and implication, cannot discern any defamatory meaning or a particular defamatory meaning in the publication.

### **The role, if any, of the views of third parties**

[21] At paragraph 16 of the Statement of Claim, and in the skeleton argument and in the representations to the court the plaintiff seeks to argue that the views expressed in the responses to the article from third parties are relevant in the court's consideration of what the ordinary and reasonable person would attribute by way of

meaning to the article – and in particular the meanings attributed to the article by the plaintiff in paragraphs 14 and 15 of the Statement of Claim. As stated above there undoubtedly could be a role for such comments in relation to the extent of damage that may be caused to the plaintiff, but that is not the question the court is asked to consider. The court sees a number of difficulties in subscribing to the plaintiff's submission. For example:

- (a) The court has no knowledge whatsoever of those people who have chosen to respond. It has no knowledge of who they are: what their beliefs might be: their knowledge of the plaintiff who is well known not just in the entertainment business but also in the field of politics: or what their attitudes may well be to those views and indeed towards her personally:
- (b) The court cannot say if there is a large constituency who do not read such Facebook pages:
  - (i) at all, and whose views as to the meaning of the words in the articles may be radically different to those who both choose to read and make submissions; or
  - (ii) read such pages sometimes, but do not engage or express views on this or indeed on any article.
- (c) The court could conclude that some of the views, including those contained in paragraph 15 of the Statement of Claim, are so distant from any proper reading of the articles – so extreme in content and tone – that not only do they not add to the court's considerations, but even underline the dangers of relying on views of others, some of whom may be more subtle in their terms of expressing what might be described as prejudices:
- (d) In this case there is no issue of specialisation, where perhaps someone expressing a view may bring to the question of the meaning of words the ability to either directly or through innuendo discern meanings not appreciated by others – where the ordinary and reasonable man or woman may need to be invested with some level of appreciation of that specialisation:
- (e) What might be relevant in seeking to stand in the shoes of the ordinary or reasonable reader is some knowledge of the belief and views of the plaintiff before the court can consider such issues such as hypocrisy - indeed the court in some circumstances may well need to know what the views of the plaintiff are in order to make such a judgment. For such an approach it would be incumbent for the plaintiff to set out

with particularity the basis of such a consideration. I will return to this when dealing with each of the Meanings individually.

[22] Having carefully considered the arguments put forward on behalf of the plaintiff, and in the context of the present exercise of discerning the meanings of the words in the articles I do not believe there is any assistance that can be drawn from the views of particular people as opposed to what the court considers to be the ordinary reasonable reader and that therefore the court should approach its task guided by the general legal principles set out above.

### **Discussion**

[23] The headlines to the articles contained the bane – that is the cause of the great distress to the plaintiff. It does not contain comment, but rather it is reported in factual terms where the ordinary meaning is that:

- (i) the plaintiff knew her brother required treatment;
- (ii) the reason for that treatment arose from the fact that he was charged with indecently assaulting two children (“the relevant treatment”);
- (iii) combined with the first paragraph immediately following the second headline that she arranged for that treatment; and
- (iv) she told the court, clearly on oath, all of the above matters.

[24] It is implicit in those headlines, and not corrected in the article, that knowing that her brother needed the relevant treatment she did not report the matter to the police – a meaning accepted by the defendant in the offer of amends.

[25] I have read the whole article carefully and find no antidote in the article to any of the above assertions. The only other reference, again of fact, is the reference to the allegation by one of the complainants in evidence that during a televised presidential debate the plaintiff claimed the allegations by her “were lies”. This does not act as an antidote to the factual report of what it is alleged she said to the court that her brother needed the relevant treatment. Indeed, on any ordinary reading it adds to the bane that having claimed the allegations were lies in that television programme, she then told the court under oath that he needed the relevant treatment, and she arranged it. Turning then to the meanings:

### **Meaning (i)**

Factually this meaning follows the factual meanings which I have set out above in paragraph [16] save that it includes the word “paedophile”. This word, as with paedophilia is not a legal term. In popular usage it is often applied to any persons sexually interested in or attracted to children, or the act of child sexual abuse. While



researches argue that this conflates sexual attraction with the act, in this case the allegation made was that the plaintiff's brother had committed an act of sexual abuse which he knew, and whilst researchers may well delineate between the act and the motive behind the act, in ordinary parlance I believe that the word would be understood by the ordinary person as someone who allegedly carried out the acts set out in the headlines. I will return to this issue under Meaning (iv). However, for the purposes of this aspect of the proceedings I determine that Meaning (i) is a meaning which an ordinary person would extract from the articles, and that the meanings attributed in the offer of amends is not sustainable.

### **Meaning (ii)**

Again this does no more than accurately set out what the headlines and the article as a whole states and is in my opinion encapsulated in the part of the offer of amends which refers to the failure to report the matter to the police. However, I am satisfied that the meaning attributed to it in the Statement of Claim, based as it is on the conspiracy to prevent disclosure, is sustainable as the meaning claimed.

### **Meaning (iii)**

Again this factually follows the contents of the articles. By the headlines the plaintiff was aware that her brother required the relevant treatment, based as I have said on having committed acts of indecency against children, but that in the presidential debate she claimed these were lies. Both cannot be true. Either what she told the court was a lie (which would appear not to be the case both by the fact that she had not told the court anything and the brother was acquitted) or she lied during the television debate. No reference is made to this in the offer to amends but the meaning attributed to it in the Statement of Claim is perfectly sustainable.

### **Meaning (iv)**

I turn to the issue of paedophilia. It is termed a 'paedophilic disorder' in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) and in the International Classification of Diseases (ICD-10) where it is defined as a sexual preference for children of pre-pubertal or early pubertal age. It is therefore a medical condition which leaves the question as to whether it is treatable. The literature indicates that there is no evidence that paedophilia can be 'cured' in a medical sense, would be to strain the import of the allegation attributed to her too far. The difficulty the court has with attributing any attitude such as that as being based on a delusional belief being capable of being cured by a priest, or that someone with that view would be a "religious zealot" would in my opinion be not sustainable as claimed in the Statement of Claim.

### **Meaning (v)**

Factually the allegation is that the plaintiff was complicit with a priest in covering up historical acts of paedophilia and did not take action to report such acts to the police. This effectively is covered by meaning (i). What however, is implicit in the meaning which the plaintiff seeks to attribute to the articles is that this was some part of a general background of conspiracy involving the Catholic Church, which has been the subject of enquiries and detailed public exposure over the last many years. If indeed that is the intention then it is one that I do not believe the article can sustain as claimed by the plaintiff and that the thrust of the article is, as I have stated, covered by meaning (i).

### **Meaning (vi)**

I referred earlier to the need for particularisation when any innuendo is sought to be claimed by the plaintiff. As again I said earlier it would be a requirement on the part of the ordinary reader to know of the background and religious views of the plaintiff to an extent where a reader could come to a conclusion as to whether or not in the alleged actions attributed to her she would be seen as being hypocritical and false. Standing in the shoes of the ordinary reader there is no particularisation at any point in the Statement of Claim to lay the foundation to allow such a judgment to be made by the ordinary reader and I do not believe that the article sustains this particular meaning.

### **Conclusion**

[26] The offer to amend is inadequate in that it does not cover the issues set out by the plaintiff in meanings (i), (ii) and (iii). The Statement of Claim does not sustain meaning (iv) or (vi) and in relation to the remaining meaning namely meaning (v) I believe that this is covered adequately by meanings (i), (ii) and (iii).