

**THE HIGH COURT
GALWAY**

[2021] IEHC 340
Record No. 2018/5022P

**BETWEEN
COLENE KILLIAN**

PLAINTIFF

**AND
MARTIN KILDUFF AND AMY KILDUFF**

DEFENDANTS

JUDGMENT of Mr. Justice O'Connor delivered on the 30th day of April 2021

1. At around thirty minutes past midnight on 14th February 2016, the plaintiff went back to her then best friend's house and home of the Defendants, to wait to be collected by her father. The boyfriend of that friend ("Ollie") was arguing on the phone with a third party during the drive to that house. Ollie continued that argument on the phone into the house and paced the sitting room.
2. The plaintiff and her then best friend went to chat on a bed in a bedroom while the heated argument and the barking of Ollie's large Pit Bull Terrier in the sitting room could be heard.
3. The dog escaped from the living room and entered the bedroom to run around in circles. The dog jumped on to the bed and nipped the back of the plaintiff who became hysterical. She pleaded for the unmuzzled dog to be taken out. Ollie said:

"I'm going to hold the dog and you can make your way out of the house."

When the plaintiff placed her hand on the handle of the door, the dog lunged towards her. The plaintiff put out her arm which the dog latched on to for about a minute. Ollie told the plaintiff:

"If you pull away he is going to take the piece."

After a minute, Ollie kicked the back of the dog and pulled him away.

4. The plaintiff noticed that the dog had a chunk of yellow flesh from her arm in his mouth. The plaintiff, on rolling up her sleeve, saw a really big hole in her arm. Ollie grabbed a tea towel and Lidocaine which he poured on to the gaping hole. That caused severe pain for the plaintiff.
5. After wrapping the arm in the tea towel, the plaintiff's then best friend suggested going to hospital. The terror of the scene was heightened by the dog still barking, scraping at a door and trying to escape.
6. Extraordinarily, Ollie did not want to bring the plaintiff to hospital and concocted a plan to get the plaintiff into a car and away from the house in advance of the arrival of the plaintiff's father. Ollie advised that the dog would scrape through the door and that the plaintiff should get into the car. More curiously, the plaintiff was brought in the car to a

sports field while the bleeding continued down her fingers on to her jeans. Meanwhile, the then best friend in the car answered a call on the plaintiff's phone from the plaintiff's father, who was asking about the whereabouts of the plaintiff. He was given no reply and the phone was retained by that friend.

7. Ollie later proposed that the plaintiff would go to hospital and ensure that blame for the attached wound be attributed to a stray dog. The triage nurse was given this fiction. The plaintiff was only able to correct it when she was on her own during an examination in the accident and emergency department of Tullamore Hospital.
8. The laceration was too deep for closing in any way. Washing out the gaping wound on a couple of occasions was all that could be done at that time. The plaintiff's mother got to the hospital when some proper understanding in interpersonal relations for the plaintiff commenced again.

Hospitalisation

9. The records of Tullamore Hospital reveal that the plaintiff was given intravenous antibiotics. It was intended to bring her to theatre on 16 February 2016 for debridement, but concerns about the depth of the wound prompted a deferral.
10. The plaintiff was ultimately transferred to St. James's Hospital on 17 February 2016, where further intravenous antibiotics were administered. She was brought to theatre on two occasions, the first for a washout under general anaesthetic, and the second was for a procedure to close the wound, again under general anaesthetic. The plaintiff spent six days at St. James's Hospital.

Mr. Hussey

11. The plaintiff subsequently attended Mr. Alan Hussey, consultant plastic reconstruction surgeon, who practices in Galway, following that surgery. At this time the plaintiff had developed "awful psoriasis", which meant that any healed scar was covered in scabs. The plaintiff never had psoriasis before and it has since appeared occasionally.
12. The plaintiff who has an optimistic and bubbly personality was knocked back severely particularly when Mr. Hussey told her that three further revision surgeries were required to remove the muscle belly which is stitched to the scar. Mr. Hussey advised the plaintiff that fat transfer would be required with some muscle removal.
13. The then and current position is that the movement of the plaintiff's fingers impacts the muscle and it is not a pretty spectacle. However the plaintiff is full of praise for the medical attention which she received.

Photographs

14. The open wound two days after the attack, the arm after treatment in Tullamore Hospital, and the long severe laceration following surgery, are photographed in the booklet introduced during the examination of the plaintiff in this Court. They show a very deep and long wound.

15. The scarring, stitches, and psoriasis, which appeared in the weeks following, are shown on pages 4 to 6 of the booklet. The multiple initial sutures from the procedure in St. James's Hospital are photographed on page 7. The other photographs in the booklet are taken in the two weeks prior to the trial of this action earlier this week.
16. At this stage the muscle belly stitched to the main scar is more noticeable in reality than is photographed on page 19 of the booklet.
17. The genuine and intelligent plaintiff explained matters to the Court calmly. She showed the Court and defence counsel the effect of moving her hand up on the appearance of her forearm. Suffice to say that there is not a shred of exaggeration about the plaintiff's inability to wear short sleeved tops without the severe indentation being noticed.
18. The plaintiff has suffered this type of ignominy from when she was 21, at the time of the attack in 2016 just over five years ago, and which will continue to do so in some respect for the rest of her life.
19. The scarring will not go away, even with the three proposed procedures, which will ameliorate the situation.

Wedding dress

20. Most people will understand and sympathise with the plaintiff about the serious effect on the pleasure and joy in dressing up, wearing beautiful clothes and makeup. The plaintiff's description of her break down when attending for the fitting of her wedding dress, moved everyone in the Court. She still gets upset when the issue is raised. Again, suffice to say that this bubbly plaintiff mother of a young son, who had been an accomplished camogie player with much to offer her son and parents, has had terrible experiences in her young life which were exacerbated if not caused by the wrongful acts and omissions of the defendants. The plaintiff is understandably reluctant to wear clothing which does not cover her arms.

Left arm hand strength

21. The plaintiff is concerned that her left wrist strength is reduced, even though Mr. Hussey, her consultant plastic surgeon, reported in 2019 that strength in the left hand "was measured as being equal to her right".
22. Having the benefit of viewing the plaintiff and witnessing her candour, I accept that the plaintiff does not have the same confidence in the use of her left arm. She explained her reticence in lifting shopping and her young son on the left side. She identified how she feels a strain in the hollow. I also accept that there may be equal grip strength in both hands, which is the different to the sensation experienced by the plaintiff and explained well by her in evidence.

Career options

23. In 2016, the plaintiff was attending Gurteen Agricultural College and was focusing on beef and sheep practicals, such as dosing and stocking. As a result of hitting rock bottom in mood from the trauma giving rise to these proceedings, the plaintiff gave up that course.

She is remarkable in her pursuit of mindfulness, the power of positivity and the law of attraction. The plaintiff explained the law of attraction as being "what you put out in the world comes back to you". The care which she affords her ailing father and her young son with her mother, is evidence of her practice of this philosophy.

24. The plaintiff now works in a residential centre with teenagers who have severe behavioural problems. The concern about using her left arm has not affected her tasks to date but she remains fearful that a prospective employer will hold her concerns and obvious left arm physical appearance against her in recruitment and promotion opportunities.
25. Presently she is studying in the Athlone Institute of Technology. She is studying mental health at Level 6, which relates to youth alcohol and drug addiction. She hopes to start a degree course in social care in September 2021.
26. Ultimately there is no evidence of actual impairment of opportunities due to the attack. The Court understands the plaintiff's desire to be an example for her son. She wants him to look upon her as a successful graduate and that he too should be positive. She demonstrates those qualities in her evidence.

Dr. Ó Cuill

27. The psychological consequences of the trauma are summarised well by Dr. Ó Cuill in his reports. In brief, the plaintiff experienced post-traumatic stress disorder ("PTSD") which has gradually improved.
28. As of 20 April 2021, when he reported again, it can be concluded that the plaintiff's phobic anxiety will persist. In his words "she does not want to pursue treatment for this because it will involve repeated experience of severe anxiety over several months for very little practical benefit."
29. Her general anxiety disorder should resolve if her concerns about future career options prove unfounded. However, he has advised some 12 to 14 sessions of cognitive behaviour therapy. ("CBT")
30. The plaintiff does not want to rely on antidepressants due to the demands of her work and following her philosophy in life. Unfortunately, she has needed and will need that form of medication, depending on triggering circumstances.

The law

31. Irvine J. in *Nolan v Wirenski*, [2016] IECA 56, at paragraph 40, referred to the spectrum of awards and stressed that there is no specific template or formula to be applied. Nevertheless, the questions which Irvine J posed are quite apt to this claim. Summarising as above has taken account of those suggestions.
32. More significantly and having regard to the type of case which merits the maximum sum of general damages, the Court finds that the situation from 14 February 2016 to April 2021, was both physically and psychologically very demanding on the plaintiff. The

trauma, hospitalisation, the deflation from the lack of success in addressing the significant physical appearance on the left arm, the psychological PTSD and concerns, together with the great efforts made by the plaintiff which stands to her credit, merits an award of €65,000 in general damages.

33. The future should be brighter. The plaintiff has said that once money from this claim is available, she will undertake the three reconstruction surgeries and the CBT sessions. Nevertheless, she will have a lifelong scar and phobic anxiety about some dogs. The appropriate award, given the plaintiff's relative youth, is €45,000.
34. This results in an award, taking into account the agreed Special damages of €11,917.90, of €121,917.90.

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Solicitors for the DEFENDANT: FBD solicitors

Counsel for the DEFENDANT Henry Bourke SC, John Hogan