

THE HIGH COURT

[2021] IEHC 406

[RECORD NO. 2008 1840 P]

BETWEEN

KEVIN TRACEY AND KAREN TRACEY

PLAINTIFF

V.

IRELAND, THE ATTORNEY GENERAL, THE MINISTER FOR JUSTICE AND EQUALITY AND LAW REFORM, THE COMMISSIONER OF AN GARDA SIOCHANA, THE GARDA COMPLAINTS BOARD, ANTHONY DUGGAN, MALACHY DUGGAN, MARTIN GRIFFIN, LIAM MULGREW, DECLAN MURRAY, EDWARD FINUCANE, DEIRDRE RYAN, FELIM MCKENNA, PAUL FANNING, KEVIN GROGAN, THE DIRECTOR OF PUBLIC PROSECUTIONS, CLAIRE LOFTUS, RONAN O'NEILL, DECLAN KEATING, THE COURTS SERVICE, FREDA MCILHENNEY, CORMC DUNNE, YVONNE BAMBURY, MARY MCKEOWN, OLIVER DOYLE AND BRIDGET O'DOWDA

DEFENDANTS

[RECORD NO. 2008 11092 P]

BETWEEN

KEVIN TRACEY AND KAREN TRACEY

PLAINTIFF

V.

IRELAND, THE ATTORNEY GENERAL, THE MINISTER FOR JUSTICE AND EQUALITY AND LAW REFORM, THE COMMISSIONER OF AN GARDA SIOCHANA, THE DIRECTOR OF PUBLIC PROSECUTIONS, THE DUBLIN METROPOLITAN DISTRICT COURT, THE COURTS SERVICE, EDWARD FINUCANE, KEVIN GROGAN, DAVID REYNOLDS, PADRAIG O'MEARA, RONAN COFFEY, JASON COURAGE AND MICHAEL FITZPATRICK

DEFENDANTS

[RECORD NO. 2008 11094 P]

BETWEEN

KEVIN TRACEY AND KAREN TRACEY

PLAINTIFF

V.

IRELAND, THE ATTORNEY GENERAL, THE MINISTER FOR JUSTICE AND EQUALITY AND LAW REFORM, THE COMMISSIONER OF AN GARDA SIOCHANA, THE DIRECTOR OF PUBLIC PROSECUTIONS, THE COURTS SERVICE, JOHN MOLLOY, FREDA MCILHENNY, HAZEL BELL, KEITH LAMBE, EDWARD FINUCANE, KEVIN GROGAN, DAVID REYNOLDS, DEIRDRE RYAN AND RONAN COFFEY

DEFENDANTS

JUDGMENT of Mr. Justice Robert Eagar delivered on the 15th day of June 2021

1. The background to the litigation in these six personal injuries summonses begins on the 4th March 2011, when by order of the President of the High Court (Kearns P.) six named proceedings were struck out.
2. Mr. Tracey is the plaintiff in all the cases and some with his wife as co – plaintiff. The dismissal of all the proceedings was then appealed. The appeal was allowed by the Supreme Court in 2016.
3. In 2016 Clarke J. directed that the litigation be listed before the President of the High Court or a person nominated by him for the purpose of ongoing case management. The President of the High Court (Kelly P.) requested that this Judge case manage the proceedings on the 14th October 2016 and the court has since sent three cases to the Jury List. The matters for the purpose of this judgment relate to the remaining three matters, this Court having been asked to case manage six sets of proceedings.

4. By notice of motion dated the 28th June 2019, the plaintiffs sought the recusal of this judge from five High Court cases.
5. At the hearing of this recusal application on the 7th October 2019 the plaintiff attended but chose not to make any submissions before the court.
6. The Court delivered a comprehensive judgment on the 25th October 2019 and dismissed the application by the plaintiff to recuse Eagar J. and ordered that the application stand adjourned in relation to the question of costs and for the ongoing case management of the matter and the four other actions.

The ongoing case management of the remaining cases

7. On 4th November 2019 this Court held a further hearing to determine the question of costs. The plaintiff appeared and made oral submissions in respect of the matter generally and as to why costs should not be awarded against him. At the conclusion of the hearing the Court awarded the costs of the applicants to the defendant with an order that those costs be taxed or ascertained in default of agreement. It also gave certain corrections with regard to the ongoing management of the litigation.
8. The judgment of this Court was appealed to the Court of Appeal. It is noted that it was heard by the Court of Appeal on the 5th of October 2020, six months after the start of the COVID – 19 pandemic. The first plaintiff, Mr. Tracey, appeared and argued the basis of his appeal. He made both written and oral submissions before the court on that date.
9. The Court of Appeal dismissed the plaintiff's appeal by judgment delivered electronically on the 21st December 2020.
10. Case management conferences were before this Court on the 23rd February 2021, the 23rd March 2021 and the 14th April 2021, 11th May 2021 and June 8th 2021.
11. Correspondence was sent by letter dated the 5th May 2021 from the Chief State Solicitor to the plaintiffs Kevin and Karen Tracey in relation to record numbers [2008 11092 P] and [2008 11094 P]. This correspondence indicated that there had been no appearance by the plaintiffs at the case management and that the Court had directed that proceedings bearing the aforementioned record numbers should be set down for trial immediately. Further, the correspondence from the Chief State Solicitor indicated that the defendants were now issuing motions to direct the plaintiffs to set the cases down for trial and the defendant will seek orders that the proceedings be struck out for want of prosecution in the event that the cases are not set down for trial by the plaintiff within three weeks or such period as directed by the court.
12. The correspondence continued: -

"Please note giving the nature of both sets of proceedings we believe the proceedings should be set down for trial as a non – jury matter. And why the next set of proceedings is set down for jury trial, we reserve the right to issue a motion to set aside the motion for trial".

13. On the 11th May 2021 the three proceedings subject to this judgement appeared before the court for further case management. The Court adjourned the matter to the 8th June 2021 as the plaintiffs had not appeared. This Court indicated that the proceedings bearing record numbers [2008/11092 P], [2008/11904 P] and [2008/1840 P] would be struck out if the plaintiffs did not appear on the 8th June 2021.

14. On the 7th June 2021, this Court received a copy letter of a letter sent to the Chief State Solicitor dated the 19th May 2021 from the plaintiffs. This referred to four cases, 2008 11092 P, 2008 11094 P, 2008 1840 P and a further case which was not the subject to case management by this Court bearing record number [2010/00189 P]. The correspondence further stated that the court was advised in writing that due to COVID – 19:

“we would not be in a position to proceed with hearings at present and thus the reason for non – attendance”.

The letter proceeded: -

“Remote hearings were not an option for us. It is important to note that this has been a deliberate thirteen - year delay of these cases by the defending legal teams”.

Additionally, the letter stated: -

“On medical advice until we are fully vaccinated we will not be in a position to attend for an oral hearing. On this basis we request the court to adjourn the matters to an October date for mention”.

The letter continued: -

“Could you please clarify case number 2010 / 00189 P and the parties in this case by return”

Finally, the letter stated: -

“In the matter of 2008 / 1840 P could you also please specify by return what you wish to progress in this case and we will respond. The case was also initiated thirteen years ago”.

This was signed by both plaintiffs.

15. At the case management on the 8th June 2021 counsel for the defendants indicated that his solicitor had not received this letter. The court considered the matter and decided to adjourn the proceedings to the 20th July on the basis that the plaintiff would comply with the requirements set out below.

16. The court will require the plaintiffs to:

- i. provide a copy of the correspondence in which they say the court was advised in writing that due to COVID – 19 “we would not be in a position to proceed with hearings at present”. It seems clear that the plaintiff was in a position to appear in the Court of Appeal on the 5th October 2020 and the court is interested to know when the court was advised in writing and a copy of same.
 - ii. provide a copy of the medical note or source of the medical advice that they would not be in a position to attend for an oral hearing until they are both fully vaccinated.
 - iii. indicate what steps they have taken to obtain vaccinations and the court will not adjourn the matters to an October date until these requirements are met.
17. The court is satisfied that it is not case managing the proceeding bearing record number [2010/00189P]. The court notes that on the 23rd February 2021 the Chief State Solicitor on behalf of the defendants wrote to the plaintiffs in relation to 2008/1840P noting that they had received the plaintiff’s statement of claim delivered on the 24th February 2020 and enclosed the notice for particulars and the amended defence.
18. They also noted that if the plaintiffs wished to furnish a new request for voluntary discovery to reflect the statement of claim dated the 24th February 2020 and the amended defence. The court will require that between now and the 20th July 2021 that the plaintiffs make a request for voluntary discovery.
19. The court is satisfied that the discovery which has been made in relation to [2008/11092 P] and [2008 11094 P] has been complied with and subject to any further motions by the plaintiffs proposes to send these matters to the jury list on the 20th July 2021.
20. Finally, the court does not believe that there has been any deliberate thirteen – year delay of cases by the defending legal teams. There has been substantial delay of the hearing of the appeal from the order of Kearns P. from 2011 to 2016 and further Supreme Court decisions. The court is also satisfied that Mr. Tracey was given ample time to deal with other matters and that the court was not pressing these matters on. The court is now satisfied that it is time to conclude the case management of these proceedings.