

THE HIGH COURT

[2021] IEHC 469
[2021 No. 4095P.]

BETWEEN

BEAUMONT HOSPITAL BOARD AND MARIE MURRAY

PLAINTIFFS

AND

GEMMA O'DOHERTY

DEFENDANT

JUDGMENT of Mr. Justice Allen delivered on the 9th day of July, 2021

Introduction

1. This is an application for an interlocutory order pursuant to s. 33 of the Defamation Act, 2009 directing the removal, and restraining the further publication, of three videos which were posted on the defendant's website <https://gemmaodoherty.com> on 8th, 10th and 11th June, 2011; and restraining the publication of any publication of or about the first plaintiff or its staff pending the trial of the action.
2. The three videos were tagged, respectively, *"/live-from-beaumont-hospital-where-staff-are-being-forced-to-take-experimental-covid-injection-which-has-already-killed-tens-of-thousands/"*, *"/live-from-beaumont-hospital-where-criminal-management-are-forcing-dangerous-covid-injection-on-staff/"* and *"/update-on-vaccine-injuries-leaving-cert-insanity-and-staged-garda-street-gatherings-with-john-waters/"*.

The application

3. The first plaintiff is a body corporate established by an order made by the Minister for Health pursuant to the Health (Corporate Bodies) Act, 1961 and is responsible for the management and control of Beaumont Hospital in Dublin. The second plaintiff is the director of nursing at Beaumont Hospital. The plaintiff's case is that a good deal of what the defendant said in the first two videos and one sentence in the third is plainly and grossly defamatory of them and that the defendant has no defence to the action which is reasonably likely to succeed. The defendant's case is that all that she said is true.
4. The plenary summons, statement of claim and affidavits of verification, and the notice of motion and the affidavits on which the motion is grounded, were all served together on the defendant on 14th June, 2021. The words complained of are set out in the affidavits of Mr. Ian Carter, the chief executive officer of the hospital, and Ms. Murray, who, as I have said is the director of nursing.
5. Mr. Carter exhibited transcripts from the videos and there is no issue as to the accuracy of those transcripts.
6. In the video posted on 8th June, 2021 the defendant said:-

" ... Beaumont has an appalling track record. It is unfit for purpose, totally dysfunctional, and this was long before this scamdemic (sic.) began, when it was, like all of the acute hospitals in the country, emptied out, people who needed life saving treatment were denied it on the phony claim that a pandemic had struck ..."

" Beaumont Hospital, which is funded by the Irish taxpayer, has decided to take its own route and it is forcing staff to get this vaccine, if they don't they will be sent home. They will be demoted to clerical duties, they will be ostracised, they will be defamed, they will be harassed, they will be stalked."

"It has been reported that the Director of Nursing, a woman called Marie Murray, remember that name, one day she will be facing a tribunal for crimes against humanity. Eoghan De Barra, a doctor, which, microbiologist, who I believe is rolled out by RTE in the same way as Luke O'Neill is, well Eoghan De Barra works in this hospital here and he has been filling the minds of staff, who are intelligent, who have done their research and who are saying no to the vaccine, with the most unbelievable rubbish about the adverse events. He's saying that the AstraZeneca vaccine is going to save the world, he's making all sorts of allegations and claims which cannot be substantiated. If we lived in a truly functioning democracy, the Gardaí would be in here today arresting Eoghan De Barra and Marie Murray."

"Why would we do that to the dying, the only explanation is that these people have lost their humanity, they have lost their compassion, these people should not be anywhere near the sick or the dying."

"We could end up in here, any day or night, and if it wasn't for whistle blowers like these incredibly brave staff standing up for their rights and our rights, we would be put into the hands of these psychopaths like Marie Murray and Eoghan De Barra."

"I believe that it is the case in here, that these clots that are being reported, there has been an increase, that they are not informing the authorities and people are being told it's in your head, this is not connected to the vaccine. That is a downright lie."

" ... Beaumont is not only breaching all sorts of international and Irish law, they are breaching the HSE protocols on this. Absolutely criminal that they are doing this to their staff and to their patients. If you are sick, do not come to this hospital because, believe you me, I have seen it through the years and it is like something out of a third world country. Of course, import the third world, we create the third world. Many of the staff in here do not even have proficiency in the English language."

"So, this is a drug pushing operation and the people who I have mentioned, Marie Murray, Eoghan De Barra and all of the management, senior consultants, nurses, doctors, everyone who is involved in pushing this vaccine in this hospital, they have blood on their hands and, one day, the truth will be told about what they did. I'm telling it here now, but one day the whole country and the whole world will know what happened in these death camps. That is what they are."

And

"There is nothing more important that you can do at the moment than to let people know what is going on inside these drug pushing camps."

7. In the video posted on 10th June, 2021 the defendant said:-

"What you are doing right there is their absolute worst nightmare. Marie Murray the director of nursing is going to come before a crimes against humanity tribunal soon. This day is coming, it's getting closer and closer. The rest of Europe is collapsing and once it collapses in the UK and on the continent, it will collapse here too, and absolutely the same applies in America."

"These people should be very, very nervous in their beds tonight. Very nervous about what they are doing to the staff in there. Giving them this, forcing them to take this lethal injection and that is what it is."

8. The statement of claim also complains that earlier in that video the defendant said:-

"The hospital is involved in a massive cover-up. They are involved in absolutely incredible abuses of employment law, employment rights. Forcing staff to get this experimental vaccine."

9. It was said that the transcript of the third video, that published on 11th June, 2021, contained similar material, although less of it. The statement of claim refers to one short passage, which reads:-

"Beaumont is behaving reprehensibly towards staff, the staff are now being told that they are not to come to work if they are not vaccinated. This is unbelievable outrageous criminality on the part of the Director of Nursing, Marie Murray, and microbiologist called Eoghan De Barra."

10. The plaintiffs' case is that all of these statements are defamatory and untrue. Mr. Carter has deposed that all vaccinations in the hospital are undertaken on a voluntary and consented basis in line with HSE policy. He has deposed that the consent process includes the provision of information from appropriate experts, including consultants in infectious diseases, microbiology, occupational health medicine and immunology. Staff can liaise with the occupational health department if they have any concerns regarding a post vaccination reaction. He has sworn that adverse reactions arising from the administration of COVID-19 vaccines are reported to the Health Products Regulatory Authority and that clinically significant adverse reactions are reported on the National Incident Management System. In addition Beaumont Hospital has an internal reporting system, overseen by a medical safety officer.

11. Mr. Carter summarised the way in which patient services are managed and delivered to mitigate the spread of infection. These measures include patient flow control, social distancing, the use of PPE, serial testing of patients regardless of symptoms and so on.

12. Mr. Carter has deposed that the European Medicines Agency has authorised a number of COVID-19 vaccines that have satisfied regulatory requirements for pharmaceutical quality, safety and effectiveness. The hospital advocates and encourages all of its staff to avail of the vaccines. The vaccination programme in Beaumont commenced in December, 2020 and by the time Mr. Carter swore his affidavit on 14th June, 2021, 32,015 vaccines had been administered to patients and staff. All of the staff working in frontline positions have been vaccinated. There have been no instances of blood clots amongst the patients or staff. Since the commencement of the national vaccination programme Beaumont Hospital has seen a significant reduction in the incidence of infection amongst its patients and staff.
13. The guidelines which have been implemented in Beaumont Hospital are those issued by the HSE on 28th May, 2021 entitled "*Risk Assessment for COVID-19 Vaccination, Guidelines for Healthcare Workers*". These guidelines set out in the introduction that:-
- "During outbreaks of vaccine preventable disease, for which there is a safe and effective vaccine, institutions have a responsibility to provide and promote immunisation to staff for the purpose of protecting them from infection and disease. Healthcare institutions have a further responsibility to limit patient and staff exposure to risk of infection from individuals who are not immunised."*
14. The guidelines provide at chapter 6, under the heading COVID-19 Vaccination Programme and Risk Assessment:-
- "6.1. The Safety, Health and Welfare at Work Act 2005 provides that employers have a duty of care towards employees in relation to safety, health and welfare at work. In that context it is appropriate to manage the risk to any employee of contracting the virus and/or potentially passing on the virus to other employees*
- 6.2 COVID-19 vaccination is recommended for all Healthcare Workers other than those who have a specific medical contraindication for the purpose of managing this risk. Where people have a specific medical contraindication it is important that this is appropriately assessed and documented.*
- 6.3 The HSE will provide information on COVID 19 vaccination and provide vaccination as above. Vaccination is based on the consent of the staff member to accept vaccination. ...*
- 5.5 (sic.) Healthcare workers, students, contractors who decline vaccination should be asked to confirm that they have been offered vaccination and understand that vaccination remains available to them if they change their mind or if their circumstances change. ..."*
15. Appended to the guidelines is a letter from Dr. Colm Henry, chief clinical officer of the HSE, to all CEOs Hospital Groups, CHOs, Clinical Directors, and Human Resources leads.

Having observed that vaccination rates among healthcare workers nationally are between 95-100%, Dr. Henry advised that:-

"For the minority of [healthcare workers] who have chosen not to be vaccinated, it is necessary to assess the risks associated with potential transmission to patients and staff colleagues. ...

It may be necessary in some circumstances for unvaccinated staff to work in lower risk areas in a temporary capacity. These guidelines will be reviewed again in September 2021 and will be updated in accordance with Public Health guidance at that time."

16. Mr. Carter has sworn that no member of staff has been forced to take a vaccine. In the case of any frontline healthcare worker who does not wish to take a vaccine, the hospital follows its Risk Assessment Protocol which is to meet with the staff member and to provide him or her with advice, support and information to allow them to make a fully informed decision to either take up or decline a vaccine. If the staff member steadfastly declines, he or she is asked to complete a "Decline of COVID Vaccine Form" which incorporates a workplace assessment of the risk of transmission to the subject, colleagues, patients and relatives. Where reassignment is necessary, frontline staff are assigned to alternative duties as "an interim, protective and non-punitive measure subject to ongoing review as the situation evolves." As Mr. Carter says, this protocol is in accordance with the HSE guidelines.
17. Mr. Carter has unequivocally deposed that no staff member has been demoted to clerical duties, defamed, harassed or stalked.
18. As to the provision of care, the hospital's case is that it has continued throughout the pandemic to provide both emergency and elective services. Mr. Carter has provided some statistics by way of example. One hundred per cent of patients with sub-arachnoid haemorrhage were admitted within 24 hours; 100% of patients referred to the rapid access prostate clinic were given an appointment within 20 days of referral; 100% of patients referred to the rapid access lung clinic were given an appointment within 10 days of referral; and since mid-March, 2020 there have been no admitted patients waiting for a bed. The hospital is concerned that the publication of false and baseless statements could influence and frighten persons, particularly vulnerable patients, who might otherwise avail of healthcare.
19. Ms. Marie Murray swore an affidavit in support of the application. It is not necessary to dwell too much on the detail of Ms. Murray's evidence which, naturally, focusses on the statements directed to her which she characterises as outrageous, dangerous, clearly defamatory, and simply untrue. Ms. Murray recapitulates the protocol which is followed for staff members who are reluctant, and ultimately decline, to be vaccinated, emphasising that her role is not to change the mind of a staff member who has decided not to take a vaccine, and that she respects the personal choice and personal autonomy of every staff member.

The answer

20. In response to the motion the defendant had sworn a 60 paragraph affidavit in the body of which there are links to a number of internet sites and sources, and she has exhibited a number of documents. In substance, the defendant's answer to the application is that she will stand over all of what she has said as true. It will be necessary to carefully analyse and consider all that the defendant has said and what she puts forward as the evidence supporting the truth of what she said but before doing so it is useful to recall the legal principles which are to be applied on an application such as this.
21. While there was sharp disagreement between the parties as to whether, on the facts, the orders sought by the plaintiffs could or should be made, there was no issue as to the applicable legal principles.

Legal principles

22. In *Gilroy v. O'Leary* [2019] IEHC 52 I considered the principles applicable to an application for an interlocutory order pursuant to s. 33 of the Defamation Act, 2009 and, for the reasons then given, concluded that the test under the Act was the same test as had applied at common law. The threshold test for what is now the statutory jurisdiction to make an order of the kind now sought is whether, firstly, the statement is defamatory and, if it is, whether the defendant has no defence to the action that is reasonably likely to succeed.
23. In *Gilroy v. O'Leary* and more recently *Lidl Ireland GmbH v. Irish Farmers Association* [2021] IEHC 381 the plaintiffs fell at the first hurdle. In this case there is no issue that the words were defamatory and so the case turns on the application of the second leg. The defence which the defendant in this case asserts is a defence of truth.
24. Both parties referred to the judgment of Kelly J. (as he then was) in *Reynolds v. Malocco* [1999] 2 I.R. 203 which considered the correct approach to be taken to an application for an interlocutory injunction which was resisted on the basis that the defendant would plead justification, or, in the modern language, defend the action by putting forward the defence of truth. It is useful to set out not only the court's conclusion as to the test to be applied but its reasoning for coming to the conclusion which it did.
25. Kelly J., starting at the bottom of p. 209 of the report, said:-

"A plaintiff in an action such as this, in order to obtain an interlocutory injunction, must show not merely that he has raised a serious issue concerning the words complained of but that there is no doubt that they are defamatory. Furthermore, if the defendant intends to plead justification or any other recognised defence, normally an injunction of this type will be refused.

*The jurisdiction to grant interlocutory injunctions to restrain publication of defamatory statements has been described as one 'of a delicate nature' which 'ought only to be exercised in the clearest cases'. (See the judgment of Esher M.R. in *Coulson v. Coulson* (1887) 3 T.L.R. 846).*

That approach was expressly approved by the Supreme Court in Sinclair v Gogarty [1937] I.R. 377. In the course of his judgment Sullivan C.J., with whom all four other members of the Court agreed, said at p 384:-

'The principle upon which the Court should act in considering such applications was stated by Lord Esher M.R. in Coulson v Coulson (1887) 3 T.L.R. 846, and his statement of the principle was approved of and adopted by the Court of Appeal in Bonnard v Perryman [1891] 2 Ch. 269. The principle is this, that an interlocutory injunction should only be granted in the clearest cases where any jury would say that the matter complained of was libelous, and where if the jury did not so find the Court would set aside the verdict as unreasonable.'

The reason for the reluctance on the part of the courts to grant interlocutory injunctions in cases of this sort is grounded on the importance attached to the right to free speech. This has been the position from at least as far back as the decision in Bonnard v Perryman [1891] 2 Ch. 269 where Coleridge L.J. said at p 284:-

'...the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions.'

The sentiments expressed by Coleridge L.J. have been heeded by the courts and nowadays are fortified by the provisions of Art. 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Coleridge L.J. went on to say:-

'The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed ...'

It is therefore clear that the first matter which I must inquire into is whether or not the plaintiff's complaints are made out with the degree of clarity required so as to enable me to conclude that the words complained of are undoubtedly defamatory.

If I so conclude in favour of the plaintiff, I then have to consider whether, in the light of the defendants' stated intention to plead justification concerning the drug dealing allegation, an injunction can be granted at all.

The reason why I have to consider this aspect of the matter arises because of the decision in Bonnard v Perryman [1891] 2 Ch. 269. As I have already pointed out, the decision in that case was approved by the Supreme Court in Sinclair v Gogarty

[1937] I.R. 377. The rule established by that decision is that where a defendant in a libel action intends to plead justification, a court will not grant an interlocutory injunction to restrain publication of the statement complained of.

The question then arises as to whether a bald statement of intention to plead justification is sufficient to debar a plaintiff, who might otherwise be entitled to an injunction, from such relief. If it is, then the plaintiff's application in respect to the drug dealing activities must be doomed to failure. Counsel on behalf of the plaintiff urges me not to adopt this approach but rather to conduct an examination of the defendant's evidence so as to establish whether the plea of justification has any substance or prospect of success.

There appear to be two conflicting decisions in this jurisdiction as to the proper approach to take on this topic.

On the one hand there is the decision in Gallagher v Tuohy (1924) 58 I.L.T.R. 134, where the matter complained of consisted of a circular containing defamatory statements concerning the plaintiff in his business capacity. Murnaghan J stated at p 135:-

'The question I have to decide is whether an order should be made restraining the defendants from repeating statements which they allege to be true and provable. Against the granting of even an order the authority of Bonnard v Perryman has been cited to me, and that authority has not been controverted by the plaintiff. The effect of that decision seems to be reasonably clear. The Court should not readily restrain the publication of any matter which is not obviously a libel. I would have no difficulty at all in deciding that the statement was defamatory but for the plea of justification. That plea having been raised, it seems to me that I cannot prejudge the issue ... and decide that the plea of justification is erroneous. That would be the effect of granting the injunction sought.'

On the other hand, the decision of the Supreme Court in Cullen v Stanley [1926] I.R. 73 demonstrates a different approach. There the plaintiff sought an interlocutory injunction to restrain the publication of statements by the defendants to the effect that he had acted as a 'scab' on the occasion of a bakers' strike. The plaintiff deposed that the statements were absolutely false and that he believed the publication was for the purpose of prejudicing his position as a candidate in an election. One of the defendants submitted an affidavit stating that all the allegations were true, and that he would prove this at trial. The Supreme Court nonetheless granted an interlocutory injunction. O'Connor J. referred to the argument of the defendant to the effect that the rule in Bonnard v Perryman [1891] I.R. 269, automatically precluded the grant of an interlocutory injunction once the defence of justification was raised. He said at p 84:-

'I do not think that the Court of Appeal intended to lay down a rule which should be rigidly applied to every case, because the judgment of Coleridge C.J. wound up with the observation that, on the whole, the Court thought that it was wiser in that case, as it generally, and in all but exceptional cases, must be, to abstain from interference until the trial of the plea of justification.'

The judge then examined the detailed affidavit of the plaintiff, which he contrasted with the 'baldest affidavit' of the defendant. He held that on the evidence before that Court that there was nothing to support the plea of justification.

Of these two approaches I prefer the latter. I do not think that a rule which permits a defendant to, in effect, oust the ability of this Court to intervene by way of injunction in an appropriate case by the simple expedient of expressing an intention to plead justification at the trial of the action, is consistent with the obligations imposed on the court under the Constitution. Furthermore, the application of such a rigid rule, without an ability on the part of the court to ascertain whether the plea of justification had any substance or not, would provide a happy hunting ground for unscrupulous defamers.

I am therefore satisfied that it is open to the court to examine the evidence adduced by the defendant in support of the justification plea so as to ascertain whether it has any substance or prospect of success. I turn now to consider the complaints made by the plaintiff."

26. As to the caution, or judicial hesitation, to be applied in considering whether to grant an interlocutory injunction restraining publication, Mr. McCullough referred to the recent judgment of Costello J. in *Start Mortgages D.A.C. v. Gilroy* [2021] IECA 147 where it was said, at para. 63:-

*"The respondent also relied upon the decision of Peart J. in *Tansey v. Gill* [2012] 1 I.R. 380, para. 24, where he said:-*

'... it seems to me that whatever judicial hesitation has existed in the matter of granting an interlocutory injunction to restrain publication pending trial should be eased in order to provide an effective remedy for any person in this State who is subjected to unscrupulous, unbridled, scurrilous and defamatory material published on a website which can, without any editorial control by the host of the website, seriously damage him or her either in his or her private or business life. In my view, the ready availability of such a means of defaming a person by any person who for any reason wishes to do so has such a capacity to cause insult and immediate and permanent damage to reputation means that the courts should more readily move to restrain such activity at an interlocutory stage of the proceedings in these types of proceedings ...'

27. In the same case, at paras. 86 and 87, Costello J. said:-

"86. *Two things follow from this conclusion. First, the court cannot act on the basis of bare assertions. The High Court and this court, therefore, must approach the application for injunctive relief on the basis that the publication, and the intended publication, is defamatory, and there is no case of justification or truth. That being so, the justice of the case requires the court to uphold the right of the respondent's officers, employees, solicitors and counsel to their good name; the right of the appellant to exercise his freedom of speech is outweighed in circumstances where he has not made out, and has failed to attempt to make out, any basis which could justify his right to injure others by his exercise of his right to freedom of expression. Second, the inference that the appellant is acting maliciously is inescapable.*

87. *I adopt the comments of Peart J. in Tansey v. Gill, quoted above, as correctly stating the approach to be taken in the era of the instant worldwide publication of material, without any editorial control, made maliciously and, as a particularly illegitimate tactic, in ongoing litigation. ... "*

28. The starting point then is to recognise the importance of the right to free speech and the freedom of expression of opinion. This is a right of every citizen which is zealously protected by law. If in principle the legal position of a journalist is no different to that of any other citizen, the importance of protecting free speech is all the more obvious where an order is sought to restrain publication or re-publication by a journalist. Ms. O'Doherty quite rightly emphasises those passages from the judgment of Kelly J. in *Reynolds v. Malocco* which underline the importance of free speech. That importance is recognised by the law in the approach which is taken to applications for interlocutory injunctions. By contrast with the general rule, the jurisdiction of the court is not engaged by showing merely that there is an issue to be tried as to the defendant's entitlement to have spoken or written the words complained of, or even that the plaintiff has shown that he has a strong case which is likely to succeed at trial. Rather the plaintiff must show that the words complained of are defamatory and that the defendant has no defence which is reasonably likely to succeed.

29. The other side of the coin is that the right of free speech is not an absolute right. The subject of a damaging statement has a right to his or her good name and reputation and a right to call upon the court to protect and vindicate that right. Often the circumstances of a case are such that the remedy can only be an award of damages after a trial but sometimes, in the clearest of cases, the court can be asked to intervene before the trial. Plainly there is no public interest in the publication of material which is untrue. The unquestionable public interest in free speech does not apply where it can be shown that the damaging words are clearly untrue, or, put the other way around, where it can be shown that the publisher – although he may assert that the words are true – has no reasonable prospect of establishing that they are.

The meaning of the words

30. The first stage of the test is to decide whether the words complained of are clearly defamatory. The plaintiffs complain that they are, and the defendant does not argue otherwise.
31. In the case of the first plaintiff, the words complained of are said to have meant and to have been understood to mean:-
- (a) That Beaumont Hospital denied lifesaving treatment to patients without good reason;
 - (b) That Beaumont Hospital invented or relied upon a false claim of a pandemic to deny patients lifesaving treatment;
 - (c) That Beaumont Hospital is demoting, ostracising, defaming, harassing and stalking staff who do not get the vaccine;
 - (d) That Beaumont Hospital is administering lethal injections of the COVID-19 vaccines;
 - (e) That the director of nursing of Beaumont Hospital has committed crimes against humanity;
 - (f) That the director of nursing of Beaumont Hospital has committed criminal offences and should be arrested;
 - (g) That Beaumont Hospital is in breach of employment law, the Nuremberg code, constitutional, fundamental and inalienable legal rights;
 - (h) That Beaumont Hospital is a dump and something out of a third world country;
 - (i) That the director of nursing of Beaumont Hospital is a psychopath;
 - (j) That Beaumont Hospital is engaged in criminal behaviour;
 - (k) That the management, senior consultants, nurses and doctors at Beaumont Hospital involved in the administration of the vaccine have blood on their hands;
 - (l) That Beaumont Hospital employs psychopaths;
 - (m) That Beaumont Hospital is a drug pushing camp;
 - (n) That Beaumont Hospital is a death camp.
32. There is an alternative plea in the statement of claim of innuendo, but the pleaded meanings are the natural and ordinary meaning of the words used.
33. In the case of the second plaintiff, the words complained of are said to have meant and to have been understood to mean:-

- (a) That Ms. Murray is demoting, ostracising, defaming, harassing and stalking staff who do not get the vaccine;
 - (b) That Ms. Murray has committed crimes against humanity
 - (c) That Ms. Murray has committed criminal offences and should be arrested;
 - (d) That Ms. Murray is in breach of employment law, the Nuremberg code, constitutional, fundamental and inalienable rights;
 - (e) That Ms. Murray is a psychopath;
 - (f) That Ms. Murray is engaged in criminal behaviour;
 - (g) That Ms. Murray has blood on her hands;
 - (h) That Ms. Murray is involved in the management and operation of a death camp.
34. Again there is an alternative plea in the statement of claim of innuendo, but again the pleaded meanings are the natural and ordinary meaning of the words used.
35. What the case turns on, then, is the second stage of the test, namely, whether the plaintiffs have established that the defendant has no defence to the action which is reasonably likely to succeed.

The evidence adduced in support of the plea of truth

36. As has been seen, it is not sufficient for the defendant to simply assert that the words complained of are true. Rather the court must examine the evidence adduced in support of the plea of truth to assess whether that defence has any substance or prospect of success. Ms. O'Doherty has filed quite a long affidavit but the question is whether the evidence which she has put forward, taken at its height, and on the assumption that it will be accepted by the jury, could justify what she has said about Beaumont Hospital and Ms. Murray.
37. Ms. Doherty introduces herself as an award-winning journalist who has been exposing the dangers of vaccines for several decades. The matters at issue, she says, relate to the gravest possible risks to life, established already in multiple reports of emerging deaths and serious injuries arising from COVID-19 vaccines, the partial withdrawal and suspension of the vaccine in multiple jurisdictions, and the number of eminent doctors and scientists emerging the world over to warn about the harmful, indeed lethal, consequences of these vaccines.
38. Ms. O'Doherty has deposed that the death toll from COVID-19 vaccines currently stands at more than 14,000 people in Europe according to the European Medicines Agency but that this is believed – she does not say by whom – to be underestimated by more than 80%. She asserts that the number of COVID-vaccine deaths in the U.S. now exceeds the total number of vaccine related deaths recorded on the VAERS (Vaccine Adverse Event Reporting System) over the preceding 29 years. She asserts that at least 30 people die

every day in the U.S. from the vaccine and that millions of people have suffered extreme adverse reactions including anaphylactic shock, thrombosis, blood clots, blindness, severe convulsions, multi-system autoimmune disorders and multiple organ failure. In Ireland, she says, 67 deaths and 9,470 reports of side effects of the COVID-19 vaccines were notified to the HPRA up to the first week of June.

39. In support of these assertions Ms. O'Doherty refers to two articles or videos published by her on her own website; a posting on the website of Principia Scientific – an organisation which promotes the view that carbon dioxide is not a greenhouse gas; a tweet by a Canadian doctor called Jean Marc Benoit; and a safety update published by the Health Products Regulatory Authority: but for the purposes of this application the plaintiffs do not take issue with the defendant's perception of the risks associated with the vaccines.
40. Ms. O'Doherty goes on to say that the COVID-19 vaccines were granted emergency authorisation on the basis that they may reduce symptoms and not because they prevent transmission, and that when the trials are complete in January, 2023 it will be possible to know if they reduce the spread. She says that the mRNA injections use a new technology which triggers the manufacture in the human body of a protein which will generate an immune response and goes on to refer to earlier animal trials and the belief of scientists that the effect of these vaccines explains the thousands of reported side-effects. Ms. O'Doherty says that COVID-19 is defined in Black's Medical Dictionary as a common cold; that the death rate is similar to a seasonal flu; and that many of those recorded as having died from COVID-19 had underlying conditions which may have caused their deaths.
41. Again the plaintiffs do not challenge the defendant's entitlement – as the plaintiffs would say – to hold or to express these views. Ms. O'Doherty is adamant that these are not matters of opinion but of scientific fact.
42. Ms. O'Doherty says that studies have shown that Hydroxychloroquine – an antimalarial drug - and Ivermectin – an antiparasitic drug – are safe, effective and affordable medications to prevent and treat COVID-19, and that Vitamin D, Vitamin C and Zinc have also been found to be very beneficial. The defendant refers to an opinion said to have been issued by the WHO in relation to the use of PCR testing and the use by the HSE of such testing, which she suggests renders test results meaningless and redundant.
43. Ms. O'Doherty refers to calls by an unspecified growing number of unidentified medical experts for an immediate suspension of the vaccines due to what she says is the unprecedented levels of death and injuries they are said to have caused, and to a study carried out by a U.K. company which is said to have concluded that there is more than enough evidence to declare that the vaccines are unsafe for use in humans.
44. Again, the plaintiffs do not challenge the defendant's entitlement to have said or to say any of this.
45. It is not necessary to set out all of the detail in Ms. O'Doherty's affidavit or to identify the sources information upon which her views are based. The substance of what the

defendant says is that, in her view, the COVID-19 vaccines are experimental, unnecessary, ineffective and disproportionately dangerous to the risks of illness or death from infection with the disease.

46. As to Beaumont Hospital and Ms. Murray, Ms. O'Doherty says that she was approached in May, 2021 by a group of healthcare workers, nurses and other staff who are said to be part of a cohort of staff unwilling to take the injection "*due to its substantial death and injury toll and the fact that it is still an experimental trial.*" The workers are said to have been very much aware of the independent research on COVID vaccines and to have been "*deeply concerned by the staggering numbers of deaths and injuries*" yet that they were being "*tormented*" by management to take the vaccine. It is said that even though these staff members had told management that they would rather wait until the experimental phase and safety trials were finished, they were warned that their jobs would be gone if they did not take it; that they would be moved away from patients and the public and put in offices where they would have to do filing and other clerical work – a role for which they were not equipped and which they had not been hired to do. It is said that these staff members were also told that they might have to work remotely and that they have identified the director of nursing, Ms. Murray "*as the key protagonist in this.*"
47. The staff members interviewed by Ms. O'Doherty are said to be deeply upset and traumatised and to feel degraded and victimised by Ms. Murray in particular and by management at large. They are said to have tried to explain the many downsides of the vaccine and that it does not stop transmission but that "*she dismisses their concerns and behaves like a cheerleader for the injections.*" The staff are reported to have said that they are being coerced, punished, threatened, demoted and harassed by management, including Ms. Murray, to take "*the experimental injection.*" Some of them are said to be grief-stricken and suffering from sleepless nights and anxiety due to pressure that is being put on them and often to have been close to tears when they describe working conditions in the hospital. They have been told that they cannot see or touch patients and are said to have said that they feel like outcasts having given their lives to the hospital.
48. The staff are said to have said that Beaumont Hospital is the only hospital in the country that has made the vaccine mandatory for staff, even though this is against HSE and HIQA policy; that management had produced a protocol in breach of HSE policy mandating vaccines for staff; and that they had been given a letter stating that their roles could be changed and that they might have to work remotely if they refuse the vaccine.
49. The hospital staff are said to have said that Ms. Murray has told them that vaccination is mandatory and that this is hospital policy and that she is engaged in demotion and punishment. One nurse is said to have said that she was moved away from her patients – a situation which has left her devastated and feeling ostracised and punished for not taking the vaccine. That nurse is said to have said that she was about to start a course but that it was cancelled as a result of her deferral of the vaccine and another staff member is said to have said that an order had been made to suspend her shifts until she had a meeting with Ms. Murray about the vaccination.

50. Another staff member is said to have witnessed suspected “*vaccine injuries*” coming into the hospital and to have been concerned that they were not being reported and to have been ordered to stay at home.
51. The staff are said to have said that they had asked the hospital to provide information about the potential injures any side effects but were not given it and that Beaumont Hospital had not informed them of the significant number of adverse effects produced by the COVID-19 vaccines and the enormous death toll to date. In this matter alone, it is said, the hospital and Ms. Murray are breaking the law in failing to abide by the HSE National Consent Policy which requires that prospective vaccine recipients receive fair and sufficient information on the drawbacks and side effects associated with the vaccine.
52. Ms. O’Doherty’s case is that the HSE National Consent Policy requires that:-
- “[The staff] must be given adequate information to enable them to assess whether or not the vaccine will be of any real value to them. This would entail the provision of independent research data which clearly show that the vast majority of recipients receive most of the benefits touted by the manufacturer. In addition, staff must be informed of the availability of alternative modes of treatment and their effectiveness.”*
53. Ms. O’Doherty points to the requirement of the HSE Policy which provides that it is essential that those who provide health and social care document clearly both the service user’s agreement to the intervention and the discussions which led up to that agreement if the intervention is innovative or experimental. It is said that Beaumont Hospital staff, in particular Ms. Murray, have been telling staff that the AstraZeneca and Johnson & Johnson vaccines are “*very safe*” and that Dr. De Barra told another staff member that “*AstraZeneca is going to save the world.*” These claims, it is said, are patently untrue and equate to nothing short of deception, fraud, criminal negligence and the reckless endangerment of staff and patients.
54. Ms. O’Doherty goes on to say that the AstraZeneca vaccine has been banned in more than a dozen European countries; that there is a clear link between that vaccine and the Johnson & Johnson vaccine and blood clots; that Beaumont Hospital has failed to inform its staff about Pfizer and Johnson & Johnson’s damning criminal records; and that Beaumont Hospital and some of its doctors have received financial donations from one of the pharmaceutical companies making COVID-19 vaccines.
55. Ms. O’Doherty deposes that the Beaumont Hospital policy implies that staff who do not take the vaccine are placing patients and other members of staff at greater risk of infection. She says that Ms. Murray has told nurses that they will not be able to treat or see patients if they do not get vaccinated and that Ms. Murray claims that the vaccines prevent transmission of the disease, something which has been refuted by the WHO; that the manufacturers have stated that they cannot guarantee that the vaccines will prevent transmission of the virus; and that the evidentiary basis for the manufacturers’ claims that the symptoms in vaccinated patients are less severe have been disputed by

respected medical scientists. From this, Ms. O'Doherty moves to an assertion that:
"Beaumont and Ms. Murray are once more engaging in medically negligence and fraudulent behaviour endangering her staff and patients in a most egregious manner."

Analysis

56. To focus attention on what he said the case was about, Mr. McCullough spelled out what he said the case was not about. It was not, he said, about the defendant's views about vaccination. The plaintiffs' position was that the defendant was perfectly entitled to say what she wants about the perceived dangers of vaccination; to say that hospital staff should not take vaccinations; to say that the defendants should not recommend staff to take vaccinations; or to say that she regards unvaccinated people as posing no risk. On the plaintiffs' case, those were points of view which she is entitled to have.
57. However, it is said, those are not the views that the defendant has expressed. Rather, it is said, the defendant has said that Beaumont Hospital has denied life-saving treatment on the dishonest basis that while it knows that there is no risk associated with the COVID-19 pandemic, it has claimed otherwise. The defendant is said to have said that staff who have not taken the vaccination have been ostracised, defamed, harassed and stalked when in fact all that has happened is that staff who have not taken vaccinations have been removed from patient facing roles, in accordance with HSE advice. The defendant is said to have said that Ms. Murray has committed crimes against humanity. She is said to have said that Beaumont Hospital has coerced people to take drugs; that it is a dump; that it employs psychopaths; that it has suppressed the truth about blood clots; that the hospital is in breach of Irish and international law; that the hospital has behaved in a criminal manner; and that the hospital staff have blood on their hands; that the hospital is a death camp; and that it has been pushing drugs. The plaintiffs' case is that those statements go far beyond anything which the defendant is entitled to say in the ordinary course of discussion of matters of public interest. Moreover, it is said, the evidence on which the defendant relies does not support the truth of what she has said.
58. The jurisdiction invoked by the plaintiffs on this application is, as has been said, a delicate one. The court must be careful not to interfere with free speech or the free expression of opinions, *a fortiori* I think with responsible journalism and the freedom of the press. Orders of the type now sought must be made only in the clearest cases and any doubt resolved against the applicant. On the other hand, journalists, no less than citizens in general, are not entitled to wantonly or recklessly traduce reputations and the court will intervene if it can be shown that statements have been made, and are liable to be repeated, for which there is no reasonable basis.
59. In this case the assertions complained of are assertions of fact, rather than of opinion, and the defendant seeks to justify them as such. Insofar as the words complained of are statements of fact they must be based on fact. When carefully analysed, much of what the defendant has said of and concerning the plaintiffs is not based on fact but on the reported perceptions or feelings of others.

60. Ms. O'Doherty has exhibited a number of what are described as "Testimonies" which appear to be anonymised witness statements or summaries of interviews. As to the objective facts, there is little or nothing between what is recorded in these documents and the evidence of Mr. Carter and Ms. Murray. One of the interviewees is reported as saying that he or she was coerced, intimidated and "somewhat bullied" but beneath the expressions of horror and dread the only substance is that the staff member was offered and encouraged to take a vaccination; was the subject of a risk assessment; and was informed that he or she would be sent home or asked to work from home if he or she remained unvaccinated. Another is recorded as having described the hospital as a death camp because vulnerable patients were allowed to stay around COVID patients. This staff member is recorded as having said on the one hand that he or she was forced to take a vaccine and on the other that he or she was told that the hospital could not have unvaccinated staff working on the frontline and that some other work would be found for him or her away from the public. The wife of a staff member reported the coercion of her husband to take a vaccine he did not want to take but it is quite clear that the husband did not take – and was not coerced into taking – a vaccine. What is reported as amounting to coercion is the fact that he was told to do filing work from home. In the wife's view, the last time this happened was in World War II when people were guinea pigs in vaccine experiments.
61. I am quite satisfied that Ms. O'Doherty will be in a position to adduce evidence that a number of staff members do not want to take the vaccine, disagree with the HSE and Beaumont Hospital policy, and would much prefer to continue in their frontline roles than the backroom roles to which they have been redeployed: but it is simply not sensible to say that anyone was forced or coerced into doing something which they have not done. No one has said that they were demoted. One is recorded as having expressed concern that he or she might not be paid but there is no suggestion that anyone was not in fact paid or was paid any less than they otherwise would have been.
62. As to the facts, the HSE Guidelines for Healthcare Workers are clear that Beaumont Hospital has a responsibility to not only provide but to promote immunisation of staff and to limit patient and staff exposure to the risk of infection from individuals who are not immunised. It necessarily follows, and it was spelled out in Dr. Henry's letter introducing the guidelines to senior management, that it may be necessary for unvaccinated staff to work in lower risk areas. It can hardly be doubted that healthcare professionals who trained for and are experienced in frontline roles would wish to work in those roles, or that they would be disappointed and upset if they could not do so – or, as the defendant would put it, were to be prevented from doing so – but the staff as well as the hospital must work within the guidance.
63. Ms. O'Doherty, by reference to the materials to which she has referred, has strong views as to the necessity for and the efficacy and safety of COVID-19 vaccination but the fact of the matter is that it is HSE policy that vaccination is recommended for all healthcare workers other than those who have a specific medical contraindication.

64. The HSE provides information on vaccination and the evidence of Mr. Carter and Ms. Murray is that this information is provided by Beaumont Hospital to its staff. In truth, this evidence is uncontradicted.
65. Ms. O'Doherty does seek to make the case by reference to what she has been told by those whom she interviewed that the hospital has failed to comply with its obligations to provide appropriate information but it is clear that the case she would make is not that the staff have not been provided with the HSE information and guidance but rather that the hospital has not provided staff with the internet publications which she characterises as "*independent research data*" and which is the basis for her belief that the vaccines which have been approved by the European Medicines Agency for pharmaceutical quality, safety and effectiveness are experimental, ineffective and dangerous.
66. Even if, as Ms. Doherty says, the vaccines are innovative or experimental, there is simply no evidence to sustain an assertion that anyone was given them, or forced to take them, without consent.
67. In practical terms, what the defendant's view of information as to the availability of alternative modes of treatment and their effectiveness amounts to is that instead of, or perhaps as well as, the HSE information on COVID-19 vaccination with approved vaccines the hospital should be providing information in relation to what she believes to be, but what all of the national and international regulatory authorities have decided are not, better or safer or more efficacious alternatives.
68. There is no contest as to the meaning of the words complained of and no room in any of the meanings complained of for a difference of opinion. The defendant has asserted that the plaintiffs are deliberately putting lives at risk, but the uncontested fact is that the plaintiffs are implementing HSE guidance as to the management of the hospital, the provision of information in relation to, and the promotion of, vaccines, and the management of risk in the case of staff who cannot or will not be vaccinated.
69. Neither, whatever about the perceptions or complaints of those staff members who have been interviewed by the defendant, is there any issue as to the fact of the hospital's vaccination policy or the implementation of that policy. Vaccination in Beaumont Hospital, as well as everywhere else, is based on the consent of the staff member to accept vaccination. The promotion of vaccination in accordance with the HSE guidance cannot fairly or sensibly be characterised as harassment or stalking or drug pushing. The redeployment of unvaccinated staff in accordance with those guidelines cannot fairly or sensibly be characterised as demotion, defamation or ostracization. Nor can the communication to a staff member of the results of a risk assessment or the potential necessity for redeployment away from the frontline be properly characterised as coercion or psychopathic.
70. There is absolutely no justification advanced for the allegation that Beaumont Hospital is administering lethal injections of COVID-19 vaccines. While the defendant is acknowledged to be perfectly entitled to her opinion as to the safety and efficacy of

vaccines in general, the import of her videos is that the policy and practice in Beaumont is different to other hospitals. There is simply no evidence of that. Moreover, the import of that suggestion is that the plaintiffs are administering or promoting injections which they know to be lethal, for which there is simply no reasonable basis.

71. The first of Beaumont Hospital's complaints is that the defendant has said that it denied lifesaving treatment without good reason. In her video of 8th June, 2021 the defendant made reference to a "scamdemic" and a "phony claim that a pandemic had struck". The defendant in her replying affidavit asserts that Beaumont Hospital and Ms. Murray have fraudulently asserted that there is a pandemic in Ireland, suggesting, by reference to a HIQA report, in the months of March and April, 2020 the crisis was not a pandemic but only an epidemic and that virtually all of those who have been recorded as having died in those months would have died anyway in the following three months. Acknowledging that Ms. O'Doherty is entitled to her opinion, it does not provide a factual basis for what she said about the hospital and Ms. Murray.

Conclusion

72. The central tenet of Ms. O'Doherty's defence, as well as of her reporting, is that Beaumont Hospital and Ms. Murray have acted dishonestly and unlawfully. The premise of that suggestion, in turn, is that Beaumont Hospital and Ms. Murray actually share Ms. O'Doherty's fringe views as to the gravity of the threat to national health caused by the prevalence – never mind whether it is a pandemic or an epidemic – of COVID-19 and of the safety and efficacy of the approved vaccines. What Ms. O'Doherty has said, and what she would seek to justify, is that Beaumont Hospital and Ms. Murray, well knowing that there is no COVID-19 crisis, nevertheless restricted lifesaving medical treatment; and that, well knowing that the vaccines are lethal, are nevertheless not only recommending them to staff but administering them to staff without consent. That, in my firm view, is not something that Ms. O'Doherty has any reasonable prospect of establishing.
73. Ms. O'Doherty is acknowledged to be entitled to her own opinion as to whether there is or is not a crisis, and as to the safety and efficacy of the vaccines, and to her own view as to the reliability or persuasiveness of the medical evidence and diverse views expressed as to both matters on the internet but she does not seem to be able to recognise that there are contrary views, to which Beaumont Hospital and Ms. Murray are no less entitled than she is to hers.
74. To establish the truth of what she has said of and concerning the plaintiffs, Ms. O'Doherty would need to prove that they secretly agree with her views that the prevalence of the COVID-19 virus is not a crisis; and that although they promote vaccination, Beaumont Hospital and Ms. Murray secretly believe, but are not saying, that the hospital staff should be given vitamins and zinc instead of injections. In the language of s. 33(1)(b) of the Defamation Act, 2009, I am quite satisfied that that is not a defence that is reasonably likely to succeed.
75. When it is recognised that the substance of Ms. O'Doherty's reporting is predicated on the subjective state of mind of the plaintiffs, it becomes obvious that her allegations of

criminality, crimes against humanity, psychopathy, breach of the Nuremberg code and all the rest of it are utterly devoid of substance and that there is no prospect that she could ever stand them up.

76. Ms. O'Doherty argues passionately that the plaintiffs are putting her on trial for doing her job as a journalist, protecting and defending the public interest and to silence free speech and fair comment relating to the safety of their staff. I reject that. She is entitled to her views but is not entitled to impute them to others, or, as she would, to everyone else.
77. Ms. O'Doherty says that journalists have a duty to report and to comment on matters in the public interest – even if what they report has a negative impact on the reputations of those involved. I absolutely agree. She says that the role of journalists in holding powerful institutions – like Beaumont Hospital – to account is critical and that by shining a light on poor behaviour it forces hospitals and other public bodies to improve and to take greater care of those in their charge. Again I agree. I reject, however, Ms. O'Doherty's submission that the pursuit of this application is tantamount to denying the journalistic and human right to freely report on matters of public importance. With the journalistic and human right of free speech comes the responsibility not to wantonly or recklessly impugn the good name and reputation of others.
78. I find that the videos are defamatory of the plaintiffs and that the defendant has no defence which is reasonably likely to succeed.
79. Even if the defendant were in a position to meet an award of damages – and the defendant has said nothing to allay the doubts expressed by the plaintiffs that she can – I am satisfied that it would not be just that the plaintiffs should have to endure a repetition of the calumnies to which they have been subjected and, on the plaintiffs' usual undertaking as to damages, there will be an interlocutory order in the terms of paras. 1 to 3 of the notice of motion requiring the removal of the videos.
80. The notice of motion, at para. 4, asks for an order restraining the publication of defamatory statements of or about the plaintiffs or either of them. I am satisfied that the plaintiffs are entitled to an order restraining the republication of the defamatory statements the subject of the action, but I think that an order in the terms sought would, potentially at least, go beyond that. The jurisdiction invoked being, as it has been described, a delicate one, it must be exercised not only sparingly but with precision.
81. To tie the order precisely to the complaints, I will make an order restraining the defendant, whether by herself, her servants or agents or otherwise however from publishing any statement of or concerning the first plaintiff to the effect that it denied lifesaving treatment to patients without good reason; that it invented or relied upon a false claim of a pandemic to deny patients lifesaving treatment; that it is demoting, ostracising, defaming, harassing and stalking staff who do not get the vaccine; that it is administering lethal injections of the COVID-19 vaccines; that its director of nursing has committed crimes against humanity; that its director of nursing has committed criminal offences and should be arrested; that it is in breach of employment law, the Nuremberg

code, constitutional, fundamental and inalienable legal rights; that it is a dump and something out of a third world country; that its director of nursing is a psychopath; that it is engaged in criminal behaviour; that its management, senior consultants, nurses and doctors involved in the administration of the vaccine have blood on their hands; that it employs psychopaths; that it is a drug pushing camp; or that it is a death camp.

82. As far as the second plaintiff is concerned, I will make an order restraining the defendant, whether by herself, her servants or agents or otherwise however from publishing any statement of or concerning the second plaintiff to the effect that she is demoting, ostracising, defaming, harassing and stalking staff who do not get the vaccine; that she has committed crimes against humanity; that she has committed criminal offences and should be arrested; that she is in breach of employment law, the Nuremberg code, constitutional, fundamental and inalienable rights; that she is a psychopath; that she is engaged in criminal behaviour; that she has blood on her hands; or that she is involved in the management and operation of a death camp.
83. The order sought at para. 5 of the notice of motion restraining the defendant from publishing any publication of or concerning the plaintiffs goes much too far and I decline to make such an order.
84. I have given some consideration to the question of costs. The plaintiffs having been entirely successful on this application, appear to be presumptively entitled to their costs. While the plaintiffs did not write to the defendant before bringing the application to ask that she should take down the videos and cease and desist saying what she said, it appears quite clear that the writing of such a letter would have made no difference. However, this is an interlocutory application. The order which the plaintiffs have sought and which the court has decided to make is limited to the time between now and the trial of the action, and it was sought and made on the plaintiffs' undertaking as to damages. In principle, the giving by the plaintiffs and the acceptance by the court of an undertaking as to damages contemplates that it might later transpire that the order made ought not to have been made. On the facts of this case I have great difficulty contemplating how a jury could conceivably come to any other conclusion as to the truth of the words complained of, but theoretically, I suppose, it might. If, although she has failed on this application, the defendant were to succeed at trial, I do not believe that it would be just that she should nevertheless be fixed with an order to pay the costs of the motion. Provisionally, it seems to me that the justice of the case would be met by making the costs of this application costs in the cause.
85. As this judgment is being delivered electronically the parties will have a period of two weeks within which to furnish brief written submissions in relation to the costs of the motion. The substantive order, however, will be drawn up immediately.