

**THE HIGH COURT**

[2021] IEHC 490  
[No. 2016/2329 P.]

**BETWEEN**

**MICHAEL REILLY**

**PLAINTIFF**

**AND**

**ICONIC NEWSPAPER LIMITED**

**DEFENDANT**

**RULING of Ms. Justice Reynolds delivered on the 13th day of July, 2021**

**Introduction**

1. This is an application brought by the defendant at the conclusion of the evidence to withdraw the case from the jury on the basis that no reasonably minded jury, properly charged, could find that the article, the subject matter of the proceedings, is anything other than a fair and accurate report of the proceedings in Kilkenny District Court on the 15th February, 2016.

The article

2. The text of the article was published on Friday, the 19th February, 2016 in the Kilkenny People. It appeared at p. 6, under the section entitled "Court Briefly" and stated as follows:-

*"SUSPENDED SENTENCE FOR NO INSURANCE*

*A three-month suspended sentence was handed down to a repeat offender at Kilkenny District Court.*

*Michael Reilly, Ballycullen, Mullinahone was fined €750 and banned from driving for six years for the offence at Johns Green on June 30.*

*The court heard that the defendant has a number of previous convictions under the Road Traffic Act and has three similar previous convictions in the past 13 months.*

*Judge Colin Daly imposed a fine of €750 and disqualified the defendant from driving for six years. He also imposed a three month sentence which he suspended for 12 months during which time the defendant was ordered to keep the peace and be of good behaviour."*

3. The plaintiff claims that the article wrongly identifies him as the Michael Reilly convicted before the court on the basis that he is the only Michael Reilly residing at Ballycullen, Mullinahone, Tipperary and that his reputation has consequently been damaged.

**The Proceedings**

4. The plaintiff is a practising Consultant Engineer who resides Ballycullen, Mullinahone, Tipperary.
5. By letter dated 22nd February, 2016, the plaintiff's solicitor wrote to the Editor of the Kilkenny People complaining about the alleged defamatory nature of the article and

seeking an immediate apology and retraction together with proposals in relation to damages by way of compensation.

6. For the purposes of this ruling, it is not necessary to embark upon a summary of correspondence that was exchanged between the parties. Suffice to say, matters were not resolved.
7. A plenary summons subsequently issued on the 14th March, following by the statement of claim dated 26th August, 2016.
8. In his proceedings, the plaintiff claims that the article and words used therein meant in their ordinary and natural meaning that the plaintiff was a criminal with a number of previous convictions.
9. The plaintiff claims that he is the only "Michael Reilly" ordinarily resident at "Ballycullen, Mullinahone, Tipperary" and that the article was entirely false and untrue.
10. The defendant denies that the plaintiff is the only Michael Reilly ordinarily resident at Ballycullen, Mullinahone, Tipperary and/or that the article referred to the plaintiff as alleged. Further, it contends that the article constitutes a fair and accurate report of the proceedings held publicly in Kilkenny District Court and that the words complained of were printed on an occasion of absolute privilege. In this regard, it relies on the provisions of s. 17(2)(i) of the Defamation Act, 2009.

The Defamation Act, 2009

11. Section 17(2)(i) provides as follows:-

*"...It shall be a defence to a defamation action for the defendant to prove that the statement in respect of which the action was brought was—...*

*(i) a fair and accurate report of proceedings publicly heard before, or decision made public by, any court—..."*

12. It is clear, therefore, that there are two distinct and separate limbs in the subsection, i.e. a fair and accurate report of proceedings publicly heard before the court or a decision made public by the court.

**The undisputed facts in these proceedings**

13. On the 30th June, 2015, Sergeant Gordon stopped a motor vehicle at Johns Green in Kilkenny.
14. The driver of that vehicle gave his name as Michael Reilly of Ballycullen, Mullinahone, Tipperary.
15. Sergeant Gordon made enquiries in relation to the vehicle registration number and established that it was registered to a Michael Reilly of Ballycullen, Mullinahone, Tipperary. Mr. Reilly nominated Mullinahone Garda Station as the station at which he

agreed to produce evidence of his motor vehicle tax and insurance within ten days, which he ultimately failed to do.

16. A number of summonses issued against Michael Reilly and were served by a local Garda on Mr. Reilly. Sergeant Gordon was in a position to satisfy himself of this when he subsequently checked the PULSE system. On the return date for the summonses of the 15th February, 2016, Michael Reilly was legally represented at Kilkenny District Court.
17. The court minute book recorded his address as Ballycullen, Mullinahone, Tipperary.
18. Certified copies of the court orders similarly record the address as Ballycullen, Mullinahone, Tipperary.

#### **The evidence relevant to this application**

19. The plaintiff's evidence was essentially that he was the only Michael Reilly in Ballycullen, Mullinahone and on other occasions referred to himself as the only Michael Reilly of Mullinahone.
20. It was clear from the evidence of Detective Garda Quinlan, called on behalf of the plaintiff, that there was a second Michael Reilly living in the village of Mullinahone at the relevant time, albeit that the detective garda was of the view that he resided in a different townland, namely Ballynacloughy, some two kilometres away.
21. Sergeant Gordon's evidence was that, to the best of his recollection, he read out the name and address of Michael Reilly, Ballycullen, Mullinahone, Tipperary into the court record at the hearing in the District Court as this was his normal practice.
22. Sergeant Gordon explained that the information on the court file, including that contained in the conviction orders and summonses, is decanted from the PULSE system and emanates from his initial recording of the address provided when he stopped Michael Reilly on the 30th June, 2015.
23. Ms. Cody, the court reporter, gave evidence of relying on her contemporaneous notes taken in the District Court on the day when she prepared her initial draft of the article. Thereafter, she double-checked all the details against the court minute book for accuracy before she submitted her final draft. She could not recall whether the address in her notes came from Sergeant Gordon's evidence or from the minute book.
24. After hearing of the plaintiff's complaint about the article, she again checked her notes and the records and was satisfied that the article was a fair and accurate report of the court proceedings. Indeed, it was never suggested to her in cross-examination that she had made any error.

#### **The law on absolute privilege**

25. In *Philpott v. Irish Examiner* [2016] 3 IR 565, Barrett J. examined the law with regard to absolute privilege and stated at para. 29 as follows:-

*"Privilege is either absolute or qualified. When it is absolute, a defendant is entirely protected in respect of any statements made..."*

26. Barrett J. went on to consider the principles to be applied in construing whether or not the article in question could be considered to be "*fair and accurate*" for the purposes of attaching the defence of absolute privilege and I endorse his views in that regard without hesitation.
27. Barrett J. concluded that, providing the requisite principles are applied, "*it is perfectly possible, reasonable and lawful for a court reporter to rely solely on the written judgment of a court as the basis for formulating a court report that later appears in print, "on-air" or on-line, and for that report to be 'fair and accurate'.*"
28. In applying the said principles to the facts in the present case, it is undoubtedly permissible for a court reporter to rely on the court records recording the outcome of the proceedings and the conviction orders as Ms. Cody did. The suggestion thereafter that there is some kind of investigative burden on her or the newspaper to include additional details, such as date of birth etc., or to carry out "*background checks*" is simply untenable.

#### **Discussion**

29. There are clearly separate and distinct limbs to s. 17(2)(i) of the Defamation Act as already outlined.
  30. The plaintiff's position is that the article at issue is not a "*fair and accurate report*" of the "*proceedings publicly heard before*" the court and submits that the issue of fact as to whether or not the address of the accused Michael Reilly – of Ballycullen, Mullinahone, Tipperary – was given in evidence, is one which falls solely within the domain of the jury.
  31. There can be no dispute but that issues of fact are matters solely for the jury to decide whilst issues of law rest solely with the trial judge.
  32. *Cox and McCullough* (Defamation Law and Practice) at paras. 14.178 and 179 assert that the question of whether the occasion upon which the publication was made was one of privilege is a question of law to be determined by the judge. However, if there are questions of fact upon which the question of law depended, then they are, *prima facie*, matters for the jury to determine.
- Are there questions of fact upon which the question of law depends?*
33. The only issue of fact in dispute between the parties is whether or not Sergeant Gordon gave oral evidence of the address of the accused Michael Reilly – of Ballycullen, Mullinahone, Tipperary – before the District Court in Kilkenny on 15th February, 2016. His evidence was not challenged in any meaningful way in that regard and, indeed, there is no contrary evidence before the court.
  34. The plaintiff's legal advisors appear to accept that if the jury were so satisfied, then the defence of absolute privilege has been made out and the plaintiff's action fails.

35. However, if the jury found to the contrary, it could well be argued that such a finding is perverse in circumstances where there is no evidence to contradict that of Sergeant Gordon. Even if such a finding was made, it is simply inconceivable to suggest that the report was anything other than a "*fair and accurate*" report, as a matter of law, where it tallies with all the official court records. However, even if I am wrong in respect of that, a careful consideration of the second limb of s. 17(2)(i) leads me to the same conclusion.
36. On the facts, it is abundantly clear that the decision of the District Court judge was to disqualify the accused from driving for six years together with the imposition of a three-month custodial sentence, suspended for twelve months on terms, having taken into account the accused's previous convictions.
37. The reporting of what happened was 100% accurate and accords with the decision recorded in the court minute book and conviction orders record. In a nutshell, the report mirrors the decision of the court.
38. In all the circumstances, I am satisfied that there is no evidence upon which a jury, properly charged, could reasonably find that the report is not "*fair and accurate*". I will, therefore, withdraw the case from the jury.
39. It is unfortunate that the plaintiff failed to avail of the offer by the newspaper to publish a clarification to the effect that he was not the Michael Reilly referred to in the article and to have this matter resolved at the earliest opportunity.