

THE HIGH COURT

BETWEEN

RM

PLAINTIFF

AND

SHC

DEFENDANT

Ex tempore JUDGMENT of Ms. Justice Eileen Roberts delivered on 15 May 2023

1. On 4 May 2023 the plaintiff issued proceedings against the defendant seeking various injunctive and declaratory reliefs and damages regarding the termination or purported termination of the plaintiff's employment with the defendant. A motion seeking interlocutory relief issued by the plaintiff on 5 May 2023 and is awaiting hearing.
2. On 10 May 2023 the present application came before this court. It is the defendant's motion seeking an order pursuant to section 27 of the Civil Law (Miscellaneous Provisions) Act 2008 (the "**2008 Act**")

“prohibiting the publication or broadcast of any matter relating to this application and the proceedings within, which would or would be likely to identify the defendant or any medical condition from which she is suffering or any information relating to the identification, gender, occupation, profession, practice and/or place of work or location within the State of the Defendant”.

3. While applications under section 27 of the 2008 Act are often made, the parties were unable to refer to any previous reported case on all fours with the present application. This arises from the fact that, unusually, this application is brought on behalf of the defendant to the proceedings and not on behalf of the plaintiff. There is no doubt that the defendant as “*a party to the proceedings*” is entitled to make an application under section 27. Section 27(6)(a) confirms that an application “*may only be made by a party to the proceedings on notice to the other party or parties to the proceedings*”. Section 27(10) provides that a “*relevant person*” means a party to the proceedings or a person called or proposed to be called to give evidence in the proceedings. Section 27(2) provides that an application for an order may be made at any stage of the proceedings. The defendant is therefore entitled to make this application now and is a relevant person for the purposes of section 27.

Section 27 of the 2008 Act

4. Section 27 of the 2008 Act deals generally with anonymity in civil proceedings in relation to the medical condition of a relevant person. The key provisions provide as follows: –

“(1) Where in any civil proceedings (including such proceedings on appeal) a relevant person has a medical condition, an application may be made to the court in which the proceedings have been brought by any party to the proceedings for an order under this section prohibiting the publication or broadcast of any matter relating to the proceedings which would, or would be likely to, identify the relevant person as a person having that condition...”

(3) The court shall grant an order under this section only if it is satisfied that-

(a) the relevant person concerned has a medical condition,

- (b) *his or her identification as a person with that condition would be likely to cause undue stress to him or her, and*
- (c) *the order would not be prejudicial to the interests of justice.”*

5. This is the basis of the court’s jurisdiction, and I will consider it against the evidence available to the court on this application.

The evidence on this application.

6. The application is grounded on an affidavit sworn by the defendant in person. The defendant avers that the plaintiff claims their employment with the defendant was allegedly unlawfully terminated on 6 April 2023. It is the defendant’s position that the plaintiff’s termination arose solely and entirely due to the plaintiff’s conduct and behaviour in June 2022 in attending unannounced and uninvited at the defendant’s home and then handing over a 28-page document, which had been prepared by the plaintiff, alleging egregious personal and professional failings on the part of the defendant.
7. The defendant exhibits to her affidavit a psychiatric report prepared by Dr Richard Blennerhassett, consultant psychiatrist. In his report Dr Blennerhassett sets out in some detail the defendant’s medical history and the impact the document in question had on the defendant. His impression at the time was that the defendant had developed an acute generalised anxiety disorder in response to the work situation and was experiencing clinical significant impairment in day-to-day life. The report confirmed Dr Blennerhassett’s opinion that, having been served with High Court proceedings, the defendant’s anxiety has escalated and that the defendant “*is particularly stressed by the prospect of being identified as suffering from a psychiatric disorder*”. The report confirms that the defendant continues to suffer from a medical condition in the form of

a generalised anxiety disorder for which the defendant remains under treatment. Dr Blennerhassett states that he would support an application under section 27 of the 2008 Act as the defendant “*suffers from a medical condition in the form of a Generalised Anxiety Disorder and secondly her identification as a person with that condition would be likely to cause undue stress to (the defendant)*”. He concludes by noting that the defendant requires continued treatment and that Dr Blennerhassett is concerned that the identification of the defendant in these proceedings “*is likely to cause a significant deterioration*” in the defendant’s condition.

8. The defendant’s grounding affidavit avers that it is more likely than not that there would be very significant publicity surrounding the plaintiff’s proceedings and interlocutory application before this court. The defendant says that the publication of these matters would cause the defendant very significant distress and is likely to very significantly exacerbate the defendant’s medical condition.
9. The other evidence available to the court on this application was the correspondence issued by the plaintiff to the defendant which is said to be the document central to the defendant’s decision to terminate the plaintiff’s employment. This document is exhibited to the plaintiff’s grounding affidavit. While there are some minor redactions made to the exhibited copy, nothing turns on those redactions from the perspective of this application.
10. As this exhibit is likely to be considered in some detail by the judge dealing with the interlocutory application and indeed the substantive hearing, I do not wish to comment on it any more than is necessary for the purposes of the present application. The plaintiff avers in their grounding affidavit at para 16 “*[A]lthough this letter was harsh and to the point and contained some very personal and private information, I felt it was constructive*”. There is no doubt that the letter contains information that is personal and

private to the defendant. Of particular relevance to the present application, the letter contains references to medication that the defendant was taking and to “*issues*” the defendant had experienced. Those explicit references are not contained in a separate and identifiable section of the letter but are peppered throughout the letter.

Arguments of the parties

- 11.** Counsel for the defendant argued that this application falls squarely within the provisions of section 27. He said the defendant has a medical condition and, if identified as a person with that condition this would cause undue stress to the defendant. He said the order would not be prejudicial to the interests of justice. He also said that the reciprocity of an order would, in his view, be in the interests of the plaintiff who had in fact sought as part of her relief, an order preventing the publication of the termination of her employment.
- 12.** Counsel for the plaintiff was willing to consent to an order prohibiting any publication of the defendant’s medical condition. However, she said that this did not require the wide-ranging anonymisation sought by the defendant. The fact that the defendant has a medical condition does not of itself entitle the defendant to anonymisation. She said that litigation could be embarrassing and stressful for all parties involved but that did not trigger the section 27 anonymisation provisions. She said there was no proper comparison between the publication restrictions sought by the plaintiff and those now sought by the defendant.
- 13.** Counsel for the plaintiff argued that the issue of the defendant’s medical condition is not a central aspect to these proceedings. She said it should be possible in those circumstances to carve out any reference to the defendant’s medical condition without a full-scale anonymisation of the parties. She stressed that the primary arguments in this

case will relate to the disciplinary process undertaken by the defendant and the engagement between the parties leading to the plaintiff's summary dismissal.

14. Counsel for the defendant argued that this proposal would be utterly unworkable and that it would simply not be possible to parse the evidence in this manner.

Analysis

15. The decision of Mr Justice Charlton in *DF v The Commissioner of An Garda Síochána* [2015] IESC 44, [2015] 2 IR 487 sets out a detailed analysis of the circumstances in which a court may consider ordering anonymity. The starting position is reflected in Article 34.1 of the Constitution which requires that justice “*be administered in public*” except “*in such special and limited cases as may be prescribed by law*”. Section 27 of the 2008 Act prescribes an exception to the administration of justice in public which was described by Mr Justice Charlton in *DF* as being “*of a limited kind*” (p. 501) and one which “*makes a minor adjustment to the fully public nature of court proceedings under Article 34.1*” (p. 503).

16. Mr Justice Charlton noted at p. 505 of his judgment in *DF* that

“[O]nly a minor diminution of a full open and fully reported hearing is involved in the application of [section 27] and only then if the party or witness comes within its terms. Such a provision in law is contemplated by Article 34.1. There is no reason why it should not be applied in accordance with its terms. Section 27 of the Act of 2008 either applies or not”.

Section 27 does not provide for a secret or *in camera* hearing. Rather it provides a much lesser form of protection for parties who come within its terms.

17. In *X.Y. v The Clinical Director of St Patrick's University Hospital* [2012] IEHC 224, [2012] 2 IR 355, Hogan J, in the High Court, stated at p. 362 that he believed he could interpret section 27 “*designed as it was to protect important values such as medical confidentiality, privacy and personal dignity*”, more liberally than absolutely literally. Hogan J had previously applied this same approach in *In the matter of Baby A.B., Children's University Hospital Temple Street v C.D.* [2011] IEHC 1, [2011] IR 665, where he made an order anonymising the identity of a baby even though he recognised at p. 671 of his judgment that

“viewed literally, it could not be said that even if Baby A.B.'s identity were to be revealed, this would cause “undue stress” to him within the meaning of section 27(3)(b), precisely because he could not have had any consciousness of this fact”.

18. In *In the matter of an application by the Teaching Council of Ireland* [2020] IEHC 683, Keane J noted in his judgment at para 124 that it is necessary on an application under section 27,

“to consider not only the stress likely to be caused to the party or witness concerned by being identified as a person with a particular medical condition in media reports but also the stress likely to be caused to that person by the predictable actions of malicious persons in response to those reports”.

He stated “*that is not an narrow test*”.

19. A note of caution was sounded by Cross J in his judgment in *Ms.Y. v Health Service Executive* [2016] IEHC 136, [2016] IR 300, where, regarding the interpretation of section 27, he stated at p. 310, “*I am not entirely convinced that a liberal approach is necessarily correct*”. He noted that:

“If a liberal interpretation is accepted then it seems to me that there is scarcely any case in which an application could not be made supported by, in particular, psychiatric or psychological evidence that says a plaintiff would be distressed by his or her identity being revealed and, therefore, should be allowed to proceed anonymously.”

He feared such an interpretation would be counter to the express requirements of Article 34.1.

- 20.** It seems to me that the question in this case is whether the medical condition of the defendant is a matter which will be central to the evidence in these proceedings. There are many instances where parties to litigation suffer from medical conditions which cause them stress and embarrassment and where their involvement in the litigation will exacerbate that stress. That however is not the test to attract the protection of section 27. It is generally the plaintiff’s medical condition which is the subject of scrutiny and evidence in proceedings. It is far less typical for the defendant’s medical condition to be the subject of evidence. While many defendants may have a medical condition this alone will not suffice to secure the protection of s. 27 even where the litigation may be stressful and embarrassing and where the defendants would clearly prefer not to be identified in that litigation. Anonymity can be abused. However, where the evidence in a case will likely require disclosure of a party’s medical condition and the conditions of s. 27 are met, it is appropriate to make an order under that section.
- 21.** What is unusual in the present case is that the correspondence on which the plaintiff’s termination of employment is founded itself refers to and discloses information regarding a medical condition from which the defendant suffers. This correspondence, which was created entirely by the plaintiff, will be an important part of the evidence both for the interlocutory hearing and the trial. The references to the defendant’s

medical condition are repeated throughout the correspondence. These references are also linked to complaints and comments regarding the defendant's behaviour. While there will certainly be evidence regarding process and procedures which will not relate to the defendant's medical condition, there is no doubt in my view that the defendant's medical condition will be a matter that will have to be opened to the court and indeed the correspondence which contains such material is already exhibited to the plaintiff's grounding affidavit. For that reason, I believe the defendant has a basis to seek an order under s. 27.

- 22.** I have considered whether it would be possible to limit the extent of any anonymity order so as only to prevent disclosure of the defendant's medical condition rather than the defendant's identity. I believe this would not be workable in the present case given that the evidence is likely to be somewhat intertwined and overlapping. A far simpler order is one which protects the identity of the defendant and which will of course also then protect the plaintiff's identity. My concern with an overly complicated arrangement on non-publication is that it could open a very real possibility of a breach of the reporting restrictions, even inadvertently. In circumstances where section 27(7) of the 2008 Act makes it an offence to publish or broadcast any matter in contravention of an order, it is very important that the terms of that order be clear and easily implemented. A straightforward anonymisation of the parties best achieves that objective.

Conclusion

- 23.** I am satisfied that the defendant has a medical condition and that the identification of the defendant as a person with that condition would be likely to arise in the course of the evidence in this case and that such identification would also be likely to cause

undue stress to the defendant were that to occur. I am also satisfied that making an order under section 27 to anonymise the identity of the defendant (and by extension the plaintiff) in these proceedings would not be prejudicial to the interests of justice. The parties will be free to give their evidence in open court. The only restriction will be in relation to identifying the parties in any publication or broadcast. In circumstances where the plaintiff has introduced material containing references to the defendant's medical condition and where that material will be the subject of evidence and examination by the court, I do not believe it is unfair to the plaintiff or prejudicial to the interests of justice to make an order under section 27.

24. It appears to me that the order of this court should be one pursuant to section 27 of the 2008 Act prohibiting the publication or broadcast of any matter relating to this application and/or the proceedings which would, or would be likely to, identify the defendant as a person having the medical condition from which she is suffering. In the circumstances, the best way to achieve this is to anonymise the identity of the defendant in any publication or broadcast relating to the proceedings. It appears to me, as a necessary consequence of that order, that the plaintiff's identity should also be anonymised as well as the respective addresses, occupations and professions of the parties. This judgment reflects the suggested title to the proceedings which should apply in all future court orders or judgments.