**THE HIGH COURT**

**[2023] IEHC 400**

**Record No. 2022/1456 P**

**BETWEEN**

**SHARON BROWNE, DAVID EGAN AND EMMANUAL LAVERY**

**PLAINTIFFS**

**AND**

**AN TAOISEACH, THE MINISTER FOR HEALTH AND THE HEALTH SERVICE EXECUTIVE (No. 3)**

**DEFENDANTS**

**JUDGMENT OF Mr. Justice Twomey delivered on the 12th day of July, 2023**

## INTRODUCTION

**1.** While the vast majority of litigants do not abuse court processes, a significant issue for the courts at present is the number of claims by litigants, which amount to an abuse of court process. This is clear from O'Moore J.'s judgment in *O'Hara v. Ireland* [2023] IEHC 268. In that case, O'Moore J. sets out a long list of recent examples of cases from different High Court judges, which amounted to an abuse of process on the part of litigants.

**2.** Since O'Moore J.'s judgment, there has been the judgment of Bolger J. in *Burke v. Workplace Relations Commission* [2023] IEHC 360 - there the abuse of process was not just the '*inappropriate allegations*' made by the litigant (at para. 7), but also the conduct of a litigant who *'repeatedly engag[ed] in a loud, scripted mantra of objections to a decision that had already been made*' (at para. 33).

**3.** In all these types of cases involving litigants abusing court processes, whether by their conduct or their *'simply preposterous*' claims (per Simons J. in *Fennell v. Collins* [2019] IEHC 572 at para. 19), the real losers are, as pointed out by O'Moore J., all the other litigants in our State:

> "It is **individuals and businesses who have to wait lengthy periods for their cases to get on** and often significant periods for judgments to be delivered after the cases have been heard. If courts have to deal with a raft of cases such as these (described by Simons J. in *Fennell* as raising arguments that are 'simply preposterous' and by Roberts J. in *Brennan* as 'simply unstateable') then the **ability of the courts to deal in a timely manner with genuine legal disputes would be further hampered.**" (Emphasis added, at para. 4)

**4.** This raises the important question of what, if anything the courts can do, in the interests of litigants with genuine legal disputes, to reduce the amount of court resources taken up with litigation, which amounts to an abuse of court process? These cases waste not just scarce court resources, but also taxpayers' funds, where a State agency is party to the litigation, and the time and funds of private individuals and businesses, where they are party to the litigation.

**5.** In particular, if a court has dealt with a *preliminary application* involving a plaintiff, in which it is clear that his *substantive case* is '*simply preposterous'* (per Simons J.), '*simply unstateable'* (per Roberts J. in *Brennan v. Ireland & Ors* [2023] IEHC 107 at para. 21), '*scandalous'* or '*baseless*' (as in this case), and it has awarded costs against that plaintiff, should a stay be put on that plaintiff continuing with a case until the plaintiff has actually paid the defendant's legal costs?

**6.** Such an order, while not preventing the plaintiff exercising her right of access to the courts, may at least discourage the continuation of a substantive case which has been held to be an abuse of process, particularly since the Supreme Court has said in *Farrell v. Bank of*

*Ireland* [2012] IESC 42 at para. 4.14 that costs orders should be used to ensure that court processes are not abused.

**7.** In addition of course, such an order would mean that the State agency/private individual or business being sued would not be required to incur even more legal costs to defend the preposterous/unstateable/scandalous/baseless case, without at least having first been paid the costs incurred to date.

**8.** In this way, rather than a litigant, who abuses court processes, not *ever* feeling any negative financial consequences (i.e. if he is not a person of means) or not feeling it *for years* into the future (i.e. after the trial and the inevitable appeals reach a conclusion), he will feel at an early stage the financial consequences of their actions. In this way, these financial consequences should operate as an '*appropriate financial disincentive'* for those who believe they can use the courts '*as a matter of course'* (see *R. (Corner House Research) v. Secretary of State for Trade and Industry* [2005] 1 W.L.R. 2600 at para. 78).

**9.** This is one of the issues for consideration in this application for costs by the State defendants.

## BACKGROUND

**10.** The costs at issue here arose in relation to a preliminary application brought by the plaintiffs in which they sought a protective costs order, so that if they lost their substantive case (seeking the halting of the Covid-19 vaccine programme for children), they would not have to pay the legal costs of the defendants. The preliminary application took a full day of court time to hear and this Court rejected that preliminary application – see *Browne & or. v. An Taoiseach & ors.* [2023] IEHC 205 ("**Principal Judgment**").

**11.** It is important to note that in the substantive case, the plaintiffs are seeking a court order halting a *voluntary* vaccination programme operated by the defendants, whereby parents can

have their children vaccinated with the Covid-19 vaccine. In the Principal Judgment, this Court reached the conclusion that the plaintiffs were not entitled to a protective costs order because, amongst other things, this Court found that the substantive case being pursued by the plaintiffs amounts to an abuse of process.

**12.** This Court concluded that the substantive case amounts to an abuse of process because of the *'baseless'* and '*scandalous'* claims made by the plaintiffs regarding the Covid-19 vaccine being a bio-weapon, which they alleged was part of Bill Gates' plan to depopulate the world. This conclusion was also reached because of the plaintiffs' baseless and scandalous claims in which they compare the actions of the defendants in distributing the vaccine to the actions of the Nazis during World War II.

**13.** In the application now before this Court, the defendants seek their costs from the plaintiffs because they say that, as is clear from the Principal Judgment, they were entirely successful in resisting the plaintiffs' application for a protective costs order.

**Attempt to prevent this Court dealing with the costs of the Principal Judgment**

**14.** However, before being in a position to deal with this costs application, this Court first had to deal with a recusal application which was brought by the plaintiffs after the Principal Judgment had been delivered and which took up yet more scarce court resources (i.e. a further half day of court time).

**15.** In that application, the defendants brought an unprecedented recusal application, since it was an application for the recusal of a judge *after* the judgment had been delivered. They sought my recusal from dealing with the costs and other orders arising from the Principal Judgment on the basis of criticisms that the plaintiffs had of my judgment, *e.g*. that I *'ignored'* the evidence they provided. Since any complaints that the plaintiffs have with the Principal Judgment are a matter for an appeal, the recusal application was without merit and was duly rejected by this Court - see *Browne & or. v. An Taoiseach & ors (No. 2)* [2023] IEHC 399.

**16.** Accordingly, there is no reason why this Court should not now deal with the costs which arise from the Principal Judgment, which it will do next.

**ANALYSIS**

**17.** At the costs hearing, which took place on Wednesday 5th July, 2023 and took another hour of court time, the plaintiffs argued that this Court has no power to make an order for costs because the Courts Act, 1924 was not properly commenced, which they say is evidenced by the fact that original Commencement Order is *'missing'*.

**18.** However, as is clear from the Court of Appeal in *Coleman v. Clohessy* [2022] IECA 279, there is absolutely no basis to this argument.

**19.** *Coleman v. Clohessy* also deals with the plaintiffs' other equally baseless claim i.e. that the Courts Act, 1924 was not properly commenced because the '*missing original commencement order'* was retrospectively sealed. As is clear from that judgment, at para. 44:

> "production of a copy of the *Iris Oifigiúil* purporting to contain any order of the Executive Council made under section 2 of the 1924 Act and/or (b) production of a copy of any such order which purports to be published by, or by the authority of, the Stationery Office, **constitutes prima facie evidence** of the order."

Collins J. noted at para. 46 that there was no suggestion that the relevant commencement orders had not been duly published in *Iris Oifigiúil*. Accordingly, this therefore deals with the plaintiffs' claims that the Courts Act, 1924 was not properly commenced.

**20.** The plaintiffs also applied to this Court to state a case to the Supreme Court in relation to the status of the High Court, *i.e.* whether the High Court is a "constitutional court" or a "statutory court" and to state a case as to the legality of solicitor firms that are constituted as LLPs (limited liability partnerships) and so their entitlement to act in cases such as these. This

Court rejects this application as it does not have the jurisdiction to state a case to the Supreme Court.

**21.** Having dealt with the point regarding the Courts Act, 1924, which was the only basis upon which the plaintiffs sought to resist a costs order against them, it is to be noted that the defendants were '*entirely successful'* in the protective costs order application. Therefore, in accordance with s. 169(1) of the Legal Services Regulation Act, 2015, ("the 2015 Act") they are entitled to 'an award of costs' against the plaintiffs.

**22.** Indeed, not only did the plaintiffs not win on any of the points they made in that application, but this Court held that the substantive proceedings, for which they were seeking a protective costs order, amounts to an abuse of court process.

**23.** As is clear from the Principal Judgment, this Court found that the substantive case amounts to an abuse of court process because the plaintiffs are seeking the mass disinterment of the bodies of all vaccinated people under 80 who died suddenly in the past 2 ½ years, on the basis of a claim that the Covid-19 vaccine amounts to a bio-weapon which is part of a plan by Bill Gates to depopulate the world. In making these claims, they compare the defendants' actions to those of the Nazis during World War II. These and the other *'baseless'* claims (i.e. without any evidence for them, save for hearsay, speculation, websites, blogs, *YouTube* videos, *etc*.) are set out in detail in the Principal Judgment.

**24.** Apart from their claims regarding the Courts Act, 1924, the plaintiffs provided no reasons having regard to the '*particular nature and circumstances of the case, and the conduct of the proceedings by the parties'* under s. 169(1) of the 2015 Act, as to why the costs should not be awarded in full against them.

**25.** Having heard submissions from the two sets of defendants, and in particular their submissions that there was no duplication of their respective roles, which this Court accepts

was the case, this Court finds that there is no basis for any reduction in the costs awarded to either of the two sets of defendants.

**26.** Accordingly, this Court will award the entire costs in this case to the defendants.

**27.** This Court did consider whether it should measure the costs, rather than having them adjudicated by the Legal Costs Adjudicator, as this might lead to the costs being calculated sooner. However, the Court heard submissions from the defendants that they would be likely to obtain less costs if the Court were to measure the costs, and that in view of the terms of the Principal Judgment regarding costs being used as a deterrent to court processes being abused, they also proposed proceeding expeditiously in having the costs determined by a legal costs adjudicator.

**28.** The defendants also submitted that, to provide the court with evidence of costs (to assist the Court in measuring costs) would necessitate the expenditure of considerable sums on legal costs accountants.

**29.** Accordingly, and since neither party has expressed a wish for the Court to measure costs, and as the defendants have expressed a preference for the adjudication of costs, this Court has decided not to measure the costs but to make an award of costs to be adjudicated in default of agreement by the Legal Costs Adjudicator.

**Defendants have liberty to apply for stay on proceedings until costs paid**

**30.** Should the defendants wish to seek the payment of those costs by the plaintiffs*, before* the plaintiffs are permitted to proceed with the litigation, they have liberty to apply to this Court for such an order.

**31.** This is because, while there is a right of access to the courts (*Farrell v. Bank of Ireland* [2012] IESC 42 at para. 4.4), in that same case, the Supreme Court held that costs orders should be used to disincentivise the abuse of court process by litigants. As stated by Clarke J. at para. 4.14:

> "the **power of the court to award costs** is a very important aspect of the armoury of the courts designed **to ensure** that parties are treated justly and **that the court process is not abused.**" (Emphasis added)

In this case, this Court has held that the substantive proceedings amount to an abuse of process. Accordingly, in a case such as this, one way of balancing the right of access to courts, on the one hand, with ensuring that court processes are not abused, on the other hand, is by allowing the plaintiffs to continue with these substantive proceedings, but on the basis that they first pay the defendants' costs for the unsuccessful preliminary application relating to proceedings that amount to an abuse of court process.

**32.** As set out in the Principal Judgment, adopting this approach means that costs orders in this case will operate as a genuine, rather than a theoretical, financial disincentive to litigants not to engage in the abuse of court processes. In this way, courts can seek to ensure that scarce court resources are not wasted in dealing with litigation, which amounts to an abuse of court process, but instead are preserved for the many litigants who are waiting to have their cases heard – as required by the Supreme Court in *Farrell*.

**33.** As noted in the Principal Judgment, costs orders are one of the few ways in which the courts can seek to ensure that court resources, taxpayers' funds and the funds of private litigants are not wasted by litigation such as this which attempts to halt an *entirely voluntary* vaccination program and in so doing makes baseless allegations that the vaccine is a bioweapon, which is part of a Bill Gates' plan to depopulate the world and is operated by the defendants, who are described as Nazis.

**No stay on the order for costs**

**34.** In addition and in order to ensure that the costs order operates as a genuine deterrent, no stay will be put on the costs order. Accordingly, once the costs are calculated the defendants can seek their immediate payment from the plaintiffs.

**35.** If an application is brought by the defendants for an order staying the proceedings until the payment of the costs order (or any similar order), the parties can at that stage make submissions to the court regarding the jurisdiction of this Court to make such an order, in order to seek to protect its processes from being abused, in light of the court's inherent jurisdiction to prevent an abuse of process (which is referred to by Bolger J. in *Burke v. Workplace Relations Commission* [2023] IEHC 360 at para. 16 *et seq*).