THE HIGH COURT

[2024] IEHC 324

[Record No. 2022/5762P]

[Circuit Court Record No. 2020/273]

SOUTHWESTERN CIRCUIT **COUNTY OF KERRY**

BETWEEN

NOREEN SCANLAN

PLAINTIFF

AND

MICHAEL MCDONNELL

T/A THE WOODLANDS CARAVAN AND CAMPING PARK

DEFENDANT

JUDGMENT of Mr Justice Coffey delivered on the 4th day of June 2024.

Introduction

1. The plaintiff is a married woman who was born on 27 October 1967. Her claim for damages arises from an accident which occurred on the afternoon of 14 July 2018 at the defendant's caravan park at Tralee in County Kerry, when it is alleged that the defendant wrongfully caused or permitted her to trip and fall over an electricity power cable which ran

from a power source provided by the defendant to her caravan, as a result of which she sustained a fracture to the distal end of her left humerus together with an injury to her left thumb.

Background

2. The plaintiff and her husband acquired a caravan around 2010 and embarked on extensive touring, staying in numerous caravan parks across Ireland from that time onward until the date of injury. In the process, they became acquainted with the defendant's caravan park, visiting and staying there about 20 times between 2011 and 2018. As a result, by July 2018 they were well acquainted with the layout of the defendant's caravan park and its infrastructure for supplying electricity to caravans and motor homes.

3. It is not in dispute that the caravan park was constructed in 1998 having been professionally designed by a team of reputable engineers and an architect following a field trip by the defendant and his architect to France to observe best practice in the caravan parks in the northwest of that country. Unchallenged evidence was also given that between 2005 and the date of the accident, the defendant's caravan park had won numerous awards including "The Best Park in Ireland" in 2005 from the Irish Caravan & Camping Council. It was readily accepted both by the plaintiff and her husband that the caravan park was always "well maintained".

4. On 13 July 2018 the plaintiff and her husband made a late booking to stay at the defendant's caravan park. Upon arrival between 6 and 7pm, the plaintiff and her husband were assigned a berth for their car and caravan, referred to as a "pitch". The pitch allocated to the plaintiff and her husband was of standard size and consisted of a gravel/hard surface which was 11m long and 3.7m wide.

5. The park has approximately 100 pitches which are located adjacent to a service road that runs through the caravan park. Located between every two pitches is a supply source for

electricity and water which is provided from a wooden vertical upright. Where the pitches are parallel to each other, the uprights are centrally located and equidistant between the pitches, but this equidistance is not maintained where one of the pitches is located on a curve on the internal service road. There is a generous grassy area between each pair of pitches, providing ample space for awnings, temporary patios, barbeques and the playing of games.

6. The plaintiff and her husband were allocated a pitch which was located on a curve to the service road with the result that the post supplying power and water was not centrally located or equidistant between it and its adjoining pitch but was rather, and atypically, located at a longer distance from the pitch assigned to the plaintiff and her husband than is the norm in the park.

7. All pitches are designed to be of such length as to accommodate a caravan/motorhome and one car. It is evident from all the photographs that were produced in evidence that as a matter of custom and practice, visitors park their caravans or motorhomes at the back of the pitch and their cars at its front to facilitate immediate vehicular access to and from the pitch to the service road.

8. It was agreed that the distance from the plaintiff's pitch to the services post was 8.5m at its shortest point, and 16.5m at its longest point. It is not in dispute that the services outlet designated for the use of the plaintiff and her husband was free from defect and consisted of a wooden vertical upstand in a 1m² concrete surround, on which there was an electric light, two white sockets for electrical supply, a water tap and a connection for a hose which stood over a gully located in the concrete. The two electrical output sockets were positioned to the side of the upright at a height of 900mm above the concrete, in accordance with the ESB's recommended height. The water tap was situated at the rear of the upright, facing away from the road, at a height suitable for filling a water container placed below it.

9. While not obligatory, virtually all visitors will opt to utilise the services provided from the services posts located between each pair of pitches. Visitors are responsible for providing their own electricity cable, water container, and hose pipe if they wish to do so, and for making all or any necessary connections to hook up to the services outlet. It is undisputed that when connecting to the outlet, it is the customer's responsibility to determine the location of their caravan or motorhome on their pitch and thereby to decide the relative distance and angle between the power supply outlet and the power input socket on their caravan or motorhome. It is also uncontested that the power input socket on a caravan or motorhome can be positioned to the front, back or either side depending on its make and model.

10. After being allocated their pitch, the plaintiff and her husband positioned their caravan at the back of the pitch in accordance with normal custom and practice. The plaintiff's husband then used the water tap at the services outlet to fill a water container which he rolled back to their caravan and connected to an external pump. It is not in dispute that as the distance between the power source and the plaintiff's caravan exceeded the length of their cable, the plaintiff's husband borrowed a black extension cable from the defendant which he attached to his own orange cable to connect to the power supply. Although the plaintiff's case was opened to this Court on the basis that the cable connected to the services post was the defendant's black cable, it is evident from a photograph taken by the defendant shortly after the accident that the relevant cable was, in fact, the plaintiff's orange cable.

11. Based on photographs taken both by the defendant and the plaintiff's brother shortly after the accident and the estimate of distance provided by the defendant's engineering expert, it would appear, and I so find, that the orange cable and its black extension cable ran a total distance of approximately 13m from the vertical upright to the power input socket on the plaintiff's caravan. It is not in dispute that although she was not directly involved in connecting her caravan to the power supply, the plaintiff was aware at all material times that a connection

had been made, the relative position of the input socket on her caravan and the services post and the fact that her cable was running from that input socket to the services post.

The accident

12. On the afternoon of the following day, which was bright and sunny, the defendant decided to make herself a cup of tea. As there was no water available in the caravan, the plaintiff decided to walk in the flip flops which she was then wearing to the services outlet to fill a kettle at the water tap provided there. It is not in dispute that the door from the caravan was on its left side so that if she left her caravan and had turned right and walked around the front of the caravan and taken a direct route to the services outlet, the plaintiff would have avoided any contact with the power cable that was running between the upright and her caravan and such cable as was running from the upright to the adjoining pitch. In the event, she decided to turn left and walked around the back of her husband's car which was parked at the front of the pitch, from which point she walked directly across the grass to the services outlet with the service road to her right.

13. As can be seen from photograph 4 of the original photographs taken by the defendant's consulting engineer, the plaintiff's route from the back of her husband's car to the services outlet was such that she could only have come in potential contact with her cable at a point that was in very close proximity to the upright in order to access the water tap positioned at its rear. Although she did not see it, the plaintiff acknowledged in her testimony that she must have stepped or walked over her own cable to access the water tap from which she filled her kettle. The plaintiff's evidence was that after filling the kettle, she immediately set off to return to her caravan on same route she had taken to the upright. Her evidence was that in so doing, she took two, possibly three steps when she felt her right ankle had become caught in the cable as a result of which she lost her footing and fell to the ground.

14. It is not in dispute that in falling to the ground, the plaintiff fractured the distal end of her left humerus with some displacement and that she also injured her left thumb.

The plaintiff's case

15. In order to recover damages for her injuries, the plaintiff must establish wrongdoing and therefore liability on the part of the defendant. The plaintiff's case was primarily advanced by the evidence of her consulting engineer. His evidence was that a power cable poses a tripping hazard when placed on a pedestrian route such that the defendant was under a duty to minimise the risk thereby created by locating its service outlets in such a way as to reduce the distance between the services posts and the visitor pitches. He stated that by placing the services post at an atypical and excessive distance from her pitch, the defendant had created an unacceptable tripping hazard for the plaintiff which, he said existed despite the plaintiff's knowledge of the cable's presence and location, as she could, through momentary inadvertence, lose her footing on the exposed cable. He said that the danger arose from the length of the cable and the alleged fact that the plaintiff was "exposed to an open cable for 16m". He suggested that the distance between the services post and the plaintiff's caravan could have been minimised by providing an upright for each pitch, ideally located 5m or less from each pitch and preferably positioned to the rear of each caravan or motorhome. He also tentatively criticised the co-location of the water and power supply services on the same post, stating that it was "not necessary" but "preferable" to separate them. He opined that failure to do so increased foot traffic to the area where the cables were protruding, regardless of their location.

16. In his direct evidence, the plaintiff's engineering expert acknowledged that he was not familiar with caravan parks, and further accepted that in his written report he made no issue of the co-location of the electricity and water supply on the same upright. When cross examined, he acknowledged that he did not know where the accident had occurred when writing his report. He further conceded that regardless of how it is organised or laid out, every pitch must have an

upright with a power source if it is to be supplied with electricity and a length of exposed cable running between the upright and the caravan if the caravan is to be connected to the power source, and that this was so even if the upright is located at the distance that he suggested would have minimised the risk of injury.

17. Although the plaintiff's pleadings are drafted in sufficient generic terms to give notice of the criticism of excessive or extreme distance between the services post and the plaintiff's caravan, which is the gravamen of the plaintiff's case, there is no pleading of any kind to sustain the suggestion that each pitch should have had its own designated services outlet or the suggestion that water and electricity ought to have been supplied on different uprights. At all events, it was readily accepted by the plaintiff's husband, and I so find, that for the convenience of visitors the water supply in caravan parks is usually located on the same upright as the power supply and that there is nothing unusual about the provision of power and water services to a pair of pitches from the same upright.

The applicable law

18. It is agreed that this case falls to be decided under the provisions of s.3 of the Occupier's Liability Act, 1995 ("the Act of 1995") which provides that an occupier of premises owes "a common duty of care" towards "a visitor". Section 3(2) defines "the common duty of care" as:

> *"a duty to take such care as is reasonable in all the circumstances (having regard to the care which a visitor may reasonably be expected to take for his or her own safety and, if the visitor is on the premises in the company of another person, the extent of the supervision and control the latter person may reasonably be expected to exercise over the visitor's activities) to ensure that a visitor to the premises does not suffer injury or damage by reason of any danger existing thereon."*

19. In *Lavin v Dublin Airport Authority plc* [2016] IECA 268, Peart J. delivering judgment for the Court of Appeal stated that the purpose of s.3 of the Act of 1995 is not to create a new

or expanded duty of care but rather to place the previous common law on a statutory footing. For this reason, he stated that the common law distinction between an unusual danger and a usual danger remains "important" in assessing whether a risk which exists on a premises will as a matter of law constitute a "danger" for the purposes the Act of 1995. In that case the Court of Appeal held that a moving escalator which transported users from the check in area on the ground floor to the departures area on the first floor at Terminal 2 in Dublin Airport did not present an unusual danger to the plaintiff who was then a 64-year-old female.

20. In using the word "important", Peart J. appears to suggest that the distinction between a usual and unusual danger, whilst significant, is not of itself determinative. Where a danger is "usual", it merely connotes the fact that on any objective assessment, the danger complained of arises from the nature of the premises such that is to be anticipated by the person using the premises. In the *Lavin* case, Peart J. gave the example of a fixed staircase as a "usual danger" because the risk of injury to a person descending it exists by reason of the nature of the staircase itself without any defect existing. In developing the example, Peart J. went on to say that provided reasonable care has been taken by the occupier to ensure that there was no unusual defect or danger being present in respect of the staircase and in respect of which the visitor ought to be warned and protected against, the occupier will not be liable if the visitor loses their step because the user, whether young or old, is expected to take reasonable care for their own safety. It appears to follow from this that where a court finds that a risk of injury arises from a "usual danger" which can be avoided by the taking of reasonable care on the part of the visitor to the premises, there will be no breach of the common duty of care and no liability will arise under the provisions of s.3 of the Act of 1995.

21. This analysis was most recently considered, approved, and applied by the Court of Appeal in *White v William Doherty & S&K Kerry Limited* [2019] IECA 295 where Donnelly J. delivering judgment for the court stated that:

"In the case of a usual danger, examples of which were a fixed staircase and an escalator, absent some unusual defect or danger being present in respect of which the visitor ought to be warned and protected, the occupier will not be liable if the visitor loses their step and falls. As Peart J. stated: "(i)n other words provided that reasonable care has been taken by the occupier no liability will exist"."

22. The Court of Appeal in *White* went on to qualify the words just quoted by stating that:

"In assessing whether there has been a failure on the part of the occupier to take reasonable care, a court must have regard to the care which a visitor may reasonably be expected to take for his or her own safety."

23. In the *White* case, the plaintiff lost her footing on loose or embedded stone in an uneven grassy area in the defendant's caravan park. The court held that the surface was more in keeping with the "naturalistic settings" which one "expects to find at a caravan park" and that "no visitor would expect pristine surfaces" such that "a certain unevenness of the surface is to be expected". The court went on to say "it is also a factor" that every individual using the caravan park would be expected to take care as regard any tripping hazard that might exist by virtue of lose or embedded stones. The Court of Appeal held: -

"In the absence of a finding by the trial judge that these loose or embedded stones had constituted an unusual danger by virtue of their size and the fact that they had recently imported into the area it cannot be said as a matter of law that there has been breach of the common duty of care."

24. It would appear from the foregoing that no liability can arise under s.3 of the Act of 1995 where a court finds as a matter of law that: -

(1) the risk of injury complained of by the plaintiff merely constitutes a "usual danger" in the sense that it is a risk of injury that necessarily arises from the nature of the premises, and which is on any objective assessment to be anticipated by the visitor and;

(2) the risk of injury thereby created can be avoided by the visitor taking the care which they may reasonably be expected to take for their own safety.

25. Accordingly, at issue in this case is:

(1) whether the presence of the plaintiff's own cable either hanging down or lying on the ground in very close proximity to the services outlet in the defendant's caravan park constituted a "usual" or "unusual danger" for the plaintiff and;

(2) if a "usual danger", whether the taking of care which the plaintiff might reasonably be expected to have taken for her own safety would have avoided the risk of contact with the cable.

Findings of fact

26. I make the following findings of fact on the balance of probabilities: -

(1) before setting off with her kettle to fill it from the water tap at the services post, the plaintiff knew of the presence and location of the services post and the fact that her cable was connected to it and to her caravan. From this it must be inferred that the plaintiff knew the approximate angle at which her cable ran from the services post to the input power socket on her caravan. It must also be inferred that the plaintiff knew that she could have avoided any contact with the cable had she chosen to turn right at the door from her caravan and gone around the front of it and taken a direct route to the upright;

(2) instead, she chose to turn left at the door of her caravan and to walk around her husband's car in order to approach the services post on a trajectory that was almost parallel to the service road but which did not converge with the cable until she reached a point of potential contact that was in very close proximity to the services post, a distance that was likely to have been in or about 1m or less from the upright.

Accordingly, I find that the plaintiff was not exposed to an open cable for 16m, as was suggested by her consulting engineer;

(3) at the point where she was exposed to it, the plaintiff stepped over the cable to access the water tap which she appears to have done without any difficulty;

(4) the plaintiff then turned on the tap and filled her kettle, the tap being immediately adjacent to the power sockets from which her own and another cable were hanging down. Her cable was immediately to her right and was highly visible being orange in colour. It must be assumed that her orange cable was in her line of vision as she had to monitor the filling of her own kettle to ensure that it did not overflow. At all material times she would have been within approximately a metre of the tap and the adjacent orange cable whose presence and location were in no way obscured and abundantly visible to her;

(5) having filled her kettle, the plaintiff must be assumed to have turned off the tap, which would have required her to redirect her attention to the cables in front of her. The plaintiff then set off to return to her caravan by the same route which she had taken to the water tap from her caravan. In so doing, she had no need to walk along the line of the cable or any part of it but only needed to step over the cable at a point of potential contact that was in very close proximity to the upright in order to resume her journey on a trajectory that diverged significantly from the line of the exposed cable;

(6) in the event, and most unfortunately, the plaintiff lost her footing when the cable became entangled around her right ankle at a point that must by inference have been in very close proximity to the services post. This inference is warranted by the fact that in order to return by the same route, the plaintiff had merely to turn away from the water tap to almost immediately step over the cable in order to return to the back of her husband's car from which she had previously come to the services post. It is also

consistent with the plaintiff's evidence that she first felt the cable on her right ankle and that the accident happened "very quickly" after she had taken a small number of steps, the number of which she could not remember with any accuracy or precision but which she estimated to be in or about two steps. This finding also accords with the opinion of the defendant's engineering expert, which I accept, who was of the view that a mechanism of injury whereby the plaintiff entangled her foot in the hanging portion of the cable was more likely than the plaintiff inserting or catching her flipflop under a section of cable that was lying on the ground.

Decision

27. It is common case that a cable when laid upon the ground is a tripping hazard. It is further not in dispute that no matter how it is managed, the risk of injury thereby created cannot be eliminated in any caravan park which has vertical uprights providing services and a section of exposed cable running from the upright of whatever length to the caravan or motorhome to which it is connected. Moreover, this is so whether the upright is serving one pitch only and even if it is located at a distance of 5m or less from the visitor's pitch, as the plaintiff's engineering expert suggested.

28. It follows from this that services posts are a typical if not inevitable feature which a visitor must expect in a caravan park, as are the cables that are connected to them. The plaintiff was at all material times aware that her cable had been connected to the services post where her accident occurred such that it was inevitable that if she sought to avail of any of the services provided at the outlet on the route she took, she had on any objective assessment to anticipate that her exposed cable would be hanging down or running along the grass from the post which she would have to negotiate in order to access the water tap.

29. In the evidential context of this case, I am satisfied that the presence of her own cable, whether hanging from the upright or lying on the ground, whether on the concrete surround or

on the grass in the immediate vicinity of the services post, cannot as a matter of law be considered to be an "unusual danger" for the plaintiff, over and above the type of danger the plaintiff would have expected in the defendant's caravan park with whose layout and set up she was very familiar. On the contrary, I am satisfied that on any objective assessment, the danger complained of was a feature which one would expect to find at any caravan park such that the plaintiff could only have expected to find her own electric cable protruding from the services post to which she knew it had been hooked up. I therefore find that the risk of injury complained of in this case, having regard to the real and proximate cause of the accident, had nothing to do with the distance of the services post from the plaintiff's caravan and did not as a matter of law constitute an "unusual danger".

30. Furthermore, I am satisfied that insofar as the protrusion of the plaintiff's cable from the services post whether by hanging down or lying on the ground in close proximity to the upright created a risk of injury, the danger so created could have been avoided by the plaintiff stepping over the cable and thereby taking the care that the plaintiff *qua* visitor might reasonably be expected to take for her own safety within the meaning of s.3(2) of the Act of 1995. In so finding, it seems to me to be irresistible that if a visitor sets up his or her caravan or motorhome by connecting their cable to a services post, they must take care when engaging with the services post not to trip over their own cable, the presence and location of which they are fully aware.

31. This is a most unfortunate case in which through momentary inadvertence, the plaintiff suffered a very serious and nasty injury which has caused her much pain and suffering. The plaintiff and her husband are manifestly decent and honest persons on whose behalf her lawyers have valiantly fought for a better outcome. On the facts of this case, I can only have much sympathy for the plaintiff but cannot hold as a matter of law that there was a breach by the

defendant of the common duty of care as provided for by s.3 of the Act of 1995. I therefore dismiss the action.