

Neutral Citation No: [2019] NIQB 38

Ref: McC10919

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 28/03/19

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY MARY BERNADETTE MAGILL
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

-v-

ONE OF THE CORONERS FOR NORTHERN IRELAND

McCLOSKEY J

Introduction

[1] This is my determination of the Applicant's application that I recuse myself from this case.

The Judicial Review Proceedings

[2] The Applicant, who is self-representing, challenges what is described as "*a decision made by the Coroner ... on 22 June 2016 not to hold a Middleton inquest touching upon the death of Mr Brian Magill (whom I shall describe as "the deceased")*". Based on my understanding of the amended Order 53 Statement, the Applicant also appears to be challenging the Coroner's determination that the inquest be conducted without a jury and the list of witnesses devised by the Coroner to give evidence.

[3] The timeline of these proceedings is the following:

- (a) **22 September 2016:** initiation of proceedings.
- (b) **20 December 2016:** Respondent's initial affidavit.
- (c) **01 March 2017:** Applicant's rejoinder affidavit.
- (d) **22 May 2017:** Respondent's skeleton argument.
- (e) **23 May 2017:** further Respondent's affidavit.

- (f) **30 May 2017:** uncompleted *inter – partes* leave hearing.
- (g) **18 November 2018:** further case management order of this court.
- (h) **28 June 2017** case management order directing an amended Order 53 Statement and Respondent’s reply.
- (i) **19 July 2017, 13 September 2017:** case management listing before Keegan J.
- (j) **05 October 2017:** further case management listing before me.
- (k) **12 October 2017:** proposed substantive listing of the leave hearing before me as determined at the aforementioned listing on 05 October 2017. I vacated this listing upon receipt of written representations about ill health from the Applicant and directed that supporting medical evidence be provided.
- (l) **18 November 2018:** Further case management order of this court requiring the Applicant to make representations in writing within 14 days relating to possible dismissal for want of prosecution.
- (m) **13 February 2019:** further case management listing before me. The Applicant raised the issue of recusal. The court ordered that she file any recusal application by 20 February 2019 and a listing on 19 March 2019.
- (n) **19 March 2019:** hearing of the Applicant’s recusal application, together with an ancillary case management order. Ruling reserved.
- (o) **25 March 2019:** Initial hand down of this judgment and further case management directions.

The Civil Proceedings

[4] The subject death occurred on 30 December 1999. The Applicant brought civil proceedings against a total of eight health authorities, hospitals and doctors. This gave rise to a trial of 55 days duration. By his judgment delivered on 28 January 2010 Gillen J dismissed her case, entering judgment for the Defendants. He observed at [652]:

“Without exception, I have found that the medical and nursing staff in all of these hospitals who gave evidence before me have faced these allegations (of malpractice, fabrication and mendacity) with fortitude and dignity. I have concluded that these allegations are unfounded and in no instance have I determined that the conduct of any of them contributed to the eventual sad demise of this man.”

[5] On 30 September 2010, the Court of Appeal made an order refusing to extend time for appealing. At the hearing on 19 March 2019 this court was informed of a continuing attempt on the part of the Applicant to appeal to the Court of Appeal. I have subsequently seen a purported “Notice of Appeal” seemingly to this effect.

The Inquest Proceedings

[6] I distil the following timeline mainly from a letter dated 18 February 2019 from the Coroners Service to the court (which the Applicant does not appear to dispute):

- (a) **03 November 2014:** the Attorney General (NI) made a direction under section 14 of the Coroners Act (NI) 1959 that an inquest be held.
- (b) **13 January 2016, 04 March 2016, 22 June 2016 and 30 September 2016:** preliminary hearings in the Coroner’s court.
- (c) **16 March 2017, 15 June 2017, 21 September 2017, 25 October 2017 and 07 November 2017:** further preliminary hearings.
- (d) **13 - 17 November 2017:** inquest hearings.
- (e) **20 November 2017:** suspension of the inquest hearings due to the alleged ill health of the Applicant.
- (f) **09 February 2018:** a scheduled Preliminary Hearing was cancelled for the same reason.
- (g) **04 - 08 June 2018:** scheduled resumption of the inquest hearings, cancelled for the same reason and also the unavailability of the interested parties’ counsel.
- (h) **26 June and 06 September 2018:** further preliminary hearings in the Coroner’s Court.
- (i) **17 September 2018:** resumed inquest hearing.
- (j) **24 January 2019:** further preliminary hearing.

(k) **04 March 2019:** further interim hearing.

[7] As appears from the foregoing, the substantive inquest hearings occupied a period of five days in November 2017 and a further day in September 2018. At this stage, the Coroner has not directed any further oral evidence to be heard.

[8] In response to the court's direction, the Coroners Service provided the following by letter dated 18 February 2019:

"By way of letter dated 3 November 2014 the Attorney General for Northern Ireland issued a direction under Section 14 of the Coroners Act (Northern Ireland) 1959 that the Coroner hold an inquest. The Coroner then assigned to this inquest was away from service on long term sick leave. The inquest proceedings have progressed by the following timeframe.

The matter was listed for its first Preliminary Hearing before His Honour Judge Sherrard on 13 January 2016. Preliminary Hearings took place on 4 March 2016 and 22 June 2016. At the fourth Preliminary Hearing on 30 September 2016 the proposed Applicant requested that it be adjourned until the application for leave to apply for judicial review she had lodged at that time, be heard. The Coroner refused and the Preliminary Hearing continued. Further Preliminary Hearings took place on 16 March 2017, 15 June 2017, 21 September 2017, 25 October 2017 and 7 November 2017.

The Inquest opened on 13 November 2017 and was at hearing on the 14, 15, 16 and 17 November 2017 and then was adjourned on 20 November 2017 due to ill health of the Applicant.

A Preliminary Hearing scheduled to take place on 9 February 2018 was cancelled due to the ill-health of the proposed Applicant. The resumed inquest was listed to run 4 to 8 June 2018 but was cancelled due to the non-availability of Counsel and ill-health of the proposed Applicant.

Further Preliminary Hearings took place on 26 June 2018 and 6 September 2018. The resumed inquest was heard on 17 September 2018 to 21 September 2018 after an application to adjourn by the proposed Applicant was refused.

At the inquest in November 2017 the Coroner agreed to permit the proposed Applicant to lodge a further statement. Since that date he has granted four extensions to allow this statement to be lodged. The proposed Applicant has, to date, failed to lodge the statement and a Preliminary Hearing on 24 January 2019 was convened to discuss the progression of the inquest. The proposed Applicant did not attend that Preliminary Hearing but instead emailed on that date to advise she would no longer participate in the inquest proceedings."

The Recusal Application

[9] The Applicant bases her application for recusal exclusively on the case management review hearing conducted by me on 05 October 2017: nothing else. The approved and signed transcript is attached at Appendix 1. This indicates that the hearing had a duration of four minutes.

[10] It is clear from a combination of her written and oral submissions that the Applicant's recusal application has two central elements. First, she asserts, and complains, that the Registrar of the court "*whispered to [me]*" at the outset of the review hearing. Second, she asserts that I "*did not permit [her] to speak*". These are direct quotations from the Applicant's oral submissions on 19 March 2019.

[11] In her oral submissions the Applicant made the following further claims and assertions:

- (a) She believes that the words whispered by the court Registrar to me were in effect an instruction that I should not permit her to speak at the hearing.
- (b) The court Registrar at some unspecified stage "*approached*" me urging a refusal of the grant of leave to apply for judicial review.
- (c) The transcript at Appendix 1 is a "*fraudulent fabrication*".
- (d) This "*fraudulent fabrication*" has been instigated by the author of the transcript.
- (e) The author of the transcript must have had access to a letter which the Applicant claims to have sent to the Judicial Review Office in compliance with this court's direction at [5](k) above. This is a letter which no one, apart perhaps from the Applicant, has to the knowledge of this court ever seen. It appears that the Applicant did not retain a copy.
- (f) During the period of seven days which elapsed following the listing before me on 05 October 2017 I was "*got at*" to the Applicant's detriment in some unspecified way.

[12] The Applicant also saw fit to make some extremely serious allegations of professional misconduct and impropriety against Mr Sharpe, counsel representing the Coroner. She blithely accused him of misleading this court on 05 October 2017. She added that she seeks from this court an order disbarring Mr Sharpe from representing the Coroner.

Conclusions

[13] The governing principles are rehearsed in the judgment of this court in Re Hawthorne's and White's Application [2018] NIQB 5 at [147] - [155]. I provided both parties with the relevant excerpt from the judgment. This resume of the principles was not challenged on either side. The Applicant's obvious familiarity with and grasp of the principles was particularly apparent from her written submission.

[14] The several ingredients of the Applicant's recusal application are characterised by a combination of bare assertion, speculation, suspicion and lack of particularity. There is also clearly demonstrated fabrication. As Appendix 1 confirms, the Applicant's sundry allegations about the conduct of this court and Mr Sharpe at the hearing on 05 October 2017 are quite simply fabricated. During this routine, brief case management review hearing, of four minutes' duration, I invited the Applicant to address the court; she did so; she then confirmed in response to a specific question that she did not wish to raise "*anything else*" and further stated "*That's all*"; Mr Sharpe then provided a brief outline of the progress of the proceedings to date, responding to the court's several enquiries; the Applicant then raised the question of a possible adjournment of the forthcoming inquest hearings; the court responded; and the court then explored the question of whether there would be a further listing before Maguire J to complete the leave hearing.

[15] The outcome of the hearing on 05 October 2017, per the transcript, was the following:

- (a) The Judicial Review Office would make enquiries to ascertain whether Maguire J would be completing the leave hearing.
- (b) The outcome of that enquiry would be notified to the parties within less than seven days.
- (c) The case would be relisted before me, as a leave hearing, on 12 October 2017.
- (d) If the aforementioned enquiry were to yield a negative result, I would deal with the leave hearing.

[16] Taking into account all of the foregoing, I consider that the hypothetical fair minded observer possessed of the various attributes recognised in the governing authorities would entertain not the slightest doubt about the impartiality or integrity

of this court. The Applicant's challenge falls manifestly short of the threshold to be attained. It is quite hopeless. I refuse it accordingly.

[17] The Applicant has seen fit to make serious allegations against Mr Sharpe. These are reckless and manifestly without foundation. She has used the forum of the courtroom and the court process to do so. She has not pursued them in the appropriate forum. This is a grave misuse of the court's process. The independent observer would expect all such allegations to be withdrawn unreservedly, in writing and forthwith.

General

[18] The court harbours grave concerns about the following matters:

- (a) The vintage of these proceedings.
- (b) The non-prosecution of these proceedings.
- (c) The cost of these proceedings.
- (d) The ways in which the process of this court has been invoked and used by the Applicant.
- (e) The vintage of the inquest proceedings.
- (f) The staggered and delayed manner in which the inquest proceedings have progressed.

[19] I remind myself that these proceedings, now of 2½ years vintage, have not progressed beyond the stage of the grant or refusal of leave to apply for judicial review. The determination of this issue is bound to be influenced by *inter alia* events in the Coroner's court during the past three years and anticipated further events therein. I make the following directions:

- (a) All of the information relating to the last mentioned issue should be comprehensively addressed in a further affidavit to be sworn on behalf of the Coroner. This will be filed and served not later than **08 April 2019**.
- (b) The affidavit will be accompanied by a further concise skeleton argument on behalf of the Coroner.
- (c) The Applicant will have the facility of responding and will do so by **22 April 2019**.

Further directions will follow thereafter.