

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

Delivered: 03/05/2013

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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**BETWEEN:**

**Alison Campbell**

**Plaintiff;**

**and**

**Dr Jim I Morrow  
Mr T Buchanan  
Mr Ian Rennie  
Ulster Independent Clinic  
and  
Northern MRI**

**Defendants.**

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**Master Bell**

[1] This is an application by the 4<sup>th</sup> defendant to strike out the proceedings against it on any one of a number of grounds, principally that the amended Statement of Claim discloses no reasonable cause of action against it. At the hearing the plaintiff conceded that it would not be pursuing its action against the 4<sup>th</sup> defendant and argued that either I should grant the 4<sup>th</sup> defendant's application but make no order as to costs or, alternatively, I should stay the proceedings against the 4<sup>th</sup> defendant and reserve the costs to the trial judge.

[2] The context of this application is a medical negligence action where the plaintiff alleges that, having complained of migraines, double vision and dizziness, she was under the care of the 1st defendant who had arranged for an MRI scan of her brain; that the

scan was reported on wrongly by the 2<sup>nd</sup> defendant; that she was referred to the 3<sup>rd</sup> defendant who told her that she need have no further concerns; that some of her care took place under the auspices of the 4<sup>th</sup> and 5<sup>th</sup> defendants. Proceedings against the 5<sup>th</sup> defendant have already been discontinued.

[3] I have concluded that the appropriate order in this case is that proceedings against the 4<sup>th</sup> Defendant should be struck out for failure to disclose a reasonable cause of action, with costs to the 4<sup>th</sup> defendant and certification for counsel.

[4] The reasons for this decision are as follows. One of the important features of any litigation is finality. Cases require to be brought to a final conclusion. Generally speaking, when A sues B one of the parties wins. It is of course true that in certain circumstances civil procedure allows for proceedings to be stayed. On some occasions, for example in applications of *forum non conveniens*, a stay is effectively a permanent state where the proceedings are frozen but not brought to a final conclusion. More usually perhaps, a stay is a temporary remedy until a party has performed a certain act, for example attended a medical appointment arranged by the other side or fulfilled his part of an agreement made under a Tomlin Order.

[5] In these proceedings the amended statement of claim particularises the allegations against the various defendants. There are no claims particularised against the 4<sup>th</sup> defendant. In such circumstances, the finality principle requires that the 4<sup>th</sup> defendant deserves to have these proceedings brought to an end against it rather than have them put into some kind of stasis. Counsel for the plaintiff was not able to persuade me that any proper purpose might be served by staying the proceedings against the 4<sup>th</sup> defendant. The sole purpose which such a course might serve is that the plaintiff would not be liable for the 4<sup>th</sup> defendant's costs.

[6] When it comes to costs, the pre-eminent rule in our system is that the loser pays the winner's costs. There is a strong public policy reason which underlies this. The principle is there to deter both frivolous and ill-advised proceedings. Costs therefore serve a disciplinary and restraining function. Where it not for this principle litigants would be free to launch civil proceedings to harass potential defendants in cases which had no legal merit whatsoever. The valuable resource of court time would be consumed by cases which ought never have been brought, thus causing delay to those who had genuine grievances underlying their proceedings.

[7] Medical negligence cases can provide significant difficulties for professional advisers. Patients can be treated by a number of doctors in a number of hospitals, clinics or treatment centres. Deciding who are the appropriate defendants can therefore cause significant challenges. Nevertheless, in order to help overcome these there are a number of mechanisms provided in our civil procedural law, for example, procedures for pre-action discovery. Essentially it will be a matter of professional judgment as to which parties to sue. Crucially, the law also provides under its limitation provisions for a discretion in the court for a party to be added to proceedings if the circumstances of the case warrant it and the limitation period has been exceeded before proceedings are commenced against a party.

[8] In the circumstances of this case the Ulster Independent Clinic was sued in circumstances where there does not appear to have been a sufficiency of evidence to merit it having been added as a defendant to those proceedings. Some defendants in such circumstances may agree to an order whereby the proceedings are discontinued with no order as to costs. They regard the costs already incurred as part of the cost of doing business and are simply pleased to be released from the litigation. The Ulster Independent Clinic has chosen not to adopt this approach, as is its right.

[9] Counsel for the plaintiff has argued that it ought not to have to pay the 4<sup>th</sup> defendant's costs. He points to correspondence that discussed that possibility that the 4<sup>th</sup> defendant might simply "hold the Writ" while the plaintiff pursued the other defendants. However while this was explored between the parties, the plaintiff then went ahead and served a statement of claim and then an amended statement of claim.

[10] The plaintiff sued the Clinic. It has now been determined by the plaintiff that the proceedings were unjustified. The plaintiff should pay the Clinic's costs. However unfortunate the circumstances of the case, and the circumstances of this case are deeply unfortunate, the principle of costs exists to protect not only an individual defendant who was sued when they should not have been but to protect all in society from unjustified litigation.