

Neutral Citation No. [2009] NICA 34

Ref: **KER7562**

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

Delivered: **25/06/09**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

**ON APPEAL FROM THE HIGH COURT OF JUSTICE IN
NORTHERN IRELAND**

QUEENS BENCH DIVISION

BETWEEN:

CHARLES WAYNE McCLURG AND OTHERS

Plaintiffs/Appellants

-and-

CHIEF CONSTABLE OF THE ROYAL ULSTER CONSTABULARY

Defendant/Respondent

LEAD CASE OF GERALD FRENCH

Before Kerr LCJ, Girvan LJ and Sir Anthony Campbell

KERR LCJ

Introduction

[1] This appellant joined the RUC at the age of twenty-one in 1966. He had a varied and distinguished career. This is comprehensively charted in Coghlin J's judgment and it need not be rehearsed here. The appellant was exposed to very many episodes of trauma, which were again systematically recorded by the judge. It is unnecessary to say anything further about those incidents, except perhaps to observe that, reading through the list of horrific incidents that he had to endure, one cannot but be struck by the enormous demands made of the police force during the period that the appellant served

as a police officer and the courage and steadfastness that he and so many of his colleagues displayed.

[2] In June 1989, after intelligence was received of an imminent terrorist attack on his life, the appellant and his family were moved to England where he was employed in two posts as a seconded RUC officer. Although unsuccessful in a number of applications for the post of Assistant Chief Constable in the RUC, and with several English police forces, he was appointed as Area Commander with Hampshire Constabulary in 1996. In October 2000 he was diagnosed as suffering from PTSD and retired on 14 May 2001.

The medical evidence

[3] There was a joint report on the appellant's condition from Dr Turner, who had been engaged for the plaintiffs and Professor Fahy, for the defence. Both witnesses also gave oral testimony. It was agreed that the appellant was not constitutionally pre-disposed to the development of mental illness but that he had probably suffered from an adjustment disorder with anxiety symptoms since the mid-1970s. Dr Turner understood that the anxiety symptoms were continuous, while Professor Fahy had taken a history that they were episodic although sometimes acute. Professor Fahy's evidence on this was, if anything, confirmed by the appellant himself in evidence and his account was preferred by the judge. Assessments of the appellant while he was serving in Northern Ireland did not disclose any cause for concern about his health. He was found to be highly competent and to be capable of a high level of professional performance in difficult circumstances.

[4] There was a significant deterioration in his symptoms after 1989. Three principal factors were considered to have contributed to this. The experts agreed about the causes of the deterioration but differed on which was predominant. The three factors were: (i) the appellant's reaction to the murder of two colleagues; (ii) the escalation of the threat to him and his family; and (iii) the dislocation associated with his enforced move to England. After this he manifested the symptoms of chronic PTSD and went on to develop a major depressive disorder.

[5] The experts agreed that treatment during his time in Northern Ireland might have helped the appellant's anxiety symptoms, but the plaintiff's expert did not make the case that it would have prevented him developing PTSD or the subsequent depressive disorder. They agreed that his treatment in England had been "sub-optimal" and that he would have been a difficult patient to treat.

The appellant's contact with OHU

[6] The appellant had been involved in the computer provision for setting up OHU. He was also, of course, a senior officer with responsibility for implementing the force orders concerning referral to OHU. Despite this, he claimed to have believed that OHU only dealt with physical ailments. He also expressed significant doubts as to the confidentiality of OHU, notwithstanding three contacts with the unit before he moved to England.

[7] On the first of these, he had visited the unit with a twitching eye on 5 June 1987. Dr Courtney considered that this was probably a nervous reaction. The second contact was what was called a pastoral visit on 23 May 1988, to discuss the situation of a young officer who was suffering from stress. As he was leaving, the appellant claimed that he said that "it wasn't only junior officers who were subject to stress as senior officers weren't exempt". He stated in evidence that this was an opportunity for Dr Courtney to address the appellant's own difficulties with him. Coghlin J observed, however, that Mr French had "come to imbue this remark with a greater degree of significance than it originally possessed". The third contact was a phone call on 22 June 1988. The appellant could not remember any details about this.

The judge's findings

[8] The judge expressed some reservations as to the accuracy of the appellant's evidence and we are not surprised that he did so. The claim that he did not know that OHU treated officers suffering from mental health problems is not easy to reconcile with his having visited the unit about a colleague who was suffering from stress. Moreover, the appellant accepted that he had read and assimilated force orders which clearly indicated that the unit had been set up to promote and protect both the physical and mental health of serving officers. Indeed, Force Order 64 of 1986 dealing with sickness levels contained the following passage at paragraph 10(1): -

"Any illness identified by supervisory members as being associated with aspects of stress, depression or allied condition must be instantly referred to the Chief Medical Advisor through Chief Constable (Personnel Branch). The conditions such as described may result in serious consequences and professional guidance at an early stage is of paramount importance."

[9] The judge found that the appellant was reluctant to disclose that he was suffering from symptoms. This was at least partly because of a police culture which held that acknowledgement of psychological symptoms adversely affected career prospects. He therefore maintained what he

described as “a magnificent façade”. The judge found that none of the contacts that the appellant had had with OHU were such as could reasonably prompt the staff there to take further action. The appellant had been clear that he did not want any specific psychological problem brought to the attention of the authorities. The judge was therefore not persuaded that earlier implementation of the stress awareness pack or other training/education courses would have persuaded the plaintiff to consult the OHU before March 1989.

[10] Coghlin J held that Professor Fahy’s view that the dislocation caused by the appellant’s move to England was the primary reason for his having developed symptoms. The doctor had been pressed on this issue in cross examination but remained resolute in his opinion. He believed that, if the appellant had remained living in Northern Ireland, he would probably have coped. The judge found that there was a real possibility that treatment by the OHU might have reduced Mr French’s symptoms. This finding was based on the partial success of the later treatment afforded to the appellant in England. The judge concluded, however, that earlier implementation of the stress awareness pack and other training/education courses would not have persuaded Gerald French to consult the OHU prior to March 1989.

The appeal

[11] The gravamen of the appeal in this case was that the judge was wrong to decide that earlier implementation of the stress awareness pack and other training/education courses would not have persuaded Gerald French to consult the OHU prior to March 1989. It was submitted that the real barrier to Mr French seeking treatment was his perception that any such treatment would have been career threatening. If the stress awareness pack and other training/education courses had been supported and delivered, the perception that suffering from a stress disorder was a ‘career stopper’ would have disappeared and treatment could have been sought. It was accepted that such treatment would not have taken place very much earlier than 1989, but, it was claimed, any reduction in suffering would have been worthwhile to Mr French.

[12] In advancing this claim, the appellant suggested that the judge had wrongly concentrated on the appellant’s concern about a lack of confidentiality in consultations with OHU. This was not the principal focus of his concern. It was that his career might be threatened.

Conclusions

[13] In our view, there was ample evidential material available to the judge to reach the conclusions that he did. The avowed anxiety about confidentiality was not unrelated to the appellant’s concern about his career.

If disclosure to a doctor or nurse in OHU about mental health problems were not kept confidential, then, according to the appellant, he believed that his career would have been placed in jeopardy. There is no warrant for believing that the judge was not alive to this. On the contrary, the judge expressly linked the two factors when he said, "I think that it is also clear that the plaintiff's concerns about confidentiality and his need to maintain a "magnificent façade" are probably rooted in an RUC culture according to which the disclosure of psychiatric type symptoms or serious concerns about stress would adversely affect career prospects ..."

[14] The judge was perfectly entitled to conclude that this particular appellant would not have been won over immediately by the training and stress awareness package if they had been delivered earlier than they were. After all, the appellant maintained, even on to trial, his claim that he did not know that OHU provided treatment for mental health problems and that confidentiality of consultations could not be assured.

[15] There is absolutely no reason to disturb the judge's findings of fact and, on the basis of those findings, only one outcome to this appeal is possible and that is that it must be dismissed.