

Neutral Citation No. [2010] NICH 12

Ref: **GIR7880**

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

Delivered: **28/5/2010**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

**TREVYN JAY NELSON, A MINOR,
SUING BY HIS FATHER AND NEXT FRIEND BRIAN NELSON**

Plaintiff;

and

NUTTS CORNER CIRCUIT LIMITED

First named defendant;

ULSTER KARTING CLUB LIMITED

Second named defendant; and

SUPER ONE-SERIES LIMITED

Third named defendant.

GIRVAN LJ (extempore)

[1] This is an unusual application. It is brought on behalf of Trevyn Jay Nelson and he seeks an injunction and the terms of the injunction are as set out in the notice of motion. The first injunction sought is an order requiring the defendants to facilitate the plaintiff to enter and compete in Round 3 of the Stingray Super-One Series for Comer cadet carts to be held at Nutts Corner during 29 and 30 May, that is tomorrow and Sunday. In the alternative, he seeks an injunction prohibiting the defendants and each of them from running Round 3 of the Stingray Super-One Series to be held during those dates.

[2] The defendants are Nutts Corner Circuit Limited, Ulster Karting Club Limited and Super One Series Limited.

[3] The nature of the legal basis for the claim is somewhat complex. The plaintiff asserts that he has a contractual right to take part in the race to take place at Nutts Corner tomorrow and that because he has that contractual right he should be entitled to enter the premises which are the property of the first-named defendant in order to take part. He alleges that the first defendant is improperly refusing him access and the second defendant, the Karting Club, is failing to take the appropriate steps to ensure that the first defendant makes available the facilities so that the plaintiff can take part.

[4] This application arises because there has been a dispute between Mr Nelson (who started off as the apparent plaintiff in the writ) and Nutts Corner and its Directors. The dispute arose out of the circumstances in which a fire occurred at those premises. The view was taken by Nutts Corner Circuit Limited and its directors that Mr Nelson had in some way an involvement or responsibility in connection with the fire. This fall out between him and Nutts Corner forms part of the background to the present difficulties.

[5] This is not an immediately recent problem because it is clear that this issue about access to Nutts Corner and the Nelsons' rights to go on to those premises emerged back in 2009 I have been referred to an e-mail of 24 July 2009 which spells out part of the background to the problem. The fact that there was that dispute going on from 2009 is a factor that one has to put into the scales when looking at the question of delay in relation to these proceedings because it is the defendants' case that the plaintiff should be precluded from seeking injunctive relief because of the delay in seeking to bring this application which, as I have noted, is the day before the actual race which is supposed to take place on Saturday.

[6] The question arises as to whether the plaintiff has made out an arguable case in contractual terms that he has a right to enter the Nutts Corner premises. One starts of with the proposition that Nutts Corner Circuit Limited as the land owner is entitled to exclude persons from the property for it has the right as the owner of land to decide who or who not can enter the land. The normal principle is that a land owner may exclude whoever he will and there is no right in law for a third party to say "I have an entitlement to enter the land belonging to that other person." For that argument to get off the ground the plaintiff bears the burden of establishing a legal basis entitling him to enter the premises. He has no statutory basis that he can rely on and the legal basis that he seeks to rely on must be on the basis of some contractual entitlement which would preclude Nutts Corner from exercising its ordinary rights as a land owner. In order to establish that he has a contractual right to enter those premises he has to point to some relationship

between him, Nutts Corner and Ulster Karting that would give rise to a legal right entitling him to enter.

[7] What is clear is that the plaintiff does not have any direct contract with Nutts Corner and it is not suggested or asserted that he has or had a contractual relationship with Nutts Corner that would entitle him against the first defendant directly to enter the premises. So the way in which the matter is set up is that the plaintiff asserts that he entered into a contractual arrangement with Ulster Karting Club under which he was entitled to take part in its competition activities and one of those activities was this particular race at Nutts Corner and that because he had the contractual relationship with Ulster Karting Club they, as part of that contract, must be subject to an obligation to take all appropriate steps against Nutts Corner to ensure that he can enter. The plaintiff asserts further that the court should infer that there is a contractual arrangement between Ulster Karting Club and Nutts Corner under which Nutts Corner is contractually bound to allow entry to whoever Ulster Karting Club seeks to make an entrant in the competition.

[8] The evidence of the alleged contractual relationship between the plaintiff and Ulster Karting is to say the least of it entirely unsatisfactory. The affidavit of Mr Nelson in paragraph 11 and 12 states in very clear terms that the minor plaintiff's team Zip Kart submitted an application, paid the appropriate fee and his membership was accepted as an entrant for the competition. Paragraph 12 states that the day to day management of Trevyn's racing is controlled by Zip Kart and Mr Nelson states on oath that he is advised and believes that in May they submitted an entry for the race to take place this forthcoming week at Nutt's Corner. He also says that he was advised that the cheque forwarded by the Zip Kart team for the entry fee had not been encashed.

[9] What appears to be the position from the documents that have been referred to the court is that Zip Kart team denies that they submitted an application for Trevyn Nelson into the Super One Series. They deny that they paid for the application. They deny that they were responsible for the day to day management of Trevyn's racing. They deny that they submitted an entry for the race a Nutt's Corner this weekend. They deny that Zip Kart paid a cheque for the entry at the race at Nutt's Corner. They also deny that they advised Mr Nelson that the cheque forwarded by the Zip Kart team had not been encashed. That statement of the position by Zip Kart contradicts entirely what is stated in the sworn affidavit of Mr Nelson and it is a matter of great concern to the court that the affidavit so inaccurately states the position bearing in mind that it was a sworn document. There is accordingly prima facie evidence at least worthy of investigation as to whether Mr Nelson has committed perjury in relation to the contents of paragraph 11 and 12 of the affidavit.

[10] The incorrect information in paragraphs 11 and 12 of the affidavit point to another factor that one has to bear in mind in relation to an injunction application. Parties seeking injunctive relief must come to the court with clean hands and there must also be full and frank disclosure of all relevant material. The evidence at this point points to the conclusion that prima facie there was not full and frank disclosure and that is a factor which will weigh heavily against the granting of injunctive relief.

[11] What has happened today is that Mr McNamee on behalf of his client's father has handed into court a document from somebody called Wayne Goodyear who indicates that he sponsors the minor plaintiff for the Super-One Championship and he said that Mr Nelson filled in all race entry forms and passed them on to Mr Goodyear to send in with cheques for each event. He then referred to cheque numbers including one for the Ulster Kart Club and he says he remembered posting the entry for Ulster Kart Club because it was the Bank Holiday, 3 May 2010.

[12] The matter becomes slightly more problematic when one considers the contents of another document dated 19 May from Mr Nelson to Mr Rutherford and he says "I hereby enclose a further copy of the race entry sent to you on 1 May which seems to have been lost or gone astray". The court has seen at page 7 of the bundle put in by the defence and also a loose copy of it handed in by the plaintiff that there is a document dated 19 May 2010 purporting to come from the minor plaintiff and Mr Nelson direct to the Ulster Kart Club and it relates to the event on 29 and 30 May. That form refers to an entry fee of £160 payable to Ulster Kart Club and it is also clear from the document that it related to an entry which closed two weeks prior to the event. The application to fulfil the requirements of Ulster Kart Club would have had to have been in by 15 May. This document is dated 19 May.

[13] Mr Dunlop on behalf of the defence argues that that of itself shows that there was no contract in relation to Ulster Kart Club that can be relied on by the plaintiff because it is an application made out of time and there is no evidence, he said, of payment of £160 entry fee.

[14] On the evidence that is presently before the court and having regard to the entirely unsatisfactory way in which the evidence has been presented the court has not been satisfied on the evidence even on an arguable basis that the contract was entered into with Ulster Kart Club Limited such as is alleged by the plaintiff as a necessary prerequisite for the argument that there was then to be attached to it a contractual obligation on Nutt's Corner to allow the plaintiff to enter the premises.

[15] The court is not satisfied on the evidence that it has been shown at this stage that there was a contract such as is alleged by the plaintiff giving rise to the possibility of a collateral contract with Nutt's Corner implicit in the

arrangement with Ulster Kart Club. I would in any event have grave doubts as to whether any legal basis can be shown to have been established in relation to a contract obliging Nutt's Corner to allow entry to anybody who has made an application for Ulster Kart Club even if Nutt's Corner had some basis for deciding that he or the members of his family were undesirable as entrants to Nutt's Corner premises. I do not think one needs to get involved in the argument as to what possible contract did or did not exist between Ulster Karting Club Limited and Nutt's Corner because I consider that the plaintiff has failed in establishing any contractual basis for the claim as set up in the application.

[16] Accordingly I have come to the conclusion that the plaintiff has not made out a legal basis for an injunction. There has been undue delay on the part of the plaintiff's family in asserting claims against Nutt's Corner when this was a long standing issue between them which just did not blow up as a matter of a problem within the last few days and I am also satisfied that the applicant has not come to court with clean hands in such a way as to justify the court granting the equitable relief of an injunction. Accordingly it is not necessary to go on to consider the question of the balance of convenience or those other issues that would arise if a good arguable case had been made out. I am satisfied that an arguable case has not been made out and those other issues accordingly do not arise.

[17] Having said all that one aspect of the case concerns me and it is this that the plaintiff on the face of the documentation was described as Mr Brian Nelson as father and next friend. I have allowed an amendment of the proceedings to substitute Trevyn J Nelson as plaintiff suing by his father and next friend but it appears that the minor plaintiff has obtained legal aid and there seems to be a practice of granting legal aid to children to pursue claims because children normally do not have assets. Nevertheless the legal aid authorities in granting legal aid are entitled to full and frank disclosure of all relevant material and I was told at the outset that the legal aid authorities had the affidavit showing the basis of the case that was being made out. Of course the affidavit as we now know in paragraph 11 and 12 does not accurately set out the position at all and accordingly the legal aid authority has not made its decision on the basis of incorrect information from Mr Nelson. That is a factor that the legal aid authorities should take into account in deciding what the status of the legal aid is that they have granted. It is important that applicants for legal aid make sure that the legal aid authorities has correct information in relation to any application for legal aid particularly in these times of great pressure on the legal aid budget. It is very important that everything is done properly and correctly in relation to these matters. It is also somewhat surprising having regard to the amount of expenditure that has occurred according to paragraph 5 of the affidavit in relation to Trevyn's motor sport career, that a legal aid application was made. The nature of the expenditure on Trevyn's motor sport career is such that it does raise an

eyebrow as to why the public purse should be expected to fund proceedings of this nature at the public expense.

[18] What I propose to do is to have my judgment transcribed and a copy of it will be made available to the legal aid authorities.