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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* **12/01/2021**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

RITA OKOTETE

Plaintiff;

and

CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND

Defendant.

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The Plaintiff appeared as a litigant in person
Mr. J Rafferty BL (instructed by the Crown Solicitor's Office) for the Defendant

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McFARLAND J

Introduction

[1] The plaintiff has appealed against an Order of Master Bell of 22 October 2020 whereby he refused her application for specific discovery. Her grounds of appeal were fourfold, but can be distilled into two principle grounds: (1) Master Bell failed to give adequate reasons; (2) Master Bell should have made the order for specific discovery and he had misdirected himself concerning the law in relation to discovery.

[2] The plaintiff was involved in an incident at the Ormeau Centre in Belfast on 23 November 2011 which resulted in her arrest, detention, prosecution and subsequent conviction at Belfast Magistrates' Court. She has issued a claim against the defendant claiming damages for false arrest and malicious prosecution.

[3] The case had been listed for hearing in the Autumn of 2020 but for a variety of reasons could not get on for hearing. It has now been listed by me for 5 days to commence on Monday, 15th November 2021. The delay in listing is a result of the plaintiff's reluctance to travel from her home in London during the current medical emergency.

[4] I conducted the hearing of the appeal on the 8th January 2021 under the provisions of Schedule 27 to the Coronavirus Act 2020 with all participants using the live video facility. I am satisfied that everyone was able to participate fully in the hearing.

Master Bell's Order

[5] Master Bell conducted the hearing of the plaintiff's application by live link and issued an order which included the following terms –

> *"Upon the Plaintiff issuing a summons under Order 24 Rule 7 that the Defendant should provide the Plaintiff with a copy of the data information/documentation which was provided to the Public Prosecution Service on 23-24 November 2011 prior to her appearance at Belfast Magistrates' Court on 24 November 2011 and upon the court considering the written submissions filed by the parties and upon the court hearing and considering the oral submissions made by the parties and upon the court being persuaded that the Defendant has already made discovery of the documents and CCTV footage which was provided by the defendant to the Public Prosecution Service in November 2011 the court dismissed the Plaintiff's application."*

Discovery

[6] The principle ground of appeal is the failure on Master Bell's part to make the order for specific discovery. Order 24, rule 7 makes provision for a court to require a party to make discovery to the other party of a specified document (or documents).

[7] Order 24, rule 2 provides for the discovery of documents (a term that can include non-paper material) relating to any matter in question between the parties in the action. No point is taken by the defendant that the documents sought by the plaintiff fall within the category of documents that should be discovered. The defendant's case is that they have already been discovered.

[8] The list of documents was furnished on 23 June 2015 and this was verified by an affidavit sworn by a solicitor from the legal services department of the defendant. Mr Rafferty, for the defendant, asserts that the documents passing from the defendant to the Prosecution Service are contained in that list. The plaintiff submits that that is not possible, and makes that submission on the basis that, in her view,

other documents must have been passed given the submissions made by the prosecutor to the magistrates' court, particularly in relation to her application for bail. Mr Rafferty reported that Master Bell had asked the plaintiff at the hearing to specify and identify what these actual documents were, and the plaintiff was unable to identify such documents with any degree of precision. She was unable to do so before this court, except in the most general of terms.

[9] When pressed she indicated that she "assumed" that there were documents, and that she did not "believe" that there were not any other documents. She referred to an extract from the prosecutor's code (2008) – section 3 dealing with the relationship with the investigator. There is no specific reference to documents, but there is mention of files, reports and information passing from the police to the prosecutor, but all in general terms. The plaintiff's assumption or belief is not based on any experience on her part. She confirmed that she has no expertise or experience as to the duties of a police officer or prosecutor, so is not actually aware of the relationship between police and prosecutor or what is likely to pass between them in documentary form in the normal course of business. Her assumptions and belief can therefore be categorised as nothing more than hunches. This has to be seen in the light of a solicitor in the employment of the defendant swearing an affidavit confirming that the list of documents provided contains all documents that had been in the possession of the police relating to any matter in question between the parties. Mr Rafferty has also submitted to the court that when this matter was specifically raised by the plaintiff by her summons, the matter was re-checked, and the position, as far as the defendant is concerned, remains unchanged.

[10] As the plaintiff has been unable to identify any specific document which was in the possession of the police that had passed between the police and the prosecution and had not been discovered, Master Bell was perfectly entitled to come to his decision. The plaintiff has been unable to identify such documents before this court so, again, her application must be dismissed.

Reasons for decision

[11] The plaintiff also appeals on the grounds that the decision is an error in law as, she says, no adequate reasons were given by Master Bell. She quotes the comments of Henry LJ in *Flannery v Halifax Estate Agencies Limited* [2000] 1 WLR 377 at 381 –

> *"…fairness surely requires that the parties especially the losing party should be left in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know whether the court has misdirected itself, and thus whether he may have an available appeal on the substance of the case."*

[12] I reject this ground because in my view Master Bell has given adequate reasons. The duty to give reasons must be seen in the context of the case and the issues involved in the decision being made. This has been well-recognised both by the common law and by the Strasbourg jurisprudence in connection with the fair civil trial provisions in Article 6 of the European Convention. The common law position is best illustrated by the comments of Buchanan JA in *Perkins v County Court of Victoria* [2000] 2 VR 246 at [64] where he stated –

> *"The degree of detailed reasoning required of a tribunal depends on the nature of the determination, the complexity of the issues … and the function to be served by the giving of reasons."*

Similar sentiments were stated by the Grand Chamber of the European Court of Human Rights in *Garcia Ruiz v Spain* (2001) 31 EHRR 589 at [26] –

> *"The Court reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case."*

[13] The plaintiff in her affidavit setting out her grounds of appeal quoted from the judgment of Lord Phillips (referring to Henry LJ's judgment) in *English v Emery Reimbold & Strick Limited* [2002] EWCA Civ 605 at [15]. However, the judgment of Lord Philips must be seen in its entirety. In particular he stated at [19] –

> *"But the issues the resolution of which were vital to the Judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the Judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, in may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon***."**

This approach has been approved in this jurisdiction in a number of cases including *Johansson v Fountain Street Community Development Association* [2007] NICA 15, *Ferris and Gould v Regency Carpet Manufacturing Ltd* [2013] NICA 26, and *CM v CL and Northern Health Social Care Trust* [2013] NICA 76.

[14] The issue in this matter was an interlocutory one, the decision could be appealed (as it has been), it was largely administrative in nature, and it was an

assessment on whether full discovery had been provided. It was very much a matter of fact for Master Bell to determine – has the defendant provided discovery of documents passing from it to the prosecution prior to the plaintiff's appearance in court on 24 November 2011? It involved an acceptance by Master Bell of the case submitted by the defendant, that full discovery had been made. The reasons that he gave were, in my view, adequate in the circumstances. He was persuaded that discovery had already been made. That was on the basis of the written and oral submissions made to him. The plaintiff submits that it is not enough to say that "I am persuaded" because it does not explain why he was persuaded. In the context of this case, and the issues before Master Bell, I consider that this reasoning is adequate, and in particular, explains to the plaintiff why he made the decision – that she already has all the documents that were in the defendant's possession and there are no more, whatever her assumptions or beliefs may be.

[15] I therefore consider that Master Bell has not failed to give reasons and the reasons he has given are adequate in the circumstances. In this context, there has not been an error of law, or one that would vitiate his decision.

[16] This type of application is dealt with day and daily by Masters, and by judges in the County Court dealing with similar applications. These are interlocutory matters relating to procedural issues in preparation for a final hearing of a case. Many are dealt with administratively based on written submissions. There will be occasional applications that will require more detailed scrutiny and reasoned judgments. The vast majority of applications do not, and can be disposed of with the type of order made by Master Bell in this case. It will be (or should be) obvious to the parties, as in this case, and to any appellate court, what the decision is, and why it has been made. That is all that is needed when dealing with an application such as this.

Conclusion

[17] The appeal is therefore dismissed. I further direct that the plaintiff shall pay the costs of the defendant before the Master, and before this court. These costs are to be taxed in default of agreement.