Neutral Citation No. [2010] NICh 13 | *Ref:* **DEE7912**

*Ex tempore Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **15/03/2010**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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LAWRENCE PATTERSON

-v-

ROBERT JAMES SHAW and DEIRDRE KATHLEEN SHAW

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DEENY J

[1] This is an application brought by Lawrence Patterson to strike out and or stay the appeal from the decision of Her Honour Judge McReynolds at Newtownards County Court following a hearing on 7 May 2008 and a subsequent judgment by her. A written judgment is included in the hearing bundle helpfully prepared by the plaintiff respondents' solicitors.

[2] The defendant appellants are Robert James Shaw and Deirdre Kathleen Shaw and they were present in court. The court had the benefit of oral argument from Mr Robert Shaw in opposition to that of Mr Sharpe of counsel on behalf of Lawrence Patterson.

[3] The court has also had the benefit of a very considerable volume of papers in this matter which has overflowed a lever arch file to a substantial degree. In the course of that Mr Shaw has had a considerable opportunity to commit his views on this matter to writing by way of affidavits and correspondence – indeed, some of it uninvited to the court. Also in the skeleton argument which addresses seriatim the arguments of Mr Sharpe in his skeleton argument. So the matter is very fully set out the court.

[4] The court has also had the benefit now of hearing the parties on some six occasions – this is the sixth occasion since the matter came before the court.

[5] The application to strike out is grounded on the affidavit of Mr Brian Cole, solicitor for Lawrence Patterson and it is on the basis that the appeal is scandalous and vexatious and also that it is an abuse of the process of the court. I think it is my duty to set out some of the grounds for that in detail although no doubt it makes uncomfortable listening but I think it is proper that I should do so.

[6] I make two preliminary points. The mode of appeal from the County Court in Northern Ireland to the High Court allows a re-hearing of the proceedings in the High Court. The present Rules do not require an appellant from the County Court to set out grounds for the appeal. But in this case as I say there has been for a variety of reasons a good deal of material committed to paper. I have searched in those papers for the grounds of the appeal here and they have been very difficult to find. I have now had some submissions from Mr Shaw which I will refer to in a moment which clarify the matter though perhaps not in a way helpful to the appellants.

[7] The other matter which I would like to put on record in case surprise is ever expressed at this being the sixth review hearing before the court – though of course this is on an interlocutory application – is that originally there was agreement to mediation which the court encouraged. The first mediator turned out to have some acquaintance with Mr Patterson and he withdrew. The Law Society then appointed another mediator but unhappily that did not resolve the matter.

[8] The plaintiff respondent succeeded only in part before the learned County Court judge and her judgment is to be found in the bundle at pages 121 to 125 and it is followed by her decree. Her decree declared that as against the defendants, that is the Shaws, the plaintiff has a right of way for all purposes and at all times both for himself and any visitors over the laneway leading from the Creevytennant Road to his dwelling at 56 Creevytennant Road, Boardmills, Ballynahinch, County Down subject to the extent that vehicular size and dimensions are limited as follows. She then limited the vehicle width to 7 feet 9 inches, the weight to 6 tons and the length to 25 feet. This was a partial success for Mr & Mrs Shaw who complained that a lady to whom I think I will have to make reference subsequently on behalf of Mr Patterson had been using a larger lorry than that. They had a hedge in front of their property adjoining the lane in question but they wanted to replace it by a wall and initially District Judge Brownlie granted an interim injunction and later Her Honour Judge McReynolds after this lengthy hearing concluded that a permanent injunction should be granted and she did grant it prohibiting the defendants from building a wall or otherwise obstructing or interfering with the right of way as declared in paragraph 1 of this decree. So it does not prevent the defendants building a wall slightly further back but it does prevent them building a wall that they wanted to build at the precise point in question.

[9] There are two approaches to this matter it might be said. One whether this is a bona fide appeal or whether the Shaws are incensed rightly or wrongly by their experience of this whole matter and are pursuing collateral purposes by way of the appeal. The other point of view is that irrespective of that whether the proceedings themselves are scandalous and vexatious. To some degree the matters overlap. Mr Sharpe adverted to the affidavit of his solicitor summarising these points and I think it is my duty to briefly mention them as indicating that the approach of the defendant appellants is in fact vexatious and to a degree scandalous.

[10] First of all they made a complaint against District Judge Brownlie who had heard the interim injunction which caused her to recuse herself from the hearing of the substantive matter. She was sitting as a deputy judge of the County Court in doing so. That complaint has not been upheld and members of the Bar including the Shaw's own barrister were very critical of that complaint having been made.

[11] Secondly Mr Cole refers to the defendant appellants having made what he describes as frivolous and unsubstantiated complaints to the Bar Council about three members of the Bar during the proceedings in the County Court all of which were dismissed. That seems to be right subject to one caveat, that in fact, for example at page 28 of the book, a further document from Mr Shaw, he in fact says that they made complaints regarding four barristers "that have both misled us and the courts. The Bar Council dismissed our complaints without hearing or having sight of the full facts and some of the facts are still being withheld from us." It is entirely reasonable that members of the public should be able to complain about members of the Bar. It is very important that the profession should maintain high standards. Occasionally persons may fall below those high standards. It is also understandable that sometimes a client and counsel will fall out but Mr Sharpe and Mr Cole in effect invite me to infer from the criticism of three or as I point out four members of the Bar that this is a vexatious approach on the part of the defendant appellants.

[12] Next Mr Cole sets out that there were complaints made to the Law Society about both firms of solicitors involved – I haven't named them but I don't want to in any way imply that the court finds there is any substance in those complaints. In fact that has not been the case and the Law Society rejected the complaints.

[13] I have to say that I also noticed in passing at page 150 of the book a further allegation by Mr Shaw against another solicitor who had been acting for a third party and it is followed by this : "We have proved their claims all to be false and the third party have walked away". So it may be said that three firms of solicitors have been attacked and again apparently without

justification. Mr Shaw points out that he didn't discharge his legal representatives but they withdrew and that seems to be the case.

[14] The first firm of solicitors that I mentioned are having to sue for their fees for their earlier representation and the court's attention has been drawn to correspondence from which it appears that the defendant appellants are threatening to call 30 witnesses including members of the judiciary and members of the legal profession in their defence of their action for fees by that perfectly respectable firm of solicitors. Such things can happen on their own but this is, again, a curious and surprising turn of events.

[15] Again the defendant appellants had an engineer at one stage and they wouldn't pay his costs and he brought proceedings which were successful before District Judge Wells. Again it is pointed out that there are repeated allegations of fraud through the papers for which there seems to be no basis at all. Mr Patterson's solicitor at the beginning of his averments accepts that there is a slight degree of uncertainty whether the relevant maps were before the court at the time of the interim injunction. There are many allegations about this matter but Mr Shaw accepted what seemed to me to be the inevitable finding on the facts in his oral arguments that Mr Brennan's map and the other map coloured red were before the County Court judge when she decided the matter ultimately.

[16] Complaints have been made to the Police Service of Northern Ireland but they have written saying they don't intend to pursue these further.

[17] It is further contended by the defendant appellants that these proceedings before this High Court if they were to go on by way of appeal from Judge McReynolds would require 30 witnesses to be called, taking 21 working days of 6 hours each. That is not denied by Mr Shaw and indeed it is in a letter of his to be found at page 24 of the proceedings as recently as 4 January 2010. But actually it seems to be worse than that because later on there is a further letter or paragraph and a further letter which says it is now going to take 26 days. The first letter mentioned 30 witnesses but apparently it is now 40 witnesses including members of the judiciary.

[18] The respondent here is in my view entitled to say that there is considerable evidence of vexatiousness and of the sort of obsessive behaviour that sadly befalls some litigants from time to time and casts doubt on whether these are bona fide proceedings. But it is worse than that. Complaints have been made to a wide ranging series of public officials, Assemblymen, MPs, the Lord Chief Justice and the Prime Minister – all seeking complaints to be heard and inquiries to be heard. In particular Mr Shaw seems very concerned that a particular map was not before District Judge Brownlie but she only heard the interim injunction and it seems to me that there is considerable and forceful strength in Mr Sharpe's submission that that is really the grievance

that Mr Shaw ends up having here. In support of that he points out for example and I am not going to go into all these matters but at paragraph 13 on page 31 of his replying affidavit for this application he says "As stated before at item 11 of this affidavit this matter could be resolved within 5 minutes by Diamond Heron, solicitors, their client and others admitting that they used a false 1997 map on which they gained their interim injunction and all that followed." Now that must be completely inconsistent with the claim for the need for scores of witnesses to be called in this case and indeed having now heard Mr Shaw on a number of occasions, read voluminous papers and heard him again today it seems to me that that is a frank statement by him of his real grievance. I don't need to rule on whether Judge Brownlie had or had not the better map of 1997 because it is irrelevant to Judge McReynolds' judgment. Really what he wants is an admission that that was the case but that in effect means that this appeal is an abuse of the process of the court because it is seeking to achieve something that is irrelevant to the decision of Judge McReynolds. I wont repeat the helpful statement of the law as set out in Mr Sharpe's skeleton argument. The court has had the benefit of the Halsbury quotation and of the reference to the Judicature Act and the Supreme Court Practice and the benefit of the decision of our own Court of Appeal affirming Mr Justice Girvan in Lough Neagh Exploration v. Morris [1999] NI 258. It is clear that all these cases will have different facts and the facts here are different but I apply the principles set out therein. It seems to me that that reference at page 31 above which one finds in at least one other place in a slightly different language is the truth of the matter. No where in the affidavits or the skeleton argument was I able to find the grounds of the complaint against Judge McReynolds' judgment so I expressly asked Mr Shaw about it in his submissions and it seemed to me that that indeed disclosed his misunderstanding about the matter, namely that he thought it was merely a matter of perimeter lines and whether or not his wall may have been within a line that existed in the past.

[19] If one looks at paragraph 1 page 1 of the learned County Court judge's decision it is clear that she states correctly that she is dealing with a matter which is res judicata namely the County Court decree of 10 October 1988 entitling Mr Patterson's predecessor in title to pass "both with vehicle and on foot" over the lane in question. So what she had to deal with, as she says then at paragraph 3, sub paragraph 9, is what was reasonable vehicular usage of the laneway. I may say that she was critical enough of Mr Patterson who initially cross appealed in this matter but wisely abandoned that cross appeal some time ago. It seems to me that having read all the papers and indeed heard Mr Shaw now, that he does not attack that decision of the learned County Court judge that his wall would as a matter of fact interfere with what she found to be reasonable vehicular usage. She had the advantage of visiting the site, ultimately she got all the necessary papers and it does not seem to me that in truth there is a bona fide appeal here but it is rather a grievance about the usage of maps at an earlier interlocutory stage.

[20] To illustrate that in the reviews before this court considerable attention was paid to a map coloured red which was alleged to be crucial to the matter and it turns out just to be the original earlier map which was later photocopied. I am entirely satisfied there is nothing sinister about its omission at some point in its red coloured form. The defendant appellants do not dispute Mr Sharpe's submission, well grounded on documentary evidence, that the map was also before the relevant County Court judge.

[21] The fact that these proceedings are really being brought for a collateral purposes is borne out by, for example, this paragraph at page 147 of the papers also from a document of Mr Shaw's. It begins : "We do question what is acceptable in the courts in Northern Ireland." I can see no evidence for [his allegations] but again it is consistent with the view I am forming of Mr Shaw's case. There are also references at page 148 of the papers and at page 150 there is an assertion that 'we have never sighted the map coloured red' which is inconsistent with my note of what the appellant said on 2 February 2010 before this court. I am not going to go through every example here but what I am satisfied is that applying the law as it stands these proceedings do constitute vexatious proceedings and perhaps to a degree are scandalous also.

[22] It would be an abuse of process of the court to continue them because they are seeking to punish somebody for what Mr Shaw believes was a subversion or omission of a map at an interlocutory hearing whereas that has nothing to do with the judgment of the lower court. For all these reasons therefore I grant the application of the plaintiff respondent and dismiss the appeal.

[The court awarded costs against the Shaws.]