

**Neutral Citation: [2016] NIQB 83**

Ref: COL10072

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

Delivered: 14/10/2016

**2010 No 30977**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
QUEEN'S BENCH DIVISION**

**BETWEEN:**

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**DAVID THOMPSON**

**Plaintiff;**

**and**

**R P CRAWFORD T/AS R P CRAWFORD SOLICITORS**

**Defendant.**

**COLTON J**

[1] The plaintiff in this action is a litigant in person. He sues a firm of solicitors who previously acted for him in relation to a claim against United Hospitals Trust. That claim arose from the plaintiff's wife's death in January 1997. It was the plaintiff's opinion that this death was caused by the negligence of the Trust and on 15 February 1997 he instructed the defendant to investigate and pursue a claim seeking compensation against the Trust.

[2] In this action commenced by Writ on 9 March 2010 he alleges that the defendant was negligent in respect of the conduct of that litigation. The Statement of Claim which was heard on 2 November 2015 sets out the particulars of his case. He makes a series of criticisms of the defendant and alleges that these shortcomings resulted "in the case failing." The gravamen of his case is perhaps best set out in sub-paragraph (xi) of the Particulars of Negligence when he pleads "Causation of the loss of opportunity to pursue case, as plaintiff's wife's case was struck out on 21 December 2011."

[3] As a result of the negligence alleged the plaintiff alleges that he suffered special damage amounting to £8,950 and also that he and his two sons suffered personal injuries in the form of stress and emotional damage. In particular he suffered two heart attacks.

[4] In subsequent correspondence to the High Court dated 20 June 2016 it is clear that the plaintiff has abandoned any claim for personal injuries.

[5] In support of the case he makes the plaintiff is critical of his former solicitor in failing to act in accordance with his direct instructions, failing to respond in time to requests made by defence solicitors, failing to provide medical experts with complete paginated information, failing to comply with the requirements of the legal aid authority, failing to take adequate steps to provide replies to particulars, failing to appear in the Masters Court, failing to obtain statements directly from material witnesses, failing to respond to requests to prevent the case from being statute barred, failing to select correct medical experts and compelling the plaintiff himself to carry out legal work including drafting replies to particulars.

[6] In his defence the defendant admits that he agreed to act for the plaintiff in relation to the claim against the Trust. He admits that a legal aid certificate was issued to the plaintiff on 7 October 1999 further to a contribution of £525.50 and limited to obtaining an independent medical report and thereafter where necessary to the preparation of papers for counsel and obtaining counsel's opinion. The defendant pleads and it is not in dispute that he instructed Professor Ian Bone, Consultant Neurologist to provide an expert report and he also instructed both senior and junior counsel in relation to the matter. On 22 December 1999, Professor Bone provided an expert report which expressed the opinion that he identified no grounds for a claim in medical negligence. In order to ensure that the action remained alive the defendant issued and served a Writ of Summons on behalf of the plaintiff on 5 January 2000. A Statement of Claim was served on 4 January 2001 and a defence and Notice for Further and Better Particulars were served on 12 February 2001. The defendant served the plaintiff's reply on 20 March 2001 and replies to the Notice for Further and Better Particulars on 18 December 2001.

[7] Thereafter it appears that the plaintiff himself obtained a nursing expert report on 7 October 2002 from a Ms Deborah Bowey and obtained a further expert report from Dr Pannikar, Consultant in Anaesthesia and Intensive Care on 20 July 2005. These reports identified shortcomings with the care provided to the plaintiff's wife but both ruled out a causal relationship between those shortcomings and the plaintiff's subsequent death. On 5 September 2005 senior counsel provided an opinion to the defendant to the effect that the plaintiff's claim against the Trust could not be justified and advised that the defendant should advise the Legal Services Commission that the action was not worthy of pursuit. Mr Thompson indicated to me that he was not in any way critical of the advice or services provided by senior and junior counsel and thanked them for their assistance.

[8] It is abundantly clear that the plaintiff was unhappy about the way the matter was conducted by the defendant and that the relationship of trust and confidence between the defendant and plaintiff broke down. As a result the defendant was granted leave to come off record for the plaintiff on 30 June 2006.

[9] The defence in this action was served on 4 January 2016 and a Notice for Further and Better Particulars was served on 6 January 2016. The plaintiff provided replies to the notice which are undated.

[10] By summons dated 9 March 2016 the defendant issued a summons seeking a series of orders against the plaintiff. The one which is relevant for this judgment relates to an application for an order pursuant to Order 18 rule 19 of the Rules of the Court of Judicature (Northern Ireland) 1980 striking out the plaintiff's action in its entirety on the grounds that it is frivolous, vexatious or an abuse of the process of the court. After a hearing on 13 June 2016 the Master made an order pursuant to the application that the plaintiff's action be struck out on the basis that it is frivolous and vexatious.

[11] The plaintiff appealed this order and the matter was heard before me on 30 September 2016. I treated the appeal as a rehearing and the application was moved by Mr William T Gowdy on behalf of the defendant. I am grateful to him for his written and oral submissions. Mr Thompson appeared in person and presented his case with conviction.

[12] The relevant order states as follows:

“The court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action or anything in any pleading or endorsement on the ground that;

- (a) it discloses no reasonable cause of action;
- (b) it is scandalous, frivolous or vexatious;
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”

[13] The defendant relies on (b).

[14] Self-evidently the onus on the defendant to establish such grounds is a high one. The correct approach has been set out as long ago as 1892 in the Court of Appeal decision in *Attorney General for the Duke of Lancaster v London and North Western Railway Company* [1892] 3 Ch 274, 277; as follows:

“It appears to me that the object of the rule is to stop cases which ought not to be launched – cases which are obviously frivolous or vexatious, or obviously unsustainable;”

This wording was adopted by Gillen J in the case of *Rush v PSNI and the Secretary of State for Northern Ireland* [2011] NIQB 28.

[15] In determining this matter I make it clear that it is not for me to come to any view about the criticisms made by the plaintiff of the defendant. Whilst these are denied in strong terms in the defence solely for the purposes of this application I must proceed on the basis that they may have merit.

[16] Before coming to a conclusion it is necessary to set out what took place after the defendant ceased to act for the plaintiff on 30 June 2006.

[17] The following matters are not in dispute:

- (a) As of 30 June 2006 the plaintiff’s action against the Trust was still a live action.
- (b) Thereafter the plaintiff sought to pursue the claim. The plaintiff confirms in writing and at the hearing the following:
  - (i) He attended the Master’s court on 14 occasions as a litigant in person in relation to the original action.
  - (ii) He approached a total of 33 solicitors with a view to pursuing the action.
  - (iii) In particular he referred me to correspondence from Edwards & Co Solicitors who advised him on 20 August 2008 that having reviewed all the papers in the matter they were “unwilling to take over carriage of this matter on your behalf”. He was then advised as to how to proceed with the matter as a litigant in person.
  - (iv) He also sought advice from a lay observer.
  - (v) He raised the matter with the Attorney General and the Lord Chief Justice’s Office.
  - (vi) He sought advice from the Bar pro bono unit who indicated that they could not assist him further.
- (c) The plaintiff’s action against the Trust was dismissed with the consent of the plaintiff on 21 December 2011.

[18] In short form the defendant says that it is simply unsustainable that a court could find that any negligence on behalf of the defendant resulted in the failure of the plaintiff's action against the Trust. Given the admitted facts post June 2006 when the defendant ceased to act for the plaintiff it cannot be argued that any misconduct on his part was the cause of the dismissal of the plaintiff's original claim or any loss of opportunity to pursue such a claim.

[19] Mr Gowdy makes a further argument that the medical expert evidence was such that any claim against the Trust was hopelessly weak and had no real prospect of success. Even (which is denied) if the defendant was responsible for a failure of the claim in effect the plaintiff did not suffer any loss.

[20] In relation to the latter argument I am not convinced that this would be sufficient to justify an order under Rule 19(1)(b) if negligence were established against the defendant that resulted in a dismissal of the plaintiff's claim against the Trust. In that event it would be at least open to him to argue that he had lost an opportunity and whilst such an argument may be extremely weak I don't think it reaches the test of being frivolous, vexatious or to use more straightforward terms unsustainable or unarguable.

[21] I am however convinced by the primary submission made on behalf of the defendant. For the plaintiff to succeed in his action against the defendant he needs to be able to persuade the court that the reason for the failure of the claim was some negligent act on behalf of the defendant. I pressed Mr Thompson on this point at the hearing but he simply reverted to his list of grievances about how the matter was originally handled. These grievances have been the subject matter of a complaint to the Law Society and of course such a complaint was the proper way to deal with these matters. However it seems to me that it is simply unsustainable that any conduct of the defendant was the cause or reason for the dismissal of the plaintiff's original claim. When the defendants ceased to act for the plaintiff he had a live action against the Trust. He continued to pursue that claim for another 5½ years before it was dismissed by consent on 21 December 2011. The action was not struck out because of some failing on the part of the defendant.

[22] In these circumstances I agree that the action brought by the plaintiff against the defendant is frivolous or vexatious in the sense that it is obviously unsustainable and allowing it to be put forward would be an abuse of the process of the court.

[23] There is one further matter that I wish to deal with. In his submissions to me Mr Thompson made the case that this action was brought to life when it was reviewed by the High Court on 27 April 2015. It will be recalled that the writ in this action was issued on 9 March 2010 but the Statement of Claim was not delivered until 2 November 2015. The Statement of Claim was served after a series of appearances by the applicant in the High Court pursuant to the review of the matter in April 2015. For some reason Mr Thompson appears to suggest that the fact that this matter was dealt with in this way gives rise to some sort of legitimate

expectation on his part that the matter would be dealt with and determined by a High Court judge. Again clearly this is an unsustainable argument. The matter was reviewed as part of the proper management of an action which had long lay dormant. It was only when a Statement of Claim was served that the defendant was in a position to assess whether or not he had grounds to bring this application.

[24] I therefore dismiss the plaintiff's appeal and make an order striking out the action in its entirety on the grounds that it is frivolous, vexatious and an abuse of the process of the court pursuant to Order 18 Rule 19 of the Rules of the Court of Judicature (Northern Ireland) 1980.