

Neutral Citation No. [2014] NICty 4

Ref:

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

Delivered: **16/06/2014**

**IN THE COUNTY COURT FOR THE DIVISION OF ARMAGH & SOUTH
DOWN BY THE COUNTY COURT JUDGE**

Between:

RYAN COLLINS

Plaintiff

-and-

**TRUSTEES FOR THE TIME BEING OF
ABBEY CHRISTIAN BROTHERS GRAMMAR SCHOOL**

Defendant

Deputy District Judge Brian F. Walker

1. This is a Civil Bill brought by Ryan Collins against the Trustees for the time being of Abbey Christian Brothers Grammar School. The claim is for £15,000.00 for personal injuries etc for negligence and breach of statutory duty in and about the provision and management of the Plaintiff's education and the protection of the Plaintiff from bullying up to February 2009. The breach of statutory duty is claimed under Article 3 of the Education (NI) Order 1998 and Articles 17, 18 and 19 of the Education and Libraries (NI) Order 2003.
2. This case was heard over four days. The evidence was given by the Plaintiff, by his mother and father, by an expert Dr Collins and for the Defendant by three teachers. In addition the Court has the benefit of the agreed medical reports submitted on behalf of both parties. The Court is only concerned with the Plaintiff's claim as set out in the Civil Bill. It is not the function of the Court to concern itself with any other issue that may have arisen between the parties or with any other issue that may have arisen between the school and other pupils.
3. Ryan Collins gave evidence that he started the school in September 2005 and for the first year he enjoyed it. From the start of the second year in September 2006 he recounted his worsening relationship with another pupil and daily incidents of bullying. At first he didn't tell his parents. He told the Court that another boy in his class had similar experiences and had to leave the school. Eventually he told his parents and accompanied his father on an unsuccessful visit to the home of the alleged bully to resolve the situation around March

2007. There was an altercation at Castlewellan in September 2007 between Mr Collins and the father of the alleged bully which led to police intervention and ultimately months later a Court case in which Mr Collins was acquitted of a criminal charge. It is reasonable in general terms to say that the origins of that incident lay in difficulties between Ryan and another pupil. Following this Mr and Mrs Collins raised concerns with the school and Mr Ruddy conducted an investigation. Mr Ruddy's enquiries were hampered by the interventions of parents. At this time the school was aware that two boys and their respective families were in a very acrimonious dispute. In my view the obvious course to assist Ryan would have been to move him to another class. This solution was not implemented until September 2008 which was almost a year later. By September 2007 the school was involved and in November 2007 there was an incident in PE which he claimed was a deliberate assault rather than an accident. He recorded that Mr Brady monitored the situation but said he offered neither solutions nor advice.

4. Ryan recounted very fully the history of events including a number of incidents of alleged bullying, the intervention of his parents, the action taken by various teachers and ultimately an incident in February 2009 when his schoolbag was found in the toilet. After this he left the school. He claimed that the school gathered information but took no action. I cannot agree with this. The evidence of the teachers clearly demonstrates that they did respond. Whether that response was adequate or timely is another matter. Similarly his contention that the PE incident was anything but an accident is in my judgment without foundation.
5. I have no doubt that Ryan Collins is a very embittered young man who has been subject to a lot of abuse during his time at the Abbey School. Events spiralled out of control and what undoubtedly started as an unpleasantness between two boys concluded with a bitter dispute between families as well as the present dispute with the school.
6. The Plaintiff had good mental and physical health prior to the incidents which are the subject of the matter before the Court. The agreed medical evidence was if the Court should decide that Ryan Collins did initially move to Belfast and then move back to Newry after encountering the alleged bully then he has developed a phobic anxiety disorder that is not disabling to his education or employment prospects.
7. I have listened carefully to the evidence of the Plaintiff and there is absolutely no doubt that he has been badly affected by these experiences. There is no doubt that he suffered a psychiatric injury. There is no doubt that was caused by the bullying at the Defendant school. Mrs Collins provided a diary of events which was very helpful to the Court and the Defendant conceded that her diary was accurate. She was clearly frustrated by the response of the school to the situation and it was evident that she had adopted an entrenched position

but that does not take away from her evidence of the events that occurred and her contemporaneous notes. Mr Collins senior quite clearly was incensed by the whole matter and quite clearly his behaviour on at least one occasion was unacceptable. Once again this is not a matter for this Court.

8. Mr Collins senior said in evidence that Ryan had lost all confidence in the Principal, Mr McGovern.
9. Mr Ruddy, Vice Principal of the school, stated in evidence that his first concern was to stop the actions rather than impose sanctions on students. He said he could not sanction where issues were not accepted by both parties. Mr Ruddy seemed very concerned about whether or not the bullying was wilful. He was keen to defend the no blame policy but my concern is the effectiveness of the policy rather than its nature. Mr Ruddy said that he was 100% certain that he did not believe that Ryan was bullied for two years in the school by the same people. He said in his evidence that the school always put the pupil first.
10. Mr McGovern who was the Principal of the school impressed me as a dedicated professional with a profound sense of vocation but, however, it is quite clear to me that these particular events overwhelmed the Principal and his staff and that despite the monitoring by Mr Brady, Ryan eventually had to leave the school. Mr Brady undoubtedly spent a considerable amount of time monitoring the situation and talking to Ryan. The situation did improve to some extent but ultimately the final incident demonstrated that nothing had changed and that Ryan's position was still intolerable.
11. From 15 February 2008 Mr Brady was involved in discussions with the Plaintiff nearly every day after school until the end of May 2008. Two pupils were suspended on 29 April 2008. However, from at least October 2007 until February 2008 the school was aware of the situation. The Defendant's reaction was subject to criticism by the expert Dr Collins. My general conclusion about the remainder of the academic year up until June 2008 is that the intervention of Mr Brady quelled the unrest. Mr Brady had no reason to believe that there was any serious difficulty during that time. He took a lot of time to monitor the situation and speak to both Ryan and his mother. Nevertheless Mrs Collins said that she was never reassured by her conversations with Mr Brady.
12. The school had a very difficult situation to deal with partly due to entrenched parental attitudes but the fact remains that the Plaintiff was bullied over a period of time. The monitoring process conducted by teachers was poorly recorded and the balance between the rights of the victim and the rights of the alleged bullies was often struck in favour of the benefit of the latter at the expense of the former.
13. As I have stated during the hearing I find the professional dedication of all of the teachers who gave evidence to be admirable. I have absolutely no doubt

that this school is an excellent one which provides an invaluable service to the community which it serves.

14. I must comment on the diary of Mrs Collins, the mother of the Plaintiff. The Defence accepted the accuracy of this record but more important in my view is the comparison with the quality of that record and the quality of records kept by teachers about this case. It is clearly their responsibility to keep an accurate record not only of the complaints but also the responses. They were only able to say that there were regular meetings about the matter but they were unable to produce any detailed records of these meetings. I am driven to the conclusion that the efforts of the teachers lacked a certain amount of structure.
15. Dr Katrina Collins, Psychologist, gave expert evidence to the Court. I am entirely satisfied with the expertise of Dr Collins and I recognise her experience in this field. Perhaps the most startling information that she gave to the Court was that almost half of all pupils in Northern Ireland suffered bullying. Of course bullying takes various forms and nobody suggests that any school can prevent every incident nor does the law expect it to do so.
16. She referred in detail to the bullying policy of the Defendant. She considered that this policy was a derivative of a no blame policy and she said this was outdated. However, she conceded that whether it was outdated or not it was still acceptable. Her criticism of the school was that the reaction to the situation involving Ryan Collins was more of the nature of an investigation rather than a restorative process.
17. Dr Collins said she was not sure about the purpose of the discussions between Mr Brady and the Plaintiff. It was in her opinion unusual to have a predominance of victim involvement. In her view listening and monitoring was not an option.
18. There has been a lot of evidence given to the Court about a no blame policy and whether or not the bullying policy of the school in this case was correct in adopting a no blame policy. My judgment is that the proper test of the policy is whether or not it was effective. The purpose of a bullying policy is to prevent bullying and if the implementation of the policy is clearly not working effectively then the policy should be reviewed.
19. I quote from Dr Collins Report:

“It is understandable that Ryan expressed disappointment and a lack of confidence in the school’s response to the situation which appear to have been compounded over time as inaction followed inaction in terms of disciplinary sanctions. ... It (*the Policy*) would appear to focus on finding facts to disprove bullying was

taking place rather than conducting a sensitive and supportive enquiry about the reported experiences”.

That is her expert opinion and the Defence did not call any expert to rebut this opinion.

It is my opinion that earlier sanctions applied to (*the alleged bully*) may have sent a definite message that ‘bullying will not be tolerated’ supporting the school’s mandate on bullying which is spelt out clearly in their anti-bullying policy.

There appeared from correspondence between the Collins family and the school that contradictory information and messages were being sent from the school. For example, on 7 January 2008, a letter to Mr and Mrs Collins from the school stating the matter is ‘mistreatment’ and not bullying explaining the differentiation. However, on 27 June 2008, seventh paragraph, a letter from Mr McGovern stated:

“At no stage did we sit down and make a decision that this behaviour was or was not bullying.’ It is difficult therefore to understand what position the school holds regarding bullying behaviour and its own understanding of the issue is less than clear.”

20. Dr Collins suggested that the approach of the school did not come up with a solution. Having heard the evidence of the teachers and Ryan Collins I cannot agree with that assertion. It is my judgment that after the intervention of Mr Brady from February 2008 the situation was under control and the school had done as much as could be reasonably expected. Similarly the removal of Ryan from the class was an effective solution but I do agree that this should have been done much earlier.
21. I recognise the constraints under which the staff at the school operated because they had taken into account the rights of other pupils as well as the rights of victims. It is, however, evident that the school policy as implemented and the teachers’ intervention did not succeed. The incident which led to the Plaintiff leaving the school and which was agreed by the teachers to have been horrific is clear evidence that the policy did not succeed. It is significant that no evidence was given by any teacher before the Court of any sanction being applied to any pupil as a result of this incident. The incident was a traumatic one which could only have occurred when a group of pupils agreed on a collective act of gross bullying.
22. The Plaintiff and his family expressed concerns about whether or not the alleged bully or bullies had been adequately punished. This is not a matter of

which I am concerned. I am only concerned about whether the actions of the school were effective in preventing further bullying.

23. Over the course of the hearing a lot of common ground was eventually established about the history of events. I was gratified to note that the Defendant, early in the proceedings, conceded that the original contention that there was a difference between mistreatment and bullying was now no longer being made and that the Defendant recognised that it was a question of bullying.
24. I turn now to the question of the law. I have been referred to certain cases by Counsel on both sides. I did point out to Counsel early in these proceedings that the Court would consider by analogy Industrial Relations cases concerning bullying.
25. I have been referred to the Bolam Test and if I apply that to this case then the question I must ask myself is whether or not a reasonable professional opinion would agree that the school had taken whatever steps were reasonably necessary to protect the Plaintiff. I believe I am correct in saying that the Courts in England have moved somewhat from the Bolam Test to a version of a reasonable 'patient' and I refer to a case of Pearce -v- United Bristol Health Care NHS Trust [1999] 48 BMLR 118. In that case although the Court applied the Bolam Test Lord Woolf said that it should be the responsibility of a Doctor to inform the patient of any significant risk which would affect the judgment of a reasonable patient. In other words the test must be considered in the background of the prevailing environment at the relevant date. What might have been acceptable in 1980 would not necessarily be acceptable in 2014.
26. In these type of cases the most difficult exercise which the school has to complete is to balance the rights of the bully and the victim. Both have rights. The victim has the right to protection from such behaviour and the alleged bully has the right to defend himself against unproven allegations.
27. I refer to the case of Bradford-Smart -v- West Sussex County Council [2002] EWCA Civ 7:

“There is no magic in the term bullying. Any school will no doubt take reasonable steps to prevent or deal with one-off acts of aggression between pupils and will also recognise that persistent targeting of one pupil by others can cause lasting damage to the victim.”

In the Bradford-Smart case there was a suggestion that the Plaintiff had difficulties which were not the result of school activities. This is certainly not the case here.

28. There has been discussion in the Irish Courts about bullying in schools. The Supreme Court in Murphy -v- County Wexford VEC [2004] T IESC 49 heard the parties in that case agreed that the standard of care was to be based on a reasonable person in loco parentis rather than that of a reasonable teacher. In that case the Court was not obliged to make a ruling on this and I cannot go so far as to agree that the standard should be other than that of a reasonable teacher. I do, however, agree that the school has a duty to instruct pupils in its charge and to supervise them.

29. I refer to the Australian case of Oyston -v- St Patricks College NSW SC 269:

“The steps taken were not adequate either to eliminate the foreseeable risk of injury which had arisen, or to provide adequate safeguards ... such safeguards required active investigation of the complaints made and monitoring whether any bullying had been brought to a halt.”

30. I refer to the unreported case Hansen -v- Isle of Wight Council:

“The criterion of what does or does not amount to bullying in any given circumstance is not to be judged solely by the subjective perception of the victim herself ... but involves an objective assessment of the observed behaviour, taken in conjunction with any apparent vulnerabilities in the target of the behaviour complained of.”

I agree with this definition.

31. I refer to the case of Green -v- DB Group Services (UK) Ltd [2006] EWHC 1898 (QB). This was a case of bullying in the workplace and I quote from that decision:

“Had the claimant’s managers intervened as they ought to have done, there were obvious steps that could have been taken to stop the bullying. It ought to have been made clear that such behaviour was simply unacceptable, and those involved warned that if they persisted, disciplinary action would follow ... by whatever means the bullying could and should have been stopped.”

In the same case I quote again:

“I am also satisfied that the bullying gave rise to a

foreseeable risk of psychiatric injury. Such behaviour when pursued relentlessly on a daily basis has a cumulative effect. ... It is in my judgment plainly foreseeable that some individuals will not be able, to withstand such stress and will in consequence suffer some degree of psychiatric injury."

32. I refer to another Industrial Relations case Barlow -v- Borough of Broxbourne [2003] EWHC 50 QB:

- “(i) whether the claimant has established that the conduct complained of in the Particulars of Claim took place and, if so, whether it amounted to bullying or harassment in the ordinary connotation of those terms. In addressing this question it is the cumulative effect of the conduct which has to be considered rather than the individual incidents relied on;
- (ii) did the person or persons involved in the victimisation or bullying know, or ought they reasonably to have known, that their conduct might cause the claimant harm;
- (iii) could they, by the exercise of reasonable care, have taken steps which would have avoided that harm.”

33. The evidence of daily taunts directed at Ryan Collins from other pupils in the school was not challenged. The Plaintiff was deliberately targeted by persistent bullying. It is clear that over a period of time the Plaintiff was isolated from his peers and he felt under very severe pressure because of the behaviour of fellow pupils. There has been a lot of discussion before the Court about the definition of bullying but in my view it is certainly more than an isolated incident. In my judgment a Court cannot impose liability on a school for an isolated incident which it could not foresee. I agree that only the most serious of failures on the part of the school should result in a finding of negligence.

34. In conclusion, therefore, my view of the law is that the Court should be reluctant to award damages against a school in cases of this kind. I do not think that the school has the same responsibility as a parent but the school has a duty of care as a teacher to each pupil.

35. I think that the steps that were taken by the school were adequate to eliminate the foreseeable risk of injury and the school provided safeguards. I believe the school conducted active investigations and monitoring. However, in my

view the school did not take the necessary steps quickly and Ryan Collins was subjected to bullying which could have been prevented. The school took two very important initiatives. Firstly, Mr Brady's intervention from February 2008 and, secondly, the segregation of Ryan Collins from the class in September 2008. However, in my view, the school should have taken effective action in October 2007. I accept the evidence of Dr Collins that effective actions should have been taken earlier.

36. The final incident in February 2009 was something that the school could not have foreseen.
37. I have reviewed the medical evidence and I have no doubt that the Plaintiff suffered psychiatric damage as a result of bullying. The medical evidence confirms the causative effect of the bullying on the Plaintiff. However, having listened carefully to the Plaintiff whilst he was giving evidence and having reviewed the medical reports, I consider that the psychiatric damage is of a relatively moderate nature and I accordingly award the sum of £10,000.00. I do not accept that any special damages claim arises. I accept that the costs to the Plaintiff should be increased by one-third in accordance with the claim on the Civil Bill and I accordingly make an Order to that effect.