

THE HIGH COURT

[2017 No. 9394 P]

BETWEEN

ELLA MCCARTHY (A MINOR SUING THROUGH HER
MOTHER AND NEXT FRIEND KIRSTY BLAIR MCCARTHY)

PLAINTIFF

AND

AN COIMISIÚN LE RINCÍ GAELACHA

DEFENDANT

JUDGMENT of Mr. Justice Tony O'Connor delivered on the 8th day of November, 2017

1. The mother and next friend of the plaintiff, who is a minor ("the minor") in this judgment explained in an affidavit sworn on Wednesday, 18th October, 2015 (three weeks ago) that the minor, her twelve-year-old daughter, has been a consistent podium-placed child (i.e. in the first five) in Irish dancing since she was under eight.
2. The real objective of this application is to allow the minor to dance in the Southern England Oireachtas in November 2017, which would then allow the minor to defend her world championship placing, commencing on 24th March, 2018. The mother also refers to a further knock-on effect which could be caused for the minor's qualification status in the 2019 championship.
3. The hiatus comes about because the minor's teacher on 17th July, 2017, emailed the minor's mother ("the mother") that due to irreconcilable difficulties over the past year with the mother, she (the teacher) could not continue to have the minor in her class. The mother unsuccessfully tried to persuade that teacher to reverse her decision but ultimately registered the minor as a pupil of the mother who is also registered with the defendant as a teacher.

Awareness of rules

4. The mother acknowledges that she was aware at all material times of the rules which are the subject of these proceedings. The rules were devised and amended over many years following discussions and votes by the membership of the defendant.
5. Rule 3.1.4 provides: -

"where a pupil, formerly the pupil of a registered CLRG [i.e. the defendant] teacher, joins the class of another CLRG teacher, the new teacher must not enter the pupil in any registered competition until six months have elapsed unless the pupil is allowed to compete by reason of rules 3.1.5 [death or deregistration of teacher], 3.1.6 [significant change of normal residence] or 3.1.7 [a successful application for exemption for extreme circumstances]."
6. It was clarified for the Court that the application for an exemption under rule 3.1.7 as made by the mother as teacher was considered by 17 of the 19 members of An Buancoiste ("the subcommittee") following the briefing by the vice-chair of the defendant, who swore the affidavit in this application on behalf of the defendant. The vice-chair recused herself from making the decision but clarified that she forwarded to each member

of the subcommittee on 31st October, 2017, in accordance with the indication given to Gilligan J. on 26th October, 2017, a copy of the undated letter from the mother addressed "Dear all", as summarised at para. 15 of the mother's second affidavit sworn yesterday on 7th November, 2017, and exhibited thereto together with the letter from the teacher received on 30th October, 2017.

7. The subcommittee members, who reside in various places, were urged to respond in view of the date given for the hearing of this application yesterday by Gilligan J. on 26th October, 2017. The unanimous decision of the seventeen members of the subcommittee who participated was to refuse the exemption application.
8. Gilligan J. had sought to see whether there was any reason to have the application determined if the subcommittee granted the application. It transpires as a result of the exemption refusal that the application did proceed to hearing yesterday and this morning.

The guiding principles

9. Laffoy J. in *Jacob v. Irish Amateur Rowing Union Limited* [2008] IEHC 196; [2008] 4 I.R. 731, sets out under the heading 'The law' an overriding factor which is particularly apposite in circumstances of this application at paras.16 – 19. Is this a case, in the words of May L.J. as quoted by Laffoy J. "so strong that to refuse to an injunction and to allow the case to go through to trial would be an unnecessary waste of time and expense and indeed do an overwhelming injustice to the plaintiff", which in May L.J.'s view would be "exceptional"? (para. 19; p. 739).
10. Consideration of an application for an interlocutory injunction is not a box ticking exercise. However, it helps to explain the Court's exercise of its discretion to deal with issues under various headings which counsel for the parties helpfully used in their outline written submissions.

Issues to be tried

11. *Mr. Meehan, counsel for the plaintiff, cogently argued that the minor by reason of having paid the teacher (albeit by the mother) for enrolment relied upon "a promise" that the plaintiff would be permitted to compete as a pupil of a teacher registered with the defendant. In other words, the submission was that the minor was induced to enrol with the teacher who was subject to the relevant rules. In that way, the defendant gave a "promise" which was accepted and relied upon by the minor. Excerpts from a website were exhibited to bolster the "promise" concept.*
12. *Mr. Hewson, counsel for the defendant, submitted that there could scarcely be a more different "promise" as in the judgment of the Court of Appeal of England and Wales in Bowerman v. ABTA [1996] C.L.C. 451 than the vague offer or representation put forward on behalf of the plaintiff.*
13. I emphasise that the Court cannot determine an issue as to fact definitively following the hearing of this type of application and based on affidavit evidence. Nevertheless, and in deference to the duty of the Court to consider the applicable principles of law, I find the alleged issue to be tried rather tentative for a number of reasons including: -

- (i) the absence of specific evidence that the history on the website extract actually induced in the minor, as is suggested now;
- (ii) the minor remains incapable of forming a contract at law, save for necessities, and it is stretching a practical understanding of the circumstances to suggest that the minor actually went through the process as is put forward now; and
- (iii) the lack of any explanation by the mother as to why she did not commence proceedings in her own name being the teacher who has a relationship through her registration with the plaintiff.

14. Therefore, insofar as this Court is concerned, there may be an issue to be tried but it is not so strong as it would be a waste of time to proceed to a full trial.

15. The second issue refers to whether the relevant rules are disciplinary in nature.

Undoubtedly, the mother believes that the rules effectively discipline the minor for the alleged breakdown in the teacher/mother relationship. I mentioned on a few occasions during the hearing to both counsel that this Court, and particularly at this stage, was not engaged to decide on the merits of the rules for child welfare. Whatever way one looks at the scenario objectively, the rules are clear, unambiguous and have equal application on their face. They are not dissimilar to the private law arrangements which arose for consideration in *Quinn v. Honourable Society of King's Inns* [2004] IEHC 220, [2004] 4 I.R. 344. Moreover, and although more applicable to the running of a specific sport or recreational event, the words of O'Donnell J. at para. 8 in *O'Connell v. The Turf Club* [2015] IESC 57, [2017] 2 I.R. 43, resonate for this Court: -

"All the modern sports are related to games played from time immemorial, whether of throwing or kicking a ball of different dimensions, striking it with a stick, running the fastest, or in this case, attempting to see who can ensure that an animal runs the fastest. It is the essence however of any game that it requires some rules. Otherwise it will not be possible to measure sporting excellence or demonstrate sporting skill. It is also the case that many of those rules are somewhat arbitrary, but sanctified by tradition. Why a team of 11, 13, 15 (or as was once the case in Gaelic sports, 17) players? Why a game of 70, 80 or 90 minutes? Why should some games end at the expiry of the time and others only when the ball goes dead? Why is a pass forward by a player in rugby an occasion for loss of possession and accompanying groans, but one of the glories of American football? Why, as some have had reason to ruefully observe, is a second serve permitted in tennis but not in golf? There is no good answer to any of these questions. They are so because they are so. These rules are peculiarly inapt for judicial consideration, as Carroll J. and Hogan J., among others, have had occasion to observe. There must be rules for the organisation of any game, and accordingly there must a rule-making, and rule-enforcing, body. To some extent at least, the idiosyncrasies of the rules become part of the tradition valued by the game's participants and spectators." (para. 8; para. 45, p. 73).

16. It is readily apparent that O'Donnell J. in that particular case was dealing with a rule which disciplined a participant but the same ethos applies to an organisation which makes rules for qualifying competitions and finals of competitions.
17. In summary, it is my view, without detracting from the right of the minor or the right of the mother to seek a plenary hearing on the contract or disciplinary verses private arrangement claims, that there is little more than tentative rights to be pursued under those headings.
18. As I said earlier, it is the Court's overall discretion which is applied in this type of application. I might use the phrase "the whole is greater than the sum of its parts" to convey the exercise which this Court undertakes in this application.
19. There is little dispute that damages for either party will not be an adequate remedy. The plaintiff may lose out on the opportunity to defend her placing in the World Championships next March at her tender age. On the other hand, the integrity of the defendant's established traditions in applying its rules is threatened by the grant of an interlocutory injunction which is likely to be the end of the proceedings since I cannot see how it would benefit the minor to proceed to a full hearing while the effect of a ruling in favour of the defendant at a plenary hearing will be pyrrhic victory indeed. Damages, even if the minor or her mother would or could pay, will not undo the reputational and integrity issues mentioned on behalf of the defendant.
20. If this Court were to grant the injunction to restrain the defendant from applying rule 3.1.4 and in some way the minor's claim was ultimately determined in favour of the defendant, the following could occur: -
 - (i) the minor would compete and would obtain a place, which placing may have to be reviewed; and
 - (ii) the minor would indirectly deprive another child of a place at one or other competition.
21. There is much to be said for the defendant's submission that children have no business being involved in litigation unless their rights have been infringed. I understand how the minor may be disappointed if it transpires that there is no other way this year for her to compete in the qualifiers but she should take heart by the realisation that there are many future events and World Championships which she can focus upon. Disappointment in one year is not a real basis for this Court to intervene in the dramatic way which is now sought. It may be that the minor will have to try harder to qualify in 2019 but trying harder is indeed a way of improving beyond what could be expected.
22. Therefore, I refuse the application for the reliefs sought in the notice of motion issued on 25th October, 2017.