



THE COURT OF APPEAL

**Unapproved**

**No Redactions Needed**

**Court of Appeal Record No.: 2018/281**

**High Court Record No.: 2017/217 MCA**

**Neutral Citation Number [2022] IECA 24**

**Haughton J.**

**Murray J.**

**Pilkington J.**

**BETWEEN/**

**C**

**APPELLANT**

**- AND -**

**JOHN CASEY**

**RESPONDENT**

**JUDGMENT of Ms. Justice Pilkington delivered on the 2<sup>nd</sup> day of February 2022**

1. This is an appeal from the Order of Barrett J. dated 31 May 2018, perfected on 7 June 2018 refusing an application for leave to commence proceedings pursuant to s.73 of the Mental Health Act, 2001, as amended (‘the 2001 Act’).

2. S.73 of the 2001 Act states:

*“73(1) No civil proceedings shall be instituted in respect of an act purporting to have been done in pursuance of this Act save by leave of the High Court and such leave shall not be refused unless the High Court is satisfied:*

- (a) *that the proceedings are frivolous or vexatious, or*
    - (b) *that there are no reasonable grounds for contending that the person against whom the proceedings are brought acted in bad faith or without reasonable care.*
  - (2) *Notice of an application for leave of the High Court under subsection (1) shall be given to the person against whom it is proposed to institute the proceedings and such person shall be entitled to be heard against the application.*
  - (3) *Where proceedings are, by leave granted in pursuance of subsection (1) of this section, instituted in respect of an act purporting to have been done in pursuance of this Act, the Court shall not determine the proceedings in favour of the plaintiff unless it is satisfied that the defendant acted in bad faith or without reasonable care.”*
3. Mr C., who I have referred to as the appellant throughout this judgment, is a litigant in person and has furnished a significant amount of documentation, both before the High Court and on appeal.
  4. There is a complex factual and procedural background to this matter. In summary, the appellant seeks leave to issue proceedings pursuant to s.73 of the 2001 Act arising from certain events that occurred whilst he was in custody at Clifden garda station, Galway, on 23 April 2013 which in turn led, in the early hours of 24 April 2013, to his involuntary admission to the Mental Health Unit of UHG, pursuant to the provisions of the 2001 Act.
  5. The respondent is a general practitioner who was the medical doctor on call that evening and who attended the appellant at the garda station. The documentation reveals that Dr. Casey was the appellant’s G.P., with the records suggesting he was last seen by the G.P in or about 2012.

6. The appellant maintains that this particular incident, which forms the factual basis of events leading to his arrest on 23 April 2013, cannot be considered in isolation but must be seen in the broader context of a series of incidents and events to which he has been subject and which in turn are the subject of ongoing litigation instituted by him. In his view the genesis of this application concerns the conduct of certain gardai at Clifden garda station and elsewhere, together with the conduct of other persons within his locality, particularly named neighbours. Within this leave application the appellant makes ongoing references to this litigation.
7. The backdrop to the present application begins initially with proceedings styled *CJ ] v The Commissioner of An Garda Síochána & ors* – Record No 1097/2014 (‘the 2014 circuit court proceedings’). No leave application pursuant to s.73 of the 2001 Act was instituted by the appellant prior to his issuing the 2014 circuit court proceedings. An application was made subsequently and this is dealt with in detail below. Ultimately that application was refused
8. Thereafter the appellant drafted a second set of circuit court proceedings, against Dr. Casey only, (‘the draft proceedings’) and this comprises the pleading grounding his present leave application.

*CJ ] v The Commissioner of An Garda Síochána & ors – Record No 1097/2014*

*(‘The 2014 circuit court proceedings’)*

9. In September 2014 the appellant issued proceedings in Galway Circuit Court. A copy of this pleading is exhibited to the affidavit of Ms. Justine Balfe, solicitor for the respondent, of 9 November 2017. The defendants comprise *‘The Commissioner of An Garda Síochána and individual officers specifically noted hereafter and others yet to*

*be identified, Address Garda Headquarters, Dublin, also Galway Headquarters, Mill Street and Clifden Garda station,*

*Individual officers identified – Gardas SV Quinn, G Gilmartin, S Lynch, Murphy, O'Donnell and K Blenheim being attached to Clifden garda station. Sgt. Tomas Concannon (local sgt. to Carna area); Supt O'Donnell Clifden and Ch. Supt M O'Sullivan, Galway, along with his Asst. Sgt. Cummins and Sgt. E Cronin, Missing Persons Unit and Garda Ombudsman and Johan Groenwold, Investigator, IDA Business Park, Longford and Dr. John Casey Junior, Clifden Medical Centre, Co. Galway'.*

- 10.** Within the endorsement of claim to the 2014 Civil Bill at paras. 9, 10 and 11 allegations are made by the applicant with regard to his involuntary detention, in the following terms:

*"9. Inducement of Dr. John Casey Junior of Clifden Medical Centre by Superintendent O'Donnell to return to station under pretext and falsely sign off Form D5 under Mental Health Act 2001 (a criminal offence as form states) to have myself involuntarily sectioned at 00.15 a.m.24.4.13 contrary to his statement of Fitness for Interview @ 22.40 prior as Custody Record states, without any intervening reason for re-interview of myself following examination for purely physical reason of chest pains and entirely rational coherent interview by Garda 23.00-23.58 (contrary to Garda S.Act 2005 and code of ethics and behaviour and EHRA Act 14, Equality Act 2004, Mental Health Act 2001).*

- 10. Custody named officers Garda G. Gilmartin and K. Blehein falsifying custody records to assist in hiding false pretexts for Dr. Casey to return to above (contrary to Garda F Act 2005 and code of ethics and behaviour and EHRA Article 6 and 14, Equality Act 2004, Mental Health Act 2001).*

*11. Garda K Blehein and O'Donnell (nb not superintendent) inhuman or degrading treatment resulting from transporting of myself to University Hospital Galway in an extremely small space, only 100mm wider than shoulders in back of police van for around 1.5 hours which whilst clearly aware I was claustrophobic depriving me of Valium tablets apparently specifically prescribed for this by R J Casey Junior according to K Biehein in custody registrar statement. Leaving with lights and ventilation fan off for over five minutes in darkness at UHG without anyone in attendance. Similarly, Garda S. Lynch and Murphy in van for 45 minutes to Clifden Garda Station from with hands handcuffed behind. Also Gardas F Lynch, G. Gilmartin, SV Quinn and P Concannon unnecessary assault/imprisonment in cell as token gesture for 20 minutes prior to interview (contrary to EHRA Articles 3 and 8 and Constitution Article 40.3.)”*

11. The pleading is lengthy and the portions of it quoted above seek to identify the allegations within the 2014 circuit court proceedings against certain named parties, including this respondent, concerning the appellant's involuntary detention. The indorsement of claim extends to other matters including claims of malicious prosecution, assault, reckless endangerment, harassment, wrongful arrest, negligence, defamation, unlawful interception of telecommunications data, false imprisonment, trespass to goods and property, inhuman or degrading treatment, abuse of right to family and private life 'as fully detailed under the indorsement of claim'. The claim is for 'damages and other measures available to the court as it thinks fit to effect justice'.
12. On 30 October 2015 Dr. Casey's solicitors issued a Notice of Motion seeking to dismiss the appellant's 2014 Circuit Court proceedings against him on a number of grounds, including that the allegations were frivolous and vexations, an abuse of

process and also that the plaintiff had failed to obtain leave pursuant to s.73 of the 2001 Act. By Order of His Honour Judge Kelly dated 14 June 2017 (again exhibited to Ms. Balfe's affidavit), the proceedings against the respondent were struck out on the grounds of his failure to obtain leave of the High Court pursuant to s.73 of the 2001 Act, with an Order directing that the plaintiff/applicant pay the respondent's costs to be taxed (now adjudicated) in default of agreement. I understand the 2014 Circuit Court proceedings remain extant, with this court being informed by the appellant that he awaits a hearing date.

13. Against the background of the strike out motion brought on behalf of Dr. Casey, on 18 January 2016 (but prior to it being heard before the circuit court) the appellant applied to the High Court (Barrett J.) seeking what is described within the papers as retrospective leave to issue (and presumably maintain) the already existing 2014 circuit court proceedings against the respondent Dr. Casey. This application appears to have been granted by the High Court and subsequently revoked by the same judge.

*The application for leave pursuant to s.73 of the 2001 Act*

14. On 17 July 2017 the appellant issued a Notice of Motion before the High Court seeking leave to issue a proposed draft civil bill with Dr, Casey as the sole intended defendant. This application is the subject of the present appeal ('the leave application').
15. The Notice of Motion seeks a number of reliefs including:
  - (a) an Order for Leave pursuant to s.73 to commence legal proceedings against Dr. John Casey ;
  - (b) an Order by way of Appeal quashing the Circuit Court Judge's decision in the granting of costs in respect of the strike out application;

- (c) in the alternative, a stay on the Costs Order;
- (d) a recitation of the facts where leave had been granted by Barrett J in respect of the 2014 circuit court proceedings.
- (e) a request that Barrett J. also hear this application given his prior knowledge of the matter.

The proposed Draft Civil Bill

16. The proposed draft civil bill, in respect of which leave is sought, is styled 'C v Casey'. The intended applicant seeks leave to issue proceedings against the intended respondent in the following terms;

*“An appearance to answer the claim of:- falsely signing off a form D5 under the Mental Health Act 2001 (a criminal offence as the form states) under inducement of Supt. O’Donnell and other officers of An Garda Síochána, Clifden, to have myself, the plaintiff, [ C ], involuntarily sectioned at 00.15 a.m. on 24.4.2013 contrary to his statement of **‘fit for interview, no underlying medical condition’** at 22.40 prior as Custody Register states, without any intervening reason, nor re-interview of myself following examination for purely physical reason of chest pains, and entirely rational, coherent interview by Guards 23.00 - 23.58 (contrary to Mental Health Act 2001; Garda Síochána Act 2005 and Code of Ethics and Behaviour; European Human Rights Act Arts 3 and 8; and Equality Act 2004).”*

17. His case is expanded upon in greater detail within an extensively drafted indorsement of claim to the draft civil bill, where the intended plaintiff pleads;
- (a) That he did not have a mental illness

- (b) In his assessment Dr Casey only conducted '*a passive observation during a purely physical exam.*'
- (c) That the officers in this incident, were the subject of a previous complaint letter (by this appellant).
- (d) That '*the Jennings as well as the Clifden police are subject of Civil Bill 1076/16 for threatening me with baseball bats/metal bars/sticks and hydraulic hoses, blocking locks and damaging sky dish, see photos attached that show them .....*'
- (e) It continues;  
*'With regard to Dr Casey .....He has clearly failed in his obligation to thoroughly, pro-actively make an Assessment, ignoring much relevant information immediately available, preferring to listed to second hand tittle tattle from neighbours. Who may appropriately be sectioned themselves and are the subject of DPP case file and now JR to force DPP to prosecute them with overwhelming witness, photo and CSI forensic evidence.....'*

**18.** The Indorsement of Claim concludes;

*'The Doctor did not follow the required procedures, nor establish the above requirements before signing off Form D5, induced wrongfully by Garda Siochana Officers to do so, as such it is a Criminal Offence from which the Plaintiff's claim is established and flows'*.

He seeks damages '*and other measures courts thinks fit to effect justice and all costs of this application*'.

**19.** The judicial review referred to by the appellant within this draft pleading, has now been heard and was unsuccessful both at first instance in the High Court and on appeal. Throughout this litigation this litigant has referred on a number of occasions to other proceedings he has instituted.



Evidence before the High Court

- 20.** In respect of the s.73 leave application various affidavits have been sworn by the appellant, the respondent and his solicitor. At the conclusion of the hearing, the appellant also submitted additional documentation, which was also considered by the court (although the appellant makes a complaint in this regard). The affidavits of the appellant moreover appear to make references to other affidavits sworn by himself and Dr. Casey within separate proceedings (particularly the strike out application within the 2014 Circuit Court proceedings).
- 21.** The Notice of Motion filed on 17 July 2017 seeking leave is grounded upon the appellant's affidavit of 12 July 2017. The appellant has also sworn a replying affidavit on 28 November 2017. Within these affidavits the appellant makes averments that include the following:
- (a) Again (here and elsewhere) he points to the respondent's entry within the custody register @ 22.40 of 'Fit for interview, no underlying medical condition'
  - (b) He contends that when the respondent returned he was informed by gardai of comments made about him by his neighbours
  - (c) He points out that Barrett J. had already granted him leave before it was revoked.
  - (d) He queries the respondent's medical qualifications.
  - (e) He also points to the procedural conduct of the case before Barrett J. The appellant appears to be under the impression that Barrett J. rescinded the initial leave application on the basis that if the applicant were to make the application again in respect of draft proceedings as opposed to the proceedings he had already issued, that it was likely be accepted and leave granted.

- (f) He disputes that, upon the respondent's return to the garda station, he was either agitated or aggressive.
- (g) He claims that his interview of one and half hours with the gardai was lucid, coherent and demonstrates a rational mental state.
- (h) He references (as he does on many occasions) that video evidence of his time at the garda station will show him to be calm throughout
- (i) He highlights, in some detail, his difficulties with his neighbours.
- (j) He again states that the respondent was lying *'to cover his ulterior motivation, disgracefully inventing exaggerating my behaviour in his current Affidavit to cover for the fact that he was called back by Supt O'Donnell to sign a form after interview went other than he hoped'*. (para.11)
- (k) That the respondent never carried out a proper medical assessment of him without proper clinical engagement. In this regard he raises complaints with regard to his adjudication by the psychiatric unit at UHG.
- (l) He denies that Dr Casey ever mentioned the option of voluntary detention.
- (m) At paragraph 12 (of his grounding affidavit) he avers:

*"The doctor is being sued for a deliberate, criminal, false signing off of a Section Form, knowing there was no real basis to do so and without even carrying out, by his own admission, a proper assessment. Basing it, in part, on tittle tattle from neighbours, shown to be criminal in recent Civil Bills. As well as words of Officers, who are guilty of perjury in presenting irredeemably fabricated evidence and who are the subject of a complaint sitting in filing cabinet of Superintendent in that very station, to which he makes no reference, even at this stage some four years later. Who, as can be seen from the Civil Bill against neighbours/police, have been guilty of malintent for 4.5 years now. It is clear from the contradictions highlighted above*

*and as far from a doctor carrying out his duties in good faith, but negligently without care or skill. It is a malevolent act which only requires proof thereof, not a matter of medical opinion on his clinical judgement, which he may indeed not be sufficiently qualified in psychological medicine to carry out. Something not supported by a psychiatric unit in a hospital after four days' observation, without incident and overruled by a Mental Health Tribunal on appeal 13.5.13 in my absence, the hospital putting up no evidence or submissions to the contrary."*

(n) He again reiterates the conduct of the police together with certain neighbours and refers to other circuit court proceedings, bearing record no Civil Bill 1076/16.

22. Dr. Casey's affidavit is sworn on 8 November 2017. After detailing his qualifications, he confirmed that on 23 April 2013 he was the G.P. on call in the Clifden area and in that context received a request from An Garda Síochána to assess a patient whom they had detained at Clifden Garda Station. This was the appellant. He was asked in particular to review him as he had complained of chest pains. He states that he took a careful history and a physical examination but felt that the pain was mainly anxiety or muscular in nature. He further avers:

*"8. I also noted from the applicant's history that he was suffering from hypothyroid and had been without his medication for a number of days. It was during the course of my examination of the applicant that I noticed that he was behaving bizarrely and he gave a history, which suggested paranoid ideation."*

23. In confirming his medical examination of the appellant took approximately 30 minutes he avers:

*"10. .... But I became concerned about his agitation and mental health. I was also concerned about his poor compliance with his hypothyroid medication and the role this may have had on his mental health. It is well established that patients*

*suffering from severe hypothyroidism may suffer from confused or deliria states similar to psychosis.*

*11. It was during the examination of the applicant that the applicant, expressed quite severe paranoid ideation and in particular about a neighbour he felt that was persecuting him. He also had persecution ideation in relation to the arresting gardai and previous encounters with An Garda Síochána. He described several incidents where he felt he was being followed and watched by a man driving a black jeep particularly while he was out jogging late at night.*

*12. I discussed options with the applicant in relation to giving him some form of medication for his anxiety and chest pain. I suggest Valium, which unfortunately I did not have in my bag at the time. At approximately 10 p.m. I left the station for two reasons: (a) to attend an emergency call and (b) to obtain some Valium for the applicant.*

*13. Following my examination of the applicant and upon a careful reflection of the facts, I was satisfied that the applicant was suffering from an acute psychotic episode given the bizarre nature of his behaviour and his thoughts. The circumstances surrounding the applicant's arrest and the persecutory ideas that he had as against An Garda Síochána led me to believe that the applicant was suffering from a mental illness that was clouding his judgment.*

*14. I returned to Clifden garda station later that night with the Valium for the applicant. I spoke to a member of An Garda Síochána and they described the applicant as being very agitated. I was then informed that he was detained after a car chase and an alleged assault.*

*15. I discussed the options with the applicant including having him assessed on a voluntary basis at Galway University Hospital, which the applicant declined.*

*16. I felt that at this point, involuntary admission was needed on the grounds of psychosis and further the applicant posed a possible risk to himself and to others. A member of An Garda Síochána made the appropriate application under the Mental Health Act 2001 for a recommendation to admit the applicant involuntarily. At midnight and on foot of that application I recommended that the applicant be admitted involuntarily. This involuntary admission was for a period of 24 hours to have him assessed by a consultant psychiatrist in the appropriate centre being University Hospital Galway.”*

- 24.** The affidavit of Ms. Balfe sworn on 9 November 2017 sets out much of the procedural background to the proceedings.
- 25.** It is clear that the appellant places great reliance upon matters contained within the Garda Síochána Custody Record . The custody record (a typed version was made available as the copy of the original exhibited was in part illegible) states that the appellant was taken into custody on 23 April 2013 at 20.35. At 21.15 he requested a doctor. At 21.19 it recites that the appellant was detained under s.4 of the Criminal Justice Act 1984. At 21.55 it is recorded that a doctor arrived at the station and was brought to the doctor’s room . At 22.00 a new garda took up duty as member in charge of the prisoner (with initials KB – Garda Kevin Blehein) and deemed there to be reasonable grounds to continue detaining RC *“for the proper investigation of the crime for which he was arrested under Sec.4 Criminal Justice Act ‘84”*. The entry at 22.05 records *“prisoner concluded consultation with solicitor, prisoner taken to doctor’s room for consultation with Dr. Casey”*. It then records at 22.25 ‘checked on prisoner in doctors rooms, all ok’.
- 26.** The appellant relied upon a portion of the following entry, which I have underlined – the entire entry is in the following terms at 22.40:

*“Doctor concluded medical examination. Dr. Casey stated he was satisfied that the person had no underlying medical condition and stated he believed the prisoner was fit for interview. Dr. Casey then stated that he would prescribe Xanax for the prisoner as the prisoner stated he may become claustrophobic. Doctor lastly stated he did not have Xanax tablets on his person but he would return to his practice to get some.”*

The next entry at 22.47 shows that the appellant was then taken to the interview room where he was interviewed under caution by Garda Quinn and Garda Connolly. He requested a cup of tea which he was given at 23.39, and the entry says “All ok”, and a further entry at 23.59 notes “Interview concluded...Prisoner all ok.”

**27.** At 00.02 there is the following entry:

*“00.02 Prisoner taken from interview room and placed in the doctor’s room by myself [the duty garda with initials KB]. Dr Casey returned to the station. Dr Casey spoke with the prisoner in the doctors room. Dr. Casey then stated that upon reassessment he deemed it necessary to have the prisoner assessed by a psychiatrist.*

*00.10:*

*“Dr. Casey completed and handed me Form 5 Mental Health Act Section 10 referring the prisoner to be involuntarily admitted to the psychiatric unit at UCHG. Dr. Casey then informed me that he offered the prisoner 2 mg Valium tablets but the prisoner refused. Dr. Casey left Valium in my possession in the event the prisoner changed his mind.*

*00.04 Prisoner sitting in doctors room. All ok.*

*00.05 Prisoner taken to UCHG by myself and Garda (illegible).*

*11.30 Person detained released into custody of Consultant ....at UHG by Garda S. Hennessey and Garda McHugh. Garda Hennessey handed over property of RC to Seamus King. RC being involuntarily admitted to psych unit UDG by [Consultant] for treatment.”*

Judgment of the High Court

28. The leave application was heard before Barrett J. on 13 February 2018 and he reserved judgment. After the hearing additional documentation was later sent by the appellant to the court and the respondent’s solicitors.
29. On 17 May 2018 Barrett J. delivered judgment and the matter was then adjourned to 31 May 2018. On that date Orders were made (perfected on 7 June 2018) by Barrett J. refusing the application for leave to issue the intended proceedings against Dr. Casey. On 5 July 2018 a Notice of Appeal was filed by the appellant.
30. The Order of Barrett J. recites that in addition to the Notice of Motion and the affidavits, he had regard to the additional documentation filed. The judgment does not deal with the affidavit evidence in detail, although he does confirm that he had carefully considered it.
31. After dealing with the initial leave application in respect of the 2014 circuit court proceedings and noting that the proceedings against Dr. Casey were dismissed on 14 June 2017 (together with an order for costs against him), the events thereafter are recited in the following terms:

*“Mr. C was previously before this court in the spring of 2017 when application was made by Dr. Casey for a leave previously granted to be revoked, as having been granted retrospectively. The court adjourned determination of that application for a month and expressly stated that it was doing so to allow Mr. C to bring a fresh*

*leave application on the adjourned date. Mr. C failed to bring any such application and a previous leave was revoked. A year later Mr. C sought to make the within application for leave.”*

32. Barrett J. held that, on the basis of the respondent’s own affidavit evidence, he had acted bona fide and reasonably with only mere assertion to the contrary. The reference to ‘mere assertion’ does not refer to any statutory requirement within s.73 of the 2001 Act but appears to arise from a passage with the judgment of MacMenamin J. (as he then was) in *M.P. v HSE* [2010] IEHC 161, considered below.
33. The court pointed out that Dr Casey was at all times acting in a professional capacity and that if the applicant wished to pursue a claim in professional negligence this would necessitate an expert opinion prior to the institution of proceedings. In that regard the trial judge cites the well-known authorities of *Reidy v National Maternity Hospital* [1997] IEHC 143, *Cooke v Cronin & Neary* [1999] IESC 54 and *Greene v Triangle Developments Ltd* [2008] IEHC 52 and comments that there is no such opinion before the court.
34. The court also pointed out that upon admission to the approved centre (UHG) the appellant was thereafter examined by a consultant psychiatrist on the morning of his admission and rejects the appellant’s contention that that examination was performed negligently. He further notes that the appellant was admitted to the approved centre and put in ‘*high risk nursing care*’.
35. Barrett J., confirming that he had properly considered all of the documentation furnished by the applicant both prior to and after the application itself was concluded, stated, in what appears to be the ratio decidendi of his decision, as follows:

*“8. The court is mindful, inter alia of (i) the importance that the public should have access to their courts, and (ii) the significance of the court’s refusing to grant the*



*leave sought, most especially where the proceedings concern the deprivation of personal liberty. The court is mindful too that (a) the events in issue occurred about five years ago, (b) no expert report or independent evidence appears to have been procured by Mr C during that time, (c) Dr Casey is being confronted therefore with mere assertion, and (d) while a defence of fairness tends to lead the courts to extend some lee-way to personal litigants in the commencement and conduct of their proceedings, the same demands of fairness, when it comes to their opponents, likewise demands that there must be a limit to such lee-way as is extended. The court considers on the basis of the evidence now before it, and having heard the extensive submissions of both sides, that, at this time, Mr C has no reasonable chance of succeeding in his intended proceedings against Dr Casey, yielding the unavoidable conclusion that the proceedings in respect of which leave is sought are, from a legal perspective, and adopting the reasoning of Barron J. in Farley, frivolous<sup>1</sup>. The court will therefore respectfully decline to grant the leave now sought. The court notes that Mr C's related proceedings against individual members of An Garda Síochána and the Garda Ombudsman remain in being and Mr C is free to prosecute those proceedings'.*

- 36.** The Court Order, after referring to all of the documentation filed, records that the Court reserved judgment on 24 April 2017 continues:

*“And same coming on this day in the presence of said counsel:*

*IT IS ORDERED that the said ex parte Order of this Court dated 18 January 2016 granting the applicant liberty to issue an Originating Summons against the respondent herein be and is hereby revoked and by consent with no Order as to costs.”*

---

<sup>1</sup> A reference to *Farley v Ireland* (unrept S. Ct), 1<sup>st</sup> May 1997

37. The Order refers to an Order of 18 January 2016 '*granting the applicant liberty to issue an Originating Summons*' which is subsequently revoked. This appears to be an error. The appellant only ever sought leave to issue circuit court proceedings.
38. The respondent was awarded his costs of the leave application from the appellant.
39. The appellant's notice of appeal is dated 5 July 2018.

Grounds of appeal

40. The appellant raises the following grounds of appeal:
  - (1) Having read the judgment it is surprising that Judge Barrett could not avail himself, as requested, of discovery...of the contemporaneous video/audio evidence to show appellant's state of mind at the precise time of sectioning.
  - (2) None of what he describes as the supplementary evidence accepted by Barret J. after the hearing were referred to or figured in his judgment.
  - (3) Barrett J. made no reference to the respondent signing him off as "*fit for interview, no underlying medical condition*" in the custody register notwithstanding that the case was dismissed on the basis of assertion.
  - (4) That the assertion within the respondent's own affidavit saying "*he is not guilty by his own admission is accepted as evidence*" and it is no more than his assertion of "*bona fide*" behaviour.
  - (5) To say that after 5 years enough latitude has been given to a litigant in person contradicts the fact that he was granted leave twice and encouraged to bring a fresh leave application.
  - (6) "*As a person wrongfully sectioned, a serious criminal offence, I also have rights. There is good reason to doubt the respondent's actions were honest, not a matter of well-meaning medical negligence and consequently not something that*

*requires an expert opinion on at least initially. The MHA doesn't just exist to protect doctors who will do the dirty work of bigots".*

- (7) *"The apparent support from UHG Dr. Khider Admissions/Discharge Sheet, is seriously criticised in my submission post hearing and was so in court. He has accepted hearsay from police and Dr. Casey trying hard initially to queer the pitch and influence their judgment on admission."*
- (8) *"UHG contradicts the above by their own observations on admission of good eye contact, speech normal in rhythm and volume etc. and been taking off high risk nursing after 24 hours a standard proportion from which they were told but quickly removed as unnecessary from their own observations."*
- (9) Ignoring the Civil Bill 1076/16 with photos of neighbours, whose opinion of him Dr. Casey uses when making his decision about him on the night in prison presented to him by certain named gardai who it is contended are seriously implicated in both Civil Bill 1076/16 and JR Leave Document.
- (10) It continues; *"In short a brief judgment that could have been written by respondent's solicitors simply a device to allow the guilty doctor to walk away, as if time and a second leave application dictate it so, extinguishing any right I may have. To pretend there is no semblance of a case other than assertion, requires the systematic redaction of objective supporting evidence that screams out there is a case to answer. It is only a leave application, there is so much smoke here that a trial is clearly predicated. On appeal I will ensure there is an experienced counsel representing."*

**41.** The submissions set out within the grounds of appeal are extensive and the above is a summary and flavour of the issues raised.

42. The Respondent's grounds of opposition contain a denial of all matters relied upon by the appellant and objects to the appellant seeking to rely upon any additional evidence not set out within the notice of appeal.
43. The following provisions of the Mental Health Act 2001 are relevant to this appeal.

*MHA 2001 – Involuntary Admission of Persons to Approved Centres*

PART 2

**Criteria for involuntary admission to approved centres.**

8.—(1) A person may be involuntarily admitted to an approved centre pursuant to an application under section 9 or 12 and detained there on the grounds that he or she is suffering from a mental disorder. [My emphasis].

.....

**Persons who may apply for involuntary admission.**

*9.—(1) Subject to subsection (4) and (6) and section 12, where it is proposed to have a person (other than a child) involuntarily admitted to an approved centre, an application for a recommendation that the person be so admitted may be made to a registered medical practitioner by any of the following:*

*(a) the spouse or civil partner or a relative of the person,*

*(b) an authorised officer,*

*(c) a member of the Garda Síochána, or*

.....

*(4) A person shall not make an application unless he or she has observed the person the subject of the application not more than 48 hours before the date of the making of the application.*

.....

**Making of recommendation for involuntary admission.**

*10.—(1) Where a registered medical practitioner is satisfied following an examination of the person the subject of the application that the person is suffering from a mental disorder, he or she shall make a recommendation in a form specified by the Commission that the person be involuntarily admitted to an approved centre (other than the Central Mental Hospital) specified by him or her in the recommendation.*

*(2) An examination of the person the subject of an application shall be carried out within 24 hours of the receipt of the application and the registered medical practitioner concerned shall inform the person of the purpose of the examination unless in his or her view the provision of such information might be prejudicial to the person's mental health, well-being or emotional condition.*

.....

*(4) A recommendation under subsection (1) shall be sent by the registered medical practitioner concerned to the clinical director of the approved centre concerned and a copy of the recommendation shall be given to the applicant concerned.*

.....

**Powers of Garda Síochána to take person believed to be suffering from mental disorder into custody.**

*12.—(1) Where a member of the Garda Síochána has reasonable grounds for believing that a person is suffering from a mental disorder and that because of the mental disorder there is a serious likelihood of the person causing immediate and serious harm to himself or herself or to other persons, the member may either alone or with any other members of the Garda Síochána—*

*(a) take the person into custody, and*

*(b) enter if need be by force any dwelling or other premises or any place if he or she has reasonable grounds for believing that the person is to be found there.*

*(2) Where a member of the Garda Síochána takes a person into custody under subsection (1), he or she or any other member of the Garda Síochána shall make an application forthwith in a form specified by the Commission to a registered medical practitioner for a recommendation.*

*(3) The provisions of sections 10 and 11 shall apply to an application under this section as they apply to an application under section 9 with any necessary modifications.*

*... ”*

*Form 5*

- 44.** A form 5 is executed pursuant to s.10 of the 2001 Act and is headed ‘Recommendation (by a registered medical practitioner) for involuntary admission of an adult (to an approved centre)’. At the end of the pre-printed form it states that penalties apply for ‘false or misleading information’. No copy of the Form 5 completed by Dr Casey was before this Court (which is regrettable). All parties accept it was executed but it should properly have been produced as it was the legal basis for the appellant’s involuntary transportation and initial admission to UHG, and it is central to the claim that the appellant seeks to pursue which is that the Form 5 was not properly or lawfully executed by Dr. Casey under the 2001 Act

45. Within submissions and in his affidavits Dr. Casey has averred that his execution of the Form 5 ensured this appellant's involuntary detention for a maximum period of 24 hours. That is in accordance with the terms of the 2001 Act. The documentation from the approved centre which has been furnished to the court, discloses that psychiatric examination of the appellant then took in UHG place on the morning of appellant's involuntary detention on 24 April, within the initial 24 hour period of detention.

Approved Centre and Mental Health Tribunal ('MHT')

46. Pursuant to s.14 of the 2001 Act, upon the recommendation being received by the clinical director of the approved centre, there is a 24 hour period for a consultant psychiatrist within that approved centre to examine the person and determine whether to make or refuse an order for involuntary admission.
47. Unless the person is discharged, the psychiatrist's order for involuntary admission lasts for a period of 21 days (s.15) within which a Mental Health Tribunal (MHT) is convened in respect of the detained person. This is what appears to have occurred in the present case. The MHT convened in the appellant's case on 13 May 2013. The decision of the MHT dated 13 day of May 2013 states, in respect of the provisions of the 2001 Act, that they were satisfied "*that the provisions of ss. 9, 10, 12, 14, 15 and 16 where applicable had been complied with*". In reality this was of limited significance as on 28 April the appellant discharged himself from the approved centre, and did not return nor was his return sought. Accordingly, on 13 May 2013 the MHT revoked the order of involuntary detention.
48. Extracts from the UHG records, including the MHT tribunal, also contain notes from the psychiatric SHO on call, Professor McDonald and a clinical psychologist.

Throughout they record the appellant's comments, which accord with the matters set out within his affidavits. The only reference to any clinical diagnosis is at the beginning of the entry on 24 April at 2.20 'Brought in from Clifden as an involuntary patient - 'acute psychosis' which may be referable to the Form 5. In any event the entry appears to arise following the appellant's admission to the approved centre, not it appears, following any psychiatric evaluation or assessment. Thereafter the notes record conversations with the appellant last on 26 April notes him as 'pleasant and appropriate in conversation'. Up until he left UHG on 28 April it appears that no diagnosis of a precise mental disorder or condition is recorded within these notes. The discharge notes that whilst the appellant was placed on high risk nursing care upon his arrival at the approved centre on 24 April (a point highlighted within the High Court judgment) he was taken off high risk nursing care on 25 April and thereafter he left UHG on 28 April. The discharge summary (dictated 21/05/2013) states that this appellant 'may continue to experience psychotic symptoms which affect his behaviour and functioning .....'. It concludes by stating that; 'we informed the Gardai that if they felt the patient needed further assessment under the MHA a new application process would be needed'. Neither at the time of the MHT nor within this discharge summary was there any suggestion that the UHG sought his return to the approved centre (for medical reasons or at all) after the appellant discharged himself without permission on 28 April.

- 49.** It is clear that the 2001 Act is designed to ensure that, on the facts in a case such as this, in order to affect an involuntary detention, pursuant to s.9 or s.12 there are two entities involved; on the facts of this case one is a member of an Garda Síochána and the second a registered medical practitioner. Indeed, Dr. Casey's affidavit sworn in



response to the motion before Barrett J. dated 8 November 2017 at para. 16 puts the position as follows:

*“I felt that at this point, involuntary admission was needed on the grounds of psychosis and further that the applicant posed a possible risk to himself and to others. A member of An Garda Síochána made the appropriate application under the Mental Health Act 2001 for a recommendation to admit the applicant involuntarily. At midnight and on foot of that application, I recommended that the applicant be admitted involuntarily. This involuntary admission was for a period of 24 hours to have him assessed by a consultant psychiatrist in the approved centre being University Hospital Galway.”*

In the case law considered below, in respect of s.73 of the 2001 Act, issues relating to the actual involuntary detention, within an approved centre itself, are the principal grounds of a leave application, coupled with claims involving the circumstances of the recommendation for that admission. That is not the case here. The only application for leave is in respect of the recommendation for involuntary detention by Dr Casey.

#### The Law

- 50.** In *Blehein v. The Minister for Health and Children & the Attorney General* [2009] 1 IR 275 (*Blehein*) the Supreme Court considered issues relating to the predecessor to s.73 of the 2001 Act ; s.260 of the Mental Treatment Act 1945.
- 51.** In considering an application for leave Denham J. considers the issue of proportionality, which has been cited in subsequent caselaw as an equally important consideration in determining leave applications pursuant to s.73 as it was in respect of its predecessor.

52. Denham J. initially quoted from *Murphy v Greene* [1990] 2 IR 566, where the Supreme Court held that requiring leave of the court as a precondition to the institution of proceedings pursuant to s.260 of the 1945 Act was a curtailment of the constitutional right of access to the courts and thus should be strictly construed, Finlay C.J. stated at p. 572;

*'Section 260 of the Mental Treatment Act 1945 is prima facie a curtailment of the constitutional right of every individual of access to the courts to the extent that it requires a precondition of leave of the court for the bringing by him of a claim for damages for an asserted wrong. It seems reasonable as was stated by O'Higgins C.J. in O'Dowd v North Western Health Board [1973] ILRM 186, that one of the reasons for this curtailment is to prevent a person who is or has been thought to be mentally ill from mounting a vexatious action, or one based on imagined complaints'.*

53. Denham J. continued, also citing Costello P. in *Heaney v Ireland* [1994] 3 I.R. 593 at p.281;

*"At issue in this case is the liberty of the plaintiff, an important constitutional right. Whilst the aim of the Act of 1945 was legitimate, the limitation on the right of the plaintiff should not be overbroad, should be proportionate, and should be necessary to secure the legitimate aim" ..*

54. The principal distinction between s. 260 and the present provisions of s. 73 is the reversal of the burden of proof within a leave application. As Clarke J. (as he then was) puts it in *A. L. v the Clinical Director of St Patricks Hospital and anor* [2010] 3 IEHC 62 (*'A.L.'*);

*"2.2 Section 73 of the 2001 Act is, in some respects, similar to the former s. 260(1) of the Mental Treatment Act 1945 ("the 1945 Act"), which also provided that*

*proceedings of the relevant type could not be instituted save by leave of this Court. However, s. 260(1) of the 1945 Act provided that such leave should 'not be granted unless the High Court is satisfied that there are substantial grounds for contending that the person against whom the proceedings are to be brought acted in bad faith or without reasonable care'.*

*2.3 It will immediately be seen that there are two significant differences between s. 73(1) of the 2001 Act and s. 260(1) of the 1945 Act. First, s. 73 of the 2001 Act reverses the onus of proof. Under s. 260 it was necessary for the person wishing to initiate proceedings to establish that there were substantial grounds for contending bad faith or lack of reasonable care. Under s. 73 the court is required to give leave unless the court is satisfied that the proceedings are frivolous, vexatious or that there are no reasonable grounds for asserting bad faith or lack of reasonable care.*

*2.4 Second, it is to be noted that, while s. 260 required the intending plaintiff to show substantial grounds for the contentions which underlie the intended proceedings, s. 73 contains no such requirement.*

**55.** As Clarke J also pointed out in *A.L.*, the terms '*bad faith or without reasonable care*' appear both with s.260 of the 1945 Act and s. 73 of the 2001 Act.

**56.** In considering '*reasonable care*' Clarke J. in *A.L* stated :

*"2.7 Thus, at the level of principle, it seems clear that it is open to an intended plaintiff to seek to allege that there was a breach of duty of care on the part of a doctor or hospital arising out of the procedures, followed or not followed in the course of putting in place the necessary measures required to procure the detention of a patient. Any such want of care is, it seems to me, therefore, a type of want of care which came within s. 260 of the Act of 1945 and also comes, at the level of principle, within s. 73 of the Act of 2001."*

57. Clarke J. continued and stated

*“2.9... .. the question which I must ask myself is whether I am satisfied that there are no reasonable grounds for contending that either or both of the intended defendants acted without reasonable care. This is, of course, something of a double negative. I should grant leave unless I am satisfied of that matter. It follows that leave should be granted, save in cases where it has been demonstrated that there is no reasonable basis for the allegation that any relevant intended defendant acted without reasonable care. Where, therefore, there is any legitimate basis on which a court might arguably conclude that a relevant intended defendant had acted without reasonable care, then it follows that leave must be granted.*

58. *M.P. v. Health Service Executive, The Minister for Justice, Equality and Law Reform & Sheila Casey* [2010] IEHC 161 (*‘M.P.’*) is an application for leave pursuant to s.73 of the 2001 Act. The applicant was a lay litigant and her complaint was primarily with regard to her involuntary detention within an approved medical centre in 2009.

59. However a portion of her intended draft proceedings was directed against a GP, the third named defendant, Dr. Sheila Casey, in effecting her involuntary detention. The applicant had attended this GP on a number of occasions and the doctor had made efforts to have her mental health condition supervised which did not prove successful.

60. The applicant had initially been arrested on 29 January by the gardai under s. 12 of the 2001 Act, the doctor contacted from the out of hours service had declined to certify her and she was released. On 3 February the applicant attended Dr. Casey (as her patient).

61. Within her affidavit, Dr. Sheila Casey averred that it was at that time, on the basis of her own observations and confirmed by social workers and a consultant psychiatrist with knowledge of the case, she formed the view that there was a significant risk of

the applicant either harming herself or another person. On that basis a request was made to the gardai that the applicant be detained under the Mental Health Act.

- 62.** It appeared that the second named intended defendant, the Minister for Justice, Equality and Law Reform, had been joined by virtue of the fact that the gardai had arrested the applicant for the purposes of her detention pursuant to s.12 of the Mental Health Act 2001. No other complaint was made against them and the court held that no case had been established in relation to the performance of their duties.
- 63.** The intended defendants in seeking to resist the leave application invoked both s. 73(1) (a) and (b) of the 2001 Act.
- 64.** In considering the judgment of Denham J in *Blehein* with regard to the issue of proportionality MacMenamin J. stated:
- 65.** “69. *I consider that the principles of proportionality applied in Blehein are as applicable here as they were to the predecessor section.* Later in the judgment the court continued:
- “78. One must have regard to the fact that the matters outlined by the applicant had not been previously fully litigated. But that is the nature of a leave application. However, the other tests outlined earlier are of particular relevance. To reiterate, the affidavits sworn by the medical practitioners involved indicate that they acted bona fide and reasonably. There is no evidence to the contrary, save assertion..*
- 79...The tribunal held on the first hearing that the applicant’s detention was lawful..*
- 80. There is no evidence sufficient to cross the thresholds that any of the defendants or their servants or agents acted in such a manner as would warrant leave being granted for proceedings .....*”.

**66.** MacMenamin J. held the proceedings to be frivolous, vexatious and an abuse of process, having found that there was no evidence that any of the defendants had acted in bad faith or without reasonable care . Whilst this judgment was not appealed, a second application was made by the same intended applicant M.P. pursuant to s.73 (amongst other matters) by the same applicant

**67.** In *M.P. v Attorney General, The Health Service Executive and Sheila Casey* [2010] IEHC 473 (“M.P. No.2”) the applicant claimed that she was seeking leave in respect of a separate issue, namely her second involuntary detention in 2010, but her affidavit evidence relied largely on the same material that she relied upon in her previous application. The respondents opposed the application as being frivolous and vexatious and contended that it was an abuse of the process, and also sought an Isaac Wunder order to prevent the issue of further proceedings without leave of the court. Within that application the court quoted the passages recited above from the previous judgment. The s. 73 application for leave was struck out because MacMenamin J. considered it to be a re-litigation of the same issues, although he declined to grant an Isaac Wunder order.

While the factual basis is different here, *M.P. and M.P. No.2* do serve to illustrate that any further litigation, in respect of An Garda Siochana or other parties within the U.H.G. approved centre or otherwise, in respect of any act purporting to have been done under Part 2 of the 2001 Act may give rise to consideration of abuse of the process.

**68.** In *M.Z v. Khattak & Tallaght Hospital Board* [2008] IEHC 262 (‘M.Z’), Peart J. considered a s. 73 application brought on behalf of an involuntary patient at a psychiatric unit for an enquiry as to the lawfulness of that detention. Complaints were also raised in respect of the role of Dr. W who was requested to attend at the garda

station to carry out an examination of the applicant for the purposes of recommending involuntary admission.

**69.** The evidence before the Court was that Dr. W chatted to the applicant outside the garda station for a short period whilst they both smoked their cigarettes. The doctor was at the garda station for between 25 and 30 minutes and the informal conversation, it was agreed, lasted about 10 minutes. On the basis of this, the doctor formed the view that the applicant was elated and paranoid and he signed the Form 5 Recommendation. The doctor stated he was fully satisfied based on his experience (not as a psychiatrist) that the applicant was suffering from paranoia and needed to go to hospital. He was not aware of what medication he was on, but stated he was satisfied to rely upon the psychiatrist at the hospital taking in the applicant and considering what should happen to him.

**70.** With regard to the s.12 procedure, Peart J. stated at para. 43:

*“The section is clear and precise as to its terms. There is no room for ambiguity. Where a person is taken into custody under s. 12 of the Act, the section mandates that for the purposes of continuing the process under that section, only a member of the Garda Síochána may make the application for a recommendation. That is not the same as saying that where the person is taken into custody under that provision, the process must continue under s.12. That point should be made. Clearly Dr W's view, resulting in him getting the applicant's brother to complete the application form for the recommendation, that where a Garda makes the application the patient must simply remove himself/herself from the approved centre following admission, has no legal basis, and is erroneous given the express terms of the legislation...”*

71. The judge stated that whilst in an ideal world he would have preferred stricter adherence to the procedures, he was satisfied that a process commenced under s.12 could not preclude matters from proceeding further under s.9. He stated:

*“I am not satisfied that the fact that the process had commenced under s. 12 precluded matters from proceeding further under s. 9. The Act does not state this. Alternative procedures are provided for.” (para.45)*

72. Whilst much of the judgment deals with issues after the involuntary admission, submissions were also advanced that the examination carried out by Dr. W. at the garda station was not of the type of examination envisaged pursuant to the terms of the 2001 Act. The Court found that Dr. W’s knowledge as to the precise requirements of the Act and his role within it left some room for improvement.

73. Having asserted a certain disquiet about the manner of the examination the Court stated at para. 53;

*“But having said that, there is no question but that Dr W is a registered medical practitioner, and thus a qualified person to have examined the applicant for the purpose of the s.10 recommendation.*

...

*54. In these circumstances, even though I would have reservations about the appropriateness of such an examination taking place in such an informal way...nevertheless one cannot discount completely the probability that Dr W's thirty years' experience as a general practitioner and his later experience of examining patients in a Garda Station, enables him to reach the necessary conclusions, for the purpose of making this recommendation quite rapidly, both from observation and conversation with the person, armed as he was, and was*



*entitled to be, with necessary background information provided to him by the applicant's brother and Sgt. Reynolds at that time."*

74. Accordingly, the Judge found that the circumstances of the recommendation by Dr. W did not invalidate the applicant's involuntary detention.
75. In *J.O'T v. Healy, Grazioli, Commissioner of An Garda Síochána, Minister for Justice and Equality, Ireland and the Attorney General [2018] IEHC 571 (J. O'T)*, within the draft proceeding the plaintiff sought damages for negligence, breach of duty including breach of statutory duty, breach of contract, unlawful deprivation of liberty, false imprisonment and breach of and failure to vindicate the plaintiff's constitutional right and rights pursuant to the European Convention on Human Rights. The claim related to detention within an approved centre but also against the doctors who had initially recommended his involuntary detention.
76. The first and second named defendants to the leave application were both general practitioners within the same practice. Both had sworn affidavits in the proceedings. The remaining defendants to the proceedings were joined due to the allegations concerning particular members of An Garda Síochána who the plaintiff contended acted unlawfully in procuring and effecting his arrest and involuntary detention within an approved centre.
77. The intended plaintiff's complaint against the first named defendant alleged a breach in statutory procedure in the completion of the Form 5.
78. It was submitted on behalf of this intended defendant that this was the type of scenario envisaged by s.73 in which a general practitioner who had acted *bona fide* in this way could be afforded protection against having to defend legal proceedings which have, in essence, no prospect of success. The judge found on the facts that it was clear that, whilst the first named defendant had had an attendance with the intended plaintiff, by

the time this intended defendant was approached by family members, the intended plaintiff was then missing and that it was then on the basis of his notes and examination of the intended plaintiff that a Form 5 was completed.

- 79.** In respect of this defendant, the court found that with regard to the chain of events;
- “63.....I am entirely satisfied that Dr Healy was acting under extreme pressure with a view to protecting the health and life of the intended plaintiff in issuing the Form 5. Even if it is established that the relevant Form was not appropriately completed (it had been misplaced) there is no evidence that this of itself led to any loss or damage to the intended plaintiff that is actionable in respect of false imprisonment or breach of any related constitutional right.”* (my note in parenthesis)
- 80.** The court found that the doctor’s overriding duty was to protect the patient’s health and life and was satisfied that Dr. Healy had established that there were not reasonable grounds or contending that he acted without reasonable care or in bad faith between the dates in question.
- 81.** The second named defendant was also a general practitioner within the same practice. He accepted that he completed a Form 5 in circumstances only supported by the medical records (he had not seen the applicant in person for some time). Rather unusually, the second named defendant averred that the gardai had reassured him that there was no intention on their part to use the form to involuntarily detain the plaintiff, but rather to use it to persuade the plaintiff to voluntarily seek psychiatric assessment, that he was to be shown the Form 5 only in order to illustrate the scenario that might occur should he not voluntarily seek treatment.

- 82.** The second named defendant averred that all steps taken were in the context of a crisis and that the intended plaintiff was believed to be suicidal and *bona fide* efforts were being made by his family and the gardai to locate him and preserve his life.
- 83.** The intended plaintiff complained that members of An Garda Síochána had subjected this doctor to undue influence or pressure to complete the Form 5 recommendation for involuntary admission, in circumstances where it was alleged that the gardai sought a completed Form 5 as leverage. There was also an unresolved factual issue as to whom the Form 5 had been sent and who had received it (amongst the gardai, the applicant and the second named defendant) and in what specific circumstances.
- 84.** In respect of the second named defendant the court concluded at para. 66:
- “...I am satisfied that the second intended defendant had not established that there are no reasonable grounds to conclude that his actions were carried out in bad faith or without reasonable care: it has not been demonstrated that there is no reasonable basis for making the claim sought to be advanced. Indeed, the doctor accepts that an invalid Form 5 was furnished by him but for a different purpose. Thus, the circumstances of a doctor’s involvement is different to the much more limited involvement of Dr. Healy. Accordingly, I will grant leave to issue proceedings against the second intended defendant seeking damages for negligence, breach of duty, false imprisonment and breach of constitutional right to privacy in supplying his medical details to the gardai. This does not in any way suggest that I am satisfied that this claim should succeed: that is a matter for the trial judge and subject to a different standard of proof.*
- 85.** The Court reviewed both the legislation and case law in respect of s.73 of the 2001 Act and its predecessor, the decision in *Blehein* and Clarke J, in *A.L.* The court also

considered the term “*without reasonable care*” within *Melly v. Moran*, and the decision of MacMenamin J. in *M.P.*

In respect of the role of the second named defendant and the gardai, the court stated

*“45...There are clearly issues of fact between Dr. Grazioli, Garda Hannon and J.O'T as to how and why the detention was effected; the lawfulness of the detention is also in issue between them. It is appropriate therefore to grant leave to issue proceedings against the third, fourth, fifth, and sixth intended defendants for the same reasons as leave was granted in respect of the second intended defendant since they are said to be liable in their various capacities for the actions of Garda Hannon and Dr. Grazioli.*

*46. I wish to emphasise that the leave threshold is very low and the claims made will be determined at the trial of the action which will require a much higher standard of proof based on oral evidence.”*

*The appellant’s legal submissions*

- 86.** The appellant’s written submissions are lengthy and detailed (the final submissions, his third version, run to 49 closely typed pages).
- 87.** Initially, the appellant raises various complaints concerning his previous and ongoing litigation, where the language used is forthright and in some instances unfortunate. He also references applications for the recusal of certain judges. His difficulties in relation to these matters covers the initial eight pages of his submissions.
- 88.** The appellant raises issues with regard to discovery. In particular, he expresses disappointment that he was unable to get discovery before the High and Circuit courts (with regard to audio video recording concerning his time at the Clifden garda station

on 23 April) to, as I understand it, show his rational demeanour throughout. Again he deals with these matters in some detail. A notice of motion and affidavits before the High Court in respect of an application for discovery are also furnished within the papers, but they do not relate to this appeal.

- 89.** In short, he sets out in great detail the issues that have arisen, as he perceives them, including with various members of the gardai and his neighbours. He deals with the incident resulting in his being in Clifden garda station on 23 April amongst other matters. He submits that these matters should be examined and considered prior to any consideration of s.73 of the 2001 Act. At one point he states:

*“Dr. Casey’s assessment is based on a completely suspect version of reality by police and third hand via...from neighbours, now assumed to be arsonists/murderers. As such leave must be granted to allow this to be fully explored in Court...with Dr. Casey and police, neighbours and UHG doctors, as appropriate called as witnesses...”*

- 90.** The appellant’s submissions are an exhaustive recitation of all of the complaints that have arisen, his ongoing and significant complaints against the gardai at Clifden and elsewhere and additional complaints as to how those matters have been raised and dealt with in previous judicial proceedings, taking serious issue with the comments of Dr. Casey both in the e-mails exchanged between them and within his affidavit evidence.
- 91.** He also deals at length with his complaints concerning his period of involuntary detention within the approved centre.
- 92.** With regard to the finding of Barrett J. that the allegations and issues the appellant raises are largely based upon assertion, he strongly asserts that it is not a matter of assertion but of criminality. He again details, at length, that there has been a blind

acceptance of discredited persons to form a version of events that do not reflect well upon him. He also references the 2013 e-mail exchange with Dr. Casey.

93. The appellant contends that Dr. Casey himself behaved inappropriately and that also a false pretext was created by the gardai for his return to the garda station. This is not, it appears, an allegation against Dr. Casey personally but rather an allegation that he only returned when called back to see the officers who wished to furnish certain unfavourable information about the appellant. Under 'Conclusion' he states the following:

*“There is only a low threshold needed to demonstrate that it is not unreasonable, frivolous or vexatious case. We don't have to prove it here.”*

94. The appellant again re-iterates the phrase within the custody record of *“no underlying medical condition ...fit for interview”*.
95. It is clear from his affidavits before the High Court, the additional documentation furnished and his submissions within this appeal that the appellant takes serious issue with steps taken by An Garda Síochána with regard to various road traffic and other offences allegedly committed by him and also in respect of various adjudications in relation to him in various courts.

#### Respondent's submissions

96. The respondent's submissions, after affirming that the specific grounds within the appellant's notice of appeal should be dismissed, also confirm that he seeks a refusal of the leave application on the criteria within both s.73 (1) (a) and (b) of the 2001 Act.
97. Thereafter there is consideration of the case law in respect of s.73 of the 2001 Act, in respect of the medical practitioner's role within the facts of each case. The respondent

strongly contends that the case being advanced within the draft pleading, against the respondent, is to the effect that he was induced to falsely sign off on a Form 5 recommending involuntary admission to an approved centre. They further contend he did so arising from his medical concerns regarding this appellant and on the basis of a proper medical assessment.

- 98.** It is argued that the documents show that the respondent was at all times acting in his professional capacity and that, based upon the case law (*Reidy v National Maternity Hospital* [1997] IEHC 143, *Cooke v Cronin & Neary* [1999] IESC 54 and *Greene v Triangle Developments Ltd* [2008] IEHC 52) in such circumstances, the appellant was required to obtain an expert's report before advancing the case within the draft proceedings against him and that his failure to do so constituted an abuse of process.
- 99.** It is submitted that the respondent acted bona fide and reasonably throughout. In his affidavits before the High Court and submissions before this court, Dr. Casey sets out how seriously he takes the allegations and how damning he considered them to be in respect of his professional conduct as a medical practitioner. The allegations are indeed serious and on occasions the correspondence and indeed phraseology of some of the appellant's submissions are ill-considered at best.
- 100.** The respondent further contends that he is being asked to defend a case where the appellant cannot succeed, and this is both frivolous and vexatious. In this regard he cites McGovern J. in *Doherty v Minister for Justice, Equality and Law Reform* [2009] IEHC 246 in his consideration of the words '*frivolous and vexatious*' in respect of which he in turn cites McCracken J. in *Faye v Tegral Pipes Ltd* [2005] 2 I.R. 261 at p.266 where he refers to the privilege of access to the courts only being "...used for the resolution of genuine disputes and not as a forum for lost causes which...have no basis for a complaint in law." The respondent also relies upon Barrett J's reference to

Barron J's judgment in *Farley v Ireland* (Supreme Court, unreported 1 May 1997) (*'Farley'*) where he stated –

*“.....so far as the plaintiff is concerned if he has no reasonable chance of succeeding then the law says that it is frivolous to bring the case. Similarly, it is a hardship on a Defendant to have to take steps to defend something which cannot succeed and the law calls that vexatious”.*

- 101.** Reliance is also placed upon the averments within the respondent's affidavit to show that he acted bona fide and reasonably. The respondent also points to the fact that the consultant psychiatrist who examined the appellant upon his involuntary admission to UHG agreed with his earlier clinical diagnosis.
- 102.** The respondent also points to the fact that the appellant's proceedings against certain members of An Garda Siochana and the Garda Ombudsman are still in being and that he is free to prosecute them within other litigation instituted by him.

### Discussion and decision

- 103.** In considering the issues raised by both parties a number of matters require consideration.
- 104.** Within the appellant's grounds of appeal he takes issue with certain matters that are not relevant to this leave application. He criticises the High Court judge for failing to consider supplemental documentation (which the trial judge in his judgment states clearly that he had considered, and much of which, in any event, did not relate to the leave application), and ignoring other pleadings, particularly citing Civil Bill 1076/16, again a matter not relevant to his leave application or this appeal.



**105.** As to his application for discovery, while preliminary discovery is on occasion granted before a Statement of Claim is delivered, it is hard to envisage circumstances in which it might be relevant and necessary in a leave application such as this. More particularly it can hardly be said to be necessary where the appellant has a right to access his medical records (which would include the Form 5, and UHG hospital records which have been produced). His entitlement to request and receive the audio/video record of the interview in the Garda Station would appear to require a direction or order of the court (s. 56 of the Criminal Justice Act 2007). Whilst one can appreciate the appellants reasons for seeking the interview tapes in support of his contention that he was never agitated or suffering a mental disorder, as this is a leave application and the matter that was not considered by the High Court judge, in my view it is preferable that any such order or direction is made on foot of an application for discovery if leave is granted to pursue the proceedings.

*Leave and the 2014 circuit court proceedings*

**106.** Section 73 of the 2001 Act is clear. It is incumbent upon any applicant who wishes to issue proceedings, with regard to the circumstances of an involuntary detention pursuant to the provisions of Part 2 of the 2001 Act to initially seek leave of the High Court. As MacMenamin J. states in *M.P.* the requirement has '*no variation or waiver provision*'.

**107.** In a number of the cases discussed above (*J'OT* and *M.P.*, particularly the latter) it is noteworthy that there were significant procedural difficulties prior to the leave application. Both applicants had their initial proceedings struck out on the basis of

having failed to obtain leave and thereafter made a fresh leave application, with draft proceedings grounding their leave application before the court.

- 108.** In respect of the 2014 Circuit Court proceedings, the basis upon which retrospective leave was initially granted to this appellant by the High Court is difficult to discern. Certainly s.73 is clear as it begins with the phrase:

*“No civil proceedings shall be instituted in respect of an act purporting to have been done in pursuance of this Act save by leave of the High Court...”*(my emphasis)

The High Court ultimately struck out the application for leave in respect of the 2014 circuit proceedings, presumably recognising that leave cannot be granted with retrospective effect. For the avoidance of doubt, in my view s.73 of the MHA 2001 does not permit of what is described within the papers as retrospective leave.

#### Expert's Report

- 109.** The failure to furnish such a report was referenced by Barrett J, who cited *Reidy v National Maternity Hospital* [1997] IEHC 143, *Cooke v Cronin & anor* [1999] IESC 54, and *Greene v Triangle Developments* [2008] IEHC 52 . Whilst not taking a concluded view, nevertheless he confirms that this respondent was acting as a professional throughout and described the intended draft pleading as a professional negligence claim. He further notes that there was no such opinion before the court.
- 110.** Those cases cited within Barrett J's judgment all confirm the necessity of procuring an expert opinion prior to the initiation of professional negligence proceedings and that a failure to do so may constitute an abuse of process. In endorsing the approach

of the court in *Reidy v National Maternity Hospital Denham J* in *Cooke v Cronin & anor* states;

*“10.....To issue proceedings alleging professional negligence puts an individual in a situation where for professional or practice reasons to have the case proceed in open court may be perceived and feared by that professional as being detrimental to his professional reputation and practice. This fear should not be utilized by unprofessional conduct”.*

- 111.** The respondent’s submission also maintains that Dr Casey acted throughout within his professional capacity and therefore, in advance of instituting any proceedings against him, the appellant should have obtained an expert opinion. They contend this his failure to do so constitutes an abuse of process.
- 112.** In the affidavit of Ms. Justine Balfe, solicitor, sworn on 9 November 2017 within the leave application dated 23 June 2017 she exhibits (‘JB4’) a number of items of correspondence, particularly those dated 2 January and 23 March 2015 to the appellant requesting an expert report in respect of the 2014 Circuit Court proceedings and this stance is maintained in respect of this leave application.
- 113.** There is no statutory requirement within the 2001 Act for the furnishing of an expert report prior to issuing a leave application pursuant to s.73, or within the context of Part 2 of the 2001 Act dealing with the criteria for a recommendation of involuntary detention to an approved centre. Part 2 of the 2001 Act is clear as to the role of a medical practitioner within that process and in my view is central to the checks and balances set out within that part as to the procedures to be adopted where it is proposed to make a recommendation of involuntary detention.
- 114.** In none of the case law cited to this court in respect of a s.73 leave application (or its predecessor), where medical practitioners are named as intended defendants, does any

court require or express the view as to any requirement for the procurement of an expert's report prior to seeking leave in respect of draft proceedings.

115. Moreover, while the respondent's submission relies on well known dicta as to the need for an expert report before professional negligence proceedings are issued, the appellant's primary complaint against the respondent in the draft proceedings is that in completing Form 5 he acted in bad faith rather than without reasonable cause/negligently. Thus there may not be the same imperative to obtain a supporting psychiatric report in a case such as the present, although such expert evidence might ultimately be needed if the appellant is to have any reasonable prospect of succeeding at trial.
116. Even if this intended pleading could be categorised as professional negligence proceedings, McKechnie J. considered in *Mangan v Dockeray & ors* [2020] IESC 67, that the absence of an expert report is not always fatal to the institution of such proceedings.
117. The cases dealing with a s.73 leave application (and its predecessor) all endorse the concept of proportionality, as set out by the Supreme Court in *Blehein*. To impose a further requirement upon an intended plaintiff is in my view contrary to the proportionality that Blehein confirms should be maintained between a constitutional right of access to the courts and vexatious actions or imagined complaints.
118. In my view the respondent has failed to demonstrate why and in what specific circumstances a prior expert report is required in respect of this appellant's leave application. Accordingly, the submission that a failure to do so constitutes an abuse of process is rejected.

*The Statute of Limitations*

- 119.** In response to a query from the court additional submissions were considered on the issue of the statute of limitations, as more than six years have elapsed since the events of April 2013: if leave were to be granted would the proceedings themselves be statute barred?
- 120.** Both parties filed legal submissions. The Appellant contends that the limitation period should not be considered on the facts of this case. He argues that this issue should have been raised at an earlier time and could not properly be considered in the absence of discovery (he again refers to and seeks certain additional documentation). With regard to the Statute of Limitations he confirms that he has dealt with matters as expeditiously as possible and moreover was entitled to seek leave pursuant to the 2001 Act to seek a vindications of his human rights.
- 121.** The Respondent contends that the applicable limitation period pursuant to the Statute of Limitations 1957 as amended, is 6 years and this should begin from 23 April 2013, or possibly 24 April 2013 in respect of any damages claim. In respect of any other claim (a claim of bad faith is specifically referenced) it is argued that the limitation period should be considered an analogous to the six year limitation period as proscribed within the Statute of Limitations. Accordingly should leave be granted by this court to issue the intended proceedings, they would be found to be statute barred as more than 6 years has elapsed.
- 122.** A plea with regard to the statute of limitation is usually a matter to be considered by a court if raised as a defence or objection to the continuation of proceedings (see *O'Connell v Building and Allied Trades Union* [2012] IESC 36).
- 123.** I am conscious that the appellant is a lay litigant and has on more than one occasion referenced his understanding that he had been previously granted leave by the High

Court, as outlined above. It is also the case that he attempted to initiate proceedings against Dr. Casey in 2014, and his present application for leave was issued within 6 years of April, 2013. The issues that potentially arise under the Statute of Limitations are not straightforward and might warrant much fuller argument than has been presented to this court thus far. I am satisfied that this court should, as the appellant submits, refrain from determining any issue concerning the statute of limitations at the leave stage, particularly bearing in mind that this issue was not raised before the High Court.

- 124.** I also note the following comments of O'Malley J. in *AM v Kennedy & Ors (intended defendants)* [2013] IEHC 55 where she stated at para. 37;

*'It may be worth stressing the difference between the procedure being dealt with under s.73 and, for example, an application for leave to bring judicial review proceedings. The reversed burden of proof is one obvious distinction. It is also important to note that no party, let alone a trial judge, is in any way bound by the views expressed in this judgment. The normal course of litigation, including discovery and oral evidence, may well bring other considerations to the fore'*

- 125.** In light of these considerations in my view, in the specific circumstances of this application, it would not be appropriate to express a decided view upon this specific issue within this leave application.

*The leave application pursuant to s.73 of the 2001 Act*

- 126.** The facts of this case can be distinguished from those considered above; the documentation is clear that the appellant's initial arrest related to a road traffic incident and his request for a doctor followed a complaint that he was feeling physically unwell,

specifically that he was suffering from chest pain. He was not arrested and taken into custody pursuant to any provisions of Part 2 of the 2001 Act and the respondent was not called to consider any issue regarding the appellant's mental capacity.

- 127.** Dr Casey arrived at the garda station arising from the appellant's complaint of chest pains and request for a doctor. The outcome of his initial medical consultation (recorded in the custody record as being from 22.05 to 22.40), clearly records Dr Casey's opinion that this appellant had no underlying medical condition and that he was fit for interview. Thereafter it appears that the appellant was interviewed under caution by the gardai. Had any concern regarding the appellant's mental health been raised by Dr Casey at that time, his interview under caution would presumably not have proceeded as it did.
- 128.** At no point does Dr. Casey contradict or describe as incorrect that entry within the custody record (no underlying medical condition, fit for interview) as a description of the appellant's medical condition at that time. His affidavit suggests that he gave consideration to other matters concerning the appellant's health, but the entry is clear and following it the appellant's interview by An Garda Siochana took place.
- 129.** Dr Casey, within the initial correspondence between the parties and in his affidavit opposing the leave application, makes reference to his view that this appellant showed signs of agitation, paranoid ideation and considered him to be suffering from an acute psychotic episode. That opinion must, it appears, have been formed after his initial medical consultation where no concerns of this nature are recorded within the custody record.
- 130.** At no point does the custody record note any of Dr Casey's subsequent concerns regarding this appellant's condition (for example there is no reference to his being agitated). At no time does this record note any alteration in the appellant's condition

with regard to any agitation or any other features indicative of any concern on their part for this appellant's welfare.

- 131.** It appears that the decision to consider involuntary detention was made by Dr Casey and thereafter the gardai executed the documentation to this effect, with Dr Casey executing the Form 5 pursuant to s.10 of the 2001 Act. None of the forms were produced to the court, so the position cannot be fully clarified at this time.
- 132.** The appellant's subsequent medical examination when Dr Casey returned to the garda station, seems to have been his initial face to face assessment of the appellant's mental status and appears to have been conducted between 00.02 and 00.10, which was a considerably shorter time period than his initial physical examination and included his completion of the Form 5. Dr Casey, in his affidavit, states that within his consultation he raised the possibility with the appellant of agreeing to a period of voluntary detention in order that he might be examined by a psychiatrist; this is denied by the appellant.
- 133.** The respondent's submissions make specific reference to the phrase 'acute psychosis' on the initial admission records to UHG as confirmation of Dr's Casey's diagnosis or assessment within his second consultation in the Garda Station. As stated earlier, it is unclear whether this phrase within the admission notes to UHG, (24 April at 2.20 'Brought in from Clifden as an involuntary patient - 'acute psychosis'), is a clinical diagnosis by UHG or a recording of the information it had received upon the appellant's arrival to the approved centre.
- 134.** The trial judge found that no grounds were presented by the appellant in his leave application other than by way of 'mere assertion'. That finding is not, in my view, substantiated upon the facts of this case. MacMenamin J. in *M.P. (No 1)* considered that this phrase must mean that some form of corroboration is presented to the court



by an intended applicant. The matters considered above in my view raise issues or potential issues that take this matter beyond the realm of mere assertion. There are discrepancies within the documentation surrounding the circumstances giving rise to the appellant's involuntary detention.

- 135.** These issues which, in my view, take this intended application beyond mere assertion, cannot be determined by this court but are raised in order to determine whether, in the words of Clarke J (as he then was) in *A.L.*, '*leave should be granted, save in cases where it has been demonstrated that there is no reasonable basis for the allegation that any relevant intended defendant acted without reasonable care*'. (para. 2.9)
- 136.** The trial judge also considered (citing *Farley v Ireland unreported*, (*Supreme Court 1<sup>st</sup> May 1997*)) that as this appellant has no reasonable chance of succeeding in his intended proceedings, then the unavoidable conclusion is that these leave proceedings are frivolous. The respondent urged the correctness of that finding on this court. However, that is asking the court to consider a leave application pursuant to s.73 of the 2001 Act by the same criteria for the striking out of existing proceedings as occurred in *Farley*, where the court has the benefit of pleadings having been exchanged between the parties. In cases such as this the case law is clear in confirming that the effect of s.73 of the 2001 Act is to reverse the burden of proof and that any intended applicant must pass a low threshold test in order to obtain leave. As pointed out by McDermott J. in *J. O'T.* a higher standard of proof will be applied at a subsequently hearing, which will also have the benefit of oral evidence. It is not for this court, within this leave application, to assess this evidence, but to consider whether it satisfies the requirement of discharging a low threshold burden of proof.
- 137.** In my view both criteria within s.73 of the 2001 Act have been satisfied. This leave application grounded upon the intended pleadings cannot be categorised as frivolous

or vexatious. Neither can it be said that there are no reasonable grounds for contending that the person against whom the proceedings are brought acted in bad faith or without reasonable care.

- 138.** The core complaint of this appellant throughout his submissions is that Dr Casey after his initial medical assessment found no underlying medical condition and that he was fit for interview. Within that assessment there is no reference to his needing any psychiatric assistance or exhibiting any traits consistent with his subsequent findings. The second consultation occurred some 1 hour and 30 minutes after the initial consultation (22.40 to 00.10), and resulted in a diagnosis which, in Dr Casey's view, necessitated the appellant's involuntary detention. The discrepancies surrounding this decision to recommend involuntary detention, in the circumstances outlined above, are sufficient to pass the low threshold burden of proof and grant leave to the appellant pursuant to s.73 of the 2001 Act.
- 139.** Accordingly, this Court will set aside the Order of the High Court Judge (including in respect of costs) and grant leave to this intended appellant pursuant to s.73 of the 2001 to issue the intended proceedings in the form of the draft Civil Bill submitted to the Court.
- 140.** As this is the initial leave application, this matter will ultimately be considered by the trial judge. In such circumstances the appropriate Order is that the costs of this leave application, both before this Court and the High Court should be reserved to the hearing of this matter. If either party wishes to contend for an alternative order with regards to costs of the within appeal, they should provide written submissions to the Office of the Court of Appeal within 21 days of delivery of this judgment, with the other side providing a written response within a further 21 days.

**141.** Haughton and Murray JJ. concur with this judgment which is being electronically delivered.