[2024] IEHC 595

THE HIGH COURT

RECORD NUMBER 2021 / 5391 P

BETWEEN:

W.Z.

PLAINTIFF

AND

IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

THE HIGH COURT

RECORD NUMBER 2023 / 4833 P

BETWEEN:

W.Z.

PLAINTIFF

AND

IRELAND, THE ATTORNEY GENERAL, THE CHIEF STATE SOLICITOR AND THE MINISTER FOR EDUCATION

DEFENDANTS

THE HIGH COURT

RECORD NUMBER 2023 / 4834 P

BETWEEN:

W.Z.

PLAINTIFF

AND

IRELAND AND THE ATTORNEY GENERAL, THE CHIEF STATE SOLICITOR, THE MINISTER FOR JUSTICE AND THE LEGAL SERVICES REGULATORY AUTHORITY

DEFENDANTS

Judgment of Mr Justice Barry O'Donnell delivered on the 22nd day of October 2024

INTRODUCTION

1. This is the court's judgment on four applications moved by the respective defendants in three separate sets of proceedings that were brought by the plaintiff. I will describe the proceedings with record number 2021/5391P as the *First Proceedings*, the proceedings with record number 2023/4833P as the *Second Proceedings*, and the proceedings with record number 2023/4834P as the *Third Proceedings*.

2. In each set of proceedings, the State defendants have brought motions seeking to have the proceedings against them struck out as frivolous or vexatious or bound to fail. As part of the relief sought in those applications, in the event that the proceedings are struck out, the State defendants also are seeking orders restricting the ability of the plaintiff to commence fresh proceedings against them without the plaintiff first obtaining the permission of the President of the High Court or a judge nominated by him (described as an *Isaac Wunder* order). In the Third Proceedings, the fifth defendant, the Legal Services Regulatory Authority (*LSRA*) has sought similar orders in relation to the proceedings as against that body.

3. All the proceedings have their origin in family law proceedings involving the plaintiff concerning his relationship with his wife (from whom he is separated, and who I will describe as his *former wife*) and his child who is now in her early teens. Those proceedings were commenced in 2015 and, while an order for judicial separation has been made, there are ongoing issues, mainly in relation to questions of access and maintenance.

4. In the First Proceedings, Mr Justice Ferriter made orders on the 15 November 2023 providing for the anonymisation of the proceedings. At the outset of the hearing of these applications, the parties agreed that similar orders should be made in the other two cases in order to protect the anonymity of the parties involved in the underlying family law proceedings, and those orders were then made by the court by consent.

5. The proceedings with which these applications are concerned were all commenced by the plaintiff, and all involved very serious allegations made against numerous persons. The plaintiff appeared to find the process emotionally difficult and at various times he expressed a strong desire that all he sought was some element of finality to his overall legal predicament. The court accepts that the plaintiff has found the experience of litigation difficult, and the court in no way underestimates the traumatic effect of his marital breakdown and the effective breakdown of his relationship with his child. A further significant feature of the plaintiff's approach to litigation was profound suspicion of the legal process and the judiciary, combined with what appeared to the court to be a substantial inability to view matters other than through the prism of his own sense of grievance. It must, however, be noted that responsibility for much of the extent of the underlying litigation and the satellite litigation lies with the plaintiff himself and his unwillingness to accept outcomes and orders with which he disagrees.

6. The plaintiff was represented for periods in the family law proceedings but has been representing himself for some time and represents himself in the proceedings that are the subject of these applications. While the plaintiff was fully entitled to represent himself, the approach adopted by him to the preparation and presentation of his evidence and arguments was difficult and did not assist in understanding the precise nature of his underlying claims.

The court has endeavoured to do its best to understand his arguments, particularly considering the nature of the relief sought in these applications.

7. In the course of the application, in addition to the relatively voluminous papers, I was asked to review two folders of materials that the plaintiff presented by way of "*Exhibits to the Plaintiff's Replies to Particulars*" in the First Proceedings. Those materials ran to 923 pages of densely prepared materials relating to the underlying family law proceedings. I reviewed all of the documents with the exception of certain materials. Those materials were not considered because, while orders had been obtained from the Circuit Family Court permitting the release of most papers, the plaintiff had also included materials which had not been the subject of application permitting their use in these proceedings. I did not consider those documents.

8. Having reviewed the documents, the court has decided that it would not be appropriate or necessary to set them out or rely on them in this judgment. This is for the following reasons:

a. The primary reason was that the materials appear to have been created for the purposes of the underlying family law proceedings or by way of commentary on those proceedings. The role of the court in this application is not to hear any appeal from those proceedings or, even less, to carry out a general review of the manner in which those proceedings progressed (or did not progress). As such, the overwhelming bulk of the materials are not relevant.

b. Second, certain substantive orders regarding access that were made in the underlying family law proceedings were in fact considered by Faherty J. in the High Court on a de novo on appeal from the Circuit Family Court, and a judgment was delivered in January 2020. In that judgment, the High Court dealt with an appeal from orders that suspended the plaintiff's access and certain

ancillary orders. From the perspective of this court, those determinations are final and cannot be revisited by way of a collateral challenge.

c. Third, much of the material was directed towards agitating the disputes that the plaintiff has with his former wife. That person was not a party to any of these proceedings and therefore the court effectively has only had access to the plaintiff's perspective on those matters.

d. Finally, even if the above features were not present, the enormous volume of the materials would create a situation in which this judgment would necessarily become entirely unwieldy if the assertions in the materials were to be catalogued and rehearsed.

9. The court must record that the review conducted of the voluminous papers led to a conclusion that the plaintiff's approach to that litigation, and these applications, regrettably was pedantic and querulous. The documentation generated for the purposes of the proceedings before the court evidenced an inability on the part of the plaintiff to accept any professional view or outcome with which he disagreed.

10. Before considering the substantive proceedings and the applications I will set out the principles that I have applied to the applications to strike out the various proceedings.

THE APPLICABLE LEGAL PRINCIPLES

11. The recent amendments to Order 19, rule 28 of the Rules of the Superior Court (RSC) have the effect of gathering together and, to some extent, clarifying the well-established existing principles that were applied by reference to the then version of Order 19, rule 28 of the RSC and the jurisprudence governing applications to strike out claims pursuant to the inherent jurisdiction of the High Court.

12. Those principles were recently helpfully summarised by Dignam J. in *Tucker v. The Property Registration Authority of Ireland* [2024] IEHC 491, where the court considered, *inter alia*, *Barry v Buckley* [1981] IR 306, *Salthill Properties Limited v Royal Bank of Scotland plc* [2009] IEHC 207, *Lopes v Minister for Justice, Equality and Law Reform* [2014] IESC 21, *Keohane v Hynes* [2014] IESC 66, *Clarington Developments Limited v HCC International Insurance Company plc* [2019] IEHC 630, *Kearney v Bank of Scotland* [2020] IECA 92, *Scotchstone Capital Fund Ltd & anor v Ireland & anor* [2022] IECA 23, and *McAndrew v Launceston Property Finance DAC & anor* [2023] IECA 43. Many of those cases were referred to in the written submissions filed by the moving parties in these applications, and the State defendants placed particular emphasis on the summary of the principles provided by the Court of Appeal in *Scotchstone*.

13. One of the changes effected by the amendment of the rules was to clarify the type of material that can be considered by the court and the approach to be adopted to those materials. In that regard, Dignam J in *Tucker* also referred to Clarke J.'s explanation of the difference that then existed between applications under Order 19, rule 28 RSC and the inherent jurisdiction in *Lopes v The Minister for Justice*, where Clarke J. said at paragraph 2.3:

"The distinction between the two types of jurisdiction is, therefore, clear. An application under the RSC is designed to deal with a case where, as pleaded, and assuming that the facts, however unlikely that they might appear, are as asserted, the case nonetheless is vexatious. The reason why, as Costello J pointed out at p. 308 of his judgment in Barry v Buckley, an inherent jurisdiction exists side by side with that which arises under the RSC is to prevent an abuse of process which would arise if proceedings are brought which are bound to fail even though facts are asserted which, if true, might give rise to a cause of action. If, even on the basis of the facts as pleaded, the case is bound to fail, then it must be vexatious and should be dismissed under the RSC. If, however, it can be established that there is no credible basis for suggesting that the facts are as asserted and that, thus, the proceedings are bound to fail on the merits, then the inherent jurisdiction of the Court to prevent abuse can be invoked."

14. As can be seen from the text of the amended rules, the approach now to be adopted towards factual matters is that articulated in the cases dealing with applications under the inherent jurisdiction to strike out cases.

15. As emphasised by the State defendants, the relevant pre-existing principles also were considered in detail by the Court of Appeal in *Scotchstone Capital Fund Ltd. v. Ireland and the Attorney General* [2022] IECA 23. Having addressed the case law relating to applications under the RSC and under the inherent jurisdiction, the Court of Appeal, at paragraph 290, identified the following essential principles:

"*a) An application for a strike out of a plaintiff's claim on the basis of the inherent jurisdiction is not a substitute for summary disposal of a case;*

b) The jurisdiction exists, not to prevent hardship to a defendant from defending a case, but to prevent against an abuse of process of the court by the plaintiff, e.g. causing a manifest injustice to the defendant in being asked to defend a case which is bound to fail;

c) The burden of proof is on the defendant;

d) There is a degree of overlap between bound to fail jurisprudence and cases which are held to be frivolous and vexatious. However, the latter are cases which may have a reasonable chance of success but would confer no tangible benefit on a plaintiff or are taken for collateral or improper motives or where a plaintiff is seeking to avail of scarce resources of the courts to hear a claim which has no prospect of success;

e) The standard of proof is on the defendant/respondent to show that the claim is bound to fail or frivolous or vexatious;

f) Bound to fail may be described inter alia, as devoid of merit or a claim that clearly cannot succeed;

g) Frivolous and vexatious must be understood in their legal context as claims which are, inter alia, futile, misconceived, hopeless;

h) The threshold for the plaintiff successfully to defend such a motion is not a prima facie case but a stateable case;

i) It is a jurisdiction only to be used sparingly, in clear cut cases and where there is no basis in law or in fact for the case to succeed;

j) The court must accept that the facts as pleaded by the plaintiff in considering whether an Order pursuant to O.19, r. 28 may be made but in the exercise of its

inherent jurisdiction the court can to some extent look at and assess the factual basis of the plaintiff's claim;

k) Where the legal or documentary issues are clear cut it may be safe for a court to reach a conclusion on a motion to dismiss;

l) Even where a plaintiff makes a large number of points, each clearly unstateable, it may be still safe to dismiss; and

m) In some cases, even if the factual disputes are clear cut or may be easily resolved, the legal issues or questions concerning the proper interpretation of documentation may be so complex that they are unsuited to resolution within the confines of a motion to dismiss."

16. In *Doherty v. Minister for Justice, Equality and Law Reform & Others* [2009] IEHC 246, McGovern J. referred to *Faye v. Tegral Pipes* [2005] 2 IR 261 where McCracken J. explained the reasons underpinning the jurisdiction to strike out claims as frivolous and vexatious. McGovern J. agreed with the judgment of McCracken J., and, at paragraph 11, added the following apposite observations:

"While completely agreeing with the judgment of McCracken J., I would add that in addition to not permitting the courts to be a forum for lost causes, the courts should not be used to facilitate general abuse of a person or class of persons. The courts are not to be used as a forum for ventilating complaints but, rather, for resolving genuine disputes between parties to the litigation and, where appropriate, the granting of declarations and ancillary relief, based on established right or entitlement."

17. McGovern J. further noted at para. 14:

> "*Where the extent of the scandalous or vexatious pleading is sufficiently gross and extensive, it seems to me that it is not the function of the court to sift through the material in the statement of claim to see if, perhaps, somewhere within it, a claim can be found in the proper form. The court is entitled to have regard to the document at a whole. There might well be cases where there is an isolated pleading here or there which may be scandalous or vexatious, but the greater part of the document contains pleadings in a proper form. In those cases, the courts can strike out the offending portions of the pleadings. But that is not the case here*." [emphasis added]

18. Accordingly, while the amended rules operate to mitigate the difficulties with approaching a strike out application by reference to two separate tests, albeit tests that overlapped in significant regards, the essential character of the application remains very similar. The onus to satisfy the court that the orders should be made is a heavy one and rests on the applicant. There is no suggestion that the default position is anything other than that a full trial is the proper vehicle to resolve contested cases, and the jurisdiction to strike out should be used sparingly and only in clear cases.

THE FIRST PROCEEDINGS

19. The First Proceedings were commenced by a plenary summons dated the 13 September 2021. Following the entry of an appearance, the plaintiff delivered a statement of claim on the 13 September 2021. Both the plenary summons and the statement of claim are substantially

the same in terms of form and content. In the prayer for relief in the statement of claim, the plaintiff seeks the following:-

> *"The plaintiff prays for redress through tort law for:*
>
> a. *The setting aside of order since 23rd December 2017 pending proper hearing, in accordance with Natural Justice, Due Process and Fair Hearing of my Breach of Access Order and Enforcement Orders.*
> b. *general damages in the form of monetary compensation in the sum of €125,000.00 per year, or part thereof, for denial of The Right to a Fair Hearing resulting in the loss, harm, injury and damage to me of denial of access to my child including but not limited to, physical and emotional distress, pain and suffering, loss of reputation, impairment of mental wellbeing, hedonic damages and loss of enjoyment of life*
> c. *costs of suit; and*
> d. *such other and further relief that this Honourable Court determines necessary and appropriate"*

20. In the substantive body of the statement of claim, the plaintiff asserts that he has suffered loss, harm, injury and damage in been denied the right to a fair hearing resulting in he been denied access to his child without lawful excuse *"by the State, through its Family Law Courts"*.

21. The action is predicated on an express assertion that the family law court is a party sufficiently close to the State that it is reasonably foreseeable that its negligence or result of its conduct would cause loss, harm, injury or damage to the plaintiff such that the State has a duty of care to him. The plaintiff asserts that that duty of care has been breached through

"*nonfeasance, misfeasance and malfeasance and in its decision-making process, which injured me…".* The principal basis set out in the statement of claim is that there was a failure to adhere to natural justice or fair procedures in *"denying me hearings for applications for breach of access orders and enforcement orders"*. The plaintiff goes on to plead that:-

> *"The courts did, through it acts or omissions give rise to injury [the invasion of legal rights] and harm to me which the courts knew or should have known would result in a wrong*
>
> *The courts did, deny me the opportunity to be heard"*.

22. Accordingly it can be seen that the claims made are principally as against the courts arising from the manner in which the plaintiff asserts his applications were treated in the Circuit Family Law Court, and as against the State on the theory that it is a party sufficiently close to the family law courts to owe a duty of care to the plaintiff arising from the manner in which the courts conducted its business.

23. The facts set out in the statement of claim recite that there have been ongoing protracted Circuit Family Law Court proceedings since 2015. The plaintiff contends that on the 6 November 2017 an access order was granted in his favour. He then asserts that the access order was breached by his former wife on the 23 December 2017 and on 34 subsequent dates. He states that he brought an application dated the 11 January 2018 but that his application was ignored and not given a hearing. He further asserts that following the breach of the access orders his former wife brought an application to vary the access order, and that this constituted an abusive process which *"drowned out"* his pre-existing application.

24. Under the heading *"cause of action",* the plaintiff contends as follows:-

"Their Abusive of Process application-demand was – in a disordered manner and in conflict with art. 40.3 of the Constitution and Natural Justice, by nonfeasance, misfeasance and malfeasance on the part of the judge acceded to and – given a hearing despite coming chronologically after my Breach of Court Order and Enforcement Order applications".

25. Thereafter, the plaintiff appears to plead that effectively he was denied the right to a hearing and fair procedures. Slightly later in the statement of claim there is a further paragraph also headed *"cause of action"* in which the plaintiff claims:-

"The failure by the Circuit Court to act and to perform a legal obligation, breached its duty, violated and invaded my rights, resulting in the denial to me of The Right to a Fair Hearing and denial to me of access to my child".

26. Following the entry of an appearance on behalf of the defendants, the defendant served a notice for particulars on the plaintiff dated the 8 April 2022 and this was replied to in an email by the plaintiff dated the 13 April 2022. Due to concerns regarding compliance with the *in camera* rule, the Circuit Family Court made an order on the 7 February 2023 which, subject to certain conditions, permitted the replies and information to be given insofar as it arose from proceedings that are heard otherwise than in public. The plaintiff replied to that request in or about the 13 April 2023. The replies to particulars run to 60 pages and I have already noted the exhibits to the replies to particulars which ran to over 900 pages above.

27. Without addressing the replies to particulars in detail, it will be fair to say that in addition to being prolix the replies combine what appear to be detailed legal submissions and factual assertions which make personalised and very serious allegations of misfeasance and

malfeasance against the Circuit Court judges who dealt with the plaintiff's family law proceedings, together with what appears to be an extensive recitation of all the facts that appear to be relied upon by the defendant as well as assertions containing serious criticism against the court appointed experts who participated in the underlying Circuit Family Court proceedings.

28. The State defendants delivered a defence on the 25 September 2023. In the substantive body of the defence, the State defendants deny the claims made by the plaintiff and in particular deny that a duty of care was owed to the plaintiff or breached by the State. The State defendants highlight that they were not parties to the proceedings in the Circuit Family Court and are therefore strangers to a large number of the contentions made by the plaintiff. They also make the point that a number of the claims made by the plaintiff are not legally recognisable.

29. More pertinently, the defence also raises a number of preliminary objections. These form the essential core of the application currently before the court in relation to the First Proceedings. It is possible to summarise those preliminary objections as follows:-

a. That the proceedings constitute an impermissible collateral attack on the orders made in the Circuit Family Court proceedings and also orders made in an appeal to the High Court which resulted in the judgment of Ms. Justice Faherty dated the 28 January 2020 which I have referred to above.

b. The proceedings are an attempt to relitigate matters which have been determined in the Circuit Court proceedings and/or the High Court appeal.

c. The statement of claim is prolix, contains unnecessary pleas and fails to comply in material respects with the requirements of O. 19, r. 3 RSC.

d. The claims made are vague, uncertain, imprecise and confusing.

e. The plaintiff has failed to disclose any acts or admissions on the part of the defendants capable of giving rise to the liability and as such are frivolous and vexatious and failed to disclose any reasonable cause of action and are bound to fail.

f. The principle of judicial immunity constitutes an absolute defence to the plaintiff's claim.

g. Insofar as arguments regarding the fairness of the procedures adopted in the Circuit Court were capable of being agitated by way of a judicial review application brought by the plaintiff, the proceedings were commenced well outside the time period provided for such proceedings in O. 84 RSC.

h. The order of the 6 December 2018 in the Circuit Court proceedings was the subject of an appeal by the plaintiff which was refused in the judgment of Faherty J. and therefore the matter is res judicata.

30. The application in the First Proceedings were brought by a notice of motion dated the 1 December 2023. That application is grounded on an affidavit of Ruth Lynch, a solicitor in the Chief State Solicitor's Office, sworn on the 1 December 2023. In her affidavit, Ms. Lynch sets out the background to the Circuit Court Family Law proceedings. By reference to the judgment of Faherty J. dated the 28 January 2020 in the underlying proceedings, Ms. Lynch notes that that judgment refers to orders made in the Circuit.

31. The plaintiff himself swore an affidavit on the 4 January 2024 seeking to oppose the granting of relief. The affidavit itself is short but it refers to an attached 33 page document which the plaintiff says addresses the arguments that are made. The document attached to his affidavit is in the form of a composite legal submission and rehearsal of his assertions. The

plaintiff disputes that the judgment of Faherty J. sets out the full background and progress of those Circuit Court proceedings. The plaintiff asserts that the application brought by the State is being brought "*solely to harass, intimidate, bully, subjugate + subdue me*". The plaintiff contends that the earlier proceedings in the Circuit Family Court, and the High Court on appeal, were characterised by the admission of fraudulent evidence, evidence given by professionals which he states now ought to be revisited, and that the orders made in the Circuit Court and the High Court were void. Throughout his document, the plaintiff asserts that various judges in the Circuit Court have recused themselves from the proceedings due to malfeasance; however no cogent substantive evidence is given to support that serious contention.

32. It is quite clear that the document attached to the affidavit appears to attempt to introduce a significant number of new arguments to the proceedings. In particular, the plaintiff seeks to reformulate the action to one grounded on the contention that the duration of the Circuit Family Court proceedings amounted to a violation of his rights pursuant to Article 6 of the European Convention on Human Rights. The plaintiff takes significant issue with the orders relating to access that were made by the Circuit Family Court and upheld on appeal by Faherty J. He seeks to contend that the conditions imposed as part of the disposal of the access application were unlawful and unconstitutional and argues that his proceedings cannot be characterised as a collateral attack on the decisions made by the Circuit Family Court and High Court on appeal because the orders were neither final nor definitive. That contention is grounded on the fact that one of the orders made by the High Court on appeal was that the matter should be remitted to the Circuit Family Court pending a further review by that court.

33. Having considered the entirety of the papers in this application the court is satisfied that the State defendants are entitled to the orders sought. That determination is based on a number

of factors, each of which would be sufficient to justify striking out the proceedings, but which together make matters altogether clear.

Collateral attack

34. The First Proceedings amount to an impermissible collateral attack or attempt to relitigate the issues that were disposed of in the judgment of Faherty J. delivered on the 28 January, 2020. That judgment addressed the history of the proceedings and the orders made up to the 6 December 2018 by the Circuit Family Court. In dealing with the appeal from the order made by the Circuit Family Court, Faherty J. conducted a *de novo* hearing where she gave full and detailed consideration to all of the evidence that led to the initial order of the Circuit Court on the 6 November 2017 which regulated access and the further order from the Circuit Court dated the 6 December 2018 suspending the plaintiff's access subject to certain conditions.

35. The High Court heard from the plaintiff and his former wife as well as an expert who had prepared reports at the request of the Circuit Family Court. The High Court had regard to the factors set out in s.31 of the Guardianship of Infants Act, 1964 which are to be considered in determining what is in the best interests of a child and are therefore highly relevant to the question of access. The High Court addressed all the arguments made by the plaintiff and noted several instances over the course of the history of the case in which the plaintiff had engaged in extremely concerning behaviour. It is also clear from para. 67 onwards, that the High Court considered the complaints made by the plaintiff that his application for orders on foot of the alleged breach of the access order were not heard by the Circuit Court, but rather the Circuit Court only dealt with his former wife's application for a variation of the 6 November 2017 access orders. That matter was dealt with by Faherty J. in the following way:-

> *"69…On this issue, in my view, it is not for this Court to conduct a judicial review of the actions of the Circuit Court. In any event, this Court is satisfied that in making the order of 6th December, 2018 the Circuit Court was cognisant of the fact that the access order of 6th November, 2017 was not being adhered to. This is evident from the applicant's solicitor's correspondence to the respondent of 13th July 2018 and indeed implicit in the action of the Circuit Court on 11th October 2018 directing an updated s. 47 report."*

36. Without retreading ground that was covered in the judgment of Faherty J., it is quite clear that the difficulties with the access issues in no small part was attributable to the deeply unpleasant and aggressive communications sent by the plaintiff to his former wife in the period prior to Christmas of 2017, which were described by Faherty J. as a "*barrage of abusive and offensive emails and texts*".

37. The High Court was satisfied that access should remain suspended pending a further order of the Circuit Court. In that regard the court envisaged that the issue of the resumption of access could be revisited upon an application by the plaintiff to re-enter the question of access once "*he is in a position to show that he has undergone the mental health assessment and the weekly psychotherapy sessions recommended by [relevant expert] and that he has evidence in this regard to put before the Circuit Court*." The High Court also gave directions in relation to the manner in which the plaintiff and his former wife should communicate in regard to issues surrounding access and matters concerning the welfare of their child. The High Court directed that the plaintiff cease visiting his former wife's home; that, in any communications with the former wife's solicitor, he refrain from addressing any matters save

those directly related to the access issue; and that the plaintiff was to refrain from making reference directly or indirectly to his former wife's solicitor's personal or family life.

38. Insofar as the plaintiff is seeking to have the orders of the Circuit Court set aside or seeking damages arising from such orders or claiming misfeasance on the part of the judiciary, it seems to me that this clearly amounts to an attempt to conduct an impermissible collateral attack on the orders made in the Circuit Court and by the High Court on appeal.

Judicial review argument

39. Secondly, the plaintiff seeks to make an argument within these proceedings that in some sense he was deprived of his entitlements to due process or fair procedures in the course of some or all of the hearings before the Circuit Family Court. Insofar as this is something that could not be dealt with by the High Court on appeal from the orders made in the Circuit Family Court, this is a matter which ought to have been pursued by way of judicial review proceedings.

40. The well-established position in this State is that although judicial review type relief can be sought in a plenary action, that does not absolve the plaintiff from complying with the procedural requirements that attach to an application for judicial review; see, for instance, *O'Donnell v. Dun Laoghaire Corporation* [1991] ILRM 301, *Hosford v Ireland* [2021] IEHC 133, and *Muldoon v. Minister for the Environment* [2023] IECA 61. As Clarke J. explained in *Shell E&P Ireland Ltd v. McGrath* [2013] 1 IR 247, at para. 43:

> "*... it would make a nonsense of the system of judicial review if a party could by-pass any obligations which arise in that system (such as time limits and the need to seek leave) simply by issuing plenary proceedings which, in substance, whatever about form, sought the same relief or the same substantive ends."*

41. Here, the operative orders that appear to be the focus of the plaintiff's concerns were made on the 6 December 2018. As noted by Faherty J., if there was an argument that there was some unfairness of process attaching to the making of those orders the proper response was to make an application for leave to apply for judicial review. That did not occur. Even if the plaintiff could contend, giving him some benefit of the doubt, that he was unclear about the proper procedural course and was only aware of what should be done when he received the judgment from the High Court in January 2020, there was still no application for leave to apply for judicial review. The First Proceedings were initiated in September 2021. As such, the time had long passed for the commencement of judicial review proceedings, and the plaintiff cannot be permitted to seek judicial review type relief in these proceedings and thereby entirely bypass the time periods specified in Order 84 of the RSC.

Judicial immunity and State liability

42. Finally and overarching the other issues with regard to the First Proceedings, it is quite clear that a tort action predicated on allegations of wrongdoing on the part of various judges in the Circuit Family Court engages the question of judicial immunity, whether those actions are framed as a direct action against the Circuit Court or, as here, as an attempt to hold the State liable for the actions of those judges.

43. It is well established that in a civil tort action – which is how this action is framed by the plaintiff - the State cannot be held vicariously liable for the actions of a judge. The essential position is set out by McMahon J. in *Kemmy v. Ireland* [2009] 4 IR 74 where he stated at paragraph 52:

"... it is clear that the independence of the judiciary is a fundamental value in western democracies. The immunity from suit for the judiciary is a necessary corollary of this set of values. This immunity has developed in the common law context where the starting point on the liability of the State was expressed in the absolute rule that "the King can do no wrong". To make the State liable now for the wrongs of the judiciary would in effect represent a late indirect challenge on the personal immunity of the judiciary. The jurisprudence on the matter is too well settled to permit any such oblique subversion."

44. The court went on to note:-

"59...Accordingly, in my view, the State cannot be vicariously liable for the errors which a judge may commit in the administration of justice. This conclusion holds in respect of errors which may be described as errors within jurisdiction, and a fortiori in respect of errors which are outside the judge's jurisdiction, including those committed, mala fides, for which of course, in extreme cases, the judge may lose his personal immunity."

45. It is quite clear that the action against the State which is predicated on an assertion that the State should be liable for the acts of members of the judiciary in the course of proceedings must fail. In the premises, the court will strike out the First Proceedings on the basis that they constitute a clear abuse of the process of the court.

THE SECOND PROCEEDINGS

46. These proceedings were commenced by a detailed plenary summons issued by the plaintiff on the 4 October 2023. While no statement of claim has been delivered, the general endorsement of claim set out in the plenary summons runs to six pages and sets out the plaintiffs claim in some considerable detail. The relief sought in the prayer for relief is framed as follows:-

> *"The plaintiff prays for redress through tort law for:*
>
> *a. That my constitutional rights + those of the child are made good, properly + fully exercised + protected.*
>
> *b. that the court invoke the provisions of the Intermediate Education (Ireland) Act 1878 – s.7 [in the withholding of state funding from schools…] against [name of school] where in violation thereof 'the conditions as to religious instruction will not be observed' until such time as they respect my rights + those of the child + have made good on their wrong doings through apologies + appropriate reparations for distress, injury + harm caused.*
>
> *c. general damages in the form of monetary compensation in the sum of €250,000.00 [a sum which requires to be adequately punitive to prevent the State through the Minister of Education + establishments of education in its charge from continuing to violate – with punity – parents' rights + children's rights] for gross, egregious, conspicuous + arrogant violation of our rights resulting in the loss, harm, injury and damage to me + the child including but not limited to, physical and emotional distress, pain and suffering, loss of reputation, impairment of mental wellbeing, hedonic damages and loss of enjoyment of life."*

47. Under the heading *"cause of action"* the plaintiff articulates his case as follows:-

> *"The failure by the State [though the Minister + Department of Education (+ an educational establishment in its charge)] through its acts and / or omissions to perform a legal obligation – contrary to article 42, 3.1° of the Constitution of Ireland, s.30.2(e) of The Education Act 1998 + s.6 of the Guardianship of Infants Act 1964 – breached its duty, violated and invaded my rights + those of the child, resulting in loss, harm, injury and damage to me + the child including but not limited to, physical and emotional distress, pain and suffering, loss of reputation, impairment of mental wellbeing, hedonic damages and loss of enjoyment of life, where:*
>
> a. *In violation of the Intermediate Education (Ireland) Act 1878 – s. 7*
>
> i. *Conditions as to religious instruction remain not observed.*
>
> ii. *The 'pupil attending such school is permitted to remain in attendance during the time of any religious instruction which the parents or guardians of such pupil shall not have sanctioned'*
>
> b. *In violation of the Education Act 1998 s.30.2(e) 'the student is [compelled] to attend instruction in a subject which is contrary to conscious of the parent of the student'*
>
> c. *My rights under s.6 of the Guardianship of Infants Act are being violated*
>
> d. *Our constitutional rights [incl. but not ltd. to art. 42. 3.1°] remain violated."*

48. The facts set out in the indorsement of claim also refer to the Circuit Family Court proceedings that were commenced in 2015. The plaintiff then goes on to state that an identified secondary school in Dublin had enrolled the child in their school against his wishes. He states

that the school is faith based. The plaintiff claims that he wrote to the school in August of 2023 noting his objection to the faith-based ethos of that school and purporting to put the school on notice that he did not want his child to remain in attendance during the time of any religious instruction. The school was not a party to the proceedings. The plaintiff goes on to state that he notified the Minister for Education of his objections on a number of dates in August and September 2023.

49. The State's application was brought by notice of motion dated the 4 December 2023 and grounded on an affidavit which was sworn on the 4 December 2023 by Ruth Lynch, a solicitor in the office of the Chief State Solicitor. In her affidavit, Ms. Lynch sets out the background, as far as the State is aware, of the Circuit Family Court proceedings. She rehearses the history of the current proceedings and notes the existence of both the First and Third Proceedings. The affidavit explains, by way of what are accepted to be primarily matters for legal submission, the reasons why the plaintiff's claim should be struck out and why various other relief should be granted. The affidavit finally notes that by letter dated the 27 October 2023 the Chief State Solicitor wrote to the plaintiff calling on him to discontinue the proceedings. The plaintiff replied to that email on the same day refusing to withdraw the proceedings.

50. The plaintiff swore a short replying affidavit on the 4 January 2024, to which he attached a fourteen page response to the State defendant's motion. In a similar way to the response to the application brought in the First Proceedings, other than simply restating the claims made in the endorsement of claim without much further elaboration, the document attached to the plaintiff's affidavit engages in legal argument concerning the reliefs being sought by the State. The plaintiff also provided a composite written legal submission which

was intended to address the various applications brought in the three proceedings, but which, as far as I can ascertain, does not address any of the specific issues that arise in the Second Proceedings.

51. It appears to the court that a number of very serious difficulties can be identified with the manner in which the plaintiff's claim has been formulated. First, as expressly pleaded by the plaintiff he is seeking to bring a claim in tort law against Ireland and the Attorney General, the Chief State Solicitor and the Minister for Education requiring the court to grant a form of mandatory order to the effect that the Court itself should invoke the provisions of s. 7 of the Intermediate Education (Ireland) Act, 1878 against his child's school because he had not been offered an assurance that she will not attend for religious instruction. Secondly, general damages are sought, which include a very serious punitive element.

52. In the first instance, it is quite clear that the claims against the Chief State Solicitor cannot proceed, as there is nothing in the pleadings or the other documents submitted by the plaintiff to ground a claim against that body.

53. Second, the claims ignore the manner in which post primary education is provided for in Irish law, and impute to the Minister for Education a responsibility that does not appear in the foundational legislation. As it is clear from the Education Act 1998, as amended, the Oireachtas has made a policy choice in the area of education to distribute functions in a particular manner. The functions of the Minister for Education are set out at s. 7 of the Education Act 1998. Essentially these, for the purposes of this application, can be treated as high level policy functions. The Minister is to ensure that subject to the provisions of the Act there is made available to each person resident in the State support services and a level and quality of education appropriate to meeting the needs and abilities of that person, to determine

national education policy, and to plan and co-ordinate the provision of education in recognised schools and centres for education. To achieve those aims the Minister is provided with a series of further functions which are itemised at s. 7 (2) of the 1998 Act. These include the provision of funding to recognised schools and overall monitoring and assessment function and functions relating to the leasing of land or buildings to bodies set up for the purpose of establishing a school.

54. As provided for in Part 2 of the 1998 Act, subject to compliance with the Act, primary responsibility for the operation of schools is allocated between the patron of the school, the board of management of the school, and the principal of the school.

55. Pursuant to s. 15 of the 1998 Act, the board of management has the duty to manage the school on behalf of the patron for the benefit of the students and parents. In carrying out that function, the board has the responsibility to uphold the characteristic spirit of the school, in accordance with any other legal obligations. Finally, the principal is responsible for the day-to-day management of the school.

56. The plaintiff placed emphasis on s. 30(2)(e) of the 1998 Act. I consider that emphasis is based on a clear misapprehension. Section 30 deals with curriculum matters, and provides that the Minister shall prescribe the curriculum for recognised schools. Section 30(2)(e) of the 1998 Act provides that in prescribing the curriculum, the Minister shall not require any student to attend instruction in any subject which is contrary to the conscience of the parent of the student, or in the case of a student who has reached the age of 18 years, the student.

57. It is clear that, taken on its own, s. 30(2)(e) of the 1998 is directed towards preventing the State, through the Minister for Education, in prescribing the curriculum, from imposing religious instruction on a student where that would be contrary to the conscience of the parent or guardian of the student. In that way, the provision reflects to a large extent the ethos expressed in s. 7 of the Intermediate Education (Ireland) Act, 1878 which imposes an obligation on what originally was constituted as the Intermediate Education Board for Ireland to ensure that pupils should only attend for religious instruction where the parents or guardians have sanctioned that course of action.

58. The plaintiff has not identified, and the court cannot find within the 1998 Act a provision which requires the Minister, still less the other defendants to the Second Proceedings, to specifically intervene in a dispute between parents or guardians on the one hand and the school on the other regarding the question of education or religious instruction. Primarily, having regard to the structure of the 1998 Act, this appears to be a matter between those parents and the school.

59. More fundamentally, the court is satisfied that the proceedings as constituted amount to a further attempt to either bypass or override the availability within the underlying family law proceedings for applications to be made regarding the education of the child. Implicit in the plaintiff's claim is a dispute with his former wife about the upbringing of their child. While this is not articulated in the proceedings, it appears to the court that it is something that informs the entirety of the Second Proceedings. Clearly it was open to the plaintiff - if this has not already been addressed in the Circuit Family Court - to obtain a direction or orders that regulates the question of how the plaintiff and his former wife's child should be educated. Absent that adjudication in private law family proceedings, having regard to the background,

the plaintiff simply has not explained or provided any rational basis for proposing how either the State defendants, or the school (which is not a party to the proceedings) or indeed the court could make such a decision where the plaintiff's former wife was neither consulted nor involved.

60. In these circumstances the court is satisfied that the Second Proceedings should be struck out on the basis that they have no reasonable chance of success.

THE THIRD PROCEEDINGS

61. The Third Proceedings were commenced by the issue of a plenary summons dated the 4 October 2023. In the course of the hearing it emerged that prior to the issue of the current proceedings the plaintiff had issued a plenary summons on 15 November 2021 as against the Legal Services Regulatory Authority (*the Authority*) seeking declarations and damages in the amount of €125,000 per annum arising from alleged failures by the LSRA to investigate certain complaints, actions which the plaintiffs has characterised as resulting in a denial to him of access to his child. The Third Proceedings were brought as against Ireland and the Attorney General, the Chief State Solicitor, the Minister for Justice and the Legal Services Regulatory Authority. As in the Second Proceedings there was no basis in law, no pleading or no assertion of fact made by the plaintiff to explain or justify the joinder of the Chief State Solicitor as a party.

62. In the prayer for relief the plaintiff seeks:-

> *"The plaintiff prays for redress through tort law for:*

a. *The proper investigation [as prescribed in law and having properly made an appropriate application to the relevant court for the lifting of the in camera rule to do so] of all complaints made by me to the LSRA by an independent [family-law-specialist] authority, High Court judge or Senior Council.*

b. *general damages in the form of monetary compensation in the sum of €125,000.00 per year or part thereof, for denial of The Right to a Fair Hearing resulting in the loss, harm, injury and damage to me [incl. ultimately in denial of access to my child] including but not limited to, physical and emotional distress, pain and suffering, loss of reputation, impairment of mental wellbeing, hedonic damages and loss of enjoyment of life."*

63. In a similar way to the Second Proceedings, the plaintiff did not serve a statement of claim, however the essential character of the plaintiff's claim and the basis for those claims are set out in the nine pages of the general indorsement of claim to the plenary summons. Those proceedings later were withdrawn.

64. It appears that the claims as against the State defendants have been made on the basis of an assertion of a form of vicarious liability for the actions of the Authority. In addressing the factual basis for his claim, the plaintiff sets out that these proceedings also arise from his protracted Circuit Family Court proceedings. The plaintiff claims that over the course of those proceedings he had cause to file complaints about what he describes as *"repeated & persistent, unorthodox & irregular behaviour & malpractice by solicitor's contrary to the Guide to Good Professional Conduct for Solicitors & the Solicitors Acts 1954 to 2015 & repeated & persistent unorthodox & irregular behaviour & malpractice by barrister contrary to the Code of Conduct*

for the Bar of Ireland." The complaints in relation to the legal practitioners are that they submitted false or fabricated evidence to the court and violated the rule of law by giving untrue evidence and facilitated interference and abuse of the courts system, knowingly allowing witnesses to give evidence in the knowledge that the evidence was untrue, and knowingly breached their obligations to uphold the proper administration of justice. Those claims are not supported by any evidence or specific pleading other than a generalised form of assertion.

65. There appear to be two main elements to the plaintiff's claim. First, that the Authority did not properly investigate the complaints that were made, and second that the Authority acted unlawfully in accepting materials from the plaintiff which had been generated as part of the underlying family law proceedings. The plaintiff claims that he did not realise or appreciate that the materials should not have been provided but that the Authority ought to have known that the materials should not have been considered. The claim is that by accepting those materials the Authority breached a duty of care to the plaintiff.

66. As noted above, there were two separate applications in these proceedings. The first was brought by the State defendants seeking to have the proceedings struck out, and also seeking Isaac Wunder type relief, the second application – in similar terms - was brought on behalf of the Authority.

67. The State defendant's application was brought by way of a notice of motion dated the 4 December 2023 and grounded on an affidavit sworn on the same date by Ruth Lynch, a solicitor in the office of the Chief State Solicitor. Ms. Lynch's affidavit follows much the same format as her affidavits in the other applications dealt with above. The central point highlighted by Ms. Lynch, and elaborated upon in the State defendant's submissions is that the State parties

were improperly joined to the proceedings, that the State parties are not responsible for the actions of the Authority and owe no duty of care to the plaintiff. The State defendants, not having been involved in the underlying complaints by the plaintiff to the Authority, necessarily are strangers to any factual contentions made in the proceedings.

68. The Authority brought an application seeking to have the complaints against that body struck out on the basis that they were bound to fail. The application was brought by a motion dated the 14 December 2023 and grounded on an affidavit sworn on the same date by Eleanor Carmody, who is the Head of the Complaints and Resolutions Unit within the Authority. Ms. Carmody's affidavit helpfully and comprehensively sets out the Authority's understanding of the factual basis for the plaintiff's claims and exhibits the relevant documents.

69. Ms. Carmody notes that while the plaintiff has not identified any specific failure made by the Authority in relation to any specific complaint, the Authority believes that the plaintiff has to date made twelve complaints. Ms. Carmody explains that those complaints were considered pursuant to section 57 of the Legal Services Regulation Act, 2015 (*the 2015 Act*). Pursuant to that provision, where the Authority receives a complaint, it is obliged to conduct a preliminary review of the complaint to determine whether or not the complaint is admissible. Section 58(2) of the 2015 Act provides that the Authority must determine a complaint to be inadmissible if in the opinion of the Authority the complaint is frivolous or vexatious or without substance or foundation.

70. Ms. Carmody explains that certain of the complaints made by the plaintiff remained under consideration at the commencement of the proceedings. The other complaints were dealt with as follows:

a. Two complaints related to members of the staff of the Authority who are neither practising solicitors nor practising barristers within the meaning of the 2015 Act. As such the authority found that it had no jurisdiction to investigate the complaints.

b. Three of the complaints were made as against a solicitor who acted in family law proceedings for the plaintiff's former wife. Two of those complaints were found to be inadmissible because they were either without substance or foundation, and a third was found to be an abuse process having regard to the two previous complaints which were determined as inadmissible.

c. A further two complaints were made against another solicitor who acted in the family law proceedings for the plaintiff's former wife, and both of those were determined to be inadmissible because they were without substance or foundation.

d. The plaintiff also made complaints against two solicitors who acted on behalf of the Authority and those complaints were determined to be inadmissible as being without substance or foundation.

e. Finally, two complaints were made to the Authority as against a barrister who acted for the plaintiff's former wife in the family law proceedings. The first of those complaints was deemed inadmissible because it was determined to be frivolous, vexatious and misconceived and the second was deemed to be inadmissible because it was determined to be without substance or foundation.

71. In her affidavit Ms. Carmody makes the point that if the plaintiff was dissatisfied with the manner in which the authority dealt with his complaints, then the appropriate remedy was by way of complaint to the Ombudsman or, if appropriate, by way of judicial review. In addition

to identifying that the plaintiff has failed to set out any factual basis for the causes of action on which he seeks to rely, Ms. Carmody says that the Authority is obliged pursuant to s. 57 of the 2015 Act to consider the admissibility of any complaint made to it in the first instance. In that regard the Authority according to Ms. Carmody acted in a *bona fide* manner in pursuance of its statutory obligations. Moreover, Ms. Carmody identifies that as a matter of public policy no cause of action arises and/or the authority enjoys absolute and/or qualified immunity from a claim in damages and she relies in that regard on s. 209 of the 2015 Act.

72. Insofar as the plaintiff complains that the authority accepted *in camera* material from him, Ms Carmody states that the responsibility in that regard must rest with the party producing or disclosing the documentation and not with the receiving party. Ms. Carmody makes two final points, first that the relief or part of the relief claimed is misconceived and incapable of achieving the desired outcome sought by the plaintiff and as such should be treated as frivolous and/or vexatious, and, secondly, insofar as the plaintiff seeks to agitate an argument that the underlying family law proceedings were dealt with in an unsatisfactory manner this appears to be an attempt to launch a collateral attack on the processes and decisions in the Circuit Court.

73. The plaintiff replied to both applications with a single short affidavit dated the 4 January 2024, to which he attached a twelve page document comprising in the most part legal submissions. The document, other than repeating certain matters already set out in the plenary summons, does not engage with the facts of his case at all. Accordingly, when the court comes to consider the plenary summons and the affidavit and exhibited or attached document provided by the plaintiff it is not possible to ascertain with any clarity the factual basis for his complaints. That difficulty is compounded by the contents of the composite legal submissions that the defendant filed in response to all of the applications with which this judgment is concerned. That document does not engage or explain either the factual premise of the case or provide any

legal argument as to why the claim should not be struck out. In the premises, given the plaintiff did not express any disagreement with the factual materials provided by the Authority, the court is relying on that evidence as explaining the factual context for the Third Proceedings.

74. The court agrees that there is a strong sense that the Third Proceedings constitute an impermissible attempt to re-litigate matters that were determined by the Circuit Family Court and by the High Court on appeal. Insofar as the claim is predicated on a contention that the Authority ought to have but did not refuse to accept materials that were generated as part of the family law proceedings, this raises a general issue that properly ought to be determined in a properly pleaded and based case. Aside from the issue raised by reference to section 209 of the 2015 Act below, it is not at all clear that the plaintiff could raise this complaint in a tort action against the Authority, particularly where all the materials were submitted by him. It seems to the court that this is a matter more appropriate to be addressed in the first instance by the Circuit Family Court in managing the proceedings and the integrity of its process in family law litigation.

75. Even if there was some basis for the plaintiff's contentions about some or all of the legal practitioners in respect of whom he complains – and the court has seen no evidence at all to support those contentions – there is a fundamental difficulty presented by seeking to agitate those contentions in a tort action. That difficulty arises by the operation of section 209 of the 2015 Act. Before considering the text of section 209, it bears noting that (a) all of the acts or omissions of the Authority that the plaintiff complains of in the proceedings were conducted pursuant to Part 6 of the 2015 Act, which is the part of the Act that deals with Complaints and disciplinary hearings in respect of legal practitioners, (b) the Authority is a separate body corporate (see section 8 of the 2015 Act), and (c) the Authority, subject to the Act, is to be

independent in the performance of its functions (section 13 of the 2015 Act). As such, and without more, it would be difficult to envisage a basis for contending that the Minister for Justice could be found to owe a duty of care – whether as principal or in a vicarious sense - arising from the manner in which the Authority deals with specific complaints.

76. That understanding of the operation of the Act is copper-fastened by section 209 of the 2015 Act, which provides as follows:-

> *"209. (1) Neither the Authority nor a member, or member of staff, of the Authority shall be liable in damages in respect of any act done or omitted to be done by it or him or her in the performance, or purported performance, of its or his or her functions under Part 3 or 6, unless the act or omission concerned was done in bad faith.*
>
> *(2) The State shall not be liable in damages in respect of any act done or omitted to be done by the Authority or a member, or member of staff, of the Authority in the performance, or purported performance, by the Authority or such member of its, his or her functions under Part 3 or 6, unless the act or omission concerned was done in bad faith."*

77. There is no claim made by the plaintiff or assertion by reference to any cogent evidence that the Authority acted in bad faith. In those premises, the clear operation of section 209 of the 2015 Act bars the plaintiff's claims against the Authority and the State defendants in the Third Proceedings. In those premises, and on the basis of the operation of section 209 of the 2015 Act, the court has concluded that the Third Proceedings should be struck out in their entirety as bound to fail.

ORDERS RESTRICTING THE ABILITY OF THE PLAINTIFF TO BRING FURTHER PROCEEDINGS.

78. As noted at the outset, the defendants have sought orders restricting the entitlement of the plaintiff to commence further proceedings against them without the consent of the President of the High Court or a judge nominated by him. Following the decision of the Supreme Court in in *Wunder v. Irish Hospitals Trust* (Unreported, SC, 24 January 1967), pursuant to its inherent jurisdiction, the court may make what is now described as an "*Isaac Wunder*" order. Before considering the basis upon which those orders are sought in these proceedings it may be helpful to set out the nature of those orders and the principles applicable to a decision whether or not the order should be granted.

79. The problem of repetitive baseless litigation requires a balancing of rights. The starting point must be that a person has a right of access to the courts. That is a constitutional right and a right recognised in the European Convention on Human Rights. The right is not absolute. On the other side of the scales, persons have a right not to be exposed to the costs and inconvenience of repetitive baseless litigation. However, as occurred in this case, an affected defendant is entitled to seek orders striking out proceedings that are contended to amount to an abuse of the process of the court or otherwise have no reasonable chance of success. Clearly, while that constitutes an important protective factor, it still involves considerable cost and inconvenience. In many cases, an award of costs to defendants who successfully apply to have baseless litigation struck out may be an empty remedy if the unsuccessful plaintiff does not have the means to meet those orders. Finally, the caselaw recognises that the court system is a scarce resource, and that baseless litigation creates difficulties by diverting those scarce court resources at the expense of other litigants with valid claims that require to be litigated. That is

an important public policy consideration, see *Irish Aviation Authority v Monks* [2019] IECA 309.

80. Hence, the right of access to courts may be restricted in order protect the judicial process from abuse. As explained by Keane CJ in *Riordan v. Ireland (No.4)* [2001] 3 IR 365:

> *"It is, however, the case that there is vested in this court, as there is in the High Court, an inherent jurisdiction to restrain the institution of proceedings by named persons in order to ensure that the process of the court is not abused by repeated attempts to reopen litigation or to pursue litigation which is plainly groundless and vexatious. The court is bound to uphold the rights of other citizens, including their right to be protected from unnecessary harassment and expense, rights which are enjoyed by the holders of public offices as well as by private citizens. This court would be failing in its duty, as would the High Court, if it allowed its processes to be repeatedly invoked in order to reopen issues already determined or to pursue groundless and vexatious litigation."*

81. In *Kearney v Bank of Scotland* [2020] IECA 92, the Court of Appeal highlighted the exceptional nature of the jurisdiction and the necessity to use that jurisdiction sparingly. In *Kearney*, Whelan J. summarised the state of the jurisprudence as follows, and I have relied on that summary in approaching these applications:

> "*132. Isaac Wunder orders now form part of the panoply of the courts' inherent powers to regulate their own process. In light of the constitutional protection of the right of access to the courts, such orders should be deployed sparingly and*

only be made where a clear case has been made out that demonstrates the necessity of the making of the orders in the circumstances:

i. Regard can be had by the court to the history of litigation between the parties or other parties connected with them in relation to common issues.

ii. Regard can be had also to the nature of allegations advanced and in particular where scurrilous or outrageous statements are asserted including fraud against a party to litigation or their legal representatives or other professionals connected with the other party to the litigation.

iii. The court ought to be satisfied that there are good grounds for believing that there will be further proceedings instituted by a claimant before an Isaac Wunder type order restraining the prosecution of litigation or the institution of fresh litigation is made.

iv. Regard may be had to the issue of costs and the conduct of the litigant in question with regard to the payment and discharge of costs orders incurred up to the date of the making of the order by defendants and indeed by past defendants in applications connected with the issues the subject matter of the litigation.

v. The balancing exercise between the competing rights of the parties is to be carried out with due regard to the constitutional rights of a litigant and in general no legitimate claim brought by a plaintiff ought to be precluded from being heard and determined in a court of competent jurisdiction save in exceptional circumstances.

vi. It is not the function of the courts to protect a litigant from his own insatiable appetite for litigation and an Isaac Wunder type order is

intended to operate preferably as an early stage compulsory filter, necessitated by the interests of the common good and the need to ensure that limited court resources are available to those who require same most and not dissipated and for the purposes of saving money and time for all parties and for the court.

vii. Such orders should provide a delimitation on access to the court only to the extent necessitated in the interests of the common good.

viii. Regard should be had to the fact that the right of access to the courts to determine a genuine and serious dispute about the existence of a right or interest, subject to limitations clearly defined in the jurisprudence and by statute, is constitutionally protected, was enshrined in clause 40 of Magna Carta of 1215 and is incorporated into the European Convention on Human Rights by article 6, to which the courts have regard in the administration of justice in this jurisdiction since the coming into operation of the European Convention on Human Rights Act 2003.

ix. The courts should be vigilant in regard to making such orders in circumstances where a litigant is unrepresented and may not be in a position to properly articulate his interests in maintaining access to the courts. Where possible the litigant ought to be forewarned of an intended application for an Isaac Wunder type order. In the instant case it is noteworthy that the trial judge afforded the appellant the option of giving an undertaking to refrain from taking further proceedings which he declined.

x. Any power which a court may have to prevent, restrain or delimit a party from commencing or pursuing legal proceedings must be regarded as exceptional. It appears that inferior courts do not have such inherent power to prevent a party from initiating or pursuing proceedings at any level.

xi. An Isaac Wunder order may have serious implications for the party against whom it is made. It potentially stigmatises such a litigant by branding her or him as, in effect, "vexatious" and this may present a risk of inherent bias in the event that a fresh application is made for leave to institute proceedings in respect of the subject matter of the order or to set aside a stay granted in litigation.

xii. Where a strike out order can be made or an order dismissing litigation whether as an abuse of process or pursuant to the inherent jurisdiction of the court or pursuant to the provisions of O. 19, r. 28, same is to be preferred and a clear and compelling case must be identified as to why, in addition, an Isaac Wunder type order is necessitated by the party seeking it."

82. The basis upon which this aspect of the relief has been sought is that, in their written legal submissions, the State defendants assert that there is a pattern of repeated persistent vexatious litigation evident from what are described as "*three spurious sets of legal proceedings…*" The State defendants go on to assert that there is good reason to believe that in the absence of Issac Wunder type orders the plaintiff "*will attempt to issue further, similarly frivolous and vexatious proceedings as against the State Defendants.*" For its part, the Authority referred to the fact that the plaintiff already had issued and then withdrawn one set

of proceedings, had brought the Third Proceedings, and has made complaints about the staff of the Authority and two solicitors who have acted on behalf of the Authority.

83. In large part the plaintiff rested on his assertions that the various proceedings were justified by the underlying difficulties he experienced in his family law proceedings. He did not accept that his proceedings were frivolous or vexatious. While he did not provide any assurance that he would not issue further proceedings, it can be noted that as far as can be ascertained he has not commenced any other legal actions.

CONCLUSION

84. The plaintiff has brought three separate sets of proceedings. In each proceeding, claims have been made as against emanations of the State as well as the State itself in a corporate sense. Proceedings have also been brought as against the Legal Services Regulatory Authority, a body that is legally separate to the State and independent in the discharge of its functions. All of those claims have been found to be bound to fail as constituting an abuse of the process of the court and/or as having no proper legal foundation and therefore having no reasonable chance of success. In that regard, having succeeded in the applications to have the proceedings struck out, the defendants no longer have to face the cost or inconvenience of defending proceedings that should not have been brought.

85. Ultimately, while this issue was very finely balanced, having regard to the relevant principles the court is not satisfied that the high threshold of proof required to be satisfied before an order can be made restricting the right of the plaintiff to commence further litigation against the defendants without prior permission has been met. The court is acutely conscious

that the plaintiff's family law dispute underpins all the proceedings. If the plaintiff's former wife was joined to the current proceedings, the court would have been persuaded that further litigation of this type would be entirely unacceptable and that there would be ample justification for the making of Isaac Wunder orders.

86. It seems to the court that at this point in time, the just and equitable position is that matters rest with orders being made striking out the proceedings. However, the plaintiff now has adequate warning that further baseless proceedings against these defendants or attempts to re-litigate issues that have been determined by the courts are very likely to result in a necessity for his right of access to the courts being restricted in an appropriate case.

87. In all the circumstances therefore, the court will grant the orders sought in the various motions striking out the three sets of proceedings that were the subject of applications before the court, and the court will refuse the relief directed at restricting the plaintiff's entitlement to commence litigation against these defendants.

88. As this judgment is being delivered electronically, I will list the matter for final orders, including any issue about costs, before me at 10.30am on the 30 October 2024. I want to make clear that the only issues that will be entertained by the court on the adjourned date will be the issues of costs and the form of final orders.