

**THE HIGH COURT**

[2021] IEHC 194

**[Record No. 1991/14045 P]**

**BETWEEN**

**SEAN O'BRIEN**

**PLAINTIFF**

**AND**

**THE MINISTER FOR JUSTICE, IRELAND AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Mark Sanfey delivered on the 19th day of March 2021.**

1. On 22nd January, 2021, I delivered judgment in the above matter in relation to the defendant's application for an order dismissing the plaintiff's claim for inordinate and inexcusable delay pursuant to the inherent jurisdiction of the court and/or pursuant to Order 122, r.11 of the Rules of the Superior Courts. That judgment is reported at [2021] IEHC 44, and should be read in conjunction with this ruling.
2. In the event, I indicated that I would order that the plaintiff's claim be dismissed, and invited brief written submissions from the parties within fourteen days of communication of the judgment in relation to costs and any other relevant matter.
3. The defendants duly made a very brief written submission in relation to the costs, citing s.169 of the Legal Services Regulation Act 2015, and submitting that there was no basis for departing in the present case from the normal rule that costs follow the event. The defendants accordingly sought an order for the costs of the proceedings as against the plaintiff.
4. By an email of 4th February, 2021 to the court's registrar, which was copied to the solicitor for the defendants, the plaintiff's solicitor sought an additional seven days in which to file submissions. This extension of time was granted. However, the plaintiff's solicitors did not file submissions, and when this was pointed out to them by the registrar, it was intimated that the non-compliance with the extended deadline had been due to inadvertence. The plaintiff's submissions were emailed to the court on the first working day after the expiry of the extension.
5. By email of the same day – 15th February, 2021 – the defendant's solicitors sent an email to the court's registrar, on notice to the plaintiff's solicitors, which stated that "*...as these submissions [i.e. the plaintiff's submissions] concern an issue not relating to the costs of the successful application to dismiss the proceedings, the Defendant/Applicant objects formally to their being received and considered by the court*". There does not appear to have been any reply to this email from the plaintiff's solicitors.
6. While the defendant's solicitor "*objects formally*" to the plaintiff's submissions being received and considered by the court, I did not accede to this request and accordingly considered the submissions which had been made by the plaintiff.
7. The main point made in the plaintiff's submissions was that, on 4th November, 2020, two days before the hearing of the defendant's application on 6th November, 2020, the

Supreme Court delivered judgment in the matter of *Andrew Mangan (a person of unsound mind or not so found) suing by his mother and next friend, Lorraine Mangan v. Julian Dockeray & Ors.* The judgment was uploaded to the website of the Courts Service on 4th November, 2020 and deals with two issues in particular: the jurisdiction of a court under Order 19, r.28 of the Rules of the Superior Courts, or in the alternative the inherent jurisdiction of the court to dismiss proceedings on the basis that they have no prospect of success and are an abuse of process; and the jurisdiction of the court to dismiss an action on grounds of delay.

8. The decision of the Supreme Court in *Mangan*, delivered two days prior to the hearing of the defendant's application in the present case, was not brought to my attention during the hearing. The plaintiff now submits "...that there can be no question of allowing the Court to fall into error in jurisdiction by failing to alert the Court to the judgment of the Supreme Court in *Andrew Mangan* and its important implications". It was submitted that "...it is simply not possible for this honourable Court correctly to rule on [the delay issue] without having regard to the Supreme Court in *Andrew Mangan*".
9. While it would have been preferable for this Court to have been alerted to the Supreme Court decision in *Mangan*, which at the date of hearing of the present application was "hot off the presses", the fact that the judgment has not been considered by the court in the present case does not constitute an error in jurisdiction. If the plaintiff considers that the court in the present case applied the wrong legal test, or made some other error of law, whether this is indicated by the decision in *Mangan* or otherwise, it is open to the plaintiff to appeal the decision of this Court to the Court of Appeal. It is not open to this Court at this stage to consider the *Mangan* judgment or, as the plaintiff suggests, to "vary its judgment from a dismissal of the proceedings and instead to decline to dismiss the proceedings, and then to take the action into case management."
10. I might in any event remark in passing that I have read the judgment of the Supreme Court in *Mangan*, and consider that my decision in the present case would have been no different even if that judgment had been brought to my attention during the hearing.
11. At paras. 19 to 21 of his submissions, the plaintiff urges that the court revisit certain findings it made during the course of its judgment. In this regard, the plaintiff is seeking to reargue the case. This Court has given its decision and cannot entertain any such application.
12. Likewise, the plaintiff's submissions urge that "...the inherent jurisdiction of the High Court does not include a jurisdiction to strike out a constitutional challenge without the action being heard".
13. I dealt with the alleged constitutionality argument at paras. 62 to 63 of my judgment on the substantive matter. As I pointed out, there is no issue regarding the constitutionality of legislation in the statement of claim, and accordingly I was not prepared to deal with this issue "on the basis that an application might be made to amend the statement of claim at some unspecified time in the future". As there was no challenge to the

constitutionality of s.5 of the Civil Service Regulations Act 1956 in the statement of claim, the constitutionality of that section was simply not an issue in the proceedings. Once again, the plaintiff wants me to revisit a finding which I have made, which is not permissible.

14. It is submitted that I should grant the plaintiff liberty to apply, "*...including liberty further to apply to the Court to vary its judgment, including in the light of new evidence*". No indication is given as to what that new evidence might be. The plaintiff also seeks a stay on any order dismissing the action pending appeal, and an order that the costs of the defendant's application be made costs in the cause.
15. None of these orders is appropriate. I will make an order dismissing the plaintiff's proceedings for the reasons set out in the substantive judgment. There is no basis upon which I could or should depart from the principles set out in s.169(1) of the Legal Services Regulation Act 2015 that the party who is entirely successful in proceedings should be entitled to an award of costs. There will therefore be an order in favour of the defendants for their costs of the proceedings, including the defendant's motion, against the plaintiff.