

Neutral Citation No: [2020] NICA 65

Ref: DEE11277

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

Delivered: 30/06/2020

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE QUEEN'S BENCH DIVISION

BETWEEN:

JOHN CHRISTOPHER WALSH

Plaintiff;

-and-

The DEPARTMENT OF JUSTICE

Defendant.

Before: Sir Donnell Deeny and Sir Richard McLaughlin

SIR DONNELL DEENY

[1] The defendants in this action moved to strike out the plaintiff's writ of summons as disclosing no reasonable cause of action or being scandalous, frivolous or vexatious or an abuse of the process of the court contrary to Order 18 Rule 19(1) of the Rules of the Court of Judicature and the inherent jurisdiction of the court. Master McCorry found for the defendants. Mr Walsh appealed to the High Court but His Honour Thomas Burgess, sitting as a High Court Judge, upheld the decision of the Master.

[2] Mr Walsh sought to appeal. The appeal from the order of Judge Burgess was only made in respect of the first defendant described as Minister of Justice, David Ford MLA. The defendant should properly have been, if at all, the Department of Justice pursuant to section 133 of the Criminal Justice Act 1988 but Mr McAteer, Counsel for the Minister, did not wish the appeal determined on this technical basis but nor did he consent to any amendment. In all the circumstances we have concluded that it is preferable to amend to name the Department, which is the true respondent.

[3] The background to the action is that Mr Walsh was convicted at Belfast Crown Court on 7 December 1992 on a charge of possessing a coffee jar bomb with intent, contrary to section 3 of the Explosive Substances Act 1883. The trial judge

sentenced him to 14 years' imprisonment. His appeal to the Court of Appeal was dismissed on 7 January 1994. On 27 March 2000 the Criminal Cases Review Commission referred the case back to the Court of Appeal but on 7 January 2002 the Court, per Carswell LCJ, dismissed his appeal again. On 10 March 2007, however, the Court of Appeal, per Kerr LCJ allowed his appeal and quashed the conviction.

[4] Following that Mr Walsh sought compensation on foot of the provisions of section 133 of the Criminal Justice Act 1988. The matter was considered by the Department of Justice and the then Minister refused his application. He sought judicial review of that decision and the matter was heard by Weatherup J who delivered judgments in respect of the matter on 18 June 2012 and 30 October 2012. The earlier hearing was a partial success for Mr Walsh in as much as the judge found there to be errors in the Department's consideration of the issue of compensation and directed that the Department should reconsider the decision. It seems Mr Walsh was dissatisfied, despite that partial success, with the conduct of the case by his then Counsel and Solicitors. He then made a personal application to Weatherup J which was dealt with by him on 30 October 2012.

[5] The Minister of Justice at that time, Mr David Ford MLA, did reconsider the matter on foot of the order of Weatherup J. Having done so a letter signed by him was sent on 9 May 2013 to Mr Walsh. It referred to case law in regard to miscarriages of justice and went on:

"Applying this definition to your own case, I note that, notwithstanding the newly discovered facts, substantive elements of the evidence on which you were convicted still remain intact, namely the eye witness statements and your unconvincing explanation for your presence at the scene at the time.

I concluded that the evidence now available renders the conviction unsafe but a jury might, or might not, have convicted on that evidence. I write to confirm that the decision therefore remains that you are not eligible for compensation under Section 133."

[6] It was the view of the judge at first instance, with which we agree, that Mr Walsh at that time ought, being disappointed as he was with this new decision of 2013, have either attempted to revive the judicial review proceedings before Weatherup J or commenced fresh judicial review proceedings of the Minister's decision contained in his letter of 9 May 2013. He did neither. A belated appeal from the 2012 decisions of Weatherup J was dismissed by this court on 3 April 2014. In 2015 Mr Walsh commenced these proceedings against the Minister and the other defendants. Of course we do not say he would or would not have been successful in judicially reviewing the decision of 9 May 2013 but it was the appropriate remedy to seek in those circumstances.

[7] The submissions of Mr Walsh, appearing in person, to this Court of Appeal were delivered with courtesy and had been prepared with care. But they were not those that any qualified lawyer practising in this jurisdiction could properly have advanced. He had seized on expressions such as “administrative practice” which he had seen and read in judgments without appreciating that this was not some separate cause of action grounding a claim against the defendant. Similarly, he alleged “bias” against the defendant. That might well have been a very relevant consideration in any judicial review of the Minister’s decision but again it is not an independent cause of action. In any event he fell far short of demonstrating any bias here. It is only in two possible respects that this court has to address his submissions as conceivably grounding a successful appeal.

[8] Following amendment he alleged the tort of deceit against the Minister. Master McCorry dealt with this at paragraphs [30] and [31] of his well marshalled and comprehensive judgment.

“[30] The 21st edition of Clerk and Lindsell on Torts at paragraph 18-0 defines the modern tort of Deceit in these terms:

‘The tort involves a perfectly general principle: where a defendant makes a false representation, knowing it to be untrue, or being reckless as to whether it is true, and intends that the claimant should act in reliance on it, then in so far as the latter does so and suffers loss the defendant is liable.’

Whilst the normal standard of proof in civil cases applies, in practice more convincing evidence is required than would be in other civil cases (18-04).

[31] Clerk and Lindsell goes on to consider the four general principles upon which the tort is based. The first requirement is that there be a misrepresentation of present fact (18-05) which can include misleading conduct or can be express or implied. The second concerns the state of mind of the person making the misrepresentation who must do so knowingly, without belief in its truth, or recklessly or carelessly (18-19). The third requirement is that the misrepresentation must be intended to be acted upon by the claimant, in other words with the intention of deceiving him (18-30). This is where the plaintiff’s argument falls down because even if it was correct that Mr McGleenan knowingly or recklessly withheld

information from the court: where careful reading of Weatherup J's judgment shows that he was aware of, and took into account, the matters the plaintiff says were withheld, any wrongdoing by the second defendant was done to the court and no misrepresentation was made to the plaintiff with the intention that he act upon it. The fourth principle is that the claimant shows that he was influenced by the misrepresentation in that he acted in reliance upon it (18-34). As there was no misrepresentation made by the second defendant that could have influenced the plaintiff, this simply does not arise. The plaintiff cites the cases of *Derry v Peek* (1889) 14 App. Cas. 337 and *Myers v Elman* [1940] AC 282, but counsel correctly distinguishes them and I do not propose to consider them further. Therefore, the plaintiff's claim against the second defendant in deceit is inarguable and no other causes of action being raised against him, so far as he is concerned the plaintiff's claim must be dismissed."

[9] We agree with that helpful summary of the Master. His remarks apply with equal force to the Minister. If, which is in dispute, he misunderstood any of the factual circumstances surrounding Mr Walsh's case that could have been examined in a judicial review hearing. But he made no representation to the appellant on which he acted to his detriment. We may say that it might be noted in addition and for the avoidance of misunderstanding that the material put before us did not lead us to think that there had been any significant error on the part of the Minister or those acting for him. Mr Walsh's allegations were not borne out. But in any event his contention that the tort of deceit is applicable here is fatally flawed.

[10] It is common case that a breach of rights under the European Convention of Human Rights is actionable at law: section 7, Human Rights Act 1998. Mr Walsh alleged breaches of both article 3 and article 6 of the Convention. He also contended for article 13 but it has not been made part of our domestic law by the 1998 Act.

[11] The only authority which Mr Walsh cited in support of his contention that the quashing of his conviction without subsequent compensation was a breach of article 3 i.e. constituted torture or inhuman and degrading treatment was *Metropolitan Police Commissioner v DSD* [2018] UKSC 11. That authority does not assist Mr Walsh nor have we identified any other case that supports his contention. It is a distortion of language to say that imprisonment, found to have been grounded on an unsafe conviction, without subsequent monetary compensation, is to be equated with torture or inhuman and degrading treatment. The regime in place in the United Kingdom for compensation, in these circumstances, as elucidated by the United Kingdom Supreme Court, has not been found to be unlawful by the

European Court of Human Rights. We reject this contention on the part of the appellant.

[12] His claim that there was an actionable breach of article 6 of the Convention also fails. As the brief history at the start of this judgment outlines he has had many hearings over the years. In particular, the combination of consideration by the Minister of Justice and review by the High Court provided him with a fair and public hearing of his civil rights and obligations by an independent and impartial tribunal established by law.

[13] We have carefully considered Mr Walsh's other submissions in search of any point of substance and the oral and written submissions on behalf of the respondent and we can find no basis for overturning the decision at first instance. In the circumstances it is not necessary for us to deal with any further issues of delay or abuse of process. We are satisfied that the decisions of both Master McCorry and of Judge Burgess were correct and we uphold them.