Neutral Citation No.: [2008] NIQB 99 | *Ref:* **GIL7257**

Judgment: approved by the Court for handing down | *Delivered:* **17/09/08**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

PAULA SUZANNE TULLY

Plaintiff;

And

CAUSEWAY HEALTH AND SOCIAL SERVICES TRUST

Defendant.

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GILLEN J

Application

[1] This is an appeal from an order of Master Bell dated 19 June 2008. The Master refused an application by the plaintiff for an Order pursuant to Order 26 Rule 6 of the Rules of the Supreme Court requiring the defendant to answer interrogatories on oath. Costs were reserved until the trial of the action.

Background

[2] The plaintiff's case is that she sustained personal injuries, loss and damage as a result of treatment for an ectopic pregnancy in respect of which she was admitted by way of emergency transfer from Coleraine Hospital to the Route Hospital, Ballymoney on 13 August 1996. She alleges that she suffered a ruptured ectopic pregnancy and, following an operation, her left fallopian tube and left ovary were removed without her consent. Following

discharge she experienced severe abdominal pain and, after attending the Route Hospital on several dates, underwent a laparotomy on 1 September 1996 resulting in two bowel resections. It is alleged that the first of these involved the resection of 45 cm of the caecum and a right hemicolectomy. The second was a resection of the small bowel.

[3] It is alleged that the medical adviser retained by the plaintiff has advised that there was no indication or explanation in the medical records or notes for removal of the plaintiff's left ovary or of the small bowel. The histology reports on the plaintiff's bowel do not indicate that the bowel was gangrenous or damaged in any way.

[4] The plaintiff's advisers have entered into correspondence with the defendant's solicitor requesting interrogatories in order to ascertain an explanation as to why the left ovary was removed together with substantial amounts of small bowel and caecum.

[5] The solicitors on behalf of the defendant have refused to answer the interrogatories on the basis that the queries posed related to evidence rather than facts.

Interrogatories

[6] After amendment, the interrogatories which eventually came before the court for determination by Master Bell were couched in the following terms:

> "1. At operation 13 August 1996 what was observed by the servants and agents of the defendant, the medical practitioners that caused a decision to be reached to remove the plaintiff's left ovary?
>
> 2. What were the presenting signs which required the removal of the plaintiff's left ovary at operation on 13 August 1996?
>
> 3. What were the presenting signs and medical conditions which required removal of the amount of small bowel which was removed on 1 September 1996".

Principles governing the administration of interrogatories

[7] Order 26 Rule 1 provides:

> "1.-(1) A party to any cause or matter may in accordance with the following provisions of this Order serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter which are necessary either –
>
> (a) for disposing fairly of the cause or matter, or
>
> (b) for saving costs.
>
> . . .
>
> (3) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) may not be administered notwithstanding that it might be admissible in oral cross-examination of a witness".

[8] Some of the principles governing the use of interrogatories set out in the Supreme Court Practice 1999 are worth repeating. At paragraph 26/4/7 it is recorded that:

> "The right to interrogate is not confined to the facts directly in issue, but extends to any facts, the existence or non existence of which is relevant to the existence or non existence of the facts directly in issue. It is enough that they should have some bearing on the question and that they might form a step in establishing liability".

Paragraph 26/4/9 records that:

> "Interrogatories are not allowed which do not relate to any matter in question in the cause or matter. It is an important function of interrogatories to gain information not within the knowledge of the party applying; but they should be confined to facts which there is some reason to think true".

Paragraph 26/4/11 records:

> "Nevertheless only such interrogatories will be allowed as shall be considered necessary either for disposing fairly of the action or matter or for saving costs".

Paragraph 26/4/13 records that interrogatories will not be allowed which relate solely to the evidence which the party intends to adduce as distinct from the facts which he alleges.

Thus interrogatories will not generally be allowed where the object is to obtain an admission of a fact which can be proved by a witness who will in any case be called at the trial, and therefore the interrogatory will not save but add to costs.

[9] Carswell J in Eastwood v. Channel Five Video Distribution Limited and Finbar Patrick McGuigan (unreported 28 January 1992) summarised the approach to interrogatories at page 50 as follows:

> "I think that one must always come back to asking whether an interrogatory is necessary for disposing fairly of the case or matter, or for saving costs, and all other principles expressed have to be seen in light of this governing principle. One views the principle in the light that interrogatories are not to be encouraged and that their administration has to have positive justification as being necessary".

Helpfully in that case Carswell J referred to the dictum of Jessel MR in Attorney General v. Gaskill [1882] 20 Ch D 519, 528:

> "Now one of the great objects of interrogatories when properly administered has always been to save evidence, that is to diminish the burden of proof which was otherwise on the plaintiff. Their object is not merely to discover facts which will inform the plaintiff as to evidence to be obtained, but also to save the expense of proving a part of the case".

Applying the principles to this matter

[10] I consider that in order to dispose fairly of this case, the plaintiff has to know what were the facts observed during the operative treatment that caused

the decision to remove the plaintiff's left ovary and small bowel. Otherwise it might be necessary to subpoena all those who made notes relevant to the operation and they may not be even privy to the facts now sought. She obviously will not know what these facts were. Once these facts are given, the witnesses on behalf of the defendant will be entitled to give evidence, if they wish, as to why in their opinion these facts led to the removal. The interrogatories now sought do not seek evidence of the opinion of the doctors but rather a statement of what factually was observed which required the relevant removals. It seems to me that these facts are self evidently material to the action, do not represent oppressive inquisitions, are necessary to dispose fairly of the action, may save costs and are necessary for the plaintiff's medical experts to know prior to the hearing. Cases should be conducted in an open and transparent manner where each party has cards which are up front for all to see.

[11] If, for example, the signs/observations are clear indicators of the need to make the removals, then this case might well collapse and the need for the attendant trial and expense will be removed. Equally, there will be no need for potentially expensive delay on the part of the plaintiff's medical advisers to consider, perhaps at length, the emergence of such facts for the first time at trial. By virtue of these interrogatories her advisers will be able to consider her case in a timely and ordered fashion thus again contributing to a fair disposal of the case and a potential saving of costs.

[12] In most cases, the observable signs now sought in the interrogatories will have been clear from the discovered medical notes or records. In this instance the plaintiff makes the case that no explanation whatsoever is revealed in the notes or records or has been forthcoming to date. That in itself removes this from the usual case where all relevant facts will have clearly emerged from disclosure of medical records.

[13] In all the circumstances I have therefore decided to reverse the Order of Master Bell and to make an Order pursuant to Order 26 Rule 6 of the Rules of the Supreme Court directing the defendant to answer the interrogatories contained therein. Costs will follow the event both before the Master and before this court.