Neutral Citation No: [2016] NICA 8 | *Ref:* **MOR9906**

*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **02/03/2016**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

BETWEEN:

EDDIE RITCHIE

Appellant;

-and-

Dr HENRY McKEE, Dr S J KYLE, Dr DEIRDRE SAVAGE, Dr DAVID W McCOMB, J MACMAHON AND BELFAST HEALTH AND SOCIAL CARE TRUST

Respondents.

Before: Morgan LCJ and Weir LJ

MORGAN LCJ (giving the judgment of the court)

[1] Between 2003 and 2005 the applicant issued 13 separate medical negligence actions arising from various treatments he received between 2000 and 2003. Three of those actions have already been disposed of prior to any trial of the issues relating to his treatment and he now applies for leave to appeal the dismissal of the remaining 10 sets of proceedings.

[2] Four of the claims are against the first four respondents and in each of those cases an Order was made on 16 June 2004 providing that the applicant's claim should be struck out unless he commissioned expert medical evidence by 11 August 2014 and served a letter confirming the same by 30 September 2014. In each case he had earlier been directed to exchange liability and causation reports before November 2013 and then by extension before January 2014 but in each case had failed to comply with the direction. On 8 August 2014 an extension of time was granted by Master Bell extending the time for the commissioning of expert evidence until 26 September 2014 and for the service of a letter confirming same until 30 September 2014. On 23 September 2014 a letter was received from the applicant

seeking a further extension of time for compliance with the unless Orders of 16 June 2014.

[3] The applicant provided written submissions on 29 September 2014 explaining that the need for the extension had been caused by the applicant's engagement in a number of cases. Master Bell directed that the matter be listed for submissions as to whether time should be further extended which he heard on 17 November 2014. He then gave a detailed written judgment on 28 November 2014 striking out each of the claims for failure to comply with the unless Orders.

[4] In respect of each of the claims against the four GPs the applicant had also issued corresponding proceedings against the relevant Trust. The appropriate defendant was the Belfast Health and Social Care Trust (the Trust) and no issue was taken on any misnomer by the applicant. The GP appeals were listed for review on 22 January 2015. The applicant did not attend and in light of correspondence suggesting some medical difficulty for his non-attendance Horner J directed that an independent assessment of the applicant's health and ability to attend court should be organised by the respondents.

[5] The applicant refused consent to be examined by the first consultant proposed by the respondents but agreed to undergo medical examination by Dr Todd on 12 March 2015. He also provided the respondents' solicitors with two signed forms of authority authorising them to access his Ulster Hospital and GP notes and records. The applicant did not attend for the medical appointment but Dr Todd produced a report on the basis of the notes and records which he had reviewed and stated that he could find no physical reason why the applicant was not fit to attend court.

[6] On 22 April 2015 the applicant applied for the hearing scheduled for 23 April 2015 to be adjourned on the basis of his ill-health. In light of that O'Hara J decided that he wanted to hear evidence from the applicant's GP, Dr Stevens and she attended on 29 April 2015. She indicated that the applicant had suffered from medical issues but that he was now stable. His condition was unlikely to improve but there was no reason why he could not attend court. On that date the appeals and the applications in relation to the other cases were relisted for 8 May 2015 and it was indicated to the applicant by letter that the appeals would proceed in his absence.

[7] On 8 May 2015 the applicant failed to attend but sent a letter to the court rejecting the evidence of Dr Stevens and Dr Todd. The learned trial judge concluded that there was no reason for him to depart from the decision by Master Bell that no further extension of time should be granted and that the claims should be struck out with costs to the respondents.

[8] In respect of the four corresponding claims made against the Trust the learned trial judge accepted the submission that the GPs were independent contractors and that in any event under the health and social care arrangements in

Northern Ireland the Trusts had no responsibility for the conduct of GPs. He accordingly struck out each of the claims pursuant to Order 18 Rule 19 RCJ.

[9] The final two claims concerned the period between 24 and 28 November 2000. The plaintiff attended the Accident and Emergency Department of Belfast City Hospital on Friday, 24 November 2000 complaining of pains in his chest. He was admitted and subjected to various examinations. The consultant surgeon in charge of his care was Mr MacMahon. On 28 November 2000 he was discharged. The applicant was unwilling to leave the hospital, believing that he had not been adequately monitored, and security guards were required to escort him from the building. Two sets of proceedings were issued against Mr MacMahon and, separately, the Trust in respect of this incident. Neither Statement of Claim asserted any condition from which the applicant was suffering or detriment as a result of this treatment. Both sets of proceedings were dismissed by O'Hara J on 8 May 2015 pursuant to Order 18 Rule 19 RCJ.

The appeal

[10] In support of his appeal the applicant lodged a statement. He referred to a notorious incident when two corporals were murdered on the Andersonstown Road on 19 March 1988. The events were captured on television. He said that one of those seen running towards the two corporals was wearing a green jacket which was of the same make as a jacket owned by him. Although he was 15 miles away at his home when the incident happened he claimed that at 7 PM that night a British Army helicopter started hovering over his house. Subsequently he claimed that he was put on 24-hour surveillance with police driving around him daily and surveillance planes also being used. He related some of this to a report he had made to police in 1986/7 that the child of a person known to him was beating up a little boy at Belmont Road, Belfast. He also claimed that in January 2000 some sort of device was put into his home emitting a high-pitched sound which apparently changes in tone. He requested the assistance of the Environmental Health Department to deal with it but when he explained the circumstances they left his house. He has never been arrested or questioned in relation to this or any similar incident and accepted that two people have been convicted of murder in connection with the deaths. He claimed that he has sought the assistance of various solicitors in Belfast, Holywood and Bangor but that when he explained the circumstances they were unwilling to take his case up. He produced no material from any solicitor in respect of such contacts. He remained anxious to find out what papers were held on him by the intelligence services but produced no independent evidence to corroborate any of the background asserted by him. He believed that the solicitors contacted by him may have been prevented from representing him by the intelligence services and was concerned lest Master Bell was also part of the conspiracy.

[11] The applicant submitted a letter from the General Practitioners in his practice dated 3 August 2015. This stated that he continued to suffer from Chronic Obstructive Lung Disease, Ischaemic Heart Disease, Fibromyalgia, Chronic Kidney

Disease, and Hypothyroidism. He continued to have recurrent chest infections, general fatigue and ongoing episodes of chest pain. He was still attending respiratory and cardiology consultants in the Ulster Hospital. His current health condition was reasonably stable and the doctors considered that he was fit to attend court. They noted that he was not educated in law so could not cope with the physical or mental stress of representing himself and they asked the court to obtain legal counsel and representation for him.

[12] It was indicated that the applicant had been diagnosed with ischaemic heart disease in January 2013. He also submitted a document indicating that he had undergone a cystoscopy procedure on 29 September 2015. None of this supports in any way his complaints in relation to the medical treatment that he has undergone in connection with these various proceedings.

Consideration

[13] There is no dispute that Master Bell in his careful judgment was correct to follow the approach in Hytec Information Systems Limited v Coventry City Council [1997] 1 WLR 1666:

> "1. An unless order was an order of last resort, not made unless there was a history of failure to comply with other orders. It was the party's last chance to put its case in order.
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> 2. Because it was the last chance, a failure to comply would ordinarily result in the sanction being imposed.
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> 3. The sanction was a necessary forensic weapon which the broader interests of the administration of justice required to be deployed unless the most compelling arguments were advanced to exonerate the failure.
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> 4. It seemed axiomatic that if a party intentionally flouted the order he could expect no mercy.
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> 5. A sufficient exoneration would almost invariably require that he satisfied the court that something beyond his control had caused the failure.
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> 6. The judge would exercise his judicial discretion whether to excuse the failure in the circumstances of each case on its own merits, at the core of which was service to justice.

> 7. The interests of justice required that justice should be shown to the injured party for procedural inefficiencies causing the twin scourges of delay and wasted costs. The public administration of justice to contain those blights also weighted heavily. Any injustice to the defaulting party, though never to be ignored came a long way behind the other two."

[14] He also correctly noted the emphasis in Hughes v Hughes [1990] NI 295 by Carswell J that a party seeking an extension of time must put forward some material to serve as a foundation for the court's exercise of its discretion. When the applicant argued his case in front of Master Bell his principal submission on the reasons for delay was that he was too occupied with other legal proceedings to attend to the unless Orders. Master Bell dealt with that submission explaining why that explanation was not sufficient to enable the discretion to be exercised in favour of the applicant.

[15] No point was raised on this appeal to suggest that the Master had erred in that judgement. The manner in which the appeal was conducted before Master Bell is quite inconsistent with any suggestion that the applicant had been seeking legal representation during the relevant time but had failed to secure the services of an appropriate solicitor. If he had been seeking representation at that stage it would unquestionably have been first and foremost among the submissions that he would have made to the Master. It is also of significance that, subsequent to this hearing, on 16 October 2014 the review before Stephens J was adjourned to enable the applicant to obtain a McKenzie friend. If he had, even in the alternative, been seeking legal advice, that would have been advanced as a reason for delay. The only explanation is that the search for legal advice did not begin until after the hearing before the Master. It is hardly surprising that any solicitor faced in these circumstances with a proposed medical negligence action relating to events more than 10 years beforehand which had already been dismissed would have been difficult to persuade. We consider that the Master's decision in November 2014 was inevitable and that the matters raised in this appeal are not sufficient to raise an arguable case with a reasonable prospect of success.

[16] In relation to the four related actions against the Trust the applicant can show no relationship with or responsibility of the Trust for the actions of the GPs. In those circumstances he has no cause of action. In respect of the action against Mr MacMahon and the Trust, the statement of claim discloses no cause of action but simply records his disagreement with the decision to discharge him from the hospital. The subsequent diagnosis of ischaemic heart disease more than 12 years later does not assist in raising a case that there was any error in diagnosis in 2000. The learned trial judge was quite correct to dismiss these proceedings under Order 18 Rule 19(1)(a) RCJ on the basis that the pleadings disclosed no reasonable cause of action.

Conclusion

[17] For the reasons given the applicant has not demonstrated an arguable case with a reasonable prospect of success in any of these appeals and accordingly leave to appeal is refused in each case.