Neutral Citation: [2016] NIQB 51 | *Ref:* **STE9994**

Judgment: approved by the Court for handing down | *Delivered:* **08/06/2016**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Between:

THE BOARD OF GOVERNORS OF THE CAMPBELL COLLEGE

Plaintiffs:

-and-

INDEPENDENT NEWS AND MEDIA (NORTHERN IRELAND) LIMITED

Defendants:

STEPHENS J

Introduction

[1] This case involves a point of procedure. The parties, who have settled their dispute prior to the issue of proceedings, wish to read a statement in open court. The procedural question is whether the parties have to issue proceedings, with the consequence that they have to incur the court fees involved in doing so, or whether there is another procedural route which they can adopt. The plaintiff has not issued a writ of summons, but rather has issued a summons seeking permission to read the statement. The summons has been served on the defendant.

The Rules of the Court of Judicature (Northern Ireland) 1980 and the Defamation Act 1996.

[2] There are a variety of circumstances in which an individual may wish to make an application to the court in circumstances where proceedings have not been issued. Those include cases of "urgency" where there is simply insufficient time to issue proceedings. In such a case the individual making the application intends to issue proceedings. Another instance in which an individual intends to issue proceedings but also wishes to make an application to the court prior to doing so, is where a plaintiff applies for anonymity and reporting restriction orders in advance of issuing proceedings, see *KL and NN v Sunday Newspapers Limited* [2015] NIQB 88.

However in this case the parties have no intention of issuing proceedings, except in so far as is strictly necessary to avail of an opportunity to read a statement in open court. Another instance in which an individual does not wish to proceed with an action, but all the same wishes to make an application to the court, is an application to approve the settlement of a claim brought by a child or young person.

[3] There is no specific rule contained within the Rules of the Court of Judicature (Northern Ireland) 1980 governing the position where a party wishes to make an application to the court despite there being no proceedings. The position in relation to urgent applications is governed by Order 29 Rule 1(3) and section 91 of the Judicature (Northern Ireland) Act 1978. Section 91 provides that the "High Court … may at any stage of any proceedings … grant a mandatory or other injunction; … in any case where it appears to the court to be just and convenient to do so for the purposes of any proceedings before it and, if the case is one of urgency, the court may grant such an injunction before the commencement of the proceedings." It is also provided that any "order (or) injunction … may be made either unconditionally or on such terms and conditions as the court thinks just (including, where an injunction is granted before the commencement of the proceedings, a condition requiring proceedings to be commenced)." It is apparent that discretion can be exercised as to whether to require an undertaking that proceedings are to be commenced.

[4] There is a specific rule governing approvals of, what in this jurisdiction, are still termed "minor" settlements. If the parties have settled before proceedings have begun and when approval of the court is sought in relation to the settlement then Order 80 Rule 9(1) requires the application for approval of the settlement to be made in proceedings begun by originating summons. Accordingly, the party seeking approval has to issue an originating summons but does not have to issue a writ of summons.

[5] There are specific rules in relation to defamation proceedings contained in Order 82. Order 82, rule 5(2) requires that where a party to an action for libel or slander which is settled before trial desires to make a statement in open court an application must be made to the court for an order that the action be set down for trial. I consider that this rule applies if there are already proceedings in existence and does not apply to the circumstances of this case where there are no proceedings.

[6] There is another specific procedure relevant to defamation proceedings. Sections 2, 3 and 4 of the Defamation Act 1996 dealing with offers of amends came into force in Northern Ireland on 6 January 2010, see the Defamation Act 1996 (Commencement No. 4) Order 2009. If an offer of amends is accepted then the party accepting the offer may not bring or continue defamation proceedings in respect of the publication concerned against the person making the offer but he is entitled to enforce the offer to make amends. Order 82, Rule 8 provides the procedure for making an application to enforce the offer to make amends. If there are no proceedings in existence then the application is made by originating summons to

which no appearance need be entered. Again there is no need for a writ of summons to be issued.

[7] If proceedings have been commenced then the mode of making an application is generally by summons, see Order 32, Rule 3. The question is whether the court can endorse that as the appropriate method of making an application for a statement to be read in open court in circumstances where no proceedings have been issued. In considering that question it is necessary to bear in mind that the court's duty is to further the overriding objective contained in Order 1 Rule 1A which is to enable cases to be dealt with justly and at proportionate costs. The court must seek to give effect to the overriding objective when it interprets any rule.

Consideration of the procedure in England and Wales

[8] The position in England and Wales is to be found in Practice Direction 53 which supplements CPR Part 53. I have been informed by the plaintiffs' solicitors who practice both in England and Wales and in this jurisdiction, that as a matter of practice proceedings do not have to be commenced but rather a Part 23 Application Notice is issued seeking permission to read a statement in open court. If the proceedings have not been issued then the space for the claim number on the notice is simply left blank. This practice may be realistic pragmatism. The explanation for the practice cannot be found in 23.2(4) which states:

> "If an application is made before a claim has been started, it must be made to the court where it is likely that the claim to which the application relates will be started unless there is good reason to make the application to a different court."

That provision would not apply as the whole point is that a claim is not likely given that it has been settled. I am prepared to accept that the practice in England and Wales is not to require the parties to issue proceedings but rather that the equivalent of a summons is sufficient.

Discussion

[9] The ability to make a bilateral or unilateral statement in open court facilitates settlement see *Winslet v Associated Newspapers Ltd* [2009] EWHC 2735 and *Murray v Associated Newspapers Ltd* [2015] EWCA Civ 488 [2015] E.M.L.R. 21. A statement in open court provides a valuable means for vindication for a plaintiff because it can be reported freely under the privilege which protects fair and accurate reports of proceedings heard in public and will normally receive some press and media coverage. The willingness of a defendant to join in a statement, expressing acceptance, that the words were false, together with a suitable expression of contrition, can be the subject of negotiations prior to the issue of proceedings. If the defendant is willing to join in a statement in open court then that could influence the

plaintiff's attitude to the amount of damages which are sought in the negotiations. The attitude of the court is to encourage and facilitate the settlement of actions so that the parties do not have to be involved in proceedings. It is suggested, and I agree, that to require that proceedings are issued by way of a writ of summons when the action is settled and when all the parties wish to achieve is to have an agreed statement read in open court, lacks proportion. I come to that conclusion bearing in mind that the amount of court and judicial time involved in having a statement read in open court is minimal. I consider that a proportionate approach would be to require the parties to issue a summons rather than to issue proceedings. If in fact the application to read a statement in open court is not as simple and straightforward as envisaged, then there may be circumstances in which the court would require an undertaking to be given that proceedings would be issued. So if it transpires, in the event, that the issues are somewhat more complicated, then the applicant could be required to provide such an undertaking before the court proceeds further with hearing the application.

Conclusion

[10] I consider that the appropriate method of making an application to the court for a statement to be read in open court is for a summons to be issued. I do not require that a writ of summons is issued. If I am incorrect in that conclusion then under Order 2 of the Rules of the Court of Judicature (Northern Ireland) I consider that there has been no adverse effect of non-compliance with any rule in relation to the beginning of or purporting to begin any proceedings.

[11] I have considered the terms of the statement and permit it to be read.