



THE HIGH COURT

[2024] IEHC 459

[Record No. 2021/6050 P]

BETWEEN

DONAL COLEMAN

PLAINTIFF

AND

ALAN COLEMAN

DEFENDANT

**JUDGMENT of Ms. Justice Marguerite Bolger delivered on the 22nd day of July
2024**

1. This is the plaintiff's application for an extension of time to bring defamation proceedings pursuant to s. 11(2)(c)(ii) of the Statute of Limitations. For the reasons set out below, I am refusing this application.

The proceedings

2. These proceedings were commenced by a plenary summons dated 28 October 2021. A statement of claim was filed on 7 March 2022 claiming damages for defamation arising from what the plaintiff pleaded was a publication made by the defendant, by way of a complaint to An Garda Síochána on 6 January 2020. The defendant delivered a defence on 6 October 2022 which included a preliminary objection that the claim was statute barred. The plaintiff brought this application to extend time by motion dated 25 November 2022, grounded on affidavit. The defendant filed a replying affidavit. Due to contradictions between the plaintiff's averments in his grounding affidavit and his averments in his affidavit verifying separate personal injury proceedings relating to the same circumstances, the plaintiff had to swear a corrective affidavit during the course of the court's hearing of this motion (for which the hearing was adjourned) and the defendant filed a further affidavit sworn by a

garda who had been involved in the criminal investigation of the defendant's complaint on which the plaintiff grounded his claim of defamation.

3. In his affidavit grounding the within motion, the plaintiff averred to his plea in the statement of claim that the defendant's defamatory statement was published on 6 January 2020. In his personal injury summons, which he verified by affidavit, the plaintiff pleaded that the defendant made a complaint to An Garda Síochána in early 2019. In his corrective affidavit, he indicated his intention to amend the personal injury summons to say that the defendant's 2019 complaint related to other family members and that the defendant's complaint about him was made on an unknown date on or before 6 January 2020. The plaintiff averred in that affidavit that he first became aware of the publication of the defendant's complaint against him at his interview with An Garda Síochána on 6 January 2020, and that he was not made aware, at that time, precisely when the defendant's complaint was made.

4. The cause of action in a defamation claim accrues on the publication of the alleged defamatory statements. The plaintiff, in seeking an extension of time pursuant to s. 11(2)(c)(ii), submits that the court should apply a date of knowledge test, similar to that provided by statute for a personal injuries claim by s. 2(1) of the Statute of Limitations (Amendment) Act 1991. The plaintiff submits that the court has jurisdiction to interpret s. 11(2)(c)(ii) as having such a date of knowledge test as part of the court's inherent jurisdiction and that it is in the interests of justice for the court to do so as, otherwise, a defamed person who was unaware of the publication of a statement defamatory of them may be denied a cause of action by virtue of not becoming aware of the publication until the time permitted by the Statute of Limitations to bring a defamation action has expired. The defendant contends that such a consequence is the clear effect of s. 11(2)(c)(ii) as intended by the Oireachtas and that the court has no jurisdiction to apply a date of knowledge test and that, to do so, would usurp the clear legislative intent and involve the court in inappropriate judicial lawmaking.

5. Separately, the plaintiff contends that certain periods of time between the defendant's complaint to An Garda Síochána and the issuing of his proceedings, should be excluded from the calculation of the time period referred to in s. 11(2)(c)(ii) as the plaintiff says he was, in good faith, avoiding issuing proceedings until the criminal investigation against him was brought to an end. The defendant disputes the plaintiff's *bona fides* and, in

any event, disputes that the court has jurisdiction to exclude those periods of time and/or should exclude them.

The evidence

6. It is not disputed by the defendant that the plaintiff did not know of the publication of the defendant's complaint to An Garda Síochána until 6 January 2020. The defendant says he made his complaint by way of a statement to An Garda Síochána on 13 November 2018 and he exhibited a copy of that statement in his replying affidavit. The plaintiff did not challenge that affidavit but asserted in his written submissions to this court (filed before his corrective affidavit or the affidavit of the investigating garda) that he does not accept the authenticity of that statement. The plaintiff has never set out on affidavit any basis for that. Subsequent to the filing of the plaintiff's submissions, the investigating garda swore an affidavit in which he exhibited the same statement and confirmed the circumstances in which he took that statement from the defendant. The plaintiff has not challenged that affidavit. The plaintiff's corrective affidavit was drafted before the garda's affidavit was sworn on 18 June 2024, although the plaintiff did not swear his corrective affidavit until 24 June 2024 due to travel commitments. Nevertheless, in his corrective affidavit, he maintains his position that he does not know the precise date on or before 6 January 2020 on which the defendant's complaint was made to An Garda Síochána. That assertion by the plaintiff is inconsistent with the clear evidence in the garda's unchallenged affidavit.

7. The evidence before the court clearly establishes that the defendant's complaint to An Garda Síochána, which the plaintiff claimed was defamatory of him, was made by the defendant on 13 November 2018. That is the date on which the plaintiff's cause of action accrues. The plaintiff issued his plenary summons on 28 October 2021, almost three years after the date on which the statement was made and some twenty one months after when he first became aware on 6 January 2020 that the statement had been made.

(1) Date of knowledge

8. The defendant's date of knowledge was 6 January 2020 and if that is the date of publication, the court would have to consider whether the one-year limitation period should be extended to the two years, as is potentially permitted by section 11(2)(c)(ii). However, no such date of knowledge test currently exists in Irish defamation law and the clear wording of these statutory provisions are inconsistent with such a test. There is no lawful basis on which the court can or should apply such a test. To do so would fly in the face of the clear

legislative intention of the Oireachtas and would involve the court in judicial lawmaking, which is not its role or within its jurisdiction. There are a number of previous decisions of this court and the Court of Appeal that confirm the correctness of that approach. In *Reidy v. Pasek* [2023] IECA 44, the Court of Appeal upheld the High Court's finding that the plaintiff's failure to issue defamation proceedings within two years of publication meant that the High Court had no jurisdiction to extend time under section 11(2)(c)(ii). Haughton J. described that as "*fatal*" to the plaintiff's application. Similar views on the absolute nature of the bar on defamation proceedings issued outside two years of publication can be seen in *Joyce v. Mayo Travellers Support Group and Geraghty* [2023] IEHC 84; *McAllister v. Commissioner of An Garda Síochána* [2023] IEHC 314; *O'Brien v. O'Brien* [2019] IEHC 591 and *Taheny v. Honeyman & ors* [2015] IEHC 883.

(2) Excluding periods of time

9. From 6 January 2020, when the plaintiff first became aware of the defendant's complaint to An Garda Síochána, until he was informed of the DPP's decision not to prosecute him on 8 February 2021, the plaintiff says that it would have been inappropriate for him to issue proceedings while a criminal investigation was ongoing. In his carefully drafted affidavit, he avers to his view and understanding in that regard. He also cites the Victims' Rights Directive 2012/29, transposed by the Criminal Justice (Victims of Crime) Act 2017, as a basis for his claim that instituting civil proceedings before the conclusion of the criminal investigation "*would likely have caused an undue encroachment on the exercise of duties and obligations by members of An Garda Síochána*" (at para. 9(b) of his replying affidavit). He does not say that his views arose from any legal advice given to him at that time. He did not secure legal representation in relation to the civil proceedings he wished to institute until April 2021, although he says he "*reached out to several different law firms*" during that time. He was, of course, instructing a specialised criminal defence lawyer at that time, whom he says was reluctant to represent him in his civil action. The plaintiff does not aver to any advice sought from or furnished by his criminal defence lawyer in relation to the concerns he claims to have had about how his intended civil proceedings might have impacted on the criminal investigation on which that lawyer was advising him.

10. There is no legitimate, legal basis for the concerns the plaintiff claims to have had, which he said caused him to delay in issuing his civil proceedings until October 2021, almost three years after the defendant's complaint, twenty one months after the plaintiff was first

made aware of it, eight months after the DPP confirmed he would not be prosecuted and six months after the plaintiff instructed his current solicitors to represent him in the within proceedings. There is nothing unlawful in issuing civil proceedings while a criminal investigation is in existence, particularly proceedings aimed at vindicating a constitutional right such as the right to a good name. The plaintiff's other stated reasons for delay, including his reluctance to litigate against a family member, does not identify or justify a different date for when the plaintiff's cause of action accrued other than 13 November 2018.

11. There is, therefore, no basis in law or the evidence in this case to extend the time and/or to find that the plaintiff's cause of action accrued on any date other than 13 November 2018. The plaintiff's proceedings are statute barred. I refuse this application.

Indicative view on costs

12. My indicative view on costs is that, in accordance with s. 169 of the Legal Services Regulation Act 2015, the defendant, having succeeded in defending the plaintiff's motion to extend time, is entitled to his costs to be adjudicated upon in default of agreement. I will put the matter in for mention at 10.30am on 26 July 2024 to hear the parties in relation to the final orders that should be made, including costs.