THE SUPREME COURT

1512

140/96

Murphy J
Lynch J
Barron J

James Farley

Plaintiff

AND

Ireland, An Taoiseach , Cabinet Ministers and the Attorney General

Defendants

Ex tempore judgment of Mr Justice Francis D Murphy delivered the 1st day of May 1997. (Reconstituted)

This is an appeal from the order of Mr Justice Barr made on the 29th day of April 1996 by which he struck out the Plaintiff's claims herein on the ground that they disclosed no reasonable cause of action and that the said proceedings were frivolous and vexatious.

In these proceedings the Plaintiff, James Farley, claimed declarations that certain provisions of the Guardianship of Infants Act, 1964, and the Family Home Protection Act, 1976, were unconstitutional. There is of course no doubt that

proceedings claiming such relief would in terms disclose a cause of action. What the learned trial Judge concluded was that on any examination of the facts there was no possibility of such an action succeeding. To maintain an action which has no prospect of success however, honourable and well motivated the plaintiff may be, would be vexatious and accordingly would be properly struck out pursuant to Order 19 Rule 28 of the Rules of the Superior Courts.

There is a long and tragic background to these proceedings. Mr Farley and his wife Kathleen had two daughters who were born in 1972 and 1974 respectively. Matrimonial problems developed and proceedings in relation thereto were instituted as far back as 1976.

There is little formal evidence before this Court as to the course which those proceedings took or the unhappy events that followed. Mr Farley in his argument to the Court has outlined these events and there are certain documents before the Court emanating from the daughters. Whilst I have no reason to doubt Mr Farley's account of what took place and for the purpose of this application I am prepared to accept that it is true and accurate. I must stress that the Court has not had the opportunity of hearing the evidence or any account from the person whose conduct is most severely criticised and accordingly there is no question of

a judgment being made on that conduct but merely an assumption that Mr Farley's account is correct.

What Mr Farley says is that Mrs Farley was given custody of his two daughters and that they stayed with her for some time in Dublin and subsequently in the United States. Mr Farley says - and the documentation from his daughters supports this - that the two girls were very badly neglected and very badly treated by their mother both in Ireland and in the United States. Mr Farley says - and I have no reason to doubt it - that he did all he could to help his daughters. He went to the United States several times to help them legally and financially. He has been deeply hurt and aggrieved by what has happened to his family. What he says with simplicity and apparent sincerity is that the law should not have permitted his daughters to endure these misfortunes.

The basis of Mr Farley's constitutional challenge is this. He says that the law which permitted these things to happen must be unconstitutional. He does not want anyone else to suffer what he and more particularly his daughters have suffered. Any law which allows this to happen must be unconstitutional.

The areas in which the law failed, according to Mr Farley, are twofold. First, in permitting custody of the children to be given to Mrs Farley and, secondly in

permitting or allowing the names of the children to be added to Mrs Farley's passport and thus facilitating their removal from the jurisdiction.

Mr Farley complains that in relation to custody judges are biased in favour of the mother and that they always believe the mother against the husband. He also complains that the judge should not have permitted the children's names to be put on the passport or if they were allowed to travel to the United States that the supervision of the children should have been retained by the Irish Courts.

The difficulty in relation to these arguments is that they amount to a criticism, perhaps a well founded criticism, of the decisions of the Courts. One has to accept, unfortunately, that judges are fallible and may be wrong. In particular they may prefer the evidence of one witness to another and they may be wrong in doing so. In particular it may be that they do, or perhaps did, tend to prefer to give custody to a mother in preference to a father. These defects, where they arise, are errors by the judge: not faults in the legislation which they are purporting to administer.

The crucial event in this unhappy family matter as Mr Farley says was the giving of custody to the mother under the Guardianship of Infants Act, 1964. In so far

as the legislation is concerned it is vital to know that Section 3 of that Act 1516 provides as follows:-

> *"Where in any proceedings before any Court the custody, guardianship or upbringing of an infant, or the administration of any property belonging to or held on trust for an infant, or the application of the income thereof, is in question, the Court in deciding that question shall regard the welfare of the infant as the first and paramount consideration."*

As the Act itself so clearly requires that it is the welfare of the infant which is to be the first and paramount consideration the Act could not be the cause of the problem of which Mr Farley complains.

Inescapably Mr Farley's complaint, though he makes it with restraint and indeed respect is that it was the judges by whom the legislation was administered, rather than the Oireachtas, who are responsible for the injustice which he says occurred. The law as enacted in this respect is, as I see it, impeccable and indeed must necessarily be accepted by Mr Farley as such because it puts the welfare of the infants as the first and paramount consideration. There is no question of the legislature preferring the interest of the mother against the father or indeed either

of them as against the children. It was the children whose interest was made paramount and if unhappily it is the case that through human fallibility judges erred in applying the test laid down by the 1964 Act I am afraid that the consequences of such errors cannot be corrected in these proceedings. In my view the purported challenge to the constitutionality of the Acts impugned is manifestly unsustainable and accordingly I take the view that the learned trial Judge was correct in dismissing the proceedings.

I would reject the appeal.

Francis D Murphy

THE SUPREME COURT

140/96

Murphy J.,
Lynch J.,
Barron J.

BETWEEN:

FARLEY

Plaintiff

- V -

IRELAND & ORS

Defendant

Judgment of the court (ex-tempore) delivered on the 1st day of May 1997 by Lynch J.

I agree with the judgment which has just been delivered by Mr. Justice Murphy but I want to add just a few words myself. Accepting the correspondence from the Plaintiff Mr. Farley's two daughters which is included in his book of appeal it is clear that the Courts chose the wrong option in giving custody of the two girls to the wife. She neglected the two daughters showing little or no interest in them. On the other hand Mr. Farley did all that he could to support them by sending money to them from Ireland, by visiting in America and by litigating in

the United States Courts at no doubt great expense. There is no doubt that the Courts failed to arrive at the best decision in this case but even if they had it must be remembered that people sometimes succeed in frustrating court decisions. This is especially so in Family Law matters where for example one spouse flees to another country with the children. In regard to such cases it is worth recalling that over the last ten years or so great improvements have been achieved in the enforcement internationally of custody orders by treaties and mutual laws imposing ~~the~~ duties on ~~ports~~ courts in one country to return children to their country of domicile to be dealt with ~~of~~ by the courts of that country. All that is of course not strictly relevant to the present proceedings which are clearly unsustainable for the reasons stated by Mr. Justice Murphy. Indeed the sections of the statutes complained of are designed to protect the rights of children but unfortunately can sometimes be frustrated by the disobedience of one or other of the parties. If I may say so, I would advise and urge Mr. Farley to put all that has happened behind him now. His daughters are of full age. Elaine is 25 years old, Lisa is 23 years old. ~~There~~ They are at an age indeed when they may be marrying quite shortly. Litigation is expensive and time consuming and Mr. Farley can be far more useful to his daughters by applying his undoubted talents and abilities to their support and guidance.

Approved as amended in blue biro on page 1 + above.
14/5/97

Murphy J.
Lynch J.
Barron J.
140/96

THE SUPREME COURT

FARLEY

v.

IRELAND AND OTHERS

JUDGMENT (ex tempore) delivered on the 1st May 1997 by

BARRON J.

I agree with the views expressed by both my colleagues. I would not have **decided this matter solely on the basis of locus standi. You may challenge what has happened in the past if it affects you adversely and if there is a remedy available for what has happened in the past. Certainly,**

there would be a case I think for Mr. Farley to argue that he was in such a position.

The seeds of the present problem and the entirety of the unfortunate saga which developed lay perhaps in the belief in the early 70s at a time when custody proceedings were to an extent not so much in their infancy but changing from being dealt with under habeas corpus to being dealt with under the Guardianship of Infants Act that young children should be given into the custody of their mother. A belief I might say nurtured by psychologists and psychiatrists who gave evidence. Such views are not held so strongly today. Also international conventions have now been passed the terms of which alleviate to some extent part of the problems which happened in this case.

So far as the legality of the matter is concerned frivolous and vexatious are legal terms, they are not pejorative in any sense or possibly

in the sense that Mr. Farley may think they are. It is merely a question of saying that so far as the plaintiff is concerned if he has no reasonable chance of succeeding then the law says that it is frivolous to bring the case. Similarly, it is a hardship on the defendant to have to take steps to defend something which cannot succeed and the law calls that vexatious. And again one cannot change the principles of law to suit the merits of a particular case and to some extent I think Mr. Farley may be asking us to do that.

The reality of this case is that he says that the law did not protect the interests of his children. My colleagues have pointed out that the law did do that. It is the manner perhaps in which the law was administered which has resulted in what happened. I would say that no individual step has caused all the problems which Mr. Farley has faced, one step led to another and this cumulative effect has resulted in what occurred. But it

seems to me that the situation now is that there is no remedy and

regretfully, I must agree that the appeal should be refused.

Henry J Barron
1/5/07

JB5