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Judgment

Title:	Coffey -v- Tara Mines Ltd
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High Court Record Number:	1994 4010 P & 1997 3916 P
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THE HIGH COURT

[1994 No. 4010 P]

[1997 No. 3916 P]

BETWEEN

GABRIEL COFFEY

PLAINTIFF

AND

TARA MINES LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice O'Neill delivered on the 31st day of July 2007

By order of this court made on the 25th day of April, 2006 (Johnson J.) it was ordered that a preliminary issue be tried as to the issue of whether Sandra Coffey the wife of the plaintiff can represent the plaintiff in all proceedings before the court in respect of his claims against the defendants.

On the trial of that issue before me Sandra Coffey appeared in person, the defendants were represented by solicitor and counsel. The Incorporated Law Society of Ireland appeared and through counsel offered the court assistance. The Attorney General appeared represented by a solicitor and counsel and made submissions on the issue to be tried, as *amicus curie*. The solicitor on record for the plaintiff was represented by counsel and he also filed an affidavit.

The background to this matter is as follows.

The plaintiff in this case Gabriel Coffey initiated two sets of High Court proceedings against the defendants as indicated in the title hereof. In the first of these under record number [1994] 4010P, the plaintiff claimed damages in respect of dermatitis contracted by him July 1991 in the course of his employment with the defendants and also in respect of a shoulder injury suffered by him on the 19th May, 1992, also in the course of his employment. In the second action under record number [1997] 3916P, the plaintiff claimed damages in respect of a neck and head injury sustained by him on the 15th May, 1995 as a result of a fall in the course of his employment with the defendants. These actions came on for hearing together before Johnson J. In respect of the action under record number [1994] 4010P liability was conceded by the defendants and it therefore proceeded as an assessment of damages. Liability was contested in the second action. The trial of these actions was adjourned by Johnson J. on the 16th November, 2000 because certain witnesses were not available and it is suggested that a map had not been produced. The trial has not since been resumed.

It is apparent that this has come about because of a number of factors, namely very serious illness on the part of the plaintiff and a complete breakdown in the professional relationship between the plaintiff and his solicitor. As a result of the latter, serious allegations have been made against the solicitor and complaints have been made to the Law Society. It is wholly unnecessary for me to embark upon any inquiry into these allegations and I make no finding whatsoever in relation to them.

In his affidavit the solicitor on record for the plaintiff exhibited a document under the title "Form of Authority" whereby the plaintiff authorised his wife Sandra Coffey to act in his stead in all matters relating to his affairs and in specifically these court cases and indeed other litigation as well. Mr. Keane informed the court that he was satisfied that this document was an authentic document and he indicated to the court that he was willing to consent to an order taking him off record as acting for the plaintiff in these proceedings. Mrs. Coffey indicated to the court that she, acting with the authority of her husband wanted Mr. Keane discharged as solicitor for the plaintiff in the case.

Consequent upon the foregoing I made an order taking Mr. Keane off record as acting for the plaintiff in both sets of proceedings.

The second problem which clearly has delayed the resumption of the trial in these actions has been the health of the plaintiff.

A letter dated the 28th June, 2006 from the Department of Neurosurgery, Beaumont Hospital was opened to the court. It is in the following terms:

"RE: GABRIEL COFFEY, COOLFORE ROAD, ARD BRACCAN, NAVAN, CO. MEATH. DOB 12/11/1946.

TO WHOM IT MAY CONCERN:

This gentleman suffered a spontaneous intra cranial haemorrhage in April, 2005 from a ruptured aneurysm.

He required surgery to deal with this and as a consequence of his illness and subsequent treatment, he has been left with a significant speech impediment, being unable to express himself.

Following his recent review I think that it would be very unlikely that this will resolve completely in the future and as a consequence, he will need significant assistance in trying to make himself understood and will probably require other people to speak on his behalf to recount previous events.

If any further information is required please do not hesitate to contact me.

Yours faithfully,

Daniel Rawluk

Consultant Neurosurgeon."

A further letter dated 5 July, 2006 from Dr. Declan O'Keeffe, Consultant Anaesthetist/Pain medicine was opened to the court and it is in the following terms:

"Re:Gabriel Coffey, Ard Braccan, Navan, Co. Meath.

To whom it may concern:

Mr. Gabriel Coffey has been a patient in my service since October, 13th 1995. He has chronic cervical pain.

In 1997 under the care of Mr. John Sutcliffe, Royal London Hospital, he received two intra mural rhizotomies for this condition. Following these procedures he had a reduction of his pain and returned to work. Unfortunately, he fell at work resulting in a fracture to his femur. Since this secondary incident he has a recurrence of his headaches.

My impression is that Mr. Gabriel Coffey has significant cervical pain and this was only temporarily abated by his intra mural rhizotomies. Unfortunately the pain has recurred since then. Following your well documented report from Mr. Daniel Rawluc, you will see that that Mr. Gabriel Coffey is currently unable to give evidence for himself. I am happy to give evidence on his behalf to support his case if needs be.

Yours sincerely,

Dr. Declan O'Keeffe."

Mrs. Coffey informed the court that the plaintiff is considerably restricted in his mobility. He does not go out on his own. He does not drive a car. He can be driven for short distances in a car. He requires to remain close to a chair with a high back in order to support his head and neck. She told the court that the plaintiff was not at all mentally impaired.

She informed the court that her husband wished her to represent him in the these proceedings because of his inability to represent himself and also because the plaintiff and Mrs. Coffey were unable to get any other solicitor to take over these cases to replace Mr. Keane.

In this regard Mrs. Coffey gave evidence of having been furnished with a list of solicitors by the Law Society for the purposes of obtaining another solicitor and that she wrote to all 22 solicitors on the list requesting that they take over these cases but received replies from only 7, and all of these were refusals to act. She acknowledged in cross-examination that in her letters of request she asked the solicitors to act on a *pro bono* basis but she was of the view that they would readily have understood that if the outcome to the case was successful that they would recover their fees.

Amongst those to whom she wrote requesting legal representation was the Legal Aid Board who did not reply.

Mrs. Coffey told the court that she has no wish or desire, to conduct these proceedings herself but is seeking to represent her husband in these cases solely because she is unable to obtain, despite her best efforts, legal representation.

I am satisfied from the evidence put before this court that by reason of the disabilities which afflict the plaintiff he would be wholly incapable of representing himself in these cases. I am also satisfied that having regard to the breakdown in trust and confidence as between the plaintiff and Mrs. Coffey and Mr. Keane that it is not practical or even possible for Mr. Keane to continue to act as solicitor in these cases and for that reason I discharged him.

That then creates the problem of providing legal representation or indeed any representation for the plaintiff in these cases.

The first and obvious step to be taken in that regard was that a formal application be made to the Legal Aid Board for legal advice and assistance in relation to these cases. I directed Mrs. Coffey to make that application forthwith and I adjourned the trial of this issue to enable her to do that. Having made that application I am now satisfied that she has been unsuccessful.

In these circumstances this court is now unavoidably confronted with the issue of whether or not Mrs. Coffey is either entitled as of right, or whether a privilege should be extended to her, to represent the plaintiff in these proceedings. I am informed by counsel that whilst this issues has been touched on in other cases it has never been unequivocally determined by the courts in this jurisdiction.

Mrs. Coffey makes the case relying upon a considerable variety of constitutional cases that her husband has a right of access to the courts, a right to avail of legal representation to exercise the former right and where legal representation is not available to the plaintiff and as the plaintiff wants Mrs. Coffey to represent him in these proceedings, the aforementioned constitutional rights can be relied upon by her and seeking a right of audience in this court for the purpose of representing the plaintiff, in these actions.

The defendants in the actions oppose the relief now sought by Mrs. Coffey. In so doing they invoke the well settled principle that only parties themselves or duly qualified lawyers who under statute or under common law enjoy a right of audience in this court can appear as a representative in litigation. In this regard they rely upon the judgments of the Supreme Court in the case of *Battle v. The Irish Art Promotion Centre Limited* [1968] I.R. 252 in which it was held that a director or servant or other officer of a company could not represent a company in litigation in the absence of statutory exception.

The defendants also refer to the judgment of Budd J in the case of *P.M.L.B. v. P.H.J. and P.H.J and Company and the Incorporated Law Society of Ireland* (Unreported, Judgment delivered 5th May, 1992), where the learned Judge conducted an extensive review of common law authorities on this topic.

For the Attorney General it was submitted that whilst there was no clear authority for the proposition, the Attorney General favoured the view that this court had an inherent jurisdiction to control and manage its own proceedings and in very rare and exceptional cases could, in its discretion permit a litigant to be represented by an unqualified advocate.

In this regard it was submitted that the following passages in the judgment of Budd J. in the**P.M.L.B**. case and also the following passage from the judgment of Keane C.J. in the case of *R.B. v. A.S.* [2002] 2 I.R. 428, support the view that this court can exercise the discretion above mentioned.

The foregoing passages are as follow:-

From the judgment of Budd J. at p. 43:

"In my view the discretionary approach adopted as the correct law by the New Zealand Court of Appeal is preferable but I do not think that the plaintiff's case comes anywhere near the rare and exceptional cases envisaged by the Court."

From the judgment of Keane C.J. in *R.B. v. A.S.*:

"A party is to litigation in our courts, whether it is civil or criminal, is entitled as a matter of constitutional right to fair procedures. They are also entitled again as a matter of constitutional right to access to the courts and it is a necessary corollary of that right that they may conduct litigation with or without legal representation as they choose. Save in special circumstances, which do not arise in these proceedings, the court has no function in relation to the representation of parties appearing before them. Nor is it necessary in the context of the present case to consider the State's obligations under the Constitution or international conventions to which it is a party to ensure that persons who cannot afford legal representation are given such assistance as is necessary in order to ensure that their rights under the constitution in these conventions are protected…

The trial of cases involving lay litigants thus requires patience and understanding on a part of trial judges. They have to ensure, as best they can, that justice is not put at risk by the absence of expert legal representation on one side of the case. At the same time they have to bear constantly in mind that the party with legal representation is not to be unfairly penalised because he or she is so represented. It can be difficult to achieve the balance which justice requires and the problem is generally at its most acute in family law cases such as the present."

In the course of his judgment in the *P.M.L.B*. case Budd J. conducted an extensive review of common law authorities on the question of whether a lay person can represent a litigant in

proceedings. As part of that review he dwelt on the judgments of the Court of Appeal of New Zealand in the case of *G.J. Mannix Limited* [1984] 1 N.Z.L.R. 309.

I am particularly attracted to the following extract quoted from the judgment of Somers J. at p. 316 of the report where he says:

"But I consider the superior courts to have a residual discretion in this matter arising from the inherent power to regulate their own proceedings. Cases will arise where the due administration of justice may require some relaxation of the general rule. The occurrence is likely to be rare, their circumstances exceptional or at least unusual and their content modest. Such cases can confidently be left to the good sense of the judges."

Budd J. seems to approve the content of this passage in his conclusion at p. 43 as quoted above even if he does not unequivocally adopt it as a correct statement of the law.

The question then arises as to whether the judgments of the Supreme Court in the Battle case inhibit the adoption by this court of the foregoing statement of Somers J. as a correct statement of the law.

In that case the issue was whether or not a managing director of a company had a right of audience in court to represent the company which was a defendant in proceedings. The managing director in question appeared in person on the application. At the close of the appeal the Supreme Court allowed the application to stand over, so that the court could have an opportunity of examining the law. In his judgment of O'Dálaigh C.J. with whom the other members of the court agreed, reviewed the English authorities in point namely *Scriven v. Jescott Leeds Limited 53 Sol. Jo. 101; London County Council and London Tramways Company* [13 T.L.R. 254); *Frinton and Walton U.D.C. v. Walton and District Sand and Mineral Company Limted* (1938) 1. All E.R. 649;*Trintonia Limited v. Equity and Law Life Assurance Society* (1943) A.C. 584 and *Charles P. Kinnell and Company v. Harding, Wace and Co*. (1918) 1 K.B. 405. Having so done, the learned Chief Justice went on to say the following:

"This survey of the cases indicates clearly that the law is as we apprehended it to be when this application was first made to us, viz. that, in the absence of statutory exception a limited company cannot be represented in court proceedings by its managing director or other officer or servant. This is an infirmity of the company which derives from its own very nature. The creation of the company is the act of its subscribers; the subscribers, in discarding their own personae for the persona of the company, doubtless did so for the advantages which incorporation offers to traders. In seeking incorporation they thereby lose the right of audience which they would have as individuals; but the choice has been their own. One sympathises with the purpose which the appellant has in mind, to wit, to safeguard his business reputation; but, as the law stands, he cannot as a major shareholder and managing director now substitute his persona for that of the company…"

As noted, the appellant in that case Mr. Battle appeared in person and the issue as to whether or not this court had an inherent jurisdiction of the kind described by Somers J. above, was not raised or argued. Neither was that issue referred to at all in any of the cases considered by the Supreme Court.

It is a well settled principle of our system of jurisprudence that what is not argued is not decided. In my view the judgment of the Supreme Court in the Battle case is not to be seen as an authority

which excludes an inherent jurisdiction in this court to manage and control its own proceedings and in a rare and exceptional cases to permit an unqualified advocate to represent another litigant.

I am satisfied that this court does possess such an inherent jurisdiction and that I should deal with the application of Mrs. Coffey accordingly.

The combination of circumstances revealed in this case, namely the adjournment of the trial of these actions at a very advanced stage, the collapse in the relationship between the plaintiff, and Mrs. Cofffey and the plaintiff's legal advisors; the occurrence of a very serious illness resulting in a disability which renders the plaintiff wholly incapable of representing himself; the fact that the plaintiff is not a person of unsound mind; the inability of Mrs. Coffey despite her best efforts to secure the services of another solicitor; and the refusal of the Legal Aid Board to provide legal aid for her; are in my view a combination of circumstances that are so exceptional or rare as to probably, be unique.

It is quite clear, that unless Mrs. Coffey is permitted to represent, the plaintiff, his actions will proceed no further, and that is an outcome or consequence that would be destructive of the interests of justice.

I am quite satisfied that this court should exercise its discretion to move to prevent that situation arising, by permitting Mrs. Coffey to represent the plaintiff in these proceedings, that is to say, the proceedings bearing the record numbers recited in the title hereof.