THE HIGH COURT

[2023] IEHC 399

Record No. 2022/1456 P

BETWEEN

SHARON BROWNE, DAVID EGAN AND EMMANUAL LAVERY

PLAINTIFFS

AND

AN TAOISEACH, THE MINISTER FOR HEALTH AND THE HEALTH SERVICE EXECUTIVE (No. 2)

DEFENDANTS

JUDGMENT OF Mr. Justice Twomey delivered on 4th day of July, 2023

INTRODUCTION

1. The plaintiffs seek my recusal from dealing with the final orders arising from the judgment I gave on 25th April, 2023 (*Browne & ors. v. An Taoiseach & ors.* [2023] IEHC 205 ("**Principal Judgment**")).

2. The Principal Judgment dealt with a preliminary application by the plaintiffs for a protective costs order, so that they would not be liable for legal costs if they lost the substantive case they were bringing.

3. In the substantive case, the plaintiffs are seeking a court order halting the *voluntary* vaccination programme operated by the defendants, whereby parents can have their children vaccinated with the Covid-19 vaccine. In the Principal Judgment, I concluded that the plaintiffs were not entitled to a protective costs order. Thus, if they continue with the substantive case

and lose, they are likely to be liable for the legal costs of the defendants, on the basis of the usual rule that the costs follow the event/the loser pays.

4. I reached that conclusion because, amongst other things, I found that the substantive case being pursued by the plaintiffs amounts to an abuse of process. This is because of the baseless and scandalous claims made by the plaintiffs regarding the Covid-19 vaccine being a bio-weapon which was part of Bill Gates' plan to depopulate the world. It was also because of the plaintiffs' baseless and scandalous claims in which they compare the actions of the defendants in distributing the vaccine to the actions of the Nazis during World War II.

5. Since the plaintiffs do not wish for me to deal with the costs and any other orders arising from the Principal Judgment, this judgment therefore deals with an application for the recusal of a judge *after* he has delivered judgment.

ANALYSIS

6. The plaintiffs are lay litigants and this is a most unusual recusal application because it is an application for a judge to recuse himself *not* before the case is heard or even during the case, but rather *after* the case has finished and *after* judgment has been delivered. Such a recusal application appears to be unprecedented as neither party produced any case law where there was ever a recusal application *after* the judge had decided the case (as distinct from complaints being made about the manner in which a judge dealt with a case, at the appeal of that judgment).

7. In this case, the evidence, relied upon by the plaintiffs to support their claim that I am biased and that I should now recuse myself, is the judgment itself. For instance, the plaintiffs say I should recuse myself because it is clear from that judgment that I *'ignored'* the evidence they provided and that I have used *'intemperate'* language in the judgment. In this regard, they say that I have used the term '*conspiracy theory'* and '*baseless'* and *'scandalous'*. It is correct

that this language is used in the judgment. For example in the very first sentence of the judgment I say:

> "In these proceedings, the plaintiffs make, what the defendants have described as, '*scandalous'* and *'alarmist'* claims that the HSE has been guilty of the mass killing of children in Ireland by administering the Covid-19 vaccine."

Similarly at para. 12, I say that the plaintiffs' claims that the defendants are Nazis and that the Covid-19 vaccine is part of Bill Gates' plans to depopulate the world raises:

> "the risk of the administration of justice being brought into disrepute by the court room being used (at taxpayers' expense) as a cheap way for litigants to air scandalous claims against civil/public servants and achieve publicity for conspiracy theories or other causes, as if the courts were some *'sort of debating society'* (*per* the Supreme Court judgment in *Riordan* at p. 764)."

However, any complaints which the plaintiffs have about the conclusions I reached, or the language I used, in the judgment is a matter for appeal. It is not a basis for seeking my recusal from dealing with the final orders which arise from a judgment that has already been delivered.

8. It is also relevant to note that the plaintiffs had no issues with me hearing the case during the hearing, but only raised allegations of bias *after* the judgment was handed down. It is impossible to avoid the conclusion that if the decision had gone the plaintiffs' way, they would not be seeking my recusal and therefore that the recusal application is solely based on the terms of the judgment, i.e. that they lost the case because I found that their claims were '*baseless'*.

9. In this regard, it is clear from the judgment of Murray J. in *Spin Communication v I.R.T.C.* [2001] 4 I.R. 411 at p. 431 that for a claim of bias against a judge to be relevant to a recusal application, the facts giving rise to the alleged bias, must exist prior to the judgment being handed down. Yet, it is clear in this instance that the facts upon which the plaintiffs rely

are the judgment itself and so those facts did not exist prior to the judgment being handed down. Accordingly, these facts cannot be a basis for a recusal application.

10. Similarly, it is clear from the judgment of Murphy J. in *Orange v. Director of Telecommunications* [2000] 4 I.R. 159 at p. 245 that bias cannot be inferred from the fact that there has been an adverse finding against a party in a particular case. Thus the fact that I have found against the plaintiffs is not evidence of bias. If it were otherwise, it is likely that our courts would be filled with losing litigants seeking the recusal of the judge who had decided against them, e.g. because a losing litigant believes, as claimed by the plaintiffs in this case, that I *'ignored'* the evidence which allegedly support their claim. This would lead to a situation where, rather than appealing and so bringing finality to the proceedings, losing litigants could seek the recusal of the judge and presumably then seek a new judge to hear the case. Then if that new judge decided against them, they could seek his recusal, presumably in an endless loop to find a judge who might decide in their favour or until all available judges had heard their case.

11. For their part, the plaintiffs relied on the test set down by Denham J. in *Bula v. Tara Mines Ltd* [2000] 4 I.R. 412 at p. 449 that the correct approach in relation to recusal of a judge is objective and the onus rests upon them as applicants. They relied on Denham J.'s statement that the:

> "*question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an* ***impartial mind*** *to bear on the adjudication of the case".* (Emphasis added, per *The President of the Republic of South Africa and Ors. v. South African Rugby Football Union* 1999 (7) BCLR 725 (CC) at p.49)

However, the impartiality to which Denham J. refers is, as noted by Murray J. in *Spin Communication*, an impartiality that existed *prior* to the judgment being handed down. It is not

an alleged impartiality that arises *in the judgment* because the judge prefers one side's argument over another side's argument. The very nature of judging is that a judge has to decide which side's argument he prefers (or is partial to), and this cannot be a basis for saying that a judge is *impartial* and so should not deal with final orders or indeed deal with future hearings. If this were the case, every judge after every judgment would have to recuse herself from any further dealings with the parties because she had (allegedly) shown herself to be impartial by favouring one side.

12. For all these reasons, I reject the application that after giving judgment I should now recuse myself and so I reject the application that I cannot deal with the final orders, including costs, arising from the judgment.

13. Finally, the plaintiffs are also seeking my recusal from dealing with any future hearings in this case, on the assumption that I will be the judge dealing with any future hearings, which is clearly not certain. Based on their oral submissions, it seems that they are claiming that every judge of the High Court should not hear the substantive case, on the basis that they cannot get a fair hearing in the High Court, because they say the terms of my judgment are such that other High Court judges will be prejudiced in hearing the matter.

14. I can only deal with the application to recuse me and so cannot deal with the suggestion that the High Court, as a whole, should recuse itself from hearing the case.

15. The issue of the recusal of a judge in relation to proceedings that might be, but are not guaranteed to be heard by him, arose in a different case dealt with by me. That was in the case of *Defender Ltd. v. HSBC Institutional Trust Services (Ireland) Limited* [2019] IEHC 32. In that case, I determined that it would not be a good use of court resources for me to have to prepare a reserved judgment on a recusal application that may never be necessary. This was because in that case, there was no guarantee that the substantive hearing would be assigned to

me. This approach was upheld on appeal in *Defender Ltd. v. HSBC Institutional Trust Services (Ireland) Limited* [2019] IECA 337 at para. 40.

16. It seems to me that the same approach should be taken here, namely that there is no guarantee that I will be hearing any future proceedings in this matter and so there is no need for me to make a decision on the recusal application insofar as it relates future motions or the substantive hearing.

CONCLUSION

17. In conclusion, I reject the recusal application in relation to my dealing with the final orders, including costs, which arise from the Principal Judgment. As I am not currently due to hear the substantive case brought by the plaintiffs or any future interlocutory applications in the case, I do not need to deal with the recusal application insofar as it relates to my hypothetical future involvement in the proceedings.