

THE HIGH COURT

[2023] IEHC 78

[2022 No. 4507 P]

BETWEEN

THE BOARD OF MANAGEMENT OF WILSON'S HOSPITAL SCHOOL

PLAINTIFF

AND

ENOCH BURKE

DEFENDANT

DIRECTION of Mr. Justice Brian O'Moore delivered on the 14th day of February, 2023.

1. In my judgment of the 31st of January 2023, a number of factors were identified which strongly supported the case management of this action in order to achieve an early trial. Directions were proposed which would have seen a hearing take place on about the 21st of April 2023, shortly after the Easter break. However, the judgment also held out the possibility of a trial in late March if the parties could be ready for a hearing before Easter.

2. Following the delivery of that judgment, Mr. Burke responded to the proposed directions and did so within the time stipulated in my ruling. The school addressed the proposed directions on the 8th of February, some days after the deadline which I had set. The sequence in which the parties stated their respective positions is of some importance.

3. The proposed directions were not accepted by Mr. Burke, in essence because his "purported" dismissal from his teaching post at the school is due to take effect on the 21st of April 2023. This fact was not known to me until receipt of Mr. Burke's emailed letter of the 3rd of February. Mr. Burke wants a trial to take place at "the earliest possible date after the Court of Appeal hearing on 16 February 2023." The reason for such an expedited hearing, according to Mr. Burke, is that his counterclaim in these proceedings seeks reliefs which go to the legality of his dismissal. Mr. Burke also queries three specific aspects of the proposed directions;

(a) Mr. Burke believes that the trial will last 2 days, as opposed to the estimate of 6 days contained in the judgment. He goes on to note that the school has never indicated that the hearing would last 6 days, though that point is of no real relevance; neither side has offered an estimate of the length of the hearing. It is of some interest, however, that the school has not disagreed with the 6 day estimate in its response to the proposed

directions. Given the dogged nature of every application so far in this action (inasmuch as I know of them) and given the potential range of issues in the case, the estimate of 2 days is unrealistically optimistic. The hearing will now be listed for 4 days, given Mr. Burke's belief that he should be able to present his case in 1 day.

(b) Mr. Burke does not agree that there is a need for witness statements, given the comprehensive affidavit evidence. Of course, either party may want to call a witness who has not already sworn an affidavit. That is as true of Mr. Burke as it is of the school. In order to avoid any surprise witnesses at the trial, and in order to ensure that the case finishes within its allotted time, witness statements will be provided. It is to be hoped that, subject to any clarification that may be appropriate, the witness statements can form the direct evidence of each person testifying at the trial. This will also save time and costs. Witness statements are not in substitution for cross examination, which will take place in the normal way.

(c) Mr. Burke believes that "very few, if any, documents will require to be discovered to [him]." This helpful approach cuts down on the need for any significant discovery to be made by the school. However, it remains for the parties to agree the precise extent of the discovery to be made. The school, equally helpfully, does not require discovery from Mr. Burke.

4. Lest there be any doubt about it, it should be clear that the making of the revised directions contained in the current Ruling in no way decides the issue of whether Mr. Burke, as a person in continuing contempt of court, is in a position to seek orders from the court to protect his interests. That question is one properly to be decided by the trial judge.

5. As Mr. Burke submits, and in particular in light of the significance for the parties of the 21st of April, revised directions should now be made to facilitate the possibility that the trial might take place this Term. In light of his observations on the proposed directions, the following fresh directions will apply;

(a) Witness Statements on behalf of the school to be delivered by close of business on the 22nd of February 2023. Any discovery is to be made by the school by the same deadline.

(b) Witness statements on behalf of Mr. Burke to be delivered by close of business on the 28th of February 2023.

(c) The school's legal submissions to be delivered by close of business on the 3rd of March 2023.

(d) Mr. Burke's legal submissions to be delivered by close of business on the 10th of March 2023.

6. These directions are possible because Mr. Burke is now prepared to agree to very expedited progress of the action, notwithstanding his earlier view that a trial before the judgment of the Court of Appeal would be "an abomination". It is also possible because the school (while accepting the directions proposed in the earlier judgment) has not disputed the desirability of a trial before Easter. As noted earlier, the school's position on directions was circulated after receipt of Mr. Burke's letter. It was therefore open to the school to take issue with Mr. Burke's correspondence, but it did not do so. The judgment of the 31st of January contemplated a trial in March, and this now should be achievable.

7. Before a trial date is fixed, the witness statements and discovery should be delivered. It is only when these steps are taken that the court can be confident that it is worthwhile to set aside the 4 days which the hearing will take. In addition, it will be necessary for me to ensure the availability of a judge to conduct the hearing. The parties will therefore inform the Chancery Registrar on the 1st of March if the directions have been complied with as of that date, and they will then be informed of the trial date.

8. The judgment of the 31st of January indicated that, after the exchange of correspondence between the parties in respect of the proposed directions, a hearing would take place “if needs be”. Such a hearing is not necessary, since the school has made no comment on (or objection to) Mr. Burke’s request for a trial “as early as possible” after the Court of Appeal hearing on the 16th of February. By the same token, and having carefully considered each of the points raised by Mr. Burke, a trial in mid March (which will be facilitated by these new directions) is as prompt a hearing as can be realistically achieved.