THE HIGH COURT

[2025] IEHC 39

2022 4507 P

BETWEEN

THE BOARD OF MANAGEMENT OF WILSON'S HOSPITAL SCHOOL

PLAINTIFF

AND

ENOCH BURKE

(NO. 2)

DEFENDANT

RULING of Mr Justice Nolan delivered on the 21st day of January, 2025

1. At the hearing of this matter on the 20th of December 2024, the Defendant Mr. Burke accused this court of acting unlawfully by directing that if anybody interrupted the hearing, I would have them removed from the courtroom and that they would be prohibited from returning for any future hearings.

2. The Defendant accused me of acting unlawfully and in breach of the decision of O'Donnell J. in a case called *Walsh v the Minister for Justice and Equality, the Director of Public Prosecutions, the Courts Service, Judge Alice Doyle, and the Governor of Cork Prison*

2019 [IESC] 15. He then demanded that I admit that I was wrong and called upon me to apologize and accused me of lying.

3. Thereafter, he maintained a constant barrage of insults anytime I attempted to speak, to the extent that it was difficult for people in the courtroom to hear what I was trying to say. I therefore rose to allow matters to calm down and on my return requested him not to interrupt. I asked him would he give an undertaking that he would not breach the court order of Owens J. and would abide by it, thereby purging his contempt.

4. Instead of answering that question, he continued his barrage of abuse directed at me.

5. After I released him from jail (see *The Board of Management of Wilsons Hospital School v Enoch Burke (No. 1)* [2024] IEHC 746), he and members of his family stated outside the court that I had acted unlawfully in breach of the *Walsh* case, saying that it was clear that I could not do what I had said I might do, namely direct the removal of anybody who interrupted the court proceedings. He then continued the assertion that I had lied.

6. I take this rather incoherent approach as an application that on the basis of the *Walsh* case that I should not make such a declaration. On that basis this is my ruling to such an application.

7. The case to which he refers is *Walsh v The Minister for Justice and Equality, the DPP, The Court Service, Judge Alice Doyle and the Governor of Cork Prisons* [2019] IESC 15 and in particular the decision of O'Donnell J. (as he then was).

8. The first thing to say is that this decision does not say what the Defendant says it says, indeed it says the complete opposite. It is a most useful analysis of the law relating to contempt of court and I am most grateful to him and his advisors for bringing it to my attention.

9. In many respects the issues around the *Walsh* case are quite similar to what has occurred here. Mr. Walsh attempted to represent his sister in the Circuit Court but since he

was not a lawyer the Circuit Judge refused to give him that permission. He, however, continued to talk over the judge and accused her of not having jurisdiction to hear the matter. It is clear that, similar to what has occurred in this case, the matter had been before the court on a number of occasions. Ultimately, Mr. Walsh was found to be in contempt of court and was sent to prison for a period of two weeks. An application was brought under Article 40.4 of the Constitution by a non-party.

10. Ultimately, the matter found its way before the Supreme Court where O'Donnell J. noted that the species of contempt of court which the Appellant was found guilty of, was contempt in the face of the court, or in the Latin phrase contempt *in facie curie.*

11. In the course of his analysis, he observed that it is central to a court's capacity to administer justice that it should be capable of maintaining order and that of all the places where law and order must be maintained, the first place is in the courtrooms themselves. He said:-

> *"The disruption of proceedings, the refusal to accept court rulings, and an insistence on continuing to speak when a matter has been determined by the judge, should not be mischaracterised as speaking truth to power, or merely challenging authority.*
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> *A judge sitting in a crowded courtroom has little power other than respect for the law itself. The refusal to accept rulings and decisions, the constant interruption of court proceedings, and the making of offensive interjections and comments is at best rude and inconsiderate to all other court users who are obliged to accept the necessity for calm in court proceedings, but more often amounts to simple bullying.*
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> *When carried out in a concerted manner, it is, and is often intended to be, menacing and intimidatory.*

These are serious concerns which should not be ignored or lightly dismissed. Disruption of proceedings attacks the very essence of a fair hearing which it is the court's obligation to provide, and every litigant's right to obtain".

12. He went on to say

"a courtroom cannot be a forum where the rule of law is applied unless those rules of law which promote a calm atmosphere and the orderly resolution of issues from untamed. That atmosphere of order may be taken for granted in most courts on most days, but it cannot be achieved without the possibility, even if rare, that the persistent and deliberate breach would attract a serious sanction. The enforcement of order must be immediate…

If the justice system could not immediately protect the courtroom proceedings from disruption, it would become correspondingly difficult not just to transact the business of the court, but also to persuade litigants, witnesses, and all others who have to have recourse to the courts system to trust it and to continue to abide by its decisions, even when they disagree with them."

13. He further observed that the power to commit a person to prison for contempt serves at least two interlinked purposes. The first and most immediate is the maintenance of order in the particular courtroom, while the second is the punishment of persons who simply refuse to obey the orders of the court and seek to disrupt proceedings and prevent them from taking place in the atmosphere of calm, which is objectively most conducive to a fair hearing.

14. In this case, it was not my intention to commit anybody to prison but to simply remove anyone who disrupted the proceedings from the court and prohibit them returning to court until they apologise and agreed not to continue to disrupt the court. In my view, that is an important distinction. Nonetheless, the words of O'Donnell J. support my comments.

15. Indeed, as O'Donnell J. stated that there is a distinction between removal of disruptive persons from court and punishment for contempt, which he felt was significant noting that certain measures taken by courts for the purposes of maintaining order fall outside the scope of Article 6 of the ECHR.

16. In a crucial passage relevant to this case he said:-

> "*Where, however, behaviour cannot be ignored, or it is a threat to the conduct of the proceedings being heard – and the presiding judge is really the only judge of this – a court has full power to address the matter, and if necessary, order that a person who will not desist from such conduct is removed from the court. If he or she persists, and seeks to re-enter the court, then such conduct would constitute a breach of the order, and would give rise to the possibility of further proceedings and sanction".*

17. He added that the power to remove a person from the courtroom and order that they not be permitted to return has as its objective that of maintaining order. He noted that it has been long established as part of the common law citing *R v Webb ex p. Hawker*, a case from 1899. Noting that these old cases applied with greater force in this jurisdiction where the courts are established pursuant to the constitution, in particular Article 34.

18. He noted that "*the administration of justice must be carried out in public but that does not give any individual member of the public an entitlement to behave in a courtroom in a manner which would not be tolerated elsewhere. The exclusion of one or more individual members of the public does not mean that the hearing is not being conducted in public, or that the public do not have access, which is what the constitution requires".*

19. He went so far as to set out the procedure which should be applied, which is simple and summary.

20. Firstly, the person should be warned that their behavior, if persisted in, may result in exclusion from the courtroom and that they should be given an opportunity of making any

representation, whether by way of explanation and excuse, or an apology, or an undertaking not to repeat the conduct, before the order is made and the person is removed.

21. This procedure is full of common sense and is practical and of course, is not in any way contrary to the Constitution or the rule of law. Indeed, the whole purpose of removing such a disruptive person is to ensure that the rule of law is carried out in public, in a clear and understandable way.

22. This power to remove disruptive persons from court has been given a statutory basis as far back as 1851 in the Petty Sessions (Ireland) Act of that year, Section 9 of which allows a court to direct that persons who willfully insult any judge or commit any other contempt of court, be removed from the court and if necessary be taken into custody.

23. This brings me to the comments of the Defendant that in some way I have acted unlawfully, illegally and have lied. As is clear to anybody who hears or reads this judgment and more particularly the words of O'Donnell J., this is not the case.

24. Accordingly, I dismiss the application, if I can call it that, that I have acted in any way unlawfully in issuing the warning which I've issued, and which I will issue again today.