

**APPROVED**

**[2025] IEHC 104**



**THE HIGH COURT**

**2022 4507 P**

**BETWEEN**

**THE BOARD OF MANAGEMENT OF WILSON'S HOSPITAL SCHOOL**

**PLAINTIFF**

**AND**

**ENOCH BURKE**

**(NO. 3)**

**DEFENDANT**

**JUDGEMENT of Mr Justice Nolan delivered on the 21<sup>st</sup> day of February, 2025**

**Background**

1. In *Board of Management of Wilson's Hospital School v Burke (No.1)* [2024] IEHC 746, having considered detailed submissions from the Plaintiff, the activities of the Defendant and the use of public funds, I decided that the Defendant should be released from jail, notwithstanding that he has failed to purge his contempt. I stated that the daily fine imposed by O'Moore J. in *Board of Management of Wilson's Hospital School v Burke* [2023] IEHC

144 of €700 a day, was not draconian enough and that it was my intention to increase that fine to the sum of €1,400 per day.

2. I urged him to consider the futility of his actions and hoped against hope that he would refrain from breaching the order of Owens J. where he granted a permanent injunction prohibiting the Defendant from attending the school premises.

3. I also directed that the Attorney General and representatives of the Department of Education and Department of Finance, come to court for the purposes of considering why the Defendant's bank account should not be sequestered and or why the Defendant's salary, presently being paid by the State, should not be paid to satisfy the fines imposed by the court, which the Defendant has refused to pay.

#### **The Hearing on the 21<sup>st</sup> of January 2025**

4. On the 21<sup>st</sup> of January 2025, the matter came back before me. It is clear that the Defendant has not considered the matter over the Christmas break and once the school opened on the 6<sup>th</sup> of January, has continued to attend the school. To be precise, he has gone through the gates and on occasions, has entered the school building. This is in flagrant breach of the court order of Owens J., a fact he knows well. Therefore, not only has he not purged his contempt he has, to use a colloquial phrase, doubled down on it.

5. Therefore, the time has come for the court to consider alternative methods to ensure compliance with its orders.

6. On top of that, he has failed to pay any of the fines which were directed by O' Moore J. in 2023 and yet, is still in receipt of his salary.

#### **The Submissions**

7. Mr. Kennedy SC appeared on behalf of the Attorney General, the Department of Education and Department of Finance (“the State”). An affidavit has been filed by James Walsh, principal officer of the Department of Education, who confirmed that whilst the Defendant is employed by the Plaintiff, his salary is discharged by the State, who pay it upon instruction from the school, as it does for all other teachers employed in an Oireachtas funded teaching post.

8. The State has kindly furnished outlined legal submissions, as have the Plaintiff, for which I am very grateful. I have also received correspondence from the Defendant which could not be considered a submission, since he simply rehashes his arguments that the Plaintiff and the court are breaching his rights under Article 44 of the Constitution, which guarantees to every citizen the rights to freedom of conscience and practice of religion. He repeats that he has spent 513 days in Mountjoy prison because he refused to abide by the instruction of the principal of the Plaintiff that he use the “*they*” pronoun in relation to a young pupil.

9. He says that there is no basis in Irish law for the principal's demand, and that every judge he has been before has refused to acknowledge the truth and uphold the Constitution and the law. He describes this as an appalling travesty of justice.

10. Finally, in regard to the matter presently before the court, he says it is profoundly wrong, but he doesn't say why.

11. None of this is true. The reason why he has spent so long in Mountjoy prison and why the court is now considering what further steps should be taken, has nothing to do with the use of language, but a simple matter of abiding by a court order.

12. Society breaks down if court orders are ignored. Therefore, as this court has repeated on many occasions, the Defendant is fundamentally incorrect in his assertion that this is something to do with his religious beliefs. Nothing could be further from the truth. It is because of his total and utter rejection of the norms of a civilized society to abide by the rule of law.

### **The Submissions of the State**

13. Mr. Kennedy SC for the State, has set out the procedural history of the case, including the many judgments of O'Moore J. He also has opened the general principles applicable in respect of civil contempt. On the key issue of the imposition of a fine, he refers to the case of *Meath County Council v Hendy* [2023] IECA 55, where the principles applicable were comprehensively addressed by Whelan J., which I will deal with below.
14. Mr. Kennedy has very helpfully brought me through the law relating to sequestration, orders of Garnishee and the Rules of the Superior Courts ("the Rules").
15. Finally, he dealt with who should move such an application.

### **Submissions of the Plaintiff**

16. Mr. White SC for the Plaintiff supports much of the submissions made by the State. He argues that one of the primary obligations of the State is to provide a court system which executes the orders that it pronounces. In those circumstances, he suggests, respectfully, that the role of enforcing the court order should fall to the State. In support of this contention, he refers me to the Law Reform Commission Consultation Paper on Contempt of Court (LRC 47-1994) which quoted a similar report in Australia in regard to an accruing fine which echoes the words of Whelan J. in *Hendy*, that civil contempt serves two distinct purposes; the enforcement of an order of court as between the parties to the litigation by way of civil execution and separately, the penal or coercive jurisdiction to be exercised by the court in the public interest to ensure compliance with the terms of the order. However, this power must be exercised with caution.
17. He makes the case, which has often been repeated by the courts, that there is a significant legislative lacuna dealing with civil contempt in this jurisdiction and whilst there

was a contempt of court bill in 2017 (Contempt of Court Bill of 2017), it has lapsed with the dissolution of the 32<sup>nd</sup> Dáil.

### **The Judgments of O'Moore J.**

18. In *The Board of Management of Wilson's Hospital School v Burke* [2023] IEHC 36, O'Moore J. noted that applications either to punish a contemnor or to seek orders to coerce that individual to comply with existing court orders, require care to be taken to ensure fairness of procedures. He quoted Hardiman J. in *IBRC v Quinn* [2012] IESC 51, where he said at para 40:-

*“One could find legal authority for the proposition that an application to commit for contempt has to be approached with great caution, over a period of many centuries. This is because it is a procedure which allows a person to be locked up, sometimes “without limit of time”, without the procedures and protection which normally apply when a person is on risk of his liberty. It is therefore essential, in the public interest (and not simply to protect the rights of an individual), that there be a “meticulous observation of procedural justice” in such a case. The most important aspect of procedural justice is, as Fennelly J. put it “In a case where the charge is that he is in breach of a court order, he should be told what the order is and how he is alleged to be in breach. It seems to me axiomatic that these procedures must be observed before the Court makes a finding that the person is in breach of the order”. The nature of this obligation to notify the person whose imprisonment is sought is that “the order allegedly breached should be indicated with absolute clarity and precision in the Motion for Attachment and Committal and the evidence alleged to establish breach of that order should be led in proper form after due and timely service of the motion.””*

19. Further, in the *Quinn* case, importantly in the context of this case, Fennelly J. said:

*"The position seems to me to be clear. A person who has been found guilty of contempt of court, may be required by an order of a court to purge his contempt. Where, following a finding of contempt, a person refuses to obey the court order, he may be imprisoned by order of the court until he undertakes to obey the order; i.e., purges his contempt. Imprisonment is not the only remedy. In certain types of case, a court has been known to impose a daily or other periodic fine. In the case of a corporation, assets may be sequestered."*

**20.** Therefore, there is little doubt that the court has the power to impose daily fines in cases of civil contempt, as has occurred here. The real issue is how to enforce the collection of those fines.

**21.** A number of months later, when reviewing the matter and dealing with whether or not there should be an increase in the fines, O'Moore J. said as follows:-

*"There remains the question of whether the fine should now be increased. I have come to the view that there are two possible reasons for Mr. Burke's continuing contempt. One is that the fine is too low. The other is that he does not really believe that the fines will ever be enforced. Taking a proportionate approach to the measures to be invoked in order to secure Mr. Burke's compliance with an Order found to be lawful and constitutional both by the High Court and the Court of Appeal, the correct option is not to increase the daily fine (at least at this stage) but to crystallise the sums due as of the 1st of March 2023, to have the Order perfected, and thereby permit the school to take the appropriate steps to enforce the fines. There are clear and obvious steps which can be taken, including the sequestration of Mr. Burke's assets. The earlier application for sequestration as a coercive measure was refused. However, sequestration of Mr. Burke's assets in order to enable collection of his fines is a different proposition. In any event, as and from 4 pm on the 23rd of March the school is at large as to what steps it wishes*

*to take to enforce the fines and Mr. Burke will be at risk of such measures for as long as it takes for the fines to be paid”.*

22. That time has now come.

### **General Principles in Respect of Civil Contempt**

23. The hierarchy of recognized applicants are, firstly, the party who has obtained the order, which in this case is the Plaintiff. Then if he/it decides not to do so, the Attorney General, if the public interest requires him to intervene in order to enforce the order. Finally, the court may act of its own volition in exceptional cases of clear contempt in which it is urgent and imperative to act immediately (see Holman J. in *Bedfordshire Police v RU and FHS* [2013] EWHC 2350 (Fam), Megarry V-C in *Clarke v Chadburn* [1984] I.R.L.R. 350 and *Arlidge, Eady & Smith on Contempt* (5th ed., 2017)).

24. Both the State and the Plaintiff agree that in general all the methods of enforcement of money judgments are available to enforce fines and in particular, Order 42 Rule 25 and Order 42 Rule 27.

25. Finally, I have been referred to the use of orders of Garnishee, pursuant to the Common Law Procedure Amendment Act (Ireland) 1856, and Order 45 Rules 1–8.

### **The Rules- Discussion**

26. Order 43 Rule 2 of the Rules states that where any person who is directed to pay money into Court “*or to do any other act in a limited time*”, and after service of the order, refuses or neglects to obey it, the person prosecuting such judgement or order shall be entitled, without obtaining any order from the court, to issue an order of sequestration in the form set out in the Rules, against the estate and effects of the disobedient person. This order relates to

sequestration only but, while clearly not primarily designed to deal with the collection of the sort of fines the court is dealing with here, the language is singularly wide.

27. I am also satisfied that pursuant to Order 42 Rule 25 of the Rules, the court has the power to make such orders directing the Defendant's salary be paid to discharge the fines he has incurred. The order provides that "*Every order of the Court in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect.*".

28. If, for some reason I am incorrect in that regard, then it seems to me that Order 42 Rule 27 also gives the court the power to make such an order, where it says "*Any person not being a party to a cause or matter, who obtains any order, or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such cause or matter; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter.*"

29. Therefore, taking all these rules in conjunction with each other, it seems to me that the court certainly has the power to make the orders that I am considering.

30. If it were not so, I am satisfied that, as Whelan J. in *Hendy* and Barniville J. (as he then was) in *Trafalgar Developments Limited v. Mazepin* [2022] IEHC 167 have noted, the provisions of the Rules do not exhaustively define the powers of a court to make orders that are considered proportionate and reasonable to ensure compliance and respect for court processes. The absence of a particular provision under rules of court is not necessarily determinative and a purposive construction may be taken to specific rules (*Moorview Developments Ltd. v. First Active plc* [2009] IEHC 214).



31. That being the case, if for some reason it were to transpire that the Rules did not give the court the power to direct that the Defendant's salary be paid into court to discharge, in part, the fines already imposed upon him, then it seems to me that the inherent jurisdiction of the court would come into play, and that I would be entitled to make an order pursuant to that inherent jurisdiction. However, as the case law clearly notes, that will only occur if there is no other basis upon which to make the order.

### **Orders of Garnishee-Discussion**

32. Orders of Garnishee normally arise in debt proceedings. If a debtor owes money to a creditor and another person owes money to a debtor, then the creditor can obtain an order from the court which attaches the debt owed to a debtor by the other person.

33. The jurisdiction to grant such an order is discretionary. In *Response Engineering Ltd v Caherconlish Treatment Plant Ltd* [2011] IEHC 345 Hogan J, said:

*“While it is true that the making of an order under O. 45 remains in the discretion of the court, it would generally require special circumstances before the court would decline on discretionary grounds to make an order in favour of a judgment creditor who had otherwise satisfied the necessary proofs. It is probably fair to say that the approach of the court in relation to such orders is more direct and somewhat less nuanced than might obtain in the cases, for example, of an application for an injunction or an application for judicial review.”*

34. The issue to be addressed is which mechanism should be utilized in this case. It seems to me that sequestration is not appropriate in circumstances where the effect of such an order would be to simply hold the monies pending further court determination.

### **Decision**

**35.** It is clear to me that the Plaintiff has no intention of abiding by the court orders. He has not changed or altered his behaviour in any way, notwithstanding his imprisonment for over 500 days. As I said previously in *Burke (No.1)*, he seems to regard himself as a martyr. His most recent letter, yet again, seems to deliberately miss the point. He seems to think that this is an attempt to force him to recognise or approve of matters which he regards as abhorrent to his religious beliefs.

**36.** That is simply not the case. All the court is trying to ensure is that he, along with all the other citizens of the state, abide by the rule of law. He has refused to do that because he thinks he is above the law or that by acting in the manner in which he is acting, he will achieve some advantage.

**37.** The time has come, as O'Moore J. predicted some two years ago, that the court must now look at the alternative methods of enforcing its order. While our neighboring jurisdiction has the benefit of a Contempt of Court Act, we do not have the benefit of such an act. It seems to me that this lacuna should be addressed as a matter of urgency, but that does not get over the present difficulties.

**38.** In my view, there is no reason in principle why the court cannot enforce a fine by way of an order of Garnishee. If it is the case that the court can imprison a contemnor and appoint a sequestrator (Order 42 Rule 4), then it makes no sense that the often-used method of enforcement in debt cases would not be available in matters of such importance as the enforcement of court orders.

**39.** Therefore, I am satisfied that the court has power pursuant to Order 45 Rules 1–8 of the Rules to make a conditional order of Garnishee.

**40.** The next question to be addressed is who should act so as to ensure that the fines which have already been imposed and remain unpaid, are paid, and set out a methodology of collecting future fines, if the Defendant continues to refuse to abide by the orders of court.

41. To that end, it seems to me that the Attorney General is the appropriate party to move such an application. Therefore, I shall make the Attorney General, the Minister of Education and the Minister of Finance, notice parties to these proceedings. I do so acknowledging that the Plaintiff has already expended significant sums of money and time in pursuing the Defendant. As Mr. White pointed out, all the school wants to do is act as a school. To that end, it seems to me that it would be inappropriate to ask the Plaintiff to act as a form of policeman in this case. Therefore, it seems to me that the Attorney General, in the public interest, should intervene.

42. There is, at present, the sum of €23,800 unpaid by the Defendant, found by O'Moore J. as of the 1<sup>st</sup> of March 2023. Thereafter, there is a sum accruing from the 2<sup>nd</sup> of March 2023 to the 19<sup>th</sup> of May 2023 (the date Owens J. delivered his judgment), being the sum of €55,300 (79 days x €700), which is now due and owing by the Defendant to the State in respect of his contempt. Therefore, for the purposes of the order now to be perfected, I will fix the amount to be recited in the order as €79,100, as of the 24<sup>th</sup> of February 2025.

### **Increase of the Court Fine**

43. The authorities are clear that the fine should bear some relationship to the individual contemnor's means and have clear regard to their assets to ensure proportionality and fairness, that account must be taken of the damage done to the public interest by the conduct of failing to comply with subsisting court orders, the gravity of the contempt, as well as the *bona fide* of the person who is in contempt, their reasons, motives and understandings in doing the acts which constitute the contempt of court. Naturally if mitigation is a factor, that too must be considered of the contempt.

44. But as a O'Moore J. noted when considering precisely the same criteria, the Defendant has shown no mitigation whatsoever. Indeed, far from it, he simply ignores the court orders. It

is for that reason that he has found himself in jail for so as long as he has. This particular case has preoccupied the Nation for far too long. That is entirely the fault of the Defendant. He and others seem to thrive on the publicity and think by so acting, they are forwarding their cause.

45. In regard to his means, I note that in 2023, O'Moore J. asked him to provide details of his assets and his income from grinds. He robustly refused to do so. The only information given to the Court was the school's estimate that his salary was in the region of €48,000 gross a year. Nonetheless, he must be given the opportunity, and therefore I shall make a conditional order of Garnishee in regard to the Defendant's salary. The matter will be made returnable to me so that I can hear the Defendant's submissions before any order be made permanent.

46. I am satisfied that the fine previously imposed has not had the desired effect. In those circumstances and based upon sworn evidence that the Defendant has failed to purge his contempt, which should be before the court it is my intention to I shall increase the fine to the sum of €1,400 for every day or part of the day that passes until he does so. Therefore, I direct the Plaintiff to bring before the court such sworn evidence as to the Defendant's actions as may justify the imposition of an increased fine for the return date.

### **Court Order**

47. I shall give liberty to the Attorney general to move an application for a conditional order of Garnishee in regard to all debts including his salary owing or accruing from the second and third named notice parties be attached to answer the fines imposed by court.

48. I direct that the Defendant appear before a court with evidence in relation to all his assets and income by way of affidavit, so that the court can consider his means in regard to the increase of the fine to be paid, by close of business on the 28<sup>th</sup> of February 2025.

49. I shall make this matter returnable before me at 10 o'clock on Friday the 7<sup>th</sup> of March 2025.

