THE HIGH COURT

Record No. 2024/2854P

[2025] IEHC 132

BETWEEN

A.R.

PLAINTIFF

AND

IRELAND, THE ATTORNEY GENERAL, THE COMMISSIONER OF AN GARDA SIOCHÁNA AND X.Y.

DEFENDANTS

JUDGMENT of Ms. Justice Stack delivered on 5 March, 2025.

Introduction

1. This is an application by the defendants for an order pursuant to O.19, r.28 of the Rules of the Superior Courts striking out the within proceedings on the basis that they disclose no reasonable cause of action and/or amount to an abuse of process of the court and/or are bound to fail, and/or have no reasonable chance of succeeding. In the alternative, an order is sought pursuant to the inherent jurisdiction of this court striking out proceedings on the basis that they are bound to fail and/or are frivolous and/or vexatious and/or an abuse of process.

2. Traditionally, the distinction between an application pursuant to O.19, r.28 and an application pursuant to the inherent jurisdiction of the court to dismiss a claim has been bound to fail was grounded on the fact that, in the latter instance, a court could look at the evidence in the case and, if satisfied that there is no evidence in support of the claim and no prospect of evidence coming to light during a pre-trial procedure such as discovery or interrogatories, the application could be dismissed, whereas, when exercising its jurisdiction pursuant to O.19, r.28, the court could only look at the pleadings to see if they disclosed a cause of action known to law. As a result, applications pursuant to the inherent jurisdiction of the court tended to be made where the relevant evidence was solely documentary in nature, such as where, in an application for specific performance, the only document put forward was a note, a memorandum of an agreement to sell land did not reflect a concluded agreement: see *Barry v. Buckley* [1981] I.R. 306.

3. Order 19 rule 28 was amended by substitution by the Rules of the Superior Courts (O.19) (S.I. No. 456 of 2023) and the court may now, in considering application under O.19, r.28, *"if appropriate"* have regard not only to the pleadings but to *"evidence in any affidavit filed in support of, or in opposition to, the application."*

4. It is not clear whether the purpose of the new O.19, r.28 (3), which permits - *"if appropriate"* - consideration of affidavit evidence is designed to entirely supplant the inherent jurisdiction recognised in *Barry v. Buckley*, or whether it is designed to supplement the jurisdiction previously enjoyed under the old O.19, r.28, which permitted a court to look only at the pleadings. Either way, the importance of the constitutional right to litigation is such that any reliance on affidavit evidence in a motion of this kind must be confined to a consideration of admitted or indisputable facts.

5. Before considering the application, I would like to record that, as there is reference in the papers to the identity of parties and to *in camera* proceedings in which they have been

involved, I have directed that the application would be heard *in camera* and that the name of the plaintiff and that of the other parties to the family law proceedings in question would be redacted from the published judgment. I have also avoided referring to the location of any property or District Court in case that would serve to identify the parties and their children. This is consistent with the approach in cases such as *O.N. v. McD.* [2013] IEHC 135, referred to further below.

6. I have also redacted the identity of the fourth defendant as his role in those proceedings is referred to in this judgment. The fourth defendant is a member of An Garda Síochána and the reasons why he has been named as a defendant will become apparent.

Factual Background

7. Before turning to the statement of claim, and in order to put this application in its proper context, it is necessary to say something about the various family law and criminal proceedings in which the plaintiff has been embroiled for over three years now. Before doing so, it should be noted that the fourth defendant, who as previously stated is a member of An Garda Síochána, has been involved in the investigation and prosecution of the plaintiff for certain criminal offences which the DPP has directed should be tried in indictment, and has, in response to a summons, attended certain family law proceedings, including child custody proceedings involving the plaintiff

8. On 11 January, 2022, an application for an interim barring order was made by A.B., the mother of some of the plaintiff's children. That interim barring order was granted. However, it was almost immediately breached by the plaintiff, who sent a text message contrary to its terms to the complainant on 12 January, 2022. The plaintiff was arrested for

that breach, which was an offence contrary to s.33 (1) of the Domestic Violence Act, 2018, and remanded on bail.

9. The interim barring order became final on 17 January, 2022. The plaintiff did not attend, but the District judge was satisfied that he had been served with notice of the hearing date. The plaintiff acknowledges that he was served with the interim barring order which notifies him of the date of hearing, but complains that the Gardaí told him it was in fact 18 January, 2022. The District judge being satisfied as to service, the order became final on 17 January, 2022, and this operated to bar the plaintiff from a residence until 16 January, 2025. The plaintiff appealed that order and his appeal was unsuccessful.

10. On 12 January, 2022, another woman, C.D., the mother of other children of the plaintiff, applied for a protection order in the District Court. This ultimately led to the making of the safety order in the District Court on 24 March, 2022.

11. On 24 January, 2022, the plaintiff sent another text in breach of the barring order obtained by A.B. He claims that a retired member of An Garda Siochána persuaded him to send this text in innocuous circumstances, reassuring him that it would not count as a breach.

12. The plaintiff was ultimately prosecuted for both this breach and the earlier breach of January, 2022, and pleaded guilty to both charges on 7 April, 2022. While the plaintiff complained that he was advised to plead guilty by his solicitor, there is no doubt that he did in fact plead guilty. He also complains that he thought he would be released on bail conditions on entering the guilty plea, but in fact remained subject to them quite a lengthy period of time, the proceedings not ultimately being disposed of until 28 March, 2023, at which point it appears the plaintiff was bound over to the peace for a period of one year. The plaintiff complains that this delay was contributed to by the delay of the relevant probation officer in providing the necessary report.

13. During the currency of the protection order granted to C.D. on 12 January, 2022, a complaint was also received by a member of the Gardaí that the plaintiff had breached the protection order by making indirect contact with the complainant's daughter on 10 March, 2022. The plaintiff was arrested on 11 March, 2022 for an offence contrary to s.33(1) of the Domestic Violence Act, 2018, and conveyed to a special sitting of the District Court. He was granted bail subject to strict conditions. The matter came before the District Court on 18 July, 2022, but the member who had served the relevant order on the plaintiff was not present in court and the proceedings were struck out with liberty to re-enter. On foot of the DPP's directions, the matter was ultimately re-entered, but was struck out again by the District Judge on 11 September, 2023.

14. A further complaint from C.D. was made on 25 March, 2022, to An Garda Siochána, alleging that the plaintiff breached the protection order by spitting in her direction and putting her in fear. The plaintiff was arrested on 25 March, 2022, again for an offence contrary to s.33 of the Domestic Violence Act, 2018, and travelled together with the other charge contrary to the same section and relating to the same protection order. It was struck out with liberty to re-enter on 18 July, 2022. Notice of re-entry was served on the plaintiff on 4 July, 2023, and it was, along with the other charge, struck out again on 11 September, 2023.

15. It should be noted that the fourth defendant, a member of An Garda Siochána, had no involvement with any of the above arrests, proceedings or court hearings.

16. However, he was involved from early 2022, in an investigation into the plaintiff for matters which have culminated in fourteen charges being preferred against the plaintiff, which the DPP has directed should proceed on indictment. There is one count of assault causing harm contrary to s.3 of the Non-Fatal Offences Against the Person Act, 1997, and 13 counts of child neglect/cruelty contrary to s.246 of the Children Act, 2001. On 7 April, 2022, specialist interviews were carried out with the plaintiff's children, with the consent of their

mother. It is not clear if the fourth defendant conducted those interviews himself, but I take it from his affidavit that he is the investigating officer for the offences which will now go forward for trial in the Circuit Court and therefore was presumably involved by the time the interviews took place on 7 April, 2022.

17. The grounding affidavit in this matter was sworn on 1 October, 2024, on which date those proceedings were listed in the relevant District Court. The plaintiff is on bail in respect of those offences and the terms of his bail were relaxed by the High Court on 3 July, 2024.

18. It should be noted that the plaintiff has also brought an interlocutory application to restrain the fourth defendant from *"besetting and or harassing [the plaintiff] pending the conclusion of the trial of the within matter"*. From the contents of the statement of claim, it would appear that, in reality, what is sought is an order restraining the fourth defendant from being involved in the investigation and/or prosecution of the offences for which the plaintiff is awaiting trial on indictment.

19. At the outset of the two day hearing last week, I indicated initially that the plaintiff's motion would be heard after the defendants' motion to dismiss, as the question of whether the proceedings were doomed to fail which would require consideration as part of the defendants' motion would, like a consideration of whether the plaintiff had shown a fair question to be tried, or a strong case likely to succeed at trial – whichever was found to be applicable, entail a consideration of the merits of the plaintiff's case.

20. It should be noted that, insofar as the charges for which the plaintiff is awaiting trial are concerned, the plaintiff was arrested on 13 May, 2024, by the fourth defendant. That arrest was effected pursuant to s.6 of the Criminal Law Act, 1997. Counsel submitted that a warrant is not necessary for this arrest. The plaintiff did not identify any provision requiring a warrant to issue prior to arrest under that section.

21. The fourth defendant also arrested the plaintiff on 18 June, 2024, on foot of a warrant issued by the District Court the previous day, 17 June, 2024. This arrest was made in connection with alleged breach of bail conditions and requires a warrant. The plaintiff complains that the warrant was not signed and is not under seal. However, he was not able to point to any provision which would require the warrant to be made under seal. The assertion that the warrant was not signed is based on the copy served on the plaintiff. The plaintiff brought to court on day two of the hearing of this application a copy of the warrant which he said was clearer than that exhibited to the affidavit of the fourth defendant(which it was). However, I could not agree with the plaintiff's assertion that the signature on the copy warrant was clearly a stamp. The signature of the District judge is in manuscript rather than typeface, and the more blurred appearance of the signature could well be down to the type of pen used by the judge.

22. In addition to all the foregoing, the plaintiff was also involved in custody proceedings between C.D. and himself from early 2023, onwards. In the course of those proceedings, the District Judge made an order pursuant to s.32 of the Guardianship of Infants Act, 1964, directing the provision of a report to the court by a court appointed psychologist. It appears that in the course of the preparation of that report, the fourth defendant spoke to the psychologist compiling same, and was highly critical of the plaintiff. However, the psychologist did not agree with the the fourth defendant's opinion or assessment of the plaintiff and took the view that fault should be ascribed, in the course of the custody proceedings, to C.D.

23. The s.32 report compiled by this psychologist, though nominally exhibited to the plaintiff's affidavit of 5 July, 2024, sworn in support of an application for interlocutory relief in the within proceedings, was not in fact exhibited in view of the fact that it was corrected by the *in camera* rule. However a letter from two psychologists involved in the family law

proceedings, written to the District Judge and exhibited in these proceedings, which may in fact be a breach of the *in camera rule* in any event, it is clear the very stark difference of opinion exists as between those psychologists and the fourth defendant as to the best interests of the children and in particular as to the conduct of the plaintiff.

24. I want to stress that the merits of that view are not a matter for me in this application. However, it is clear that the s.32 report has been taken by the plaintiff to vindicate his view that the fourth defendant is unfairly prejudiced against him.

25. The fourth defendant submitted the s. 32 report to the DPP for her consideration prior to her directions to request the trial on indictment of the plaintiff. Furthermore, while the plaintiff says that he obtained supervised access from the District Court in the family law proceedings in which the s.32 report was compiled, C.D. appealed that order to the Circuit Court. The plaintiff does not know what happened on appeal because he did not attend. However the result of the appeal appears to have been that the plaintiff's access to his children was removed.

26. The merits or otherwise of that report are not a matter for determination on this application, save to note that the report does not appear to have been weighed in the same manner by the Circuit judge and, furthermore, the manner by which it came to be prepared has been put in issue by the fourth defendant. Suffice it to say that there is a contest as to the reliability of that report which has nothing to do with the application to dismiss, other than that it is not necessarily damning of the fourth defendant.

27. I turn now to consider the case as pleaded by the plaintiff. The plaintiff has also filed a lengthy replying affidavit and, in line with the new Order 19, rule 28, I have considered the contents of that affidavit.

Statement of Claim

28. A statement of claim was delivered in these proceedings in July, 2024. Paragraphs 1 to 5 identify the parties. Paragraphs 6 and 7 make complaints about A.B. and C.D., so these do not disclose a cause of action against any of the defendants, and are best regarded as introductory in nature.

29. Paragraph 8 of the statement of claim alleges that the fourth defendant "*became over zealous in his pursuit of [the plaintiff]*". At para. 9, the plaintiff expands upon this plea, stating that it is his firm belief that the fourth defendant has ignored key evidence, supported his ex-partners' malicious agendas and their claims. It is also pleaded that the fourth defendant "*refused to take a court ordered s.32 report before eventually being court ordered to do so later and has seemingly ignored the directions of said court that did not suit his narrative*". It is not entirely clear what is meant by this.

30. At paras. 12, 13 and 14, the plaintiff complains of the fourth named defendant's attendance at family law proceedings, and a complaint that they stopped the plaintiff attending a hearing, but this hearing is not identified. At para. 13 a complaint is made about the fourth defendant's interactions with witnesses involved in matters between him and his former partners. At para. 14, the plaintiff complains about the fourth defendant's statements to professionals involved in family matters, particularly to the forensic psychologist compiling the s.32 report ordered by the District Court. It is said that this is an example of his prejudice and constitutes defamation. It is pleaded that the fourth defendant claimed at a court hearing that the forensic psychologist had been hired privately by the plaintiff, which the plaintiff said constituted misleading the court.

31. Insofar as the plaintiff alleges defamation by the fourth defendant in his conversations with witnesses or to the court appointed psychologist, those conversations are, in my view,

covered by the absolute privilege identified by this court (Noonan J.) in *R.C. v. K.E.* [2022] 1 I.R. 266, where Noonan J. confirmed that statements made by the defendant to a social worker conducting an investigation on behalf of TUSLA, in compliance with a court direction made under s.20 (3) of the Childcare Act, 1991, was the subject of absolute privilege. He found that both s.17(2)(g) and (w) of the Defamation Act, 2009, were relevant to the case, as was the common law privilege preserved by s.17(1) of the 2009 Act. Noonan J. referred to the rationale of the absolute privilege attached to out of court statements, and referred to the decision of *Evans v. London Hospital* [1981] 1 W.L.R. 184, where Drake J. stated (at p.190):

> *"It seems to me that this immunity would not achieve its object if limited to the giving of evidence in court and to the preparation only of the statements or proof of evidence given by the witness. Any disgruntled litigant or convicted person could circumvent the immunity by saying he was challenging the collection and preparation of the evidence, to be taken down as a statement or proof of evidence later, and <u>not</u> challenging the statement or proof itself.* "
>
> [Emphasis added]

32. As result, I think it is quite clear that the plaintiff cannot bring a claim in defamation against any of the defendants, and in particular the fourth defendant, for statements made to the psychologist compiling the s.32 report, or indeed any statements made in evidence in court, or to witnesses (including the complainants) in the course of the proceedings.

33. It is pleaded in the particulars at the end of the statement of claim that the fourth named defendant is guilty of "*negligent misstatement*" in the course of the family law proceedings. As submitted by counsel for the defendants, there is no relationship proximity between the fourth defendant and the plaintiff such as to attract the *Hedley Byrne v. Heller* type liability for negligent misrepresentation or misstatement (see: *Hedley Byrne and*

Company Limited v Heller and Partners Limited [1964] AC 465) . However, over and above that, there was no plea whatsoever of representations made to the plaintiff, that he reasonably relied on them, or that he suffered detriment as a result. On the contrary, everything that is pleaded, and indeed any facts submitted by the plaintiff in the course of these applications, either in his submissions to court or in his affidavits, is tantamount to the fact that the plaintiff disputes the voracity of what the fourth defendant is saying, and always did so, and never relied on anything said by the fourth defendant at any time.

34. In fact, such reliance is not pleaded at all, and consequently, a cause of action has not been pleaded on the statement of claim, though it is mentioned in passing. Even if it had been pleaded, it is abundantly clear from the admitted facts that no such cause of action against the fourth defendant (or indeed any of the defendants) could succeed. The only other plausible cause of action which might be available to the plaintiff, which is not pleaded is malicious prosecution. In *Hanrahan v. Garda Commissioner* [2020] IEHC 180, this court (Barrett J.) adopted the statement of law in *McMahon and Binchy, The Law of Torts*, 4th ed. (2013), where the constituent elements of the tort of malicious prosecution were identified as being (at paras 36.04 – 36.18):-

> "*(a)The defendant must have instituted the proceedings, that is to say, he or she must have been 'actively instrumental in putting the law in force'….*
>
> *(b) Proceedings must not have been successful*
>
> *(c)The plaintiff must establish that the proceedings were instituted 'without reasonable and probable cause' –*
>
> *(d) the plaintiff must prove malice on the part of the defendant"; and*
>
> *(e) The plaintiff must have suffered damage. "*

35. By no stretch of the imagination could the matters pleaded by the plaintiff in connection with either the barring order, or the safety protection order, or the custody

proceedings, amount to malicious prosecution, as in each case the complainants were A.B. and C.D., and it was they who put the law into force.

36. Furthermore, both the barring order and safety order proceedings appear to have been successful, as in each case the orders sought by the complainants were granted. That is another bar to success for malicious prosecution.

37. The custody proceedings and appeal – which are private law proceedings and could not have been instituted by the fourth defendant - appear to have been determined in a manner favourable to C.D.

38. As a result, any attempt to sue any of the defendants, and in particular the fourth defendant, for malicious prosecution arising out of the various family law proceedings in the District or Circuit Courts are doomed to fail.

39. The fourth defendant is of course involved in the investigation and prosecution of the criminal offences which are due to go forward to the Circuit Court for trial on indictment. Apart from the fact that the results of the fourth defendant's investigation were the subject of a decision by the DPP to prosecute and to refuse to consent to summary trial, the cause of action of malicious prosecution cannot be made out in circumstances where those proceedings have not concluded. As stated above, an essential component of that tort is that the proceedings must have been unsuccessful. Accordingly, the tort of malicious prosecution cannot even be complete in relation to those proceedings.

40. Insofar as the plaintiff complains of the various occasions on which the Gardaí objected to the bail, these matters are similarly subject to absolute privilege insofar as any cause of action in defamation is concerned, could not amount to a negligent misstatement to the plaintiff in which the plaintiff relied (as opposed to a statement to the court). Furthermore, opposition to bail is not the equivalent to the institution of proceedings, but is rather a stance

taken within existing criminal proceedings or, at the very least, in a bail application brought by the plaintiff himself. Accordingly, the tort of malicious prosecution cannot be made out.

41. And, of course, insofar as the plaintiff pleaded guilty to two breaches of the barring order obtained by A.B., he cannot succeed in malicious prosecution, because the criminal proceedings against him were successful.

42. While the prosecutions for breach of the protection order were struck out by the judge, the plaintiff could not succeed on a plea of malicious prosecution there either. The timeline shows that the proceedings were struck out relatively shortly after the charges were brought, and it is difficult to see therefore how the plaintiff could show that he had suffered damage. The key issue here, of course, is that the fourth defendant was not involved in those prosecutions.

43. This begs the question as to why any of the proceedings relating to the barring order, protection order, or criminal charges in connection with breach of these orders (which, insofar as breaches of the barring order were concerned, were successful), are pleaded when none of the Gardaí involved in those proceedings are named as defendants. I return to this issue below.

44. Insofar as the plaintiff complains about the delays by the probation service after he pleaded guilty to the two breaches of the barring orders, this is a complaint against non-parties and discloses no cause of action against any of the defendants.

45. In addition to the foregoing, the plaintiff complains about bail checks, and specifically about three occasions on which gardaí attended at a dwelling house at 4am (19 October, 2022), 3.30 am (5 November, 2022) and 1 am (10 January, 2023). He also mentions four other occasions on which the gardaí attended this dwelling between 9.30 pm and 10.30 pm, these dates all falling between 12 October, 2022, and 16 January, 2023.

46. In view of the fact that the plaintiff was subject to a curfew between 9pm and 6am it does not follow from their attendance at any of these hours that the gardaí were acting unlawfully. However the difficulty again for the plaintiff is that the statement of claim simply doesn't disclose a cause of action that is said to arise out of their attendance. Although the plaintiff referred to *"harassment",* there is no such tort known to law.

47. Counsel for the defendants correctly discharged his duty to the court by saying the closest tort might be misfeasance of public office.

48. McMahon and Binchy identified two aspects to this tort, of which they state (at para. 19.86):-

> *"It has a long history yet even today its precise contours are a matter of debate."*

49. That being the case, in a motion such as this, only general considerations can really be taken into account, as it is acknowledged that the bar for the defendants is high and that if proceedings may be saved by amendment then they should not be dismissed.

50. The judgment of Lord Steyn in *Three Rivers District Council v. Bank of* England *(No. 3)* [2003] 2 A.C. 1 identifies two different forms of the tort of misfeasance in public office:

> *"First there is the case of targeted malice by a public officer, i.e. conduct specifically intended to injure a person or persons. This type of case involves bad faith in the sense of the exercise of public power for an improper or ulterior motive. The second form is where a public officer acts knowing that he has no power to do the act complained of and that the act will probably injure the plaintiff. It involves bad faith inasmuch as the public officer does not have an honest belief that his act is lawful."*

51. Although the precise parameters of the tort appear not to have been settled as a matter of Irish law, the second category of misfeasance cannot be relevant in this case as there is no basis for suggesting that the fourth defendant had no power to do the acts complained of.

However, given the lack of clarity surrounding the tort in Irish law, it might be wise not to rely on *Three Rivers* as definitively stating the law as it stands in this jurisdiction.

52. I do not think it useful to say more about the precise parameters of the tort given the uncertainties as to its precise scope in Irish law. The question is whether, against the background of that uncertainty, the statement of claim should be struck out as failing to disclose a cause of action.

53. Paragraph 11 of the statement of claim also mentions that the fourth defendant instructed Gardaí on the night of 13/14 May, 2024 at 00.03 to check if the plaintiff was present.

54. It should be recalled that the plaintiff was subject to bail restrictions at the relevant periods which imposed a curfew on him. Assuming for the purpose of this application that the fourth defendant did instruct other members of the Gardaí to make the bail checks, it should be noted that, while the plaintiff complains in the statement of claim that his elderly mother was present as were his children who were going to school in the morning, the fact is that that is the residence nominated by the plaintiff as the place where he would reside and therefore as the address for the purposes of his bail conditions, and he was also subject to curfew. That curfew appears to have been lifted by the High Court on 3 July, 2024.

55. By way of analogy, I have considered the judgment of this court (Clarke J. (as he then was)) in *McAuliffe v. O'Dwyer* [2011] IEHC 270. In that case, the State had settled a claim between family members of a Garda who was the first defendant in the proceedings brought by those family members. This was a judgment on foot of the Notice of Indemnity and Contribution. Clarke J. first considered whether there was evidence of malice. The facts of that case stand in somewhat stark contrast to the very bare facts alleged in the statement of claim in the instant proceedings. In that case, not only had there been evidence corroborative of the allegation that the relevant Garda issued summons against his brother-in-law on a

malicious basis, but there was evidence that the Garda had issued summonses in the names of other members of An Garda Síochána without their knowledge and in contravention of a direction given by the relevant superintendent.

56. By contrast, there is nothing even *prima facia* unlawful or improper about conducting bail checks where the bail conditions require residence at a particular address and observation of a curfew. No doubt the bail conditions were onerous but, at least in respect of the bail conditions to which the plaintiff was subject in relation to the indictable offences for which he is yet to stand trial, those were relaxed by the High Court on appeal by the plaintiff. The point is that while the bail conditions remained in place on foot of District Court orders in late 2022, early 2023, and May, 2024, the plaintiff was obliged as a matter of law to comply with them. It can hardly be said that members of An Garda Síochána (other than the fourth defendant) checking on the plaintiff on a sporadic basis would be evidence of malice.

57. It is accepted by the plaintiff that the Gardaí who called to his house in the early hours of the morning were not the fourth defendant. The facts as pleaded by the plaintiff therefore are that other members of An Garda Síochána, at a time when bail conditions require the plaintiff to be in a particular residence between 9pm and 6am, checked between the hours of 1 and 4 am on three occasions that he was in fact there. There is no plea - express or implied – that the fourth defendant was motivated by malice in ordering these checks (if in fact he was responsible at all).

58. The substance of this claim, therefore, is doubtful. However, that is not enough to dismiss the claim. It is well established that the jurisdiction to dismiss at this stage must be exercised sparingly and in the clearest of cases. Furthermore, it is at least strongly arguable that the first iteration of the tort as set out by the House of Lords in *Three Rivers* is good law in this jurisdiction. That being the case, the mere fact that there was, on the face of it, power to conduct bail checks at that place and during those hours, does not mean that the case is

unstateable as a legitimate power can be exercised for malicious purposes and that would be sufficient to constitute the tort.

59. My conclusion on the Statement of Claim, therefore, is that the complaint about whether the District Judge signed the warrant for the plaintiff's arrest on 16 June, 2024, for breach of bail conditions is arguable as Order 16 of the Rules of the District Court provides that the warrant in question should be signed. (In this respect, I am again grateful to counsel for the defendants for discharging his duty to the Court by identifying this requirement in the Rules of the District Court.)

60. It is also arguable, in my view, that late night checks, even though ostensibly within the legitimate powers of the Gardaí, could constitute the tort of misfeasance of public office if carried out for malicious reasons rather than *bona fide* ones.

61. However, when one looks, first at the plaintiff's replying affidavit, and secondly, at the reliefs sought in the Statement of Claim, it is in fact evident that the claim should be dismissed.

Consideration of the plaintiff's evidence

62. At para. 42 of the plaintiff's affidavit, he says that the bail checks only commenced approximately ten months after they were first imposed *"presumably after [the fourth defendant] got yet another clear and obvious false statement from the woman; [C.D.]."* The malice alleged, therefore, is malice on the part of C.D. It is clear from the affidavit of the plaintiff therefore that the cause of action relating to the bail checks, though appearing to be stateable on the face of the Statement of Claim, does not lie against the defendants at all as the malice asserted is against the complainant, and not the defendants. For this reason, this claim should also be struck out.

63. Secondly, the reliefs claimed in respect of this allegation are, first, damages *"relating to the stress and anxiety"* caused to the plaintiff by the fourth defendant. This is, as Birmingham J. (as he then was) pointed out in *O.N. v. McD.* [2013] IEHC 135, at para. 24:

> *"So far as the claim in respect of damages for stress and damages for mental trauma is concerned, this element is in the nature of a claim for personal injuries. It does not appear that the plaintiff ever made an application to the Personal Injuries Assessment Board (P.I.A.B.) seeking authorisation to issue proceedings. It is clear from Sherry v. Primark [2010] 1 I.R. 407 and Cunningham v. North Eastern Health Board [2012] IEHC 190, that the requirement to seek authorisation is a jurisdictional matter and without authorisation a court has no jurisdiction to entertain proceedings."*

The plaintiff here faces a similar hurdle, as no such authorisation has been granted and the Court therefore has no jurisdiction to entertain the claim for damages.

64. Finally, as regards the complaint that the District Court warrant was not signed, the plaintiff was subsequently remanded and had an opportunity at that remand hearing to query the lawfulness of his arrest. He is no longer in custody and appears to be on bail in accordance with a subsequent order of the High Court. The complaint in these proceedings is in the nature of a collateral attack on the judicial processes which followed upon that arrest and he has not identified a cause of action which would flow from any defect in the warrant.

Abuse of process

65. The defendants relied in a number of respects on the inherent jurisdiction of the Court to dismiss proceedings where they amount to an abuse of the Court's process. Such a situation might arise, for example, were proceedings instituted which ostensibly sought to

litigate recognised torts, including misfeasance in public office, but which in reality were designed to shield the plaintiff from legitimate criminal prosecution.

66. In view of the fact that the interlocutory relief sought is in terms designed to restrain the third and fourth defendants from *"besetting and/or harassing [the plaintiff]"*, and taking into account that the plaintiff has classed many of the fourth defendant's actions as an investigating Garda or witness as *"harassment"* - an allegation repeated in the plaintiff's oral submissions - I harbour very significant doubts about the purposes for which the interlocutory relief is sought. Although it is clear that the plaintiff bears considerable ill-will towards his two ex partners, and although much of the criticism levied at the fourth defendant is due to the plaintiff's perception that the fourth defendant has taken their side and not his, they are not parties to these proceedings and therefore no relief is sought against them.

67. It is also notable that, despite the involvement of various Gardaí in the service and enforcement of the various barring, safety and protection orders obtained by both of the ex-partners, and in actually carrying out the bail checks to which the plaintiff objects, none of these other gardaí have been joined in the proceedings.

68. By contrast, the fourth defendant has been singled out for this suit and it is difficult to imagine that the reason is any other than that the fourth defendant is involved in the prosecution of the plaintiff for indictable criminal offences. As a result, I have a very strong suspicion that the real purpose and aim of these proceedings is to create such a chilling effect that the prosecution which the DPP has directed to take place will be frustrated or impeded, or even to obtain an injunction which would prevent it going ahead.

69. Such an injunction would be contrary to public policy and an abuse of process and proceedings designed to achieve it would have to be dismissed pursuant to the inherent jurisdiction of the court as constituting an abuse of process.

70. However, as I am satisfied for other reasons that the proceedings are doomed to fail, I will in in any event strike out the proceedings on that basis.

The plaintiff's application for an interlocutory injunction

71. For the reasons already stated, I harbour considerable doubts about the real purpose for which the plaintiff has sought interlocutory relief. However, as it follows from my conclusions on the motion to dismiss that the plaintiff cannot meet even the threshold of a fair question to be tried, which is the lowest threshold applicable to interlocutory relief, the application for interlocutory relief must therefore fail in any event. It is not necessary, therefore, to hear the parties on the balance of justice, though it would surely lean against the grant of relief which would prevent the investigation or prosecution of the plaintiff for criminal offences. An accused who is defending himself or herself against criminal charges is entitled to a fair trial, legal representation (often by skilled and experienced solicitors and counsel at the public expense), and has no need of parallel interlocutory relief by which he or she might obtain some form of immunity from the criminal process.

72. I will therefore refuse the application for interlocutory relief also.

Application

73. The third and final application listed before me is the plaintiff's application to correct the title of the case as, other than the first letter, the plaintiff spells his name using lower case. However, in the appearance entered by the Chief State Solicitor and in subsequent documents, including the title to the defendants' motion to dismiss and indeed this judgment,

had it not been necessary to anonymise it, the plaintiff's name would be shown in block capitals, as is the norm in court proceedings.

74. The basis for this application is that the plaintiff objects to the use of block capitals as such use represents that he is a corporation and legal person, and not a natural person.

75. This is quite obviously nonsensical and illogical and the use of the correct letters in block capitals (or indeed in another font) does not in any way alter the title of the proceedings.

76. This is a frivolous and/or vexatious application and I will refuse it.

77. Although I propose acceding to the defendants' motion to dismiss, I nevertheless think it is appropriate to amend the title of the proceedings as issued by the plaintiff so as to refer to the plaintiff as such and not as *"Man".* Order 1 of the Rules of the Superior Courts provides that originating summonses shall be in the form set out in Appendix A, Part 1 of the Rules. These require the plaintiff issuing the proceedings to be named in the title and then described as *"plaintiff".*

78. It seems that the summons was prepared by the plaintiff who described himself as "*Man*" which is a departure from the prescribed form. Someone else – possibly an official in the Central Office of the High Court - has placed *"[Plaintiff]"* above the word *"Man"*. The Chief State Solicitor has, in the documents filed and served by her, done up the title of the proceedings in a manner consistent with the Rules (as indeed have I in drafting this judgment).

79. In order to achieve not only consistency but compliance with the Rules, I will make an Order amending the title so as to remove the square brackets around *"Plaintiff"* and the word *"Man"* so that any further steps in the proceedings can be taken in compliance with the Rules. This cannot possibly give rise to any prejudice to the plaintiff or to any breach of his rights, but on the contrary will correct a vexatious attempt to secure for the plaintiff some

kind of unnecessary exemption from the requirements of the Rules, which apply to the plaintiff as they do to every other litigant.