

Neutral Citation No: [2019] NIMaster 6	Ref: 2019NIMASTER6
<i>Judgment: approved by the Court for handing down (subject to editorial corrections)*</i>	Delivered: 03/05/2019

No. 17/42470

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEENS BENCH DIVISION

Between:

RT

Plaintiff;

AND

ST

Defendant.

MASTER MCCORRY

[1] The plaintiff claims damages for personal injuries, loss and damage, sustained by her as a result of assault, battery and trespass to person, sexual assault and rape by the defendant and by his false imprisonment and threats to kill her, at her home on 7 May 2014. She claims aggravated damages. Judgment in default of defence was entered 14 May 2014. The defendant did not attend court or give evidence but instructed solicitor and counsel to defend the plaintiff's claim on quantum only at the hearing of an assessment of damages pursuant to Order 37 of the Rules of the Court of Judicature (NI) 1980.

[2] The medical evidence submitted by the plaintiff consisted of two reports by consultant psychiatrist Dr Stephen Best dated 24 September 2017 and 13 October 2018. The defendant did not submit any medical evidence. The plaintiff filed an affidavit sworn 14 March 2019 dealing with the assault on 14 May 2014 and how it has affected her. Giving oral evidence at hearing she further adopted the affidavit as evidence. No affidavit evidence was submitted by the defendant. His counsel did not cross examine the plaintiff, his contribution being restricted to submissions as to her evidence and as to quantum.

[3] The plaintiff and defendant married in 2001 in the Philippines where the defendant was working at the time. The plaintiff, a Philippine national, was studying to become a teacher but gave that up to marry the defendant. They settled in Northern Ireland in Dungannon and had 3 children now aged 17, 16 and 15 years. The marriage deteriorated, particularly in 2013 when the defendant was out of work, and because of his excessive drinking. They separated in early 2014, with the defendant leaving the matrimonial home in April 2014. On 7 May 2014 the plaintiff's sister in the Philippines received messages from the defendant threatening the plaintiff. A friend of the plaintiff also warned her about comments the defendant had made to her husband. They advised her to get out of the house. That evening the children were collected by the defendant's brother to be taken to a birthday party for the defendant at his parents' house.

[4] Shortly after the children left the house the defendant arrived, forced his way in and prevented the plaintiff from leaving. He choked her and threatened to kill her before carrying her upstairs into her daughter's bedroom where he forced her to undress. When he had arrived she had secreted her phone, with audio recording on, in her boot. The defendant continued to shout and threaten and he drank water from a glass which he then spat on her. The assault then became sexual in nature as he performed forcible oral sex upon her, and forced her to unzip his trousers to perform oral sex on him. He demanded

her phone so as to video what she was doing. When his own phone rang he went to answer it and she screamed so that the caller would hear causing the defendant to move to another room where she would not be heard. She took the opportunity to escape, grabbing her daughter's blazer and son's tracksuit trousers as she fled naked from the house, attempting to dress as she ran. She was assisted by a neighbour and the police were called.

[5] The defendant was charged with various offences including rape but on 27 August 2015 at Dungannon Crown Court he pleaded guilty to causing a person to engage in sexual activity without consent contrary to Article 8 of the Sexual Offences (NI) Order 2008. He received a five year sentence, two years in custody and three on licence, and ordered to participate in a sex group therapy programme and was listed on the sexual offenders register. The remaining four charges were left on the books.

[6] At trial the plaintiff enlarged upon her affidavit evidence primarily in respect of the way that the defendant's behaviour has impacted upon her. She explained that she now lives in rented accommodation in Lisburn with her three children. She has no family here and no close friends. She believed that during the assault, because of his threats, that he would kill her. He said that "he would rather kill me than see me happy". Her life has not been the same since and she is isolated and has no trust in people. She does not go out much and when for example walking in the park has experienced panic attacks when someone passed close to her. Sleep is poor. She sleeps in the living room for fear that he will come when she is asleep. She was on medication for some months after the assault but stopped taking it. She lost a stone weight and has not put it back on. She was visibly distressed during her evidence and appeared to be entirely terrorised by the fear that the defendant will attack her again.

[7] In his first report dated 24 September 2017 Dr Best noted complaints of: disturbed sleep and nightmares re-enacting the attack; vigilance and startle reaction; change in personality; depression and anxiety, fear of walking in

public, and social isolation. This was heightened after the defendant was released from prison in 2017. Dr Best was of the view that the plaintiff had suffered from post-traumatic stress reaction. His prognosis was for a period of mental disorder lasting 2 to 5 years hopefully improving as long as there was no further attack. He observed: "She remains fearful of this man and her fears are not irrational.", concluding: "This lady has sought appropriate treatments from the mental health team although no amount of counselling is really going to help that much in that her fears are for a good reason and not phobic or irrational in origin." This finding was questioned by counsel for the defendant in part because there was no evidence of an on-going campaign, but he had no expert evidence of his own to support his challenge, despite having the opportunity to instruct a psychiatrist.

[8] In his second report dated 13 October 2018 based on an examination on 23 July 2018, over four years after the assault, Dr Best had the benefit of the general practitioner's records which included communication between mental health specialists and the general practitioner. The plaintiff reported no further threats or attacks but was distressed at what she saw as his delaying settlement of the ancillary relief claim and also by an attempt to contact her through Facebook saying he could not live without her. He reported that she remained socially isolated, sleep and appetite remained poor. Intrusive dreams and memories continue. Her moods fluctuate. On reviewing the records Dr Best noted that there was agreement by a treating psychiatrist of the diagnosis of PTSD although it was resolving. There is mention of a history of abuse during the marriage, which was reiterated by the plaintiff in her oral evidence, although defendant's counsel points out that this was inconsistent with what she had told police in interviews. Dr Best concluded that he remained of the opinion that that she would go through a further period of mental disorder, with the position with the financial settlement claim perpetuating this, influencing the persistence of her PTSD and limiting her recovery. "She may not ever fully recover until she goes back to the Philippines and that may not be

possible should she want to have a normal and close life long relationship with her 3 children."

[9] Counsel for the defendant did not cross examine the plaintiff on her oral evidence, instead choosing to contradict it by reference to notes and records, and in fairness I have the impression that he was loath to cause her further distress. On probing he confirmed that he did not in any way seek to diminish the seriousness of the attack and conceded that the Plaintiff had on-going and continuing difficulties. The primary thrust of his submissions was to undermine her evidence by reference to apparent inconsistencies in her medical records and in what she told the police, and to counter the plaintiff's counsel's argument that the plaintiff's condition was aggravated by an on-going campaign aimed at keeping her distressed and in fear by, standing in the way of and delaying settlement of the ancillary relief claim, only pleading guilty at a late stage and failing to settle her damages claim. He also sought by reference to case law and the "Green Book" to persuade the court as to the appropriate level of damages.

[10] With respect to the claim for aggravated damages, I am not satisfied that the defendant has in fact engaged in an on-going deliberate campaign to perpetuate the plaintiff's difficulties and fear, either by continuing threats, his approach to the ancillary relief, or his objection to her taking the children on a holiday to the Philippines (which he lost at first instance and on appeal). There is simply no evidence of on-going threats. The protracted course of the ancillary relief case appears not untypical and in any event if there is misconduct by the defendant in this respect it is best dealt with as litigation or financial misconduct in the course of the proceedings before the Matrimonial Master. His objection to her taking the children abroad may well have been prompted more by a fear that they would not return than any malevolent intention, although I have no doubt that he would not have been well disposed to her.

[11] However, this does not mean that there is no basis for a claim for aggravated damages. It is apparent that there were clear aggravating circumstances arising out of the incident itself. From the outset his actions were not only motivated by hurting her and putting her in fear, but also to humiliate her and denigrate her, as evidenced by what he did to her and what he made her do to him, forcing her to strip with the result that when she did escape she was still naked, and also by the threat to video what he was making her do, all demonstrating a pernicious intent to exert control over, and to degrade, her. Whilst there is no evidence that there has been any threat since the incident, this does not diminish the plaintiff's fear that he might attack her or even kill her because these are precisely the things he said he would do during the assault. If the plaintiff remains in fear it is because he put her there. I am not therefore persuaded by the defendant's counsel's undermining of Dr Best's conclusions about the limits on cognitive behavioural counselling, particularly in the absence of any conflicting expert defence medical report. I am satisfied that the plaintiff has significant on-going difficulties, largely due to her fear of the defendant, although probably exacerbated by her social isolation and frustration at the lack of process in the ancillary relief proceedings, but nevertheless primarily due to what the defendant did to her.

[12] The defendant's counsel referred me to various authorities mostly mentioned by myself in a judgment in Harvey v Harvey delivered 16 February 2011 where I noted:

"Counsel referred to the cases of Griffith v Williams (C.A.) 21.11.95, Lawson v Graves-Smith (executrix of Dawes Deceased) [2006] All E.R. 169 and AT, NT, ML AK v Gavril Dulghieru et al [2009] EWHC 225 Q.B., from which I derived much assistance in terms of approaching valuation in a complex case such as this. Although none of the cases involved sexual abuse of a child they did bear similarities in terms of the consequences for the victims. In Lawson v Graves-Smith an award of general damages of £78,500 was made in respect of multiple instances of rape, attempted rape and indecent assault against a background of abduction and administering of drugs. The

plaintiff there was a 34 year old woman at the material time. In AT v Gavril Dulghieru 4 young women from Moldova, all in their twenties, were brought to the United Kingdom through trickery, where they were kept against their will in brothels and forced into prostitution by the defendants. Over a period of months until they escaped, they were forced to engage in numerous sexual encounters often involving violence, degradation and humiliation. Awards of general damages for pain, suffering and loss of amenity ranged from £97,000 to £125,000 with additional awards for aggravated damages ranging from £30,000 to £35,000. Overall awards ranged from £132,000 to £175,000."

Some of those judgments were relatively current in 2011 but with the passage of time have become less so and I derived limited assistance from them today.

[13] Of more assistance was the judgment by McAlinden J in Quinn v Ministry of Defence, delivered 27 September 2018, in particular where it deals with the question of aggravated damages. It arose from the shooting by soldiers of a 17 year old schoolboy of unblemished record on Bloody Sunday in January 1972. He suffered physical and psychological injuries. At [35] McAlinden J quoted from McGregor on Damages Ch.42:

"In so far as an assault and battery results in physical injury to the claimant, the damages will be calculated as in any other action for personal injury. However, beyond this, the tort of assault affords protection from the insult which may arise from the interference with the person. Thus, a further important head of damages is the injury to feelings, ie the indignity, mental suffering, disgrace and humiliation that may be caused. Damages may thus be recovered by a claimant for an assault, with or without a technical battery, which has done him no physical damage at all. There may be a basic award of damages for the injury to feelings and if the injury is aggravated by the defendant's conduct an additional award of aggravated damages or, as with many court awards, the two can be run together."

The Court of Appeal in England and Wales in Richardson v Howie [2005] PIQR Q3 CA said that separate awards for aggravated damages ought not to be made but rather taken into account in assessing the general damages.

[14] In Clinton v Chief Constable [1999] NICA 5, Carswell LCJ approved the test for an award of aggravated damages formulated by the Law Commission at paragraph 2.4 of its report (Law Com No 247, 1997) setting 2 basic preconditions:

- "(1) exceptional or contumelious conduct or motive on the part of a defendant in committing the wrong, or, in certain circumstances, subsequent to the wrong; and
- (2) mental distress sustained by the plaintiff as a result."

It is not suggested that the plaintiff fails to meet these tests in the present case. The defendant's objection to an award of aggravated damages was based on the plaintiff's assertions that the defendant was engaged in an on-going campaign, evidenced by his handling of the ancillary relief claim and objection to her taking the children on holiday, which I have already discounted. However, for the reasons already given I am satisfied that there were clear and serious aggravating features in the incident itself which I am equally satisfied merit an award of aggravated damages, but as they are part and parcel of the incident itself, I propose to reflect the aggravating features as part of the overall award of general damages.

[15] On the basis of the medical and other evidence before me, and having regard to counsels' helpful submissions I am satisfied that an appropriate award of damages, taking into account the aggravating features, not only in terms of the injury to feelings but also their contribution towards the persistence of her symptoms and the effects they have had, and continue to have, on her daily life, would be £75,000. This falls into the upper mid-range of the current Green Book's categorisation for moderately severe post-traumatic

stress disorder (£45,000 to £95,000) or lower mid-range of the more general moderately severe psychiatric damage (£47,500 to £125,000). In the interests of clarity, this award does not take account of any distress suffered by the plaintiff as a result of the approach by the defendant to her claim for ancillary relief.