

Court of Appeal reaffirm a number of key fundamentals in litigation

Published 11 February 2021

Briefly, the case of *Naghten (A Minor) v Cool Running Events Ltd* concerned a claim for compensation in respect of a hand injury. The injury had been suffered by a minor at an ice rink where another patron had skated over her hand. The matter came before the High Court¹ and judgment was delivered in 2018. The owner/operator of the ice rink was found liable and the minor was awarded €65,000 in general damages. This judgment was appealed by the Defendant in respect of both liability and quantum. The appeal was ultimately dismissed by the Court of Appeal² in January 2021.

There were a number of remarks made by the Court of Appeal with regard to the handling of the defence. We set out the key takeaway points below:-

The importance of instructing expert witnesses in a timely manner

The Court was critical of the defence in relation to their belated decision to instruct an engineering expert. This expert was instructed following the commencement of the High Court trial. A new SI391 schedule had been prepared on day two of the trial listing two new witnesses including an engineer. Because the report was prepared so late in the day, the engineer had not been involved in a joint inspection and nor had he the benefit of interviews with the Plaintiff and the Plaintiff's engineer. The expert ultimately conceded that he had not had time to examine all the relevant facts to the case. The High Court trial was adjourned and the Court of Appeal noted that this had resulted in delay and increased costs. The Court of Appeal emphasised the importance of SI391 of 1998 in ensuring transparency. It was also noted by the Court that the late instruction of the engineer resulted in a situation where he could not fulfil the duties required of an independent expert.

Proper consideration to be given in calling witnesses as to fact

It was noted by the Court that the only witness as to fact called by the defence was the managing director/founder of the Defendant company who had not been present at the accident locus on the day in question. No other witnesses as to fact listed on the Defendant's SI391 schedule were called and nor did they call a single witness who was present at the time of the accident despite the availability of same. The Court concluded that the Defendant's failure in calling these witnesses speaks for itself.

Caution required before pleas are advanced

The Court of Appeal was critical of the inclusion of certain pleas in the Defence which were not pursued at trial including a plea of contributory negligence on the part of the Plaintiff and pleas relating to the Plaintiff's mother's alleged failure to supervise and have regard to her daughter's safety. The Court concluded that the defence must have known that there was no basis for these pleas. This serves as an important reminder that the factual and evidential basis of any plea should be considered before the advancement of same.

The need to explain the significance and implications of swearing an Affidavit of Verification

The significance of the Affidavit of Verification was reiterated. The managing director/founder of the Defendant company distanced himself from certain pleas made during cross examination. He expressly advised that they were not made on his instruction despite the fact that an Affidavit of Verification had been sworn. The Court reiterated the importance of explaining the implications of swearing an Affidavit of Verification to deponents. The Court restated the potential penalties and consequences if what is sworn transpires to be incorrect³.

The contents of this judgment are an important reminder to Defendants, and their legal advisors, that the statutory obligations under S.I. 391 of 1998 and section 14 of the Civil Liability & Courts Act 2004 apply to both parties in personal injuries litigation. Failure to comply with these obligations, and properly prepare for a hearing can lead to delays and increased costs, and may ultimately prejudice the defence of a case.

[1] [2018] IEHC 452

[2] [2021] IECA 17

[3] For further information, see section 14 and 29 of the Civil Liability and Courts Act 2004

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