

Ireland

Eoin Quill

***McLaughlin v McDaid* [2018] IECA 524**

Key Issue

The exercise of discretion in respect of the power to dismiss claims for intentionally swearing a false or misleading affidavit

Sec 26(2) of the Civil Liability and Courts Act 2004

Facts

- Plaintiff injured his foot in a workplace accident; run over by the track of a mechanical digger
- Pleaded that it was run over by the tyre of a truck
- Defendants sought dismissal

Civil Liability and Courts Act 2004

Sec 26(2)

The court in a personal injuries action shall, if satisfied that a person has sworn an affidavit under section 14 that

- (a) is false or misleading in any material respect, and
- (b) that he or she knew to be false or misleading when swearing the affidavit,

dismiss the plaintiff's action unless, for reasons that the court shall state in its decision, the dismissal of the action would result in injustice being done.

IEHC Decision (2015), Hanna J

- Application to dismiss claim for falsehood dismissed
 - 1st Defendant influenced Plaintiff to plead the case as involving a truck (at the behest of the 2nd & 3rd defendants)
Plaintiff was vulnerable – 17 at the time of the accident & had learning difficulties
 - Plaintiff had corrected the claim prior to trial
- Damages assessed as €453,000
 - €100,000 non-pecuniary damages to date
 - €150,000 non-pecuniary damages for the future
 - €203,000 pecuniary damages

IECA Decision

- IEHC Decision Upheld

- Re Dismissal for Falsehood

- Correcting claim not sufficient on its own to avoid dismissal*

- Plaintiff's vulnerability and defendant's involvement in falsehood combined with correction make dismissal unjust*

- IEHC findings of fact supported by evidence, so not open to challenge*

- Re Damages

- Levels awarded supported by the evidence*

Comment

- Useful clarification of the exercise of discretion re dismissal
 - Confirms trend in earlier cases
 - Factual circumstances somewhat unusual
- Damages
 - Preserves scale of damages for significant injuries