

Expert evidence required to proceed in professional medical negligence action

Abigail Barnett Hunt v Peter Gormley, Bon Secours Health Systems Limited and Bon Secours Hospital Galway [2019] IEHC 316 (16 May 2019)

The High Court (Barrett J.) dismissed an application by the plaintiff for judgment in default of defence against Bon Secours Health Systems Limited (**Bon Secours Health**) and Bon Secours Hospital Galway (**Bon Secours Hospital**), on the grounds that it appeared that the plaintiff had not obtained an independent expert report in relation to the treatment provided by them.

Facts

In this case the plaintiff alleged negligence and breach of duty by Bon Secours Health and Bon Secours Hospital. Solicitors for those defendants wrote to the plaintiff's solicitors asking if they had obtained an independent expert report which specifically criticised the treatment provided by their clients as opposed to the first named defendant, Mr. Gormley. They did not receive a clear response.

Conclusions

Barrett J. noted that the position, as set out by Barr J. in *Reidy v The National Maternity Hospital*, was clear and had been repeatedly affirmed by the Superior Courts. Barr J. in the High Court in *Reidy* stated that it is "irresponsible and an abuse of the process of the

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Niamh Tuohy Trainee, Litigation DD: + 353 (0)1 673 1855 niamh.tuohy@dilloneustace.ie court" to lodge court proceedings against hospitals without first determining that there are reasonable grounds to do so. Furthermore, that the "initiation and prosecution of an action in negligence on behalf of the plaintiff against the hospital requires the appropriate expert evidence to support it."

Barrett J., noting that the plaintiff's claim in this case came directly within that contemplated by the court in *Reidy*, commented that the proceedings should not have been lodged against Bon Secours Health and Bon Secours Hospital without the plaintiff having first determined if there were reasonable grounds to do so, and obtaining an independent expert report.

In refusing to grant judgment in default of defence against those defendants, Barrett J. commented that it was relevant to the substance of their defence whether there was a report which specifically criticised the treatment provided by them.

Comment

The decision in this case demonstrates the emphasis the court will place on professional medical negligence actions (and other similar actions) being grounded on solid evidence, such as an independent expert report. It is also of note that the court was critical of the failure of the plaintiff's solicitors to provide the solicitors for Bon Secours Health and Bon Secours Hospital with a "meaningful response" on the existence of any independent expert report.

Should you have any queries in relation to the issues raise in this bulletin, please contact the authors or your usual Dillon Eustace contact for further information.

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