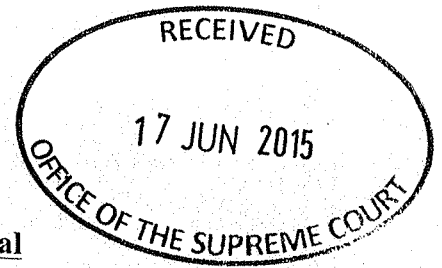


Order 58, rule 15

SUPREME COURT



Application for Leave and Notice of Appeal

For Office use

Supreme Court record number of this appeal	
Subject matter for indexing	

Leave is sought to appeal from

<input type="checkbox"/> The Court of Appeal	<input checked="" type="checkbox"/> The High Court
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Title and record number

Linda Farrell	v	John Ryan
High Court Record Number 2012/8972P		
Date of filing		
Name of Appellant	Linda Farrell	
Solicitors for Appellant	MacGeehin Toale Solicitors	
Name of Respondent	John Ryan	
Respondent's solicitors	A&L Goodbody Solicitors	
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?		
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	

Are you applying for an extension of time to apply for leave to appeal?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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1. Decision that it is sought to appeal

Name of Judge	Mr Justice Cross
Date of Order/Judgment	Date of Judgment 1 May 2015 Date of Order 19 May 2015 Date Order perfected 21 May 2015

2. Appellant's Details

Appellant's full name	Linda Farrell
-----------------------	---------------

Original status

<input checked="" type="checkbox"/> Plaintiff
<input type="checkbox"/> Applicant
<input type="checkbox"/> Prosecutor
<input type="checkbox"/> Petitioner

<input type="checkbox"/> Defendant
<input type="checkbox"/> Respondent
<input type="checkbox"/> Notice Party

Solicitor			
Name of firm	MacGeehin Toale Solicitors		
Email	Legal11@macgtn.ie		
Address	10 Prospect Road, Glasnevin, Dublin 9	Telephone no.	01-8303555

		Document Exchange no.	None
Postcode	<b>Dublin 9</b>	Ref.	<b>10800/29/C</b>

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	<b>E-mail</b>
<input checked="" type="checkbox"/>	<b>Post</b>	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	<b>John Rogers SC</b>		
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Address	<b>P.O. Box. 4460, 158/9 Church Street, Dublin 7</b>	Telephone no.	<b>01 817 5096</b>
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Postcode	<b>Dublin 7</b>		

Counsel			
Name	<b>Ciaran Craven SC</b>		
Email	<u>cocrabhain@eircom.net</u>		
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		Document Exchange no.	<b>81 4174</b>
Postcode	<b>Dublin 8</b>		

### 3. Respondent's Details

Respondent's full name	<b>John Ryan (sued as representative of the Coombe Women &amp; Infants University Hospital)</b>
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Original status

<input type="checkbox"/>	Plaintiff
<input type="checkbox"/>	Applicant
<input type="checkbox"/>	Prosecutor
<input type="checkbox"/>	Petitioner

<input checked="" type="checkbox"/>	<b>Defendant</b>
<input type="checkbox"/>	Respondent
<input type="checkbox"/>	Notice Party
<input type="checkbox"/>	

Solicitor			
Name of firm	<b>A&amp;L Goodbody</b>		
Email	<u>info@algoodbody.com</u>		
Address	<b>International Financial Services Centre, North Wall Quay, Dublin 1</b>	Telephone no.	<b>01 649 2000</b>
		Document Exchange no.	<b>29 Dublin</b>

		Ref.	<b>CC/01405833</b>
Postcode	<b>Dublin 1</b>		

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
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		Document Exchange no.	<b>81 6001</b>
Postcode	<b>Dublin 7</b>		

Counsel			
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		Document Exchange no.	<b>81 8074</b>
Postcode	<b>Dublin 7</b>		

#### 4. Information about the decision that it is sought to appeal

The Plaintiff's/Appellant's appeal is confined solely to the issue of liability which was framed as, and confined to, a single plea of negligence, as follows:

*That there was no justification whatever, in any circumstances, for the performance of an antenatal symphysiotomy on the plaintiff at the time it was performed.*

The essential and relevant findings of fact made by the High Court are as follows:

- (i). On 25 September 1963, a symphysiotomy was performed on Mrs Farrell while she was a patient in the (then) Coombe Hospital; this was 12 days prior to the onset of labour and the delivery of her first child;
- (ii). The child was delivered on 6 October 1963 by mid-cavity forceps extraction because of failure to advance;

- (iii). She suffered urinary incontinence, at least exacerbated by the symphysiotomy, lifelong functional pelvic instability associated with the symphysiotomy, difficulty bonding with and subsequent lifelong distancing from the infant born in 1963 and mental health difficulties (the precise categorization of which was considered irrelevant) and distress and anxiety: in summary, she suffered lifetime distress and physical difficulties;
- (iv). The Coombe Hospital did not suffer delay prejudice by reason of the passage of time from 1963 to the date of trial, given that Mrs Farrell's case on liability was confined to the single plea of negligence already set out;
- (v). Mrs Farrell's date of knowledge for the purposes of the Statutes of Limitation was August 2011 when she received her records from the Coombe Hospital and, in the circumstances, the plea of Statute bar failed.

The essential and relevant findings on liability made by the High Court are as follows:

- (vi). The practice of antenatal (prophylactic) symphysiotomy was a general and approved practice in Dublin maternity hospitals at the time under inquiry, i.e. 1963: specifically, a trial of labour was not always required or necessary to conclude that a vaginal delivery would not be possible and in those cases prophylactic symphysiotomy without trial of labour was a reasonable, though limited, option;
- (vii). That practice did not have inherent defects which ought to have been obvious to any person giving the matter due consideration;
- (viii). Mrs Farrell failed to establish that there were no circumstances in which her symphysiotomy could be justified at the time.

Accordingly, the High Court, following judgment delivered on 1 May 2015, made an Order on 19 May 2015 (perfected on 21 May 2015) dismissing Mrs Farrell's claim with no Order as to Costs.

## **5. Reasons why the Supreme Court should grant leave to appeal**

It is sought to appeal the Judgment and Order of the High Court directly to the Supreme Court on the grounds that:

### *The Appeal involves a matter of general public importance*

- (i). These proceedings concern the practice of symphysiotomy, which was performed on some 1,500 women in Ireland between 1948 and 1988.
- (ii). This practice has been the subject of two separate Government reports, was examined (and condemned) in July 2014 by the United Nations Human Rights Committee, which found, pursuant to Article 7 of the International Covenant on Civil and Political Rights, which is analogous to Article 3 of the European Convention of Human Rights, that Ireland ought to carry out a prompt and independent investigation and called on Ireland to provide an effective remedy for damage sustained by those who have undergone the procedure.
- (iii). The practice has been the subject of intense media interest, public discussion and debate within the Dáil over the past number of years. Even when practised, it was deeply controversial.
- (iv). The examination of controversial historic medical practices, and the expeditious and final determination of the proper application of correct legal principles to their assessment, with a view to compensating those who have been wrongly damaged by them – in the case of the cohort affected by symphysiotomy, a small group of vulnerable elderly women – is a matter of general public importance in any free, liberal and democratic society that values the upholding of the rule of law and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

### *It is in the interests of justice that an Appeal be brought directly to the Supreme Court*

- (v). Mrs Farrell is now 76 years old. The High Court has found that she has suffered lifelong injuries and distress as a result of the symphysiotomy she underwent in 1963, at the age of 24. Given her life expectancy, the time it would take for an

appeal to be heard in the Court of Appeal and that, as definitive determination of the legal issues in the case will require final consideration in the Supreme Court, the additional time that would take, she may not survive long enough to bring all stages of her appeal to finality. In those circumstances, her claim and appeal will die with her. It is in the interests of justice, therefore, that an early and final appeal of all issues arising be heard in the Supreme Court by way of direct appeal.

*There are exceptional circumstances warranting a direct Appeal to the Supreme Court*

- (vi). Mrs Farrell's claim is in the nature of a test case in respect of controversial historic medical practices and it is desirable, in the public interest, given the age of the small cohort of women affected by symphysiotomy, that there be an expeditious and final determination of the relevant liability questions before they all die and their claims die with them. Mrs Farrell's age, and the affected small cohort's age, and the time that would ordinarily be required for a final determination of her appeals constitute, in this case, when coupled with the foregoing matters, exceptional circumstances warranting a direct Appeal to the Supreme Court.

**6. Grounds of Appeal which will be relied on if leave to appeal is granted**

The Learned Trial Judge:

- (i). Erred in fact and in law in finding that the performing of a symphysiotomy on Mrs Farrell in September 1963, some 12 days before she went into labour, was justified in any circumstances;
- (ii). Erred in fact and in law in finding that the fact that the antenatal symphysiotomy was performed some 12 days before Mrs Farrell went into labour was not relevant to liability;
- (iii). Erred in fact and in law in finding that the practice of antenatal symphysiotomy was a general and approved practice within the meaning of the second *Dunne* principle;
- (iv). Without prejudice to the foregoing, erred in fact and in law in, essentially, reading a "local expertise" rule into the application of the second *Dunne* principle;

- (v). Erred in fact and in law in finding that the practice was not negligent having regard to the application of the third *Dunne* principle, *viz.* in finding that it did not have inherent defects which ought to have been obvious to any person giving the matter due consideration;
- (vi). Without prejudice to the foregoing, misdirected himself in fact and in law as to the proper interpretation of “inherent defects” within the meaning of the third *Dunne* principle;
- (vii). Erred in law in failing to have regard to the broader liability considerations articulated in the unanimous decision of the Supreme Court in *Kearney v McQuillan & anor.* [2012] IESC 43;

In relation to the foregoing Grounds of Appeal, the Learned Trial Judge:

- (viii). Erred in fact in finding that, in this case, Mrs Farrell’s hospital notes indicated that the findings on x-ray pelvimetry and examination under anaesthesia “convinced” those treating her that vaginal delivery would not be possible;
- (ix). Erred in law in failing to address why Mrs Farrell had not been treated by caesarean section, a procedure routinely performed at the Defendant’s/Respondent’s Hospital at the time;
- (x). Erred in law in failing to address, in any adequate or proper manner, purported reasons for deviating from the indications for symphysiotomy prescribed on its introduction to Dublin hospitals after 1948 and/or the indications specified in the entire body of world literature relating to the practice and/or the indications for such deviating;
- (xi). Erred in fact in finding that the Defendant’s/Respondent’s Hospital’s servants or agents had reason to believe that symphysiotomy was not generally adverse in its effect on a mother and was safer for the child compared with caesarean section and,

in this context, failed to have proper regard for the evidence and the weight of the evidence;

- (xii). Erred in fact in accepting that there were real fears in relation to repeated caesarean section and failing to have proper regard for the evidence, and the weight of the evidence, in relation to vaginal delivery after previous caesarean section including, specifically, in the Defendant's/Respondent's Hospital;
- (xiii). Erred in law in finding that a medical practice will not be condemned merely because it is not supported in any peer review literature and that it can only be condemned if it fails the *Dunne* test, or the reformulation of Mrs Farrell's case against the Defendant/Respondent;
- (xiv). Erred in fact in finding that the practice of symphysiotomy was subject to proper peer review.

**Ruadhán Mac Aodháin BL**  
**Ciaran D Craven SC**  
**John Rogers SC**

## **7. Other relevant information**

Neutral citation of the Judgment appealed against: [2015] IEHC 275

## **8. Orders sought**

- (i). An Order allowing the Appeal and setting aside the Order of the High Court made on 19 May 2015 dismissing Mrs Farrell's claim.
- (ii). An Order, if required, remitting the proceedings to the High Court for damages to be assessed consistent with the Judgment and Order of this Honorable Court.
- (iii). Further and other relief.



(iv). An Order for Costs including an Order for the Costs of the High Court proceedings and the within Appeal

What order are you seeking if successful?

Order being appealed: set aside  vary/substitute

Original order: set aside  Restore  vary/substitute

If a declaration of unconstitutionality is being sought please identify the specific provision(s) of the Act of the Oireachtas which it is claimed is/are repugnant to the Constitution N/A

If a declaration of incompatibility with the European Convention on Human Rights is being sought please identify the specific statutory provision(s) or rule(s) of law which it is claimed is/are incompatible with the Convention N/A

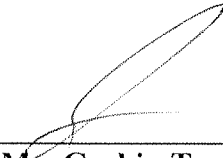
Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions?  Yes  No

make a reference to the Court of Justice of the European Union?  Yes  No

Will you request a priority hearing?  Yes  No

Reasons set out in application for leave to appeal directly to the Supreme Court

Signed: 

**MacGeehin Toale Solicitors**  
**Solicitors for the Plaintiff/Appellant,**  
**10 Prospect Road,**  
**Glasnevin,**  
**Dublin 9**

To: **A& L Goodbody,**  
**Solicitors for the Defendant/Respondent,**  
**International Financial Services Centre,**  
**North Wall Quay,**  
**Dublin 1**

**AND:**

**Office of the Registrar of the Supreme Court,  
Supreme Court,  
Four Courts,  
Inns Quay,  
Dublin 7**

**Enclosed:**

**Certified Copy of Order perfected on 21 May 2015  
Approved Judgment**