O. 58, r. 18(1)

SUPREME COURT

Respondent's Notice

Supreme Court record number		2015/30

[Title and record number as per the High Court proceedings]

Linda Farrell	**V**	**John Ryan, Record No. 2012/8972P**

Date of filing	17 June 2015
Name of respondent	John Ryan
Respondent's solicitors	A&L Goodbody, International Financial Services Centre, North Wall Quay, Dublin 1. Telephone: 01 6492000 | DX: 29 Dublin
Name of appellant	Linda Farrell
Appellant's solicitors	MacGeehin Toale 10 Prospect Road, Glasnevin Dublin 9 Telephone: 01 8303555 | DX: None

1. Respondent Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent's full name	John Ryan

The respondent was served with the application for leave to appeal and notice of appeal on date
18 June 2015

The respondent intends :	
	to oppose the application for an extension of time to apply for leave to appeal
	not to oppose the application for an extension of time to apply for leave to appeal
	to oppose the application for leave to appeal

X	not to oppose the application for leave to appeal

X	to ask the Supreme Court to dismiss the appeal

X	to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court

Other (please specify)	

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondent's representation are correct and complete on notice of appeal:	✓

Respondent's Representation

Solicitor			
Name of firm			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode		Ref.	

How would you prefer us to communicate with you?

	Document Exchange		E-mail
	Post		Other (please specify)

Counsel :			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address
Telephone no.
e-mail address

How would you prefer us to communicate with you?			
☐	Document Exchange	☐	E-mail
☐	Post	☐	Other (please specify)

2. Respondent's reasons for opposing extension of time

If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused
N/A

3. Information about the decision that it is sought to appeal

Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:

1. The "essential and relevant findings of fact made by the High Court" as set out at paragraph 4(i)-(v) do not set out fully or properly the essential and relevant findings of fact made by the High Court. The Respondent does not contest the accuracy of the facts set out, but simply contends that more facts than this were essential and relevant for the findings of the High Court and the Respondent will rely on the Judgment itself in this respect.

2. Similarly, the "essential and relevant findings on liability" are not directly extracted from the Judgment but are, instead, a characterisation of same and, again, the Respondent will rely on the Judgment itself in this respect.

4. Respondent's reasons for opposing leave to appeal

For the avoidance of doubt, the Respondent does not oppose the application for leave to appeal. However, whereas the Respondent does not oppose the application for leave to appeal, the Respondent, if relevant, would point out that the actual number of litigants whose cases concern symphysiotomy is in the region of 100 cases. The Respondent is a stranger to the submission to the United Nations Human Rights Committee. Further with reference to the contention that the procedure was deeply controversial at the time, this is in fact an issue in the proceedings and was considered by the High Court Judge in his determination of the issues before him. Whereas the Respondent does not contest the application for leave, the Respondent will rely on its substantive opposition to the appeal (if leave is granted) to deal with the contention about the controversy of the procedure. The Respondent accepts as a matter of fact the Applicant's age; the fact that there is multiple litigation relating to symphysiotomy and the fact that it has been the subject of public comment and media controversy.

5. Respondent's reasons for opposing appeal if leave to appeal is granted

The reasons for opposing are concisely stated as required as follows following the roman numerals used by the Appellant:-

(i) There was no error in law or fact in finding that the performing of a symphysiotomy on the Plaintiff was justified. The Respondent notes that the conclusion of the Court was that the Plaintiff had failed to discharge her (undisputed) burden to show that the symphysiotomy could not have been justified in any circumstances. The High Court Judge made no error in law or fact in holding that the Appellant had failed to discharge that burden.

(ii) There was no error in the High Court Judge determining that the fact of the timing of the symphysiotomy was not determinative of liability. At para.11.6 the High Court Judge held *"[t]he fact that the procedure was carried out some*

twelve days before the birth may have been causative of a number of the plaintiff's injuries but the particular time delay involved is not, of itself, a factor which could be added to the plaintiff's case such as to establish liability. The defendants did not know at the time of the symphysiotomy when labour would commence and indeed the defendants at that stage still believe that the baby was overdue." Thus, it is denied that the High Court Judge held same was "not relevant" as is alleged. Rather, the facts as outlined above where considered, judged and viewed as not determining the case on liability. In this respect, if the Appellant means to make complaint regarding this conclusion, it was a conclusion the High Court Judge was fully entitled to make.

(iii) At (iii) it is contended that the High Court Judge erred by finding that the *"practice of antenatal symphysiotomy was a general and approved practice within the meaning of the second Dunne principle"*. For the avoidance of any doubt, this is not a quote taken from the Judgment. The issue before the Court was whether the Plaintiff was able to discharge her burden to show that there was no justification whatsoever, in any circumstances, for the performance of an antenatal symphysiotomy on the Plaintiff at the time it was performed. This is what the High Court Judge determined. The Court held that the Defendant would have the second principle in *Dunne* available to it – i.e. that the Defendant could argue that *"if the allegation of negligence against a medical practitioner is based on proof that he deviated from a general and approved practice that will not establish negligence unless it is also proved that the course he did take was one which no medical practitioners of like specialisation and skill would have followed had he been taken the ordinary care required from a person of his qualifications."* In this respect, the Appellant has failed to properly set out a conclusion from the Judgment on which issue is taken save to, it is assumed, purport to summarise the High Court Judge's conclusions at, for example, paragraphs 11.6 and 11.7. Thus, for the avoidance of any doubt, it is denied that the High Court Judge made any error of fact or law in this respect and is denied that the High Court Judge was wrong in fact or in law in holding that the Plaintiff had failed to discharge her burden.

(iv) The High Court Judge made no legal error or factual error in either determining

the issue under examination (i.e. was the Plaintiff able to show that there was no justification whatsoever, in any circumstances, for the performance of an antenatal symphysiotomy on the Plaintiff at the time it was performed) or in applying the *Dunne* principles. The High Court Judge's conclusions were fully in accordance with law and were not reached on a mis-application of the law. The Appellant does not make any effort to set out what it means by importation of a "local expertise" rule.

(v) The High Court Judge made no legal error or factual error either in determining the issue under examination (i.e. was the Plaintiff able to show that there was no justification whatsoever, in any circumstances, for the performance of an antenatal symphysiotomy on the Plaintiff at the time it was performed) or in applying the *Dunne* principles. With particular regard to (v), at para.11.4 the High Court Judge *held "I have further come to the conclusion that given the real fears of multiple caesarean sections and the perceived benign effects of symphysiotomy and also given the wide acceptance of this practice among the leading consultants in the Coombe and National Maternity Hospital, that the plaintiff has not established that this practice was one which such inherent defects that ought to have been obvious to any person giving the matter due consideration."* The High Court Judge's conclusions were fully in accordance with law and were not reached on a mis-application of the law.

(vi) The High Court Judge made no legal error or factual error either in determining the issue under examination (i.e. was the Plaintiff able to show that there was no justification whatsoever, in any circumstances, for the performance of an antenatal symphysiotomy on the Plaintiff at the time it was performed) or in applying the *Dunne* principles. The High Court Judge's conclusions were fully in accordance with law and were not reached on a mis-application or mis-direction of the law. There was no mis-direction as alleged on the interpretation of *"inherent defects"*.

(vii) The High Court Judge made no legal error or factual error either in determining the issue under examination (i.e. was the Plaintiff able to show that there was no justification whatsoever, in any circumstances, for the performance of an

antenatal symphysiotomy on the Plaintiff at the time it was performed) or in applying the *Dunne* principles. The High Court Judge's conclusions were fully in accordance with law and were not reached on a mis-application or mis-direction of the law. Notably, none of the "*broader liability considerations*" which it is alleged the High Court Judge failed to have regard to, are set out to permit a proper reply.

(viii) The High Court Judge was fully entitled to conclude that the hospital notes available convinced those treating the Appellant that a vaginal delivery would not be possible. The relevant finding is at para.11.4: "*[i]n this case the hospital notes indicate that pelvimetry and the EUA convinced the treating doctors that a vaginal delivery would not be possible...*" The High Court Judge was fully entitled to reach this conclusion.

(ix) It is not appropriate to introduce facts *not* held by the High Court Judge into a ground of appeal regarding the "routine" carrying out of caesarean section. In any event, it is disingenuous to contend that the High Court Judge was not alive to the point (which the Appellant had made) regarding the choice of caesarean section over symphysiotomy. The Judgment quite clearly indicates that the High Court Judge reached his conclusions, very much alive, to the issue as to the possible role of caesarean section. It is thus simply not correct that the High Court Judge failed to address this point.

(x) Ground (x) appears to be a complaint regarding the Judgment in terms of its reasoning. It is denied that the High Court Judge has failed, in any way, to deal appropriately with the issues which were before him. Again, this ground seeks to introduce matters of fact which were not expressly held by the High Court and/or is too unspecific with reference to "the entire body of world literature" to reply to. The Appellant should be citing particular sections from the Judgment if points like this are to be made and a concise reply is not possible. For the avoidance of any doubt, the High Court Judge was fully entitled in fact and law to reach the conclusion he did.

(xi) The High Court Judge was fully entitled to find at para.11.4 that "*[i]n this case*

the hospital notes indicate that pelvimetry and the EUA convinced the treating doctors that a vaginal delivery would not be possible and accordingly, they proceeded on a course of a symphysiotomy which at the time they had reason to believe was not generally adverse in its effect to the mother and it was safer as far as the child was concerned." No error was made in this respect. Indeed the Defendant's evidence was that symphysiotomy was safer for the mother and as safe for the baby as caesarean section.

(xii) The ground at (xii) is not sustainable. The High Court Judge was entitled to find at para.11.4 that there were "*real fears of multiple caesarean sections.*" This conclusion was fully open to the High Court Judge and it was found properly and lawfully.

(xiii) At para.11.3 the High Court Judge held *"[a] practice will not be condemned merely because it is not supported in any peer review literature. A practice can only be condemned if it fails the Dunne test, or in this case, the reformulation of the plaintiff's case against the defendant."* There is nothing wrong in law with this finding. The legal test is not solely whether support exists in peer review literature and it is not contended that there was no such support or other relevant support. The legal test is the test as the High Court Judge formulated.

(xiv) The terms *"proper peer review"* are no-where used in the Judgment. Again, it is inappropriate to make complaint regarding a Judgment without setting out precisely what is contended to be an error. It is apprehended the Appellant may be referring to para.11.5 wherein the High Court Judge held *"The practice of prophylactic symphysiotomy was vigorously and publicly defended by the professionals in the annals of their hospitals and was subject to combative peer review at the annual Proceedings of their Professional Society."* The High Court Judge was fully entitled to make these findings.

Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:

Brian Foley BL
Emily Egan SC

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

1. The Respondent contends that the decision of the High Court should be affirmed on the grounds that the approach adopted to by the High Court to the question of whether there were any circumstances in which, in the circumstances prevailing in Ireland in 1963, a symphysiotomy could have been justified by a consultant gynecologist was correct.
2. The Respondent will contend that any other approach to the said question would have meant that the Respondent was prejudiced by the lapse of time from 1963 to the trial date such that it would be unjust and unfair to call on the Respondent to defend the proceedings and such that the balance of justice would be in favor of dismissing the claim.
3. In this regard, the Respondent contends that the Plaintiff's grounds of appeal (in particular, and without prejudice to the generality grounds (viii), (ix), (x), (xi) and (xii)) invite the Court to interrogate the clinical judgment of Dr Stuart (when the said person and all others involved in the Plaintiff's care are unavailable to the Defendant) and/or invite to Court to draw inferences adverse to the Defendant in such a manner as would mean that inescapable prejudice to the Defendant would arise creating a real and serious risk of an unfair trial.
4. The within case was statute barred within the meaning of the Statute of Limitations 1957 and the Statute of Limitations (Amendment) Act, 1991. The decision of the High Court to dismiss the Appellant's case should be affirmed on the basis that the case was statute-barred, although the High Court Judge concluded that it was not. In this respect, the following grounds are relied on:-

   (a) The High Court Judge erred in fact and in law in holding that the case was not statute barred.

   (b) The High Court Judge erred in fact and in law by holding that the Plaintiff's date of knowledge commenced when she was furnished with her medical records.

   (c) The High Court Judge erred in law when concluding at para 6.3 that the "use or non-use, or knowledge or non-knowledge of the word "symphysiotomy" is

not material to the issue of the statute of limitations."

(d) The High Court Judge erred in fact and law in determining that the Appellant had not used the term "symphysiotomy" as described in paragraph 6.3 and with regard to the evidence that was before the Court.

(e) The High Court Judge erred in fact and law in failing to give sufficient weight to the Appellant's evidence that she knew she was injured and was capable of attributing that to the circumstances in which she delivered her child in 1963.

(f) At para.6.7 the High Court Judge held "As a matter of probability, I believe that the plaintiff was contacted by Ms. Teeling after the *Primetime* programme because by letter dated 20th February, 2010, shortly after the *Primetime* programme, the plaintiff first sought her medical records from the Coombe. This letter was received by the Coombe on 26th February, 2010." Accordingly, and with regard to the evidence before the Court, the learned High Court Judge erred in law and fact in concluding that the Appellant's date of knowledge was in August 2011 when medical records were received. The date of knowledge was, at a minimum, the 20 February 2010 when the Plaintiff was put on sufficient enquiry regarding the topic of symphysiotomy to seek her medical records.

Are you asking the Supreme Court to:

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

If Yes, please give details below:

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

If Yes, please give details below:

Will you request a priority hearing?		**Yes**	✓	**No**

If Yes, please give reasons below:

Signed: A S L Goodbody

(Solicitor for) the respondent

Please submit your completed form to:

The Office of the Registrar to the Supreme Court

The Four Courts

Inns Quay

Dublin

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.