

O. 58, r. 18(1)

SUPREME COURT

Supreme Court record number

High Court Record No. 1231P/2014
Court of Appeal Record No. 257/2016

BETWEEN:

MICHAEL DEASY

Plaintiff/ Appellant

AND

**HEALTH SERVICE EXECUTIVE
DAVID SANTHOSH, CARL VAUGHAN AND
HCA INTERNATIONAL LTD**

Defendants/ Respondents

Third Named Respondent's Notice

Date of filing: the day of June 2017.

Name of third named respondent: Carl Vaughan

Third named Respondent's solicitors: William Fry Solicitors, 2 Grand Canal Quay, Dublin 2.

Name of appellant: Michael Deasy

Appellant's solicitors: The Appellant is a litigant in person

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: Carl Vaughan	
The respondent was served with the application for leave to appeal and notice of appeal on date 12 June 2017	
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
X	to oppose the application for leave to appeal
	not to oppose the application for leave to appeal
X	to ask the Supreme Court to dismiss the appeal
	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 (<i>please specify</i>)

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: X
--

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

Not applicable

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

<p>The third named Respondent disputes that which has been set out in the information provided by the Applicant about the decision that it is sought to appeal (Section 4 of the notice of appeal) as follows:</p> <ol style="list-style-type: none"> a. There is no nexus between the alleged damage and expense of travelling abroad for medical care which the Applicant claims he has incurred and will continue to incur with the alleged wrongdoing of the third named Respondent. b. The injunctive relief sought cannot be ordered against the third named Respondent. c. The Court of Appeal did not determine that the Applicant's damages were too remote d. The Court of Appeal did not determine that it would be an abuse of process for the Applicant to call the third named Respondent to give evidence. e. The Court of Appeal did not determine that it would be an abuse of process for the Applicant to call other medical personnel directly involved in his medical care to give evidence. f. The Court of Appeal did not state that the Supreme Court has prohibited medical negligence cases from proceeding in any circumstances without the support of a medical expert.

4. Respondent's reasons for opposing leave to appeal

<p>The third named Respondent is contesting the Applicant's leave to appeal on the following grounds:</p> <ol style="list-style-type: none"> a. The decision in respect of which leave to appeal is sought does not involve a matter of general public importance: <ol style="list-style-type: none"> i. The Applicant's case is entirely premised upon an allegation of professional medical negligence arising out of two medical examinations (bubble studies) conducted on the Applicant by the third-named Respondent on the 20th December 2012 and the 31st January 2013. ii. This case does not concern the Constitutional rights of access to the Courts, to a fair hearing or the principle of equality. This case concerns the Applicant's inability to prove the allegations of professional medical negligence against the third named Respondent without expert opinion. iii. This case does not concern the question whether expert evidence must be obtained in every medical negligence case. The facts of this case are such that the allegation of professional medical negligence cannot be substantiated in the absence of expert opinion. iv. This case does not concern the question whether a case can be dismissed for want of expert evidence without hearing any of the other evidence in the case. The allegations of professional medical negligence in this case against the third named Respondent can only be proven by expert opinion and, therefore, cannot be proven by other evidence in the case.
<ol style="list-style-type: none"> b. It is not, in the interests of justice, necessary that there be an appeal to the Supreme Court:

- i. The Applicant is alleging professional medical negligence which is not premised upon expert opinion. The oral and documentary evidence to which the Applicant refers is not relevant to the allegation of professional medical negligence asserted against the third named Respondent.

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

Third named Respondent's grounds of opposition to the grounds of appeal set out in the Applicant's notice of appeal:

- a. Opposition to First Ground of Appeal;
 - i. Neither the decision in *Keohane v Hynes & Another* [2014] IESC 66 nor the decision in *Moylist Constructions Limited v Doheny & Others* [2016] IESC 9 impacted on the well settled jurisprudence regarding professional negligence claims which is germane to this case.
- b. Opposition to Second Ground of Appeal;
 - i. Ms. Justice Irvine was not sure that it was necessary to consider whether the Supreme Court's decision in *Cooke v Cronin* (Supreme Court unreported 14th July 1999) was precedent for an absolute rule that professional negligence proceedings cannot be maintained without expert opinion.
 - ii. Whether *Cooke v Cronin* provides for a absolute "rule", as espoused by the Applicant, that a patient cannot sue a doctor or a hospital for negligence without the support of a medical expert is not relevant to this case.
 - iii. The Applicant has alleged professional negligence arising out of medical examinations conducted by the third named Respondent. Therefore, this is a professional medical negligence claim that requires expert opinion so as to satisfy the test in *Dunne v. The National Maternity Hospital & Anor* [1989] 1 IR 91.
- c. Opposition to the Third Ground of Appeal;
 - i. The Applicant has contended that the standard of care is obvious to any person. A claim of medical negligence cannot and should not be determined by an assessment of what is obvious to 'any person.' *Dunne v. The National Maternity Hospital & Anor* is the authoritative statement of principle for determining medical negligence litigation.
 - ii. The Applicant has stated that he does not need expert evidence to explain that which he has listed at (a)- (g). It is respectfully submitted that the appellant must adduce expert evidence to substantiate that which he has listed at (b), (c), (d) & (f). The third named Respondent is a stranger to that which is alleged at 5 (g).
- d. Opposition to the Fourth Ground of Appeal;
 - i. The essence of the Applicant's claim is professional medical negligence. In the absence of expert medical opinion the Applicant is not able to prove his claim. Even if the Applicant adduced expert medical opinion to prove the allegation of professional medical negligence there is no evidence to prove that such alleged wrongdoing on the part of the third named Respondent caused the Applicant any loss, damage or expense.
- e. Opposition to the Fifth Ground of Appeal;

i.	The Court of Appeal did not reach any conclusion on the submission that the Applicant's proposal to call the second and third named Respondents was an abuse of process.
ii.	The third named Respondent maintains that the manner in which the Applicant proposes to prove his case by applying to the trial judge to treat subpoenaed witnesses, including the second and third named Respondents, as hostile is an abuse of process.
Padraic Hogan, BL and Declan Buckley, SC settled the Grounds of Opposition.	

6. Additional grounds on which decision should be affirmed

Additional ground on which the decision should be affirmed:	
a.	The Applicant's proposal to prove his case by applying to the trial judge to treat witnesses he has subpoenaed, including the second and third named Respondents together with other witnesses, as hostile is an abuse of process.

Are you asking the Supreme Court to:	
Depart from (or distinguish) one of its own decisions?	Yes
	No X
If Yes, please give details below:	
Make a reference to the Court of Justice of the European Union?	Yes
	No X
If Yes, please give details below:	
Will you request a priority hearing?	Yes X
	No
If Yes, please give reasons below:	
The third named Respondent is anxious to have this matter expedited so as to maintain and protect his professional reputation.	

Please submit your completed form to:
The Office of the Registrar of the Supreme Court
The Four Courts
Inns Quay
Dublin

No. 2

O. 58, r. 18(1)

SUPREME COURT

Supreme Court record number

High Court Record No. 1231P/2014
Court of Appeal Record No. 257/2016

BETWEEN:

MICHAEL DEASY

Plaintiff/ Appellant

AND

**HEALTH SERVICE EXECUTIVE
DAVID SANTHOSH, CARL VAUGHAN AND
HCA INTERNATIONAL LTD**

Defendants/ Respondents

Third Named Respondent's Notice

**WILLIAM FRY
Solicitors
2 Grand Canal Square
Dublin 2**

015286.0810.MGC
WF-19539539-1