

**THE SUPREME COURT**

**Record No. 116/2010**

**FINNEGAN J.**

**O'DONNELL J.**

**MCKECHNIE J.**

**IN THE MATTER OF SECTION 16 OF THE COURTS OF JUSTICE ACT 1947**

**IN THE MATTER OF THE FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN)  
ACT 1976**

**IN THE MATTER OF THE RESIDENTIAL INSTITUTIONS REDRESS ACT 2002**

**THE CIRCUIT FAMILY COURT**

**MIDLANDS CIRCUIT**

**COUNTY ROSCOMMON**

**BETWEEN**

**F MCK**

**APPLICANT**

**AND**

**O L**

**RESPONDENT**

**Judgment of Mr Justice Finnegan delivered on the 28th day of October 2010**

This matter comes before the court by way of a case stated from the Circuit Family Court pursuant to section 16 of the Courts of Justice Act 1947.

Section 28 of the Residential Institutions Redress Act 2002 as amended by section 34 of the Commission to Enquire into Child Abuse (Amendment) Act 2005 provides as follows: -

*“28. (1) A person (including the Board and the Review Committee) shall not, subject to this section, disclose information other than the information specified in subsection (4) or (5) that is provided to the Board or the Review Committee and obtained by that person in the course of the performance of the functions of the person under this Act.*

*(2) A person referred to in subsection (1) shall disclose information so referred to for the purpose of the performance of the functions of the person under this Act.*

*(3) Documents that are –*

*(a) provided to or prepared by the Board and where appropriate the Review Committee, or*

*(b) prepared by a person for the Board or the Review Committee in the course of the performance of the functions of such person as a member of the Board, Review Committee, a member of the staff of the Board or the Review Committee or an adviser,*

*shall not constitute Departmental records within the meaning of section 2(2) of the National Archives Act, 1986.*

*(4) The Board shall keep a record of following information –*

*(a) the name, address and date of birth of the applicant,*

*(b) the name of the institution concerned,*

*(c) the period in which the applicant was resident at the institution, and*

*(d) the amount awarded to the applicant under this Act,*

*and such records shall be available to the Minister for the purposes of section 13 (13) and to any party against whom proceedings are initiated contrary to section 13 (12).*

*(5) Notwithstanding subsection (1) or any other provision of, or an instrument made under, a statute or any other rule of law, a person shall disclose information other than the information specified in subsection (4) that is provided to the Board or the Review Committee and obtained by that person in the course of the performance of the functions of the person under this Act to –*

- (a) *a member of the Garda Síochána if the person is acting in good faith and reasonably believes that such disclosure is necessary in order to prevent an act or omission constituting a serious offence, and*
- (b) *to an appropriate person (within the meaning of the Protections for Persons Reporting Child Abuse Act, 1998) if the person is acting in good faith and reasonably believes that such disclosure is necessary to prevent, reduce or remove a substantial risk to the life or to prevent the continuance of abuse of a child.*

*(5A) Nothing in subsection (1) operates to prohibit the production of a document prepared for the purposes or in contemplation of an application to the Board or a submission for a review by the Review Committee, or given in evidence in such application or review to –*

- (a) *a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or*
- (b) *such body or other person as may be prescribed by order made by the Minister when the body or person concerned is performing the functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matters as may be so prescribed.*

*(5B) Nothing in subsection (1) operates to prohibit the giving of information or evidence provided or given to the Board or the Review Committee to*

- (a) *a body or other person, when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or*
- (b) *such body or other person as may be prescribed by order made by the Minister when the body or person concerned is performing functions consisting of conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed.*

*(6) A person shall not publish any information concerning an application or an award made under this Act that refers to any other person (including an applicant), relevant person or institution by name or which could reasonably lead to the identification of any other person (including an applicant), a relevant person or an institution referred to in an application made under this Act.*

*(7) The Board, shall, prior to the making of an order under section 3(3) determine the disposal of the documents concerning applications made to it.*

*(8) The Review Committee shall, prior to the making of an order under section 14(3) determine the disposal of the documents concerning applications made to it.*

*(9) A person who contravenes subsection (1) or subsection (6) shall be guilty of an offence."*

The matter came before the Circuit Court on the 26th day of January 2007 by way of an appeal from a District Court Maintenance Order. The facts proved, admitted or agreed and as found by the learned Circuit Court judge are as follows: -

1. The applicant and the respondent are not married.
2. The applicant and the respondent are the parents of two dependant children, G McK born on the 27th day of September 1996 and E C McK born on the 16th day of June 1998.
3. The applicant has custody of the two dependant children who reside with him.
4. The respondent is not presently paying maintenance for the support of the two dependant children.
5. In these proceedings the applicant seeks maintenance for the support of the two children pursuant to the provisions of section 5A(1) of the Family law (Maintenance of Spouses and Children) Act 1976 as inserted by the Status of Children Act 1987.
6. In the District Court proceedings it emerged that the respondent is in receipt of payments of €200 per month from the Wards of Court Office of the High Court in respect of a settlement of a claim from the Residential Institutions Redress Board.
7. The District judge sought details of the amount of the settlement.
8. Michael E. Hanahoe, Solicitors, acted for the respondent in relation to her claim before the Redress Board. By letter dated the 16th day of January 2006 the said solicitor stated that they were unable to divulge any information regarding the claim as there was a confidentiality requirement on each applicant to the Residential Institutions Redress Board pursuant to section 28 of the Residential Institutions Redress Act 2002.

Two preliminary issues arose on the hearing before the Circuit Family Court: -

1. Whether the applicant is entitled to details of the award made by the Residential Institutions Redress Board.
2. Whether the court is entitled to take into account the award when deciding the issue of maintenance.

#### **Submissions of the Applicant**

The respondent has a legal and moral duty to support and maintain her children from the resources available to her. The Family Law (Maintenance of Spouses and Children) Act 1976 section 5A inserted by the Status of Children Act 1987 section 18 provides that the

court in deciding whether to make a maintenance order under the section where the parents of a dependant child are not married and, if it decides to do so, in determining the amount of any payment shall have regard to all the circumstances of the case and in particular to the following matters: -

(a) The income, earning capacity (if any), property and other financial resources of -

- (i) each parent,
- (ii) the dependant child in respect of whom the order is sought, and
- (iii) any other dependant children of either parent,

including income or benefits to which either parent, the dependant child as aforesaid or such other dependant children are entitled by or under statute, and the financial and other responsibilities of each parent towards –

- (i) a spouse
- (ii) the dependant child in respect of whom the order is sought, and
- (iii) any other dependant children of either parent,

and the needs of any dependant child as aforesaid or of any such other dependant children, including the need for care and attention.

Capital assets are available to satisfy a maintenance order: *C.P. v D.P.* [1983] 3 I.L.R.M. 380, *R.K. v M.K.* the High Court unreported Finlay P. 24th October 1978, *J.D. v D.D.* [1997] 3 I.R. 643, *Daubrey v Daubrey* [1976] 2 All E.R. 453 (damages awarded for personal injury).

Having regard to the foregoing it is submitted that the applicant is entitled to know the amount of the award made to the respondent and when the court in hearing the application for a maintenance order may take the same into account. The applicant accepts that in taking the amount of the award into account the source and rationale of the funds should not be ignored.

### **Submissions of the Respondent**

The respondent submits that the provisions of section 28(6) and section 28(9) are unambiguous and reflect the clear intention of the Oireachtas in enacting the Act of 2002. The requirement of confidentiality is designed to encourage those who suffered abuse in residential institutions to come forward. Notwithstanding that the Circuit Family Court proceedings are in camera disclosure of the amount of the award is in clear breach of the provisions of section 28 of the 2002 Act. Reliance is placed on *M.V. v The Commission to Enquire into Child Abuse Respondent and Residential Institutions Redress Board Notice*

Party, the High Court, unreported, O'Neill J. 7th November 2007 where having regard to terms of section 27 of the Commission to Inquire into Child Abuse Act 2000 (which in its terms differs from section 28 of the Residential Institutions Redress Act 2002 as amended) it was held that the obligation of confidentiality contained in section 27(1) is absolute and does not admit of any exceptions save those set out in subsection (2) of section 27.

Reliance is also placed on *McGreal v D.P.P.* the High Court, unreported, Hanna J. 14th July 2008. The applicant there sought to procure evidence in statements that the complainant on a charge of rape had made to the Residential Institutions Redress Board which complaint had been disbelieved. On application by the D.P.P. the applicant's solicitor's grounding affidavit was redacted insofar as it concerned that application upon the basis that section 28(6) of the Act of 2002 prevented reference to that application.

The fact that the applicant had come into possession of information relating to the application to the Review Board would not make it admissible in evidence on the application for a maintenance order: *Asburton v Pape* [1913] 2 Ch. 469.

*Wagstaffe v Wagstaffe* v 1 F.L.R. 323 is authority for the proposition that the availability of capital by way of an award of damages is a factor to be taken into account. If the amount is at all to be taken into account the source and rationale for the funds should not be ignored: see *C v C* [1995] 2 F.L.R. 171. These cases, however, relate to open and public awards for personal injuries unlike the award the subject matter of this application.

### **Discussion and decision**

Section 28(1) of the Residential Institutions Redress Act 2002 in its terms is directed to: -

1. The Board.
2. The Review Committee.
3. Persons who obtain information in the course of the performance of functions of that person under the Act.

The section prohibits each of those to whom it is directed from disclosing information other than the information specified in subsection (4) or subsection (5) of the section. Neither subsection (4) or subsection (5) are relevant to the issues in the case stated.

Subsections (5A) and (5B) introduced into the Act of 2002 by the Commission to Inquire into Child Abuse (Amendment) Act 2005 section 34(h) provide that section 28(1) shall not operate to prohibit the production of a documents prepared for the purposes or in contemplation of an application to the Board or a submission for a review by the Review Committee, or given in evidence in such application or review or the giving of information or evidence provided or given to the Board or Review Committee to a body or other person when it, or he or she, is performing functions under any enactment consisting of

the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter. The Circuit Family Court is, I am satisfied, when hearing an application for a maintenance order a body or person performing functions under an enactment consisting of the conducting of a hearing and so subsections (5A) and (5B) apply and in consequence section 28(1) of the Act has no application; such information and documents, but not the fact or amount of the award, may be disclosed by the Board, the Review Committee and the persons to whom section 28(1) is directed to the Circuit Family Court.

Section 28(6) in its terms applies to any person. It prohibits the disclosure of any information concerning an application or an award made under the Act that refers to any other person, including an applicant, relevant person or institution by name or which could reasonably lead to the identification of any other person, including an applicant, a relevant person or an institution referred to in an application made under the Act. Section 1 of the Act defines relevant person as a person referred to in an application as having carried out the acts complained of or the institution in which the acts complained of were carried out and persons involved in the management of that institution. Institution is defined in section 1 of the Act as an institution specified in the schedule to the Act.

Thus subsection (6) prohibits a person publishing information concerning an award that refers to any other person by name or which could lead to the identification of any other person including an applicant, a relevant person or an institution. For the respondent to furnish information as to the amount of the award to her would not be to publish information concerning "any other person", relevant person or institution by name nor would this lead to the identification of any other person, relevant person or institution. In short the effect of subsection (6) is that an applicant may make known the amount of an award received so long as no other person, relevant person or institution is named and provided that the disclosure could not reasonably lead to the identification of any other person, a relevant person or an institution. Having regard to the provisions of section 5A(3) of the Family Law (Maintenance of Spouses and Children) Act 1976 inserted by section 18 of the Status of Children Act 1987 there is an obligation to disclose the amount of the award: the source of the award may be disclosed by the recipient or if the source becomes relevant the recipient may be obliged to disclose it. The proceedings in respect of a maintenance order will be in camera and there will be no further disclosure of the fact of the application or the amount of the award. The clear policy of the Act of 2002 in preserving confidential information relating to applications will not be impaired by disclosure for the purposes of the proceedings in the Circuit Family Court.

This being the interpretation of section 28 of the Act of 2002 I would answer the first question raised on the Case Stated as follows: -

- (i) Whether the applicant is entitled to details of an award made by the Residential Institutions Redress Board given the provisions of section 28 of the Residential Institutions Redress Act 2002.

Answer: Yes

Section 5A of the Family Law (Maintenance of Spouses and Children) Act 1976 inserted by section 18 of the Status of Children Act 1987 deals with maintenance orders in respect of a dependant child whose parents are not married to each other. Section 5A(3) provides as follows: -

*“(3) The court, in deciding whether to make a maintenance order under this section and, if it decides to do so, in determining the amount of any payment, shall have regard to all the circumstances of the case and in particular to the following matters*

*–*

*(a) the income, earning capacity (if any) property and other financial resources of –*

*(i) each parent*

*(ii) the dependant child in respect of whom the order is sought and*

*(iii) any other dependant children of either parent,*

*including income or benefits to which either parent, the dependant child as aforesaid or such other dependant children are entitled by or under statute, and*

*(b) the financial and other responsibilities of each parent towards –*

*(i) a spouse*

*(ii) the dependant child in respect of whom the order is sought, and*

*(iii) any other dependant children of either parent*

*and the needs of any dependant child as aforesaid or of any such other dependant children, including the need for care and attention.”*

I am satisfied that the award to the respondent by the Residential Institutions Redress Board (and which award it would appear is payable in instalments pursuant to the provisions of the Residential Institutions Redress Act 2002 section 13(8) and section 13(14) inserted by the Commission to Inquire into Child Abuse (Amendment) Act 2005 section 34(e)(iv)) is income, property or other financial resources for the purposes of section 5(A)(3). The court in deciding whether to make a maintenance order is required to have regard to the same in addition to having regard to all the circumstances of the case.

This being so I would answer the second question on the Case Stated as follows: -

(ii) Whether the court was entitled to take into account an award from the Residential Institutions Redress Board when deciding the issue of maintenance.



Answer: Yes.

McK v L