

Woman with terminal cancer settles High Court action for €2.5m

Mother of two sued a US laboratory over incorrect smear test

Limerick woman was diagnosed with cervical cancer in 2014

A woman who is dying of cervical cancer and who sued over a smear test carried out seven years ago has settled her High Court action for €2.5 million.

The settlement, made without admission of liability, was against Clinical Pathology Laboratories Inc, Austin, Texas.

Vicky Phelan had also sued the HSE but the case against it was struck out.

Ms Phelan, a 43-year-old mother of two from Co Limerick, took proceedings after it emerged her 2011 smear test, which showed no abnormalities, was found to be incorrect in a 2014 audit of smear tests on a number of women.

She was diagnosed with cervical cancer in 2014 but did not learn of the review or audit until 2017.

She told the High Court she was extremely angry she was not told of the 2014 review of her smear test for another three years.

"I was in shock when I was told. I am angry, extremely angry. If I was diagnosed I probably would have had to have a procedure and at worse a hysterectomy," she said.

"If I was told sooner, I would not be in a position of a terminal cancer diagnosis."

Ms Phelan was told last January, without palliative chemotherapy, she has just six months to live while, with the chemotherapy, she has about 12 months.

Simple procedure

Her counsel Jeremy Maher SC, instructed by Cian O'Carroll, solicitor, said at the outset of the case that his side's experts would say, had Ms Phelan's cervical cancer been detected in 2011 when she had a smear test, she could have had a simple procedure and there was a "90 per cent chance" she could have been cured.

Their experts would say she would not have developed invasive cancer and would have survived into her 80s, he said.

"She should have another 40 years to look forward to but she has a couple of months."

Ms Phelan and her husband Jim were in court as the settlement was announced yesterday, the fourth day of the case.

The court made directions in



Vicky and Jim Phelan leave the Four Courts in Dublin yesterday after the announcement of the settlement of their High Court action for damages.

PHOTOGRAPH: COLLINS COURTS

relation to part of the settlement which is for the couple's children, Amelia (12) and Darragh (7).

Mr Justice Kevin Cross, approving the settlement, said he was delighted the case had been settled and described Ms Phelan as one of the most impressive witnesses he had seen in his court.

The case against the HSE was struck out and the settlement was against the US laboratory Clinical Pathology Laboratories Inc, Austin, Texas only. The settlement was without admission of liability.

Wishing Ms Phelan success with her hope to get to the US for groundbreaking treatment the judge said: "If anyone can beat this, you can."

Ms Phelan has been recently started on a new drug and is hopeful of being accepted on to

a US programme offering radical innovative treatment. She has raised €200,000 through a GoFundMe page.

Damages

In the action, Ms Phelan and her husband also claimed aggravated and exemplary damages over alleged failure to tell her for three years that a 2014 review of her 2011 smear test showed the original result of no

"I was in shock when I was told. I am angry, extremely angry"

abnormalities was incorrect.

A university educational manager, Ms Phelan, of Carrigeen, Annacotty, Co Limerick, and her husband had sued over a smear test taken under the National Cervical Screening Programme CervicalCheck and analysed in the US laboratory.

The smear test of May 24th, 2011 showed no abnormality was detected and Ms Phelan was advised by letter to that ef-

fect in June 2011.

She had another smear test in June 2014 which, on analysis, showed a high grade lesion and she was referred to a consultant. In July 2014, she was diagnosed with cervical cancer and underwent radical chemoradiotherapy.

It was claimed, subsequent to her cancer diagnosis, and unknown to her, a review was carried out of previous smear tests from women who had a cancer diagnosis.

Review

A review of the May 2011 sample from Ms Phelan showed the original report in relation to the smear was incorrect and the smear test showed suspected cancerous cells.

In September 2017, Ms Phelan was advised of the review and in November was diagnosed with an incurable stage 4 cancer and given a life expectancy of between six and 12 months.

It was claimed the alleged failure to diagnose the 2011 smear test sample caused a situation whereby Ms Phelan's cancer was allowed to develop and

spread unidentified, unmonitored and untreated until she was diagnosed with cancer in July 2014.

It was further claimed she was deprived of the opportunity of timely and effective investigation and management of her condition and deprived of the opportunity of treatment at a time when her disease was amenable to curative treatment.

The claims were denied.

"The conduct of CervicalCheck and the HSE in my case... is unforgivable"

Mr Maher had told the court an expert on their side would say there were plentiful abnormal cells in the 2011 smear sample and failure to identify them amounted to a clear breach of duty. Ms Phelan was reassured when she was told there were no abnormalities and she would not need a check for another three years, he said.

In 2014 Ms Phelan was called for a smear test which was

"very bad news" and was referred to a consultant for a series of invasive treatments. She generally felt well in 2015 and 2016 but reattended in September 2017 for a CT scan. It was then she was told of an audit of cervical smears from 2011 which was carried out in 2014, he said.

Incorrect result

"For the first time she was made aware the smear test report of 2011 was incorrect and in fact it was an incorrect result," Mr Maher said.

Speaking to reporters outside court, Ms Phelan said: "The women of Ireland can no longer put their trust in the CervicalCheck programme. Mistakes can and do happen, but the conduct of CervicalCheck and the HSE in my case... is unforgivable."

"To know for almost three years a mistake had been made and I was misdiagnosed is bad enough but to keep that from me until I became terminally ill and to drag me through the courts to fight for my right to the truth is an appalling breach of trust."

Court told of mother's 'horrific catalogue' of abuse

Teenager says he thought of killing his mother to make life better for his siblings

GORDON DEEGAN

A Clare teenager often thought of killing his mother to end the abuse he and his younger siblings were suffering at her hands, a court has heard.

At Ennis Circuit Court, the male said his mother (47) made his life "a living hell" through years of physical and emotional abuse. "I often thought about killing her as I know it would make life better for my siblings but that would mean they would have to grow up without their older brother and they didn't deserve that," he said in his victim impact statement.

Now aged 20, he took action to end the abuse when he informed his school guidance counsellor and school principal and a Garda investigation was launched. At that stage in March 2015, his older brother had already run away from the home due to the abuse. Today the two are living together overseas while the three younger siblings are living with their father away from their mother.

Investigating Garda Kevin Duffy told the court while the mother is allowed one hour supervised access with the three children each week only one child elects to meet her and "Tusla has grave concerns over the contact the mother has with the children". In his victim impact statement on behalf of the three youngest, their father said the mother was "out of control" during a supervised visit in 2016 when she shouted at one of her sons and at the Tusla social worker.

Guilty plea

The woman has pleaded guilty to ill-treating and neglecting four children over a 30-month period between October 2012 to April 2015. No charges were brought against the mother in respect of the eldest as he had fled the jurisdiction before the Garda investigation was launched.

In an interview with gardai when asked to describe herself as a mother, the accused

replied: "Cruel, violent, pathetic, unhappy."

Her counsel, Patrick Whymys said that what the court has heard "is a horrific catalogue" of abuse and "no one is more horrified than the accused person herself".

In his statement to gardai, the main complainant documented the years of abuse he suffered. In one incident in 2013, the teenager had a cast on his arm after breaking his arm while playing sports. The teen was out some time later playing with friends in the front lawn at home when the mother demanded that he do a handstand with his cast on. He refused and she threatened she would hit him with an electric cable if he didn't. He refused and the mother then assaulted him with the electric cable.

Garda Duffy said the teen did the handstand even

"He described his mother as cruel, violent, pathetic, unhappy"

though it caused him extreme pain and the boy said that his mother laughed at him when she saw the pain he was in.

In another incident, the mother chased her son out of the house at night with a coat-hanger and he was forced to sleep outdoors for the night on a trampoline as she had locked the doors of the house.

In her Garda interview, the mother said that she lost the ability to be a good mother and she suffered in the past with addiction problems.

Counsel for the State Lorcán Connolly said the accused accepted there was no excuse for what happened and she regretted her children had to go through this. Mr Connolly said the accused said she had no support and was in a bad place and admitted her behaviour was deplorable.

Judge Gerald Keys remanded the accused on continuing bail to May 21st.

Irish man in UK jail for sex offences loses appeal over transfer

MARY CAROLAN

An Irish man serving an "indefinite" sentence in the UK for "very grave sexual offences" against his daughter and stepdaughter has lost his appeal over the Minister for Justice's refusal to sanction his transfer to a prison here.

The Court of Appeal (COA) said the fact the indeterminate sentence for public protection (IPP) imposed on the man in 2009 is "quite unknown" in Irish law was at the heart of the difficulties in the case.

Mr Justice Gerard Hogan, giving the three-judge court's judgment yesterday, said the Minister had given detailed reasons for the refusal to permit transfer and those reasons centred on the difficulties posed by the IPP sentence.

Under UK law, the man's IPP sentence was to last for an initial eight-year period, subject to review by the UK parole authorities.

The sentencing judge had held a 16-year sentence was the appropriate minimum one which, on application of the 50 per cent automatic statutory remission, meant an initial eight-year term.

In refusing transfer, the Minister said the IPP sentence was unknown to Irish law and the only sentence that could be imposed here would be an eight-year sentence, which was considerably less than the 16 years the UK judge considered was appropriate, were he to have imposed a fixed sentence.

The Minister said the fact the man denies he committed

the offences would be a "very negative factor" in attempts to rehabilitate him here as it would be unlikely he would be considered suitable for Arbour Hill Prison, which rehabilitates sex offenders.

'Factually sustainable'

Mr Justice Hogan said those reasons were "clearly bona fide, factually sustainable and not unreasonable".

He agreed with the High Court the Minister has discretion in relation to transfer and is not obliged to transfer an IPP prisoner when transposition of IPP sentences had shown difficulties in the past and was likely to continue to do so.

In the circumstances, he affirmed the High Court finding the man had not set out arguable grounds for judicial review of the refusal. Earlier, the judge noted the man had lived in the UK from the 1990s and was convicted there in late 2009 of a series of "very grave" sexual offences against his daughter and stepdaughter.

An IPP sentence is "quite unknown" in Irish law and it is not easy to see how such a sentence can readily be adapted, or even understood, by reference to the traditional Irish sentencing regime, he said. IPP sentences are no longer imposed following a change of law in the UK in 2012, he also noted.

After the Minister refused transfer, the man sought to challenge that via judicial review but the High Court found he had not set out arguable grounds for review.

Daughter's action forces man to stay in emergency dwelling, court told

SARAH BURNS

A 90-year-old man has told a court he was forced to stay in emergency accommodation after his daughter threw a piece of carpet at him.

The man told Dublin District Family Court yesterday he is fearful for his safety due to his daughter's behaviour and was granted a protection order. The court heard the man's daughter had been living with him until recently and suffers from alcohol addiction.

The man said his daughter is "extremely prickly" and becomes angry when he says certain things. He told the court his daughter became angry with him two weeks ago, picked

"The man said his daughter becomes angry when he says certain things"

up a rolled-up piece of carpet and threw it at him. The man said he had to stay in emergency accommodation as he was fearful for his safety. His daughter has since moved out of his home. The man was present in court; his daughter was not.

Judge Gerard Furlong granted a temporary safety order which prohibits the person against whom the order is made from engaging in violence or threats of violence.

He set a full hearing, which the woman is expected to attend, for July.

Separately, three sisters were granted protection orders against their brother, aged in

his 20s, who they said has physically assaulted each of them on numerous occasions.

One of the sisters said in a written statement to the court that her brother had tried to "stick the door key into my neck" on Tuesday. She said her brother attacked her and she tried to leave the family home but he locked her in.

Another sister said their brother is "very aggressive" and has attacked her on "many occasions". She told the court she had to attend the hospital over a year ago after the young man "put my head through the banister".

In a written statement to the court, she said last Tuesday her brother "grabbed me by the throat, poured water over me and punched me in the stomach".

The third sister said she had a disagreement with her brother about taking a shower last week and he took her belongings and "ran at me".

Threats She said her brother started making threats that he would "smash my head in" and she locked herself in a room. She told the court she is afraid of her brother and that previously he had thrown her down the stairs "over shampoo that he said was his".

She said on a separate occasion he punched her in the back of the head and that she is in a "constant state of fear" around her brother and that his behaviour is unpredictable.

Judge Furlong granted all three women temporary safety orders and set full hearings for July.

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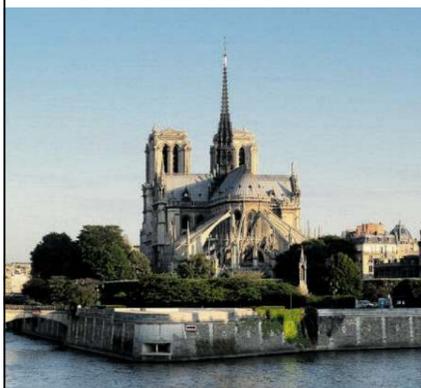


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