

THE HIGH COURT

**[2024] IEHC 206
[Record No.] 2023 3330 P**

ENOCH BURKE

Plaintiff

v

SEÁN Ó LONGÁIN, KIERAN CHRISTIE & JACK CLEARY

Defendants

Ruling of Mr. Justice Dignam delivered on the 15th of day February 2024.

1. Judgment was delivered electronically on the 20th December 2023 in respect of the plaintiff's application for an interlocutory injunction to restrain a hearing of his appeal by the defendants.
2. By emailed letter of Saturday, 23rd December 2023, to the Chancery email address, Mr. Burke raised two issues with that judgment. I was made aware of this correspondence on the 17th January 2024.
3. The two issues which Mr. Burke raised were:
 - (i) At paragraph 105 of the judgment, I refer to two sections headed "*Mr. Burke's behaviour*" and "*Conclusion*" in a document entitled the "Principal's Report" and state that "*It is necessary to set out the contents of this section and the following section, 'Conclusion' in full.*" I then quote these sections but omitted to quote the final paragraph of the "*Conclusion*" section. This reads:

"Whereas Mr. Burke contends that my actions as principal in this matter run counter to the ethos of our school, I would contend that Mr. Burke's public statement regarding his non-acceptance of transgenderism is not in keeping with the ethos of the school or the expected standards of teachers, as set out in the Code of Professional Conduct for Teachers. Schools are supposed to be safe places for students who should be able to rely on teachers to look out for, and act in, their best interests. While their children are at school, parents entrust their children to the care of teachers and other staff at the school who act in loco parentis to those students. It is well established that schools have a legal duty of care to students who are in their care. This duty of care applies to students on both a collective and an individual basis. I have serious concerns about how Mr. Burke may act in the school in future in circumstances where he has stated his personal views on transgenderism in school and at a public event after the school term had ended. These concerns extend to the student concerned and the entire student body"

- (ii) At the end of paragraph 112, which is a long paragraph referring to Mr. Burke's individual grounds of appeal, in which I refer to and, in some instances, quote from, Mr. Burke's Statement of Grounds of Appeal, the words "*He says:*" appear but nothing follows these words.

4. I was satisfied that the issues raised by Mr. Burke were clerical errors in that the paragraph from the "*Conclusion*" section of the Principal's Report was accidentally omitted from paragraph 105 in the copy-typing process and the "*He says:*" in paragraph 112 was accidentally left in during drafting. I proposed to correct those errors by including the omitted final paragraph from the "*Conclusion*" section of the Principal's Report in the quote in paragraph 105 of the judgment and by deleting the "*He says:*" from paragraph 112 but would not be doing so until the following week. The parties were informed accordingly on the 26th January 2024. I return to the nature of the errors below.

5. Mr. Burke, by emailed letter of the 29th January 2024 stated, inter alia, that he did not accept that the errors were clerical errors (for the reasons set out in his letter) and did not consent to the judgment being corrected. In light of this, I invited the parties to make submissions, if they so wished, by 4pm on Friday, the 9th February, and

to indicate by 4pm on the 7th February if they intended to do so. By emailed letter of the 7th February, the solicitors for the defendants indicated that they did not intend to make submissions and did not believe that the complaints made by Mr. Burke are of any substance. Mr. Burke did not indicate whether or not he intended to make submissions and ultimately did not make submissions (other than the points made in his letter of the 29th January 2024, all of which I have considered).

6. In his letter of the 29th January 2024 Mr Burke states, inter alia:

"I am gravely concerned and perplexed by the Court's response. The omissions from the judgment are not "*clerical mistakes*" as has been claimed by the Court. I do not consent to the proposed "*correction*" of the judgment.

The final paragraph of the Principal's Report, which was omitted from the judgment and it is now proposed to simply "*include*" in the judgment, states, inter alia, "*I would contend that Mr. Burke's public statement regarding his non-acceptance of transgenderism is not in keeping with the ethos of the school or the expected standards of teachers, as set out in the Code of Professional Conduct for Teachers*". It further states: "*I have serious concerns about how Mr. Burke may act in the school in future in circumstances where he has stated his personal views on transgenderism in school and at a public event after the school term had ended. These concerns extend to the student concerned and the entire student body.*" (emphasis added). This is how the Principal's Report ends. These statements by the Principal summarise and reinforce her findings against me contained in Section II(ii) of the Report, under the heading "*Concerns around Mr. Burke's public statement of his refusal to accept transgenderism*".

Directly after the Court's omission of this paragraph of the Principal's Report, the Court states in its judgment: "*On the state of the evidence and the facts at this stage, a reasonable person reading the principal's report could only conclude that the conduct issues in the report (which were the stated grounds for his dismissal) were the fora, timing and manner in which Mr. Burke raised his objections to the principal's instructions and not the fact that he objected to the instruction, or that he held certain religious beliefs, or even that he expressed his views*" (para. 106, emphasis added). The Court repeats this finding multiple times in forceful terms throughout the judgment. In para. 107, the Court finds that there is not even a serious question/fair issue to be tried "*that Mr. Burke was or is being disciplined for holding or even expressing an objection based on his religious beliefs*"

(emphasis added).

The Court describes this finding as "*a fundamental flaw in Mr. Burke's case*" (para. 165) and to a large extent on this basis dismissed the within application to have Kieran Christie, General Secretary of the ASTI, recused from the Disciplinary Appeal Panel.

This finding is utterly at odds with the omitted paragraph of the Principal's Report. The omitted material makes it abundantly clear that one of the "*conduct issues in the report*" which the Board of Management found amounted to serious misconduct, and indeed the one for which the Principal reserved her severest censure in the Report, was the fact that I expressed my views on transgenderism.

The omission of this paragraph from the judgment in the first place is a matter of great concern. What is now proposed i.e. the trite inclusion of the paragraph, without any engagement with its contents, renders the judgment entirely nonsensical and self-contradicting.

I note that the other material which the Court omitted, at para. 112, also included a quote from this same paragraph of the Principal's Report. This apparently coordinated deletion of evidence which establishes the complete opposite of the Court's own conclusions is extremely concerning.

The Court's characterisation of the omissions as "*clerical mistakes*" is wholly incorrect. The omissions go to the heart of the Court's *ratio decidendi* in the case. It is therefore not open to the Court in these circumstances to "*correct*" its judgment under the Slip Rule mechanism and I completely oppose this proposal." [emphasis in original]

7. The Court has jurisdiction under Order 28 Rule 11 of the Rules of the Superior Courts ("*the Slip Rule*") and under its inherent jurisdiction to correct an error in its judgment where, inter alia, it is a clerical mistake of an accidental nature in expressing the manifest intention of the Court, or where the judgment does not correctly state what the Court decided or intended. It is discretionary even where the mistake is of such a type. There is a fundamental importance to judgments or orders reflecting what was actually intended and in the judgment being an accurate record, but the Court must also have regard to the

requirements of fairness and should only correct the mistake(s) where nothing has intervened to render it inexpedient or inequitable to do so. The Court must also have regard to the requirement of finality

8. I am entirely satisfied that these are clerical errors in giving effect to my stated intention and that I have jurisdiction to correct them under the Rules of the Superior Courts and the Court's inherent jurisdiction. In relation to paragraph 105, I, having considered the entirety of the Principal's Report, expressed the view that it was necessary to set out the contents of the "*Conclusion*" section of the Report in full, and clearly intended to do so, but there was then a mistake in copy-typing that section and I accidentally omitted the final paragraph of the section. In relation to paragraph 112, I decided that it was not necessary to quote section VI of Mr. Burke's Statement of Grounds but mistakenly left in the words and colon "*He says:*" during the drafting process.

9. I have had regard to the points made by Mr. Burke both in determining whether I can properly treat the omission of part of the quote in paragraph 105 and the inclusion of the "*He says:*" in paragraph 112 as matters that may be corrected and in deciding whether it is a proper exercise of my discretion to correct them.

10. There are three points at the core of Mr. Burke's letter of the 23rd December 2023 which may be summarised as follows:

- (i) The contention that my findings in paragraphs 106, 107, 165 and elsewhere in my judgment are "*utterly at odds*" with the omitted paragraph and the inclusion of the paragraph without engagement would render the judgment "*entirely nonsensical and self-contradictory.*"
- (ii) The contention that the Court has deliberately deleted material which Mr. Burke believes establishes the complete opposite of the conclusions in the judgment.
- (iii) The contention that the omissions go to the heart of the Court's ratio decidendi in the case.

11. These points (other than one aspect of number (ii)) are in fact

all matters which go to the merits of the judgment. As I understand it, the underlying premise for these points is Mr. Burke's belief that the omitted paragraph contradicts my findings, inter alia, that a reasonable person could only conclude that the conduct issues in the report were the fora, timing and manner in which Mr. Burke raised his objections to the principal's instructions and not the fact that he objected to the instruction, or that he held certain religious beliefs, or even that he expressed his views. As is clear from my judgment, I considered the Principal's Report in its entirety and stated my findings and it would not be appropriate for me to express any further view on or further engage with the substance at this juncture. Mr. Burke may be right or wrong but that and, therefore, the question of whether my findings are at odds with the omitted paragraph, or that its inclusion renders my judgment entirely nonsensical and self-contradictory, or that the paragraph establishes the complete opposite of the conclusions in my judgment, are all matters that go to the merits of my judgment rather than to the nature of the omissions or the inclusion in paragraph 112.

12. As is clear from the description of how these errors occurred, the allegation in the first part of number (ii), is misconceived.

13. I have also considered whether the correction of the judgment by the inclusion of the omitted paragraph from the quote or the deletion of "*He says:*" would be a correct exercise of my discretion or whether, notwithstanding the nature of the mistakes, the judgment in its original form should simply stand. It is important that the record contained in Court judgments be accurate and, in circumstances where I expressed the view that it was necessary to set out the "*Conclusion*" section in full, it is appropriate that the judgment be corrected to ensure that the quote is accurate. I have also considered whether the correction of the judgment would unfairly prejudice Mr. Burke and that it would therefore be inequitable to correct the judgment. I do not believe that it would unfairly prejudice Mr. Burke. He would remain perfectly free to argue on appeal that the judgment is nonsensical and self-contradictory or at odds with the evidence. He would also be perfectly free to refer in any such appeal to the original version of the judgment to make any points he wishes and, indeed, would also be perfectly free to argue that the omissions or the inclusion of "*He says:*" in paragraph 112 are not clerical mistakes. I am also satisfied that the requirement for finality

does not preclude the correction of the judgment, particularly where no Order has yet been made on foot of the judgment.

14. In those circumstances I am therefore delivering a corrected version of the judgment to include the final paragraph of the quote from the Principal's Report (which is set out in full above) in paragraph 105 and to delete the "*He says:*" from paragraph 112. Unfortunately, I was only made aware of Mr. Burke's original letter of the 23rd December 2023 on the 17th January 2024, and, notwithstanding that I had taken no steps to have the judgment published on the courts.ie website for almost three weeks, this was after it was published on the website (on the 10th January 2024). That version of the judgment will be replaced by the corrected version and this ruling will also be published.