THE HIGH COURT

[2026] IEHC 367

[Record No. 2019/6741P]

BETWEEN

SOPHIE DRAKE

PLAINTIFF

AND

SOUTH INFIRMARY VICTORIA UNIVERSITY HOSPITAL CLG

AND RIVERDALE PHARMACY LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice Barr delivered electronically on the 19th day of June 2026.

Introduction.

1. These are medical negligence proceedings in which the plaintiff seeks damages for having been prescribed medication known as methotrexate at a time when it was contraindicated due to her being pregnant.

2. The plaintiff claims that as a result thereof, she had a miscarriage. She further claims that when she became pregnant again shortly thereafter, the drug was still in her system, as a result whereof her daughter was born with a serious brain injury. The plaintiff claims damages in respect of the miscarriage and for the psychiatric injury she suffered as a result of anxiety arising out of her daughter's condition.

3. This judgment concerns motions brought by each of the defendants to set aside the renewal of the personal injury summons in this case which had been renewed by order of the High Court dated 9 December 2024.

4. The defendants submit that having regard to the inordinate delay between the date of issue of the personal injury summons on 27 August 2019 and the date of the order renewing it a little over five years later, the matters put forward as special circumstances to justify the renewal of the summons do not provide justification for the inordinate delay in bringing the application and therefore the renewal of the summons ought to be set aside.

5. While the plaintiff concedes that there was some delay in seeking the renewal of the summons after it had expired on or about 26 August 2020, it was submitted that the renewal of the summons was justified having regard to the following matters: the present proceedings are intimately connected to the injuries suffered by the plaintiff's daughter, which it is alleged were caused by the ingestion of methotrexate prior to the plaintiff becoming pregnant for the second time. It was submitted that the plaintiff's solicitor encountered considerable difficulties obtaining the necessary expert medical evidence that was required to establish that the plaintiff's daughter’s brain injury was caused by the plaintiff’s ingestion of the medication.

6. It was submitted that the delay in obtaining this evidence was due in no small part to the restrictions imposed due to Covid 19, which had the effect of giving rise to

inordinate delay in obtaining the necessary records and scans from various hospitals which were required in order for the plaintiff to obtain the necessary expert evidence.

7. Secondly, it was submitted that this situation was compounded by the fact that the solicitor who originally had carriage of the file in the office went on maternity leave, meaning that the remaining partner in the plaintiff's solicitor's firm had to manage the entirety of the firm's work for a protracted period.

8. Finally it was submitted that having regard to the open admissions of breach of duty that were made by the first defendant following an internal review of the adverse incident concerning the plaintiff's miscarriage that had occurred in September 2017, which admission was made in writing on 23 July 2018, there has been no prejudice to the first defendant by the delay in having the personal injury summons renewed.

9. It was submitted that as the second defendant was put on notice of the plaintiff's claim by a letter of claim dated 11 April 2019, it had not suffered any prejudice as a result of the fact that the personal injury summons was not renewed until 9 December 2024, following which it was immediately served on each of the defendants.

10. Given the complexity of this case, it will be necessary to look at the chronology of the proceedings in some detail. Before doing that, it will be helpful to give a brief summary of the plaintiff's case against the defendants.

The Plaintiff's Case against the Defendants.

11. The first named defendant is the hospital where the plaintiff was prescribed methotrexate for the treatment of her psoriasis condition. The second named defendant is the pharmacy where the plaintiff presented the prescription and obtained the medication.

12. The plaintiff's case is that having been referred to the outpatient's clinic in the first defendant's hospital by her GP in March 2017, she attended at the clinic on 8 September 2017. The medication methotrexate was discussed with her by the doctor and she was prescribed this medication. Unknown to the medical staff, the plaintiff was pregnant on that date.

13. The plaintiff states that having presented the prescription at the pharmacy owned by the second defendant, she was given the medication.

14. Having taken the medication as directed, the plaintiff alleges that she went to a different hospital, Cork University Hospital (CUH), on 14 September 2017 with severe vomiting. She was admitted to the hospital. At that hospital it was confirmed that she was pregnant. The following week, she had a spontaneous miscarriage. While it is not exactly clear, it appears that the plaintiff was no longer in CUH when she had her miscarriage.

15. On or about 2 October 2017, the plaintiff became pregnant again. She carried her daughter to full term, with the child being born on 2 July 2018. The plaintiff's daughter has been diagnosed as suffering from periventricular leukomalacia (PVL), which is a form of brain injury.

16. The plaintiff's case is that her initial miscarriage and her subsequent delivery of a child with PVL were caused by her ingestion of methotrexate and by the fact that it was still in her system when she became pregnant for a second time.

17. The plaintiff alleges that the defendants and each of them were negligent in the following respects: knowing that methotrexate was an abortifacient which can also cause congenital abnormalities in a foetus, it was negligent of the defendants to prescribe the medication for her when she was pregnant. She further alleges that the defendants were negligent in failing to carry out any test to see if she was pregnant; for

failing to ask her if she could be pregnant; failing to warn her that it would be dangerous to take the medication if she was pregnant or if she intended to become pregnant; and for failure to warn her that even when she stopped taking the drug, she should not allow herself to become pregnant for a particular period thereafter.

18. The plaintiff claims that as a result of the negligence of the defendants she suffered a miscarriage in mid/late September 2017. She further claims that she has suffered psychiatric injury and anxiety as a result of the fact that she has been greatly concerned about the health of her daughter and its effects, for which she holds herself responsible due to ingestion of a contraindicated medication while, or immediately before, becoming pregnant with her daughter.

19. When the first defendant became aware of the presentation of the plaintiff with severe vomiting at CUH on 14 September 2017 and of the fact that she was found to be pregnant, it carried out an internal review of the circumstances in which the medication had been prescribed to the plaintiff on 8 September 2017.

20. In that review, the consultant doctor and the intern doctor who had attended to the plaintiff on 8 September 2017, stated that they did not recall discussing the possibility of pregnancy; the need for contraception; or the risks associated with use of the drug during pregnancy. The review also noted that there was an information leaflet in relation to the drug available in the clinic; however, there was no record of that leaflet having been given to the plaintiff.

21. The internal review report noted that methotrexate is an abortifacient which can also induce congenital anomalies if taken during pregnancy. It is therefore contraindicated in pregnancy.

22. By letter dated 23 July 2018, the solicitors acting for the first defendant wrote to the plaintiff's solicitors stating that their client admitted that there was a breach of

duty in respect of the manner in which the plaintiff was prescribed methotrexate at the hospital on 8 September 2017. The letter further confirmed that the first defendant was accepting that there was a breach of duty on their behalf regarding their element of care in the matter. The letter further stated that they assumed that the plaintiff's solicitor had entered into correspondence of a similar nature with the dispensing pharmacist who had a duty to provide proper counselling to the plaintiff prior to the provision of the medication.

Chronology of Relevant Dates.

23. The relevant dates surrounding the prescription of methotrexate for the plaintiff, her miscarriage and her subsequent pregnancy have been given above.

24. As already noted, a copy of the internal review report was furnished to the plaintiff's solicitor on 22 June 2018. On 2 July 2018, the plaintiff's daughter was born. On 23 July 2018, the letter of admission referred to above was furnished by the solicitor acting for the first defendant. It should be noted however, that this admission was only in relation to the initial prescription of methotrexate and the subsequent miscarriage. It appears that the first defendant was not aware that the plaintiff had become pregnant for a second time; nor that the plaintiff had given birth to a daughter on 2 July 2018.

25. It is the plaintiff's case that in the months after the birth of her daughter, it became apparent that she had significant health issues, which were subsequently diagnosed as epilepsy and PLV.

26. A letter of claim was written to the second defendant on 11 April 2019. On 29 April 2019, the insurers of the second defendant wrote to the plaintiff's solicitor, stating

that they were investigating the matter. They stated that they could not comment on liability at that time. They requested the plaintiff's solicitor to provide details of the clinician who had prescribed the medication for the plaintiff. The plaintiff was asked to confirm for what condition the methotrexate had been prescribed and to confirm whether she had made the pharmacy aware that she was pregnant when she obtained the medication from it. Finally, the plaintiff was asked to furnish details of any personal injury loss and damage suffered by her.

27. On 27 August 2019, a personal injury summons was issued on behalf of the plaintiff. The claim of negligence made therein has been summarised above. It is important to note that this summons was issued on a protective basis so as to prevent the plaintiff's cause of action becoming statute barred. It was stated that the summons had been issued without the benefit of an expert's report on liability.

28. On 5 March 2020, the plaintiff's solicitor wrote to Dr. Norman McConachie, Consultant Neuroradiologist, for the purpose of obtaining a medical report. He was furnished with all the plaintiff's medical records and with such of her daughter's medical records as were available at that time. On the 22 March 2020, Dr. McConachie, sent an email to the plaintiff's firm requesting that the solicitor would seek further MRI scans from CUH. However, for reasons most likely due to a misspelling in the email address, that email was not received by the plaintiff's solicitor. Some months later, on 18 August 2020, the plaintiff's solicitor received a copy of the email, which had been sent to him by Dr. McConachie by post, as he was surprised that he had not received any response to his previous email.

29. On 18 August 2020, the plaintiff's solicitor sent the original CDs that had been received from CUH to Dr. McConachie. By email dated 14 September 2020, Dr. McConachie stated that the original CDs did not have the requisite brain imaging.

30. On 18 September 2020, a letter was sent by the plaintiff's solicitor to CUH requesting the plaintiff's daughter's missing brain scans. When no response was received to that letter, a second letter of request was sent by the plaintiff's solicitor on 6 October 2020.

31. When no response was received to that letter, a third letter requesting the hospital to furnish the plaintiff with her daughter's brain scans was sent on 22 February 2021. The brain scans which had been sought by the plaintiff's solicitor were finally provided to Dr. McConachie in March 2021. Dr. McConachie furnished his report to the plaintiff's solicitor in June 2021. Unfortunately, the solicitor in the firm who was dealing with the file was on maternity leave at that time. She did not return to work in the firm until 2023, when she did so on a "*part-time and sporadic basis*".

32. The plaintiff's solicitor stated that following receipt of Dr. McConachie's report, it was necessary to obtain further reports from various specialists. He stated that that was greatly hampered due to the Covid 19 pandemic and the restrictions that have been imposed, which had led to a very considerable backlog of medical reports, resulting in difficulty and delay in obtaining reports and records. In addition, the restrictions imposed due to Covid 19 had greatly hampered the operation of the plaintiff's solicitor's office.

33. On 28 October 2022, the plaintiff's solicitor contacted Dr. McConachie for the purpose of nominating a suitable paediatric neurologist to furnish a report in the matter. On 30 October 2022, Dr. McConachie recommended Dr. Smith.

34. On 22 November 2022, the plaintiff's solicitor contacted Dr. Smith. However, he was unable to assist in the matter.

35. In May 2023, the plaintiff's solicitor took the advice of counsel in relation to what steps should be taken to advance the proceedings. Advice was given that an

application should be made to renew the personal injury summons. To that end, junior counsel provided a draft *ex parte* docket for such an application in June 2023.

36. On 2 October 2023, the plaintiff's solicitor wrote to the solicitors acting for the first defendant explaining that the proceedings had been issued against the first defendant in 2019, but had not been served on the first defendant as the matter had been complicated by the fact that the plaintiff's child, conceived shortly after the plaintiff's miscarriage, was experiencing profound medical difficulties which required further investigation. That letter stated as follows:

> "*Initially we withheld serving the proceedings in respect of the mother upon you while we endeavoured to establish the situation as it pertains to (name redacted) although service would have been effected sooner were it not for the events of the pandemic. However, at this point, it appears preferable to deal with Sophie's claim on its own and adopt a more long-term view of her daughter's health. We are presently taking the necessary steps to renew the civil bill [sic].*"

37. On 3 October 2023, the plaintiff's solicitor contacted a consultant in Foeto-Maternal Obstetrics, Dr. Emma Ferriman, for assistance with plaintiff's case. However, by email dated 10 October 2023, Dr. Ferriman stated that she would not be able to act in the matter, as she did not have capacity to take on the case. She recommended that the plaintiff's solicitor should contact her colleague, Mr. Keith Duncan.

38. On 16 October 2023, the plaintiff's solicitor wrote to Mr. Duncan. However, no response to that email was received from him.

39. On 2 November 2023, the plaintiff's solicitor wrote again to Dr. Ferriman requesting that she might recommend another specialist. On 3 November 2023, Dr. Ferriman recommended Dr. Andrew Farkas. On 3 November 2023, the plaintiff's

solicitor wrote to Dr. Farkas requesting assistance in the case. On 13 November 2023, Dr. Farkas responded indicating that given the infant's condition, the plaintiff would be better served by a report from an expert in Foeto-Maternal medicine rather than the general obstetric perspective he could provide.

40. On 16 January 2024, the plaintiff's solicitor contacted Dr. Panico Shangaris, Consultant in Maternal and Foetal medicine, seeking a report in the matter. Dr. Shangaris indicated that he was in a position to prepare the required medico-legal report. He stated that his hourly rate was STG £300, plus VAT. He estimated that the fee for production of a report would be between STG £2,700 –£3,300, plus VAT. That fee was required to be paid prior to preparation of the report.

41. As the plaintiff is a young woman of 29 years of age and is of limited financial means, the plaintiff's solicitor stated that if the summons was renewed, he would discharge that fee and obtain a report from Dr. Shangaris.

42. On 22 January 2024, the plaintiff's solicitor contacted the Central Office of the High Court in relation to bringing an application to renew the summons. To that end, he submitted an *ex parte* docket seeking renewal of the summons. The plaintiff's solicitor was informed that it would be necessary to amend the *ex parte* docket to include a statement of the special circumstances justifying the renewal of the summons.

43. On 21 February 2024, an amended *ex parte* docket was received from counsel.

44. On 5 June 2024, counsel gave further directions in the matter. On 28 June 2024, the amended *ex parte* docket was filed. It was given a return date of 22 July 2024.

45. On 22 July 2024, Dignam J. directed that a further affidavit should be filed. He adjourned the matter to 25 November 2024.

46. On that occasion, the matter was adjourned to 9 December 2024; on which date an order was made renewing the personal injury summons that had issued on 27 August

2019. The special circumstances recorded in the order renewing the summons were that the plaintiff's solicitor had encountered difficulties in instructing appropriate medical experts and that there had been personnel difficulties within the plaintiff's solicitor's firm.

47. After the order had been made renewing the personal injury summons on 9 December 2024, the renewed personal injury summons was served shortly thereafter on each of the defendants.

48. When the summons had been renewed, the plaintiff's solicitor discharged the fees requested by Dr. Shangaris. His report was furnished on 25 May 2025.

49. On 26 March 2025, the first defendant issued its motion seeking to set aside renewal of the summons. A similar motion was issued by the second defendant by notice of motion dated 6 May 2025.

Submissions on behalf of the Defendants.

50. The defendants submitted that the application to renew the summons had been made more than five years after it had issued, which was by definition, more than four years after it had expired. It was submitted that there had been a huge delay in bringing the application to renew the summons.

51. It was submitted that the special circumstances relied upon by the plaintiff's solicitor did not justify a delay of over four years in bringing the application to renew the summons.

52. In relation to the individual excuses put forward, it was submitted that the reliance on the Covid 19 pandemic was not sufficient to justify the inordinate delay that there had been in the present case; either when taken on its own, or in conjunction with

the other alleged special circumstances put forward. It was submitted that while the Covid pandemic had given rise to restrictions on the activities that could be carried out by businesses and professionals, those restrictions had largely ameliorated by the latter part of 2020, or early in 2021. It was submitted that it could not be credibly suggested that the restrictions imposed as a result of the Covid 19 pandemic had prevented the plaintiff's solicitor bringing the application to renew the summons until December 2024.

53. In relation to the alleged special circumstances due to the solicitor dealing with the file being on maternity leave; it was submitted that going on maternity leave was a very common feature of commercial life. Businesses which had female employees had to make arrangements to carry on their business during the absence of the female employee while on maternity leave. It was submitted that this was not something that could be characterised as being out of the norm or unusual, as was required to constitute a special circumstance under the test set down in *Power v CJS Indigo Tajikistan & Ors.* [2025] IESC 55 and *Murphy v HSE* [2021] IECA 3.

54. It was submitted that the reliance placed by the plaintiff's solicitor on the necessity to obtain a medical report in relation to the daughter’s injuries, could not be used to justify a failure to serve the personal injury summons in relation to the mother's case. It was submitted that these were two totally separate cases. It was not accepted that the progression of the present proceedings, which were proceedings brought by the mother in relation to the prescription of methotrexate to her was in any way connected to the case which may be brought in respect of the birth defects suffered by the plaintiff's daughter.

55. It was submitted that the case law had established that one could only hold off serving a summons where it was necessary to the institution of the proceedings that a

particular medical report be obtained. Furthermore, there had to be expedition on the part of the plaintiff's solicitor in seeking to obtain such report: see *Maloney v Lacy Building and Civil Engineering Ltd* [2010] 4 IR 417; *Murphy v HSE*; and *SW v HSE* [2025] IEHC 526.

56. Finally, it was submitted that when the court came to consider the issue of prejudice and the interests of justice; these lay in favour of setting aside renewal of the summons. This was because the issues raised in the plaintiff's case would turn on oral evidence as to what information, advice and warnings may have been given to the plaintiff by the defendants' servants or agents. In this regard, it was submitted that it would be unjust and unfair to expect the defendants to obtain reliable oral evidence as to what may have been said between their servants or agents and the plaintiff in or about September 2017, which was almost 10 years ago. It was submitted that the defendants would be prejudiced if the summons was renewed.

Submissions on behalf of the Plaintiff.

57. On behalf of the plaintiff, Mr. Robert Fitzpatrick SC submitted that it was necessary to look at the circumstances of the case in the round. These were difficult medical negligence proceedings which had been instituted at a time when restrictions had been imposed in respect of Covid 19. That had hampered both the operation of the plaintiff's solicitor's firm and had created a considerable backlog in an all areas of medicine, giving rise to a delay in obtaining records and scans and in obtaining reports from medical experts.

58. In addition, it was submitted that the plaintiff's solicitor's firm was a two-person practice; one of whom had been on maternity leave from mid-2021 until 2023, at which

time she returned on a part-time and sporadic basis. It was submitted that this imposed a very significant burden on the remaining partner to look after all the extant files in the office at that time.

59. It was submitted that it was not correct to assert that the plaintiff's case was totally independent of any case that may be brought in relation to her daughter. It was submitted that as a considerable part of the plaintiff's claim constituted a claim that she had suffered psychiatric injuries as a result of the fact that her daughter had been severely injured due to her taking methotrexate while she was pregnant, or immediately in advance of conceiving her daughter, it could not be said that the two cases were totally independent.

60. It was submitted that it was entirely reasonable, and indeed necessary, for the plaintiff to have obtained a causation report in relation to her daughter's brain injury before she could properly embark on her own litigation. It was submitted that the case law recognised that where a particular medical report was necessary to justify bringing proceedings against a professional, it was reasonable for a plaintiff to defer serving the proceedings until such report was to hand. It was submitted that the plaintiff's solicitor had taken reasonable steps to obtain such a report and had been correct in deferring service of the proceedings while such report was awaited.

61. Finally, it was submitted that this plaintiff was a particularly vulnerable person. There had been an open admission from the first defendant in relation to the incorrect prescription of the medication to her given her condition at the time; in these circumstances there was an unanswerable case in relation to the issue of liability. It was submitted that a failure to renew the summons in the face of such open admission of liability, would be extraordinary and would constitute an injustice to this vulnerable plaintiff.

62. It was submitted that while the defendants had pleaded that they would be prejudiced if the summons were renewed and they had to defend the proceedings; this ignored the fact that the first defendant had carried out an exhaustive internal review of the matter in the weeks after the miscarriage had occurred in September 2017. Following that review and the issuance of the report in the following year, the first defendant through its solicitor had made an open admission of liability. It was submitted that in these circumstances the first defendant could not argue that it was prejudiced by renewal of the summons in December 2024.

63. In relation to the second defendant, it was submitted that it had been put on notice of a possible claim by virtue of the letter of claim sent to it on 11 April 2019. It was submitted that while each of the defendants had pleaded that they would suffer general prejudice; neither of them had asserted that they had suffered any specific prejudice due to delay, such as nonavailability of relevant witnesses, or loss or destruction of relevant documents. It was submitted that in these circumstances the greater prejudice would be suffered by the plaintiff if her summons was not renewed.

The Law.

64. The principles that should be applied by a court when considering whether to renew the summons have been set down by the Supreme Court in *Power v CJSC Indigo Tajikistan & Ors.* [2025] IESC 55.

65. Delivering the unanimous judgment of the Supreme Court, Woulfe J., stated that the so-called two-step test or "*gateway test*" that had been applied up to then, whereby an applicant would have to establish special circumstances explaining why the summons had not been served within time and why the application to renew the

summons had not been made earlier, and then establish that the interests of justice were in favour of the summons being renewed; was not the correct test. The Supreme Court stated that the correct test was a single test whereby the court should ask whether there were special circumstances which justified renewal of the summons taking into account all the circumstances of the case.

66. The question of whether it is sufficient for a plaintiff's solicitor to state that he is awaiting a medical report prior to serving a summons, has been considered in several cases. In *Maloney v Lacy Building and Civil Engineering Ltd,* Clarke J. (then sitting as a judge of the High Court), stated that it could be a valid justification for not serving a plenary summons if the expert's report that is awaited is necessary in order to justify the decision to responsibly maintain the proceedings in the first place; rather than be necessary in order to take further steps in the proceedings, such as the drafting of a statement of claim or bringing the case to trial. The judge also held that it had to be established that any delay occasioned by the absence of the expert's report concerned was reasonable in all the circumstances, such that appropriate expedition was used by the party placing reliance on the absence of the expert's report in attempting to procure same.

67. Those dicta were endorsed and adopted by Haughton J. in *Murphy v HSE*; which dicta were in turn endorsed by the Supreme Court in its decision in *Power v CJS Indigo Tajikistan & Ors*. Finally, Cahill J. in *SW v HSE* came to the same conclusion, holding that it was necessary where a plaintiff's solicitor defers serving proceedings on the grounds of awaiting a medical report, that he established that such report was both necessary and that he had used reasonable expedition in attempting to procure same.

68. The existence of the restrictions imposed due to the Covid 19 pandemic and the effect that they may have had on the ability of a plaintiff's solicitor to serve the summons

has been looked at in a number of cases. In *Brady v Byrne* [2021] IEHC 778, Hyland J. (then sitting as a judge of the High Court) held that the mere existence of Covid and the substantial impact that it had had on the running of the plaintiff's solicitor's practice, was not, *per se*, a reason to allow a delay of over eight and a half months to accrue from the expiry of the 12 month period for service of the summons. Applying the test identified by Haughton J. in *Murphy*, Hyland J. held that a fact or circumstance must be identified that is beyond the ordinary or usual. While Covid was certainly beyond the ordinary or usual, the legal world had adapted by mid-2020 to the restrictions imposed by the pandemic. The judge held that the plaintiff's solicitor ought to have been in a position to serve the summons and to seek an extension of time in which to do so from that time onward (see paras. 41 and 43).

Discussion and Conclusions.

69. I accept that the plaintiff is a vulnerable young lady. For the purposes of this application, I accept that she has had the mental health difficulties and other difficulties in her life as pleaded in her personal injury summons.

70. I accept that without any fault on her part, she was prescribed a type of medication that was contraindicated as she was pregnant at the time. The first defendant has carried out a full review of the circumstances in which this medication was prescribed to the plaintiff. It has admitted that there were serious shortcomings in the care afforded to the plaintiff by its staff in September 2017.

71. When the plaintiff attended at CUH on 14 September 2017 complaining of severe vomiting, it was discovered that she was pregnant. The internal review report carried out by the first defendant merely states that "*the following week she had a*

spontaneous miscarriage." It is not clear whether the plaintiff had been discharged from CUH when she had the miscarriage. That is highly relevant, because if she had been discharged following cessation of the vomiting and cessation of taking the medication, but while still pregnant, there would have been no requirement on the staff of CUH to advise her not to become pregnant for any given period of time after she ceased taking methotrexate, because she was already pregnant at time of discharge. The court notes that no claim is made against CUH.

72. On the basis of the information before the court, it is likely that the plaintiff was still pregnant when discharged from CUH.

73. The court does not know what advice, if any, was ever given to the plaintiff about the risk of becoming pregnant for any particular period following cessation of taking the medication. The plaintiff alleges that she was not given any such advice by the defendants. Be that as it may, the plaintiff became pregnant in or about 2 October 2017. Her daughter was born in July 2018.

74. A year after delivery of her daughter, a personal injury summons was issued on behalf of the plaintiff on 27 August 2019. This was issued on a protective basis to protect the plaintiff's cause of action from becoming statute barred. The summons stated that the claim in negligence against the defendants was being maintained without the benefit of a medical liability report.

75. The key question in this case is whether it was reasonable in all the circumstances for the plaintiff's solicitor to have held off serving the personal injury summons for a period of over five years until an application to renew the summons was made to the High Court on 9 December 2024.

76. Having considered all the papers in this matter, including the legal submissions of counsel, I have come to the conclusion that the renewal of the summons will have to be set aside.

77. I have reached that conclusion for the following reasons: first, I accept that this was not a run-of-the-mill medical negligence case. In one respect the case was straightforward. There was a strong case that the plaintiff had been prescribed a type of medication that was contraindicated for females during pregnancy. Her case in relation to her spontaneous miscarriage was reasonably straightforward.

78. The plaintiff's case concerning her subsequent pregnancy and the serious brain injury suffered by her daughter was less straightforward. Essentially, for the plaintiff to succeed on this part of her case against the defendants, she had to establish the following: first, she had to prove when she ceased taking methotrexate. That was probably when she was admitted to CUH with severe vomiting. Given that they had discovered that she was pregnant, it is highly likely that it was then that she was advised to stop taking the medication.

79. Secondly, the plaintiff would have to prove that neither of the defendants had informed her that she should not become pregnant while taking methotrexate, or for whatever period may be recommended in the medical literature after she had ceased taking the medication.

80. It is known that she became pregnant again on or about 2 October 2017, which may have been within the window when a patient should not get pregnant after having ceased taking methotrexate.

81. Thirdly, she had to prove that her daughter’s brain injury had been caused on the balance of probabilities by the fact that the plaintiff had taken methotrexate in the weeks prior to her conception. Expert evidence would have been required to establish

that the methotrexate was the proximate cause of the child's brain injury and other conditions; rather than some other cause, such as any difficulties encountered during delivery, or genetic causes.

82. In argument at the bar, Mr. Binchy SC for the first defendant and Ms. Antoniotti SC for the second defendant submitted that the issue of causation of the child's injuries was not relevant to the plaintiff's action. I do not accept that submission.

83. Apart from the initial miscarriage, the plaintiff's primary claim concerns the psychiatric injury she has suffered due to the serious injuries suffered by her daughter. If those injuries were not caused by ingestion of the methotrexate, the plaintiff's cause of action against the defendants would have been restricted to the miscarriage which she suffered in mid/late September 2017.

84. I find that the question of the causation of the plaintiff's daughter's injury was of critical importance to the plaintiff's claim in these proceedings. That being the case, I hold that obtaining an expert's opinion on the issue of causation of the daughter's brain injury was necessary for the plaintiff to be able to properly institute proceedings against the defendants.

85. The case law, in particular the decisions in *Maloney, Murphy, Power* and *SW*, make it clear that when a medical report is necessary, that can be a basis for deferring serving the personal injury summons until the medical report is to hand; provided that the plaintiff's solicitor acts with reasonable expedition in obtaining the required report.

86. I have set out the chronology of steps taken by the plaintiff's solicitor in this action in considerable detail earlier in the judgment. Once the writ was issued in August 2019, it was known that the key issue in the case was going to be the issue of causation of the plaintiff's daughter's brain injury.

87. While I have sympathy for the difficulties encountered by the plaintiff's solicitor in October 2022 and in the months thereafter to obtain the services of a suitable expert, there is no justification for the fact that the required report did not come to hand until May 2025.

88. The plaintiff's solicitor took on two substantial medical negligence cases. The daughter's case, which has not yet issued, could be very large given the possible extent of her brain injury. The plaintiff's case was relatively simple in relation to the issue of the miscarriage, being effectively an assessment of damages; but was complex in terms of her subsequent pregnancy and the birth of her daughter; that aspect being dependent on proof of causation of the child's injuries.

89. Once a solicitor makes a decision to take on substantial and difficult litigation, he/she must be prepared to devote the manpower, time and resources to conduct such demanding litigation in an appropriate manner.

90. Looking at the circumstances in this case, I have to find that the plaintiff's solicitor must have known in August 2019 when the personal injury summons was issued, that a report on causation of the child's brain injury was required. Not to have obtained such a report within five years of the issue of the summons, cannot be seen as a justification for failing to serve the summons during that period of time.

91. While some of the periods during the years that elapsed after the issuance of the summons in August 2019, can be explained due to the difficulty in obtaining records and reports and latterly, the difficulty encountered in obtaining the services of a suitable expert, when one looks at the time period as a whole, there are large gaps during which no effective steps were taken to obtain the necessary medical report, which it was clear had been required from day one.

92. Insofar as the plaintiff's solicitor relied on the difficulties presented due to the imposition of restrictions due to Covid 19, I do not find this excuse convincing. While it is undoubtedly the case that witness actions could not proceed during 2020 and into 2021, the restrictions imposed due to Covid 19 had been very substantially lifted by the end of Q1 in 2021. While the court can accept that there may well have been a backlog of cases and delays in obtaining medical reports and scans from hospitals during 2020 and into 2021, the court cannot accept that it was not possible to obtain the required documentation and to furnish same to an expert for a period of five years after issuance of the summons in August 2019. The case law referred to earlier in this judgment makes it clear that Covid 19 cannot be relied upon as being some general excuse that will cover inaction for a protracted period of time.

93. Insofar as the plaintiff's solicitor has submitted that because his co-partner in the firm was on maternity leave when the report from Dr. McConachie came to hand in June 2021, and remained on maternity leave until sometime in 2023 when she returned on a "*part-time and sporadic basis*"; that that in some way justifies the inordinate delay in seeking the renewal of the summons in this case; I cannot accept that submission.

94. The fact that a member of the firm may be absent on maternity leave falls far short of what is required to constitute a special circumstance justifying the renewal of the summons after it has expired, which the case law establishes must be something that is abnormal or unusual. It is a common feature of business and commercial life that female workers will go on maternity leave. When this happens, a decision must be made whether it is necessary to engage the services of another employee to carry out the duties that had been carried on by the worker who has gone on maternity leave. Such a decision has to be made by all sorts of businesses, large and small, in every walk of

life. It cannot be argued that the fact that a solicitor goes on maternity leave means that there can be inaction on the file for a prolonged period.

95. The court also notes that reliance on Covid and the fact that one of the solicitors was on maternity leave, as being special circumstances justifying a failure to serve the summons, is somewhat weakened by the content of the letter sent by the plaintiff's solicitor to the solicitor for the first defendant on 2 October 2023. In that letter, it was stated that a decision had been made to withhold service of the proceedings in the mother's case, pending clarification of the issue of causation in relation to the daughter's injury. If that was the reason why a decision had been made not to serve the summons in the mother's case, the existence of Covid and the fact that one of the solicitors was on maternity leave, was irrelevant.

96. On behalf of the plaintiff, it was submitted that in light of the open admission that had been made by the first defendant, that it would be extraordinary to set aside renewal of the summons in this case.

97. I cannot accept that submission for the following reasons: first, the admissions that were made, were made in the context of the plaintiff's complaint of having had a miscarriage after taking methotrexate. The first defendant was not aware of the plaintiff's subsequent pregnancy when the admission was given, which was furnished shortly after the plaintiff's daughter was born. Accordingly, it cannot be argued that the admission covers the issues that arise out of the subsequent pregnancy and delivery of the plaintiff's daughter and the brain injury suffered by her.

98. Secondly, no admission was ever made by the second defendant. Thirdly, even if the case were an assessment, that does not mean that a plaintiff can defer serving the personal injury summons for an inordinate period of time.

99. The decision of the Supreme Court in the *Power* case makes it clear that in considering whether a summons should be renewed, the court must look at the period of delay in having the summons renewed and consider whether in all the circumstances of the case, there are special circumstances that justify the renewal of the summons on the date when that application was first moved before the relevant court.

100. The fact that a defendant may have made partial or completed admissions prior to the issue of the proceedings, does not relieve the plaintiff of the obligation of serving the summons within the time allowed under the rules, or of seeking a renewal of the summons at the earliest possible date thereafter.

101. It would only be if the defendant had by representation or conduct represented to the plaintiff that he should defer from serving the summons, that a plaintiff could argue that the defendant was estopped from objecting to a renewal of the summons. A mere admission of liability without more is not sufficient to establish such an estoppel.

102. It was submitted on behalf of the plaintiff that the defendants would not suffer any prejudice or hardship if the summons was renewed. This was based on the assertion that the first defendant had carried out a detailed internal review in the weeks after the prescription of methotrexate to the plaintiff and in the wake of her having had a miscarriage. It was submitted that in relation to the second defendant, it had been on notice of a possible claim as and from receipt of the letter of claim dated 11 April 2019. It was asserted that in these circumstances, there was no real prejudice to the defendants if the personal injury summons was renewed.

103. I do not accept that submission as being well-founded for the following reasons: the internal review report only concerned the circumstances concerning the initial prescription of methotrexate to the plaintiff on 8 September 2017. It did not cover the critical question of whether the plaintiff was ever informed that if she should cease

taking the medication, she should avoid becoming pregnant for any given period of time. Oral evidence would be required on this aspect, which, at almost 10 years post event, would be very difficult to obtain.

104. Secondly, I accept the evidence of the second defendant that he runs a large pharmacy which dispenses approximately 120,000 items per annum. I am satisfied that it would be very difficult for the second defendant to call reliable evidence as to what information or advice may have been given by his staff to the plaintiff when they fulfilled the prescription that had been issued from the first defendant's hospital in September 2017.

105. While the second defendant was aware of a potential claim due to the letter of claim dated 11 April 2019, they were entitled to know what exact case was being made against them. To that end, each of the defendants were entitled to have had the personal injury summons served on them within a reasonable time. I find that the defendants will be prejudiced by having to meet a claim arising out of events alleged to have occurred in or about September 2017.

106. While the defendants have not pointed to specific prejudice in the form of non-availability of relevant witnesses, or loss of or destruction of relevant documents; I find that requiring them to meet the claim on foot of the renewed summons at this remove, almost 9 years after the events complained of, would cause them significant prejudice, as the central issues in the case would turn on what information or advice may have been given to the plaintiff in relation to getting pregnant while taking, or after having taken the medication; it would be very difficult to obtain relevant evidence on this aspect at this remove.

107. For the reasons set out herein, the court will set aside the renewal of the personal injury summons in this case.

Proposed Final Order.

108. The court will grant the relief sought by the first defendant in its notice of motion dated 26 March 2025.

109. The court will grant the relief sought by the second defendant in its notice of motion dated 6 May 2025.

110. As this judgment has been delivered electronically, the parties shall have two weeks within which to furnish brief written submissions of not more than 1000 words on the terms of the final order and on costs and on any other matters that may arise.

111. The matter will be listed for mention at 10.30 hours on 15 July 2026 for the purpose of making final orders.