[2026] IEHC 615

THE HIGH COURT

[2021/2095P]

BETWEEN:

ALEX O'LEARY

(A MINOR SUING BY HER FATHER AND NEXT FRIEND COLIN O'LEARY)

PLAINTIFF

AND

AIR-TASTIC CORK LIMITED

DEFENDANT

JUDGMENT delivered by Mr. Justice Barry O'Donnell on the 8th day of September, 2026

1. This judgment is given in a personal injuries action brought by the minor plaintiff. By way of summary, the action arises from an incident that occurred on the 2 November 2018, when the plaintiff was nine years old. The defendant operated a recreational indoor trampolining park in Cork, and the plaintiff attended the defendant's premises with family members. During the course of her visit, and while trampolining, the plaintiff suffered a serious injury to her right leg.

2. The plaintiff was diagnosed with a displaced angulated fracture of the diaphysis of her right tibia and fibula, and this required surgery involving a closed reduction with percutaneous flexible intramedullary titanium nailing. While she made a good recovery, in addition to the obvious pain of such an injury, the plaintiff was immobile for a period, requiring a wheelchair

and then crutches. At the time of hearing, she had faded but noticeable scarring just below her right knee which was an understandable source of discomfort for her.

3. In the course of the hearing, the court heard from the plaintiff herself, a representative of the defendant who was at the facility and was close by when the incident occurred, together with engineering experts retained by each side.

4. It transpired that the facility had undergone a significant refurbishment in the period between the incident and when the engineers sought to inspect the facility. The refurbishment was not suggested to be connected with the incident, but it meant that the engineers had to approach their tasks without the benefit of examining the physical facilities as they existed at the time of the incident. There was photographic evidence of the facility as it was at the time of the incident and CCTV footage that captured the incident and these were relied on by both sides. It should be noted that the CCTV footage was of a type that meant it was not possible to pause or capture stills that showed the incident with the type of precision that one would expect, for instance, from footage on other formats. However, it was of considerable assistance in attempting to understand what happened.

5. The focus of the plaintiff's case was not on the physical state of the facility or the trampolines, which were accepted to be of a high quality and maintained in compliance with the relevant UK standards (there being no equivalent Irish standards). Instead, the case broadly was that there was inadequate supervision and that the plaintiff was permitted to engage in an unsafe form of trampolining: essentially that the defendant did not take adequate care for her safety.

6. For the reasons explained herein, I have concluded that the relief sought must be refused. I have found that the incident did not occur in the manner pleaded in the personal injuries summons and that the plaintiff's recollection was honest but flawed. As a result, the evidence does not support the pleaded claim or support a case that the injuries undoubtedly suffered by the plaintiff were caused by the alleged negligence or breach of duty on the part of the defendant.

7. In order to explain the decision, it is necessary to consider in the first instance the actual incident, and the pleaded case. I have underlined elements in the pleadings and evidence that are material to the decision.

8. The personal injuries summons is dated the 30 March 2021. The incident is described at paragraph 3 where it is claimed that the plaintiff "*was caused, occasioned or permitted to trap her leg at the periphery of the trampoline ...*".

9. In replies to a notice for particulars, the plaintiff's solicitor on 2 December 2021 gave the following details of the incident:

> "*8. The Plaintiff was caused to fall whilst participating in an activity under the supervision of the Defendant its servants or agents, the Plaintiff was caused, occasioned, or permitted to jump from trampoline to trampoline and in the process of so doing the Plaintiff's leg was caused, occasion* [sic]*, or permitted to come into contact with an area of the trampoline, more specifically described as being an area where springs attached thereto in consequence whereof the Plaintiff was caused, occasioned or permitted to fall*."

10. The Defence delivered on the 11 January 2022 put the plaintiff on proof of her claims and denied liability for the accident.

11. At the hearing, a medical report prepared for the plaintiff was admitted. It was prepared by Mr. David Morrissey, Consultant Surgeon, and is undated but deals with matters between the 2 November 2018 and March 2019. The report described the incident reported to Mr Morrissey as the plaintiff "*had trapped her right leg in the periphery of the trampoline resulting in pain inability to weight bear and a significant deformity*."

12. The plaintiff, who is now 17 years old, gave evidence. There was no doubt that the plaintiff was very anxious about giving evidence, but she was clear and articulate. I formed the clear belief that she gave her evidence honestly and without exaggeration. However, it was equally clear to the court that the plaintiff was endeavouring to recall a traumatic incident that occurred within an extremely short space of time nearly eight years ago, when she was a relatively young child. The plaintiff gave evidence of the impact of the injury on her, which I accept. At this stage I want to focus on her account of the actual incident. The plaintiff explained that she attended the defendant's facility with family members in the early afternoon of the day in question. She viewed an animated instruction video and then proceeded to the main body of the facility.

13. The layout of the area where the plaintiff was playing was captured in contemporaneous stills taken from the CCTV footage of the incident. The area where the plaintiff was playing was laid out in two rows of three trampolines that were arranged lengthwise. At each end of the two rows, there are elevated areas from which the participants can jump to the trampolines. There were walkways between each of the trampolines which, according to the evidence, were

padded and covered in vinyl. It was clear from the evidence and I accept that the padded walkways completely covered the spring mechanisms that maintained tension in the trampolines. There were no exposed springs.

14. Each trampoline was rectangular, and the borders of each trampoline were marked with bright yellow markings. The footage showed the plaintiff and other young people completing what in effect were circuits, jumping from the elevated blue structures to the first trampoline, then to the second trampoline, to the third, and onto the elevated blue area; and then recommencing the same process on the second row of trampolines.

15. The plaintiff was clear in her evidence that, after completing a number of circuits, her right foot landed under the padding and her body was forced forward. In that sense, her evidence was clear that the cause of the accident was that her right foot caught the padding at the border between the trampolines and this led to the leg break. That account was consistent with the pleaded case, and the history given to Mr Morrissey. Under cross examination the plaintiff confirmed that she was wearing footwear supplied by the defendant which were described as "*grippy socks*"; essentially these were socks with a non-slip material on the sole.

16. The CCTV footage was helpful but because of the number of frames captured per second it could not produce fully precise images of the incident. Nevertheless, the stills taken from the CCTV are clear and confirm the engineering evidence that the springs attached to the trampolines are concealed under padding and unless a foot actually entered under the padding there is no possibility of the foot making contact with the area above the springs and under the padding. The evidence was that the tension on the trampolines was greater the closer one approached the spring mechanisms.

17. The difficulty with the plaintiff's case is that the footage seen and reviewed by the court does not show her foot making contact with the padded area or slipping under it. Likewise, the footage shows that her feet landed before the yellow border on the trampoline.

18. In the premises I must find as a fact that the plaintiff did not trap her foot or otherwise make contact with the padded area, nor did she land on or past the yellow border.

19. It can be noted that this finding is in fact consistent with the evidence given by the engineer called by the plaintiff, Mr Michael Byrne. In his report, he states that there is a safety risk in landing closer to the edge of the trampoline, making the point that as one moves from the centre of a trampoline to the edge the bounce is stiffer and there is much less "give" in the material. However, on the basis of the footage, Mr Byrne opined that "*it is possible the incident occurred as the Plaintiff alleges that she jumped closer to the edge and her foot moved forward and got caught under the flap. Also, it is likely that she may just have suffered an injury due to stiffness of the spring close to the edge of the mat.*"

20. In those premises, the court must reject the account given by the plaintiff. However, I want to make clear that I do not consider that the plaintiff's account was tainted by any hint of dishonesty. The plaintiff suffered a very serious and painful injury at a young age. The finding made by the court is that the plaintiff's recollection, while genuine, is incorrect and contradicted by the CCTV evidence.

21. There is a wide body of recent caselaw that emphasises the need for precision in pleading personal injuries cases governed by the Civil Liability and Courts Act 2004. The requirement for precision and particularity allows the issues between the parties to be clearly

identified in advance of the case; see for instance the observations of the Court of Appeal in *Crean v. Harty & Ors* [2020] IECA 364 and *Morgan v. Electricity Supply Board* [2021] IECA 29. In addition to the need for pleadings to be precise, the Court in *Morgan* made clear that a first instance court is required to adjudicate the pleaded case. As noted by Noonan J. at para. 47:

> "*Quite apart from any pleading issue, if a criticism of the training was to be advanced by Mr. Osborne, as transpired, the defendant was entitled to know the substance of that evidence in advance of the trial on foot of the plaintiff's pre-trial disclosure obligation pursuant to S.I. 391. The defendant was entitled to know what precisely it was that was said to constitute a shortcoming in that training so as to be able to rebut it with their own evidence as a matter of basic fairness. Most importantly however, the plaintiff himself conceded that there was no issue as far as he was concerned about his training, as is evident from the relevant transcript passages to which I have referred*."

22. Accordingly, the difficulty for the plaintiff is that her account of the mechanism of the accident must be rejected on the facts, and that account was the account given in the pleaded case.

23. Insofar as the practices of the defendant in terms of supervision or warnings were criticised in the course of the trial, that criticism did not appear to aid the plaintiff's pleaded case. If the plaintiff had intended to make the case that allowing children to bounce or land close to the yellow border was unsafe in and of itself, this was a matter that ought to have been pleaded clearly and that the defendant could have addressed specifically in preparing for trial. As it was, other than observing that the tension on the trampoline mat grew stiffer as one

approached the edges, there was no evidence that it was unsafe *per se* to allow young people in the plaintiff's position to use the trampolines in that way, or that the tension was the reason for the plaintiff's injury as opposed to any other cause, such as an unlucky landing.

24. In all the circumstances, the court does not accept that the plaintiff caught her foot in or otherwise made contact with the padded area at the end of the trampoline; and for that reason, the case must be dismissed.

25. In respect of costs and final orders, to avoid the cost of a further hearing, I direct that the parties correspond in relation to costs within four weeks of this judgment. If there is a consensus position, that can be communicated to the court and the requisite orders drawn up. If there is a dispute that requires to be adjudicated this should be communicated to the court and a hearing will be arranged.