



THE COURT OF APPEAL

Neutral Citation Number: [2018] IECA 415

Appeal No. 173/2018]

[High Court No. 2014/55 J.R.]

Whelan J.  
McGovern J.  
Baker J.

BETWEEN

A.R

APPLICANT

- AND -

DIRECTOR OF PUBLIC PROSECUTIONS, AN BREITHEAMH AINGEAL NÍ CHONDÚIN, JUDGE LEO J. MALONE, DETECTIVE GARDA KATRINE TANSLEY 01310B, DETECTIVE GARDA PADRAIG HARRINGTON 27979L, GARDA SERGEANT ADRIN HEALY 26777E, GARDA SERGEANT JAMES P N MORRISEY 26186F, GARDA AOIFE HAYES 34994A, GARDA ENDA COTTER 35136K, GARDA KEN O'CONNELL 26733C, GARDA MAURICE O'CONNOR 27119E, GARDA MICHELLE O'LEARY 29891C, GARDA RONAN O'REILLY 27126H, GARDA TONY GALLWEY 31288F, GARDA O'MAHONY CC257 AND GARDA BRIAN BARRY

RESPONDENTS

THE COURT OF APPEAL

Appeal No. 121/2018]

[High Court No. 2018/206 J.R.]

Whelan J.  
McGovern J.  
Baker J.

BETWEEN/

A.R

APPLICANT

- AND -

THE DIRECTOR OF PUBLIC PROSECUTIONS AND THE CHILD AND FAMILY AGENCY

RESPONDENTS

**JUDGMENT of the Ms. Justice Máire Whelan (*ex tempore*) delivered on the 26th day of July 2020**

1. Both of the applications touch on and concern the childcare proceedings.
2. The appellant is a litigant in person and this is her appeal from the orders made *ex parte* by Meenan J. in the High Court on the 12th March 2018 and also pertaining to orders made by Noonan J. on the 8th March 2018. At the outset an issue was raised and Ms. R. brought to my attention that some letters signed by me in my capacity as Attorney General had been received by her in the past. She confirmed however that she had no objection to me hearing and sitting as a member of this panel of judges determining this case.

3. In the first instance, the application in relation to the orders made by Meenan J., an application was made seeking leave to apply by way of an application for judicial review for reliefs which were set forth in Ms. R.'s statement of grounds dated the 20th March 2018 based on grounds set out in that statement and verified by her affidavit sworn on the 12th March 2018. The *ex parte* order made by Meenan J. was perfected on the 16th March. The appellant is the mother of three girls, now aged 18, 16 and 14.
4. The background is that there had been childcare proceedings in 2013 as is outlined in her grounding affidavit and childcare orders made in the District Court in Cork in 2013 had been set aside on appeal in the Circuit Court in June of 2013. The District Court orders were vacated in the Circuit Court by Judge Moran in June 2013.
5. The appellant in this application for judicial review sought to review orders made by Circuit Judge O'Brien at Cork Circuit Court based on an application made by her on the 1st December 2017. In that application to Cork Circuit Court she sought an "order for unedited copy digital audio recording, ("the DAR"), appeal hearing with Judge Moran presiding at Cork Circuit Court on the 10th June 2013." She also sought an "order for unedited transcript digital audio recordings during the appeal hearing with Judge Moran presiding on the 10th June 2013" and thirdly she sought an "order for unedited copies of all Circuit Court files."
6. This was an original application before the Circuit Court on that date. The judge presiding was His Honour Judge Gerard O'Brien and he made an order on the 12th December refusing all applications. Ms. R. did not appeal that decision and no appeal has been brought so far as we can ascertain to the order made in relation to her application for disclosure of the DAR. It is clear that the DAR request and the files in question pertained to minor children, pertained to the years 2013 and onward and pertained to childcare and child welfare matters.
7. The position is that in general files and records and indeed transcripts in relation to such applications are not generally made available and a judge does maintain a significant degree of discretion in such applications in general, I would observe.
8. I note that ahead of the hearing of the 2017 Child Care District Appeal, the substantive hearing of the appeal in the Circuit Court, the appellant received a letter from Messrs. Comyn Kelleher Tobyn Solicitors for the Child and Family Agency and that letter stated that the presiding judge, Judge Gerard O'Brien,

"had now adjourned the case for hearing to Thursday, 22nd March 2018, at 10.30am. Judge O'Brien is very anxious that you will be given every opportunity to review the reports that contain the information that will be tendered to the Circuit Court in the course of the appeal."

Those reports include social work reports, guardian ad litem reports and the final report of Dr. M.N. and Ms. C.J. which was directed by the Circuit Court

9. The letter continued:

"The Court has made a ruling that you are not to receive these reports yourself but that you are to come to this office and review the reports here. You will be able to read the reports, take notes in respect of the reports but you will not be able to copy or photograph the reports." and it was indicated in the correspondence that the hearing would proceed by way of an appeal from the District Court on the 22nd March 2018 and there is a separate letter exhibited in the paper from Messrs. Noonan Linehan Carol Coffey Solicitors on behalf of the guardian ad litem. It records that the appeal of Ms. R. had been part-heard before Judge O'Brien in the Circuit Court on the 26th February and that it would proceed on the 22nd March. The guardian ad litem solicitor invited Ms. R. to contact him by phone or letter or e-mail to confirm that "you would attend at my office" at an address in Cork, or at "The Courthouse in Washington St. in Cork to take the opportunity to read the guardian ad litem report as prepared for Circuit Court appeal herein dated the 16th January 2018 and now adjourned to the 22nd March"

10. Ms. R. confirmed that she did not avail of the opportunity to consider those reports.
11. With regard to the grounding affidavit and so forth, the application for judicial review order, O. 84, r. 20 required an application for leave to embody a statement of grounds in the prescribed form which sets out certain specified information including a statement of which relief sought and the particular grounds upon which it is sought and an affidavit which verifies the facts relied on in the form set out in Form no. 14 in Appendix T in the Rules of the Superior Courts. It is a requirement that the statement of grounds should be set out concisely and the precise relief claimed and the basis on which it is sought must be specified. It is clear from the case law that a clear formulation of grounds is required to enable the court and the judge to whom the application is made to determine whether or not leave should be granted and on what grounds and that vague and unspecified assertions do not meet the requirement contained in the Rules and that was stated by Kearns J. in *Shine v. the Fitness to Practise Committee*.
12. I am satisfied in the instant case that no sufficient grounds have been identified in relation to the application seeking to reverse the decision of Meenan J. I am satisfied that no basis has been advanced and no grounds on which this court could grant leave, particularly in circumstances where the order made by the circuit judge in question in the first instance refusing the DARS, the various DARS, and refusing to make available the entire file of the District Court was never appealed against and in the absence of that preliminary fundamental step being taken there was never any basis for judicial review and, notwithstanding that the threshold is very low indeed, that low threshold has not been met in this case.
13. With regard to the second application, it pertains to an application that came before Noonan J., it has its historical background in that it is derived from proceedings no. 2014/55J.R., proceedings in which Hedigan J. in the past, over four years ago, on the 21st July 2014, made an order. The order said that upon application by the said applicant for an extension of a stay on the proceedings current then before Cork District Court, the subject matter of these proceedings pending the hearing of an appeal now lodged in the

Supreme Court, the order that provided that "... the applicant prosecutes the said appeal with all due expedition the stay herein before mentioned be and is hereby extended pending the determination of the said appeal." That order clearly pertains to matters that had occurred on or before the 21st July 2014 and could not, and in my view did not, extend to matters in respect of which prosecutions might be considered necessary or appropriate thereafter.

14. The application seeks, first of all, that the Director of Public Prosecutions, two named judges and 13 Gardaí be the subject of orders as follows:
  - (i) An order for immediate dismissal of five outstanding erroneous charges created by them.
  - (ii) Orders for immediate injunctions against the respondent government departments, an Garda Síochána and the Director of Public Prosecutions.
  - (iii) Orders for immediate injunctions against the District Court judiciary.
  - (iv) Orders for immediate imprisonment of the named respondents, being 16 separate named respondents in light of their alleged continuing prosecution in breach of the High Court order.
  - (iv) Orders for full disclosure of all evidence in the respondent's files, to include copy of all unedited video recordings taken of the applicant by Gardaí within Cork District Court, the Bridewell Garda Station, Cork Circuit, on the 6th November 2013 and an order to continue the above remedies until determination of judicial review appeal in order to "ensure the safety and freedom of the applicant and the applicant's three daughters".
15. In my view there is no basis arising from the clear language of the order made by Hedigan J. for the making of such an order. Clearly the burden on an applicant who seeks leave to apply for judicial review is quite light. You are simply required to establish that you have made out an arguable case in law and the court is not concerned with trying to ascertain whether the grounds put forward are strong or weak or what the evidential result will be. In deciding whether this threshold has been met, it is the version of facts put forward by an applicant which should normally be presumed to be correct for the purposes of determining the existence of an arguable case.
16. However the language in the order made by Hedigan J. is very clear and it fundamentally undermines the contentions advanced. In my view there is no lawful basis whatsoever disclosed and not stateable ground on which the orders that are being sought could be made and for those reasons I would refuse both applications.

[McGovern J.] : I agree with the judgment delivered by Whelan J.

[Baker J.] : I agree with the judgment delivered by Whelan J.