

UNAPPROVED

THE COURT OF APPEAL

Appeal Number: 2022/158

High Court Record Number: 2019/1157 P

Neutral Citation Number [2023] IECA 144

BETWEEN/

**Faherty J.
Pilkington J.
Butler J.**

DEBRA JAMES

PLAINTIFF/APPELLANT

-AND-

JAMES WATTERS AND DEREK SHORTALL

DEFENDANTS/RESPONDENTS

JUDGMENT of Ms. Justice Butler delivered on the 12th day of June, 2023

1. In a judgement delivered by me on the 10 May 2023 I rejected an appeal brought by the plaintiff/appellant against an *ex tempore* decision of the High Court striking out her proceedings against the second named defendant who is the respondent to this appeal. The parties were invited to make written submissions on the question of the costs of the appeal within 14 days of the date of that judgement and both parties have done so. This is my ruling on costs.
2. Under section 169(1) of the Legal Services Regulation Act 2015 a party who is entirely successful in civil proceedings is entitled to an award of costs against the party who was not successful in those proceedings unless the court orders otherwise. In deciding whether to make a different order, the court must have regard to the nature and circumstances of

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the case, the conduct of the proceedings by the parties and to a list of factors set out in subparagraphs (a) to (g) of section 169(1). These factors are not necessarily exhaustive and may or may not be relevant to the circumstances of the individual case. In line with these provisions at the conclusion of my judgement of 10 May 2023 I indicated a provisional view that the respondent would be entitled to an order for his costs of the appeal.

3. The submissions filed by the appellant do not advance any grounds coming within the matters listed at section 169(1) of the 2015 Act which might persuade a court to exercise its discretion against the making of the usual or default order for costs in favour of the successful party. Instead, the bulk of the submission appears to contend that the judgement itself is legally incorrect. Whilst the appellant may well be of this view, any decision on costs has to be made on the basis of the judgement as it stands and not on the basis that the unsuccessful party believes they may have a meritorious appeal.
4. The only other ground advanced by the appellant is, in effect, a plea of poverty or hardship. Apart from the fact that this plea is inconsistent with the case made by the appellant in the substantive proceedings (where she alleged that the defendants conspired to encourage her to bring unmeritorious legal proceedings because she represented “*potentially very lucrative business*” and “*was reasonably well off*” (para.49 of the appellant’s replying affidavit of 30 July 2021)), the fact that a person is of limited means does not generally have any bearing on whether it is appropriate to make an order for costs against them in legal proceedings. The ability of the respondent to successfully execute an order for costs is a matter separate to the question of whether such an order should be made.
5. In the circumstances I am satisfied that an order for the costs of this appeal should be made in favour of the respondent and against the appellant. In a very short submission, the respondent has indicated that he was not objecting to the granting of a stay on execution of an order for costs in his favour pending the timely filing by the appellant of her envisaged application for leave to appeal to the Supreme Court and, if so filed, pending the determination of that application for leave and, if leave is granted, pending determination of her appeal. Therefore, I will stay the execution of the order on those terms.

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6. Judge Faherty and Judge Pilkington have read this judgment prior to its delivery and agree with its contents.