



THE SUPREME COURT

S:AP:IE:2019:000136

Clarke C.J.
McKechnie J.
MacMenamin J.
Charleton J.
Baker J.

BETWEEN/

M.C.

Appellant

And

The Clinical Director of the Central Mental Hospital

Respondent

And

The Mental Health (Criminal Law) Review Board

Notice Party

RULING of the Court on the costs application and regarding the form of the order

1. The notice party does not seek any order regarding its costs on this ruling, and no costs order is being sought against the notice party. This ruling therefore concerns the application of the appellant for costs against the respondent.
2. The appellant has sought her costs in this Court, in the Court of Appeal and in the High Court. The High Court had determined the matter on the grounds that the judicial review was

moot, and that approach was upheld by the Court of Appeal. Costs were awarded against Ms. C in both courts.

3. On appeal, this Court took the view that the proceedings were not moot, and having determined that issue went on to decide that the Clinical Director had not performed his statutory obligation to assess and thereafter make the necessary arrangements to facilitate the operation of the decision of the Review Board that Ms. C be released on a conditional basis. In addition, Ms. C sought damages, and whilst she failed in her claim for damages for breach of constitutional rights and/or for breach of statutory duty, her claim for damages under the European Convention on Human Rights was adjourned and subsequently compromised between the parties.

4. Ms. C argues that she succeeded in the appeal and that the primary issues in the appeal were the question of mootness and the interpretation of the relevant legislation. She argues that she succeeded on both of these points. It is argued therefore that there are no factors that would warrant the Court departing from the usual rule that costs follow the “event”.

5. The Clinical Director argues in the alternative that the Court should in its discretion make no order as to costs in what is described as the “special circumstances” of the case, primarily that no personal criticism was made of the Clinical Director for acting upon his understanding of the legislative scheme, and there was no argument or finding that he acted negligently, recklessly or mala fides. It is argued that the meaning and practical consequence of s. 13A of the Act of 2006 was unclear, and that the respondent’s mistaken understanding of that section was not culpable.

Decision

6. The Court considers that the “event” properly characterised in the present case was the decision of this Court that the proceedings were not moot, and that the Clinical Director had a statutory obligation to assess and thereafter put in place the conditions to give effect to the

decision of the Review Board that Ms. C be released from the Central Mental Hospital on conditions.

7. In those circumstances, the Court is of the view that Ms. C should be awarded her costs in this Court, and in the Court of Appeal and the High Court. While it is appreciated that the Clinical Director was not found to be personally culpable, the action was not against him in a personal or professional capacity, but in his statutory role as Clinical Director of the Hospital.

The Form of the Order

8. The parties have not agreed on the form of the declaration that is to be made by this Court and counsel for Ms. C argues that the correct form of declaratory order is as follows:-

“A declaration that the Criminal Law (Insanity) Act 2006 – 2010, s. 13A require the Clinical Director to put in place the arrangements necessary to give practical effect to the proposed conditional order that the Mental Health (Criminal Law) Review Board intended to make in respect of the appellant and that he failed to perform that statutory duty.”

9. The Clinical Director proposes alternative wording as follows:-

“A declaration of the provisions of s. 13(A)(2) of the Criminal Law (Insanity) Act 2006 – 2010 impose a mandatory obligation on the Clinical Director of the designated centre to give effect to the arrangements set out in the conditional order of discharge of the Mental Health (Criminal Law) Review Board.”

10. This Court made an express finding at paras. 116 – 119 that the Clinical Director did breach the statutory duty imposed upon him and that he had therefore “acted unlawfully”. A similar finding was made at para. 136 of the judgment.

11. The Court is also cognisant of the fact that at para. 143 of the judgment, it was said that Ms. C would with the benefit of a declaration be enabled to say to the world at large and to her community in particular that a declaration was made by the Supreme Court that her personal

and family rights “were breached”. That was a factor in the decision of the Court and should be reflected in the order.

12. It does not seem to the Court that it is necessary that the order either use the word “breach” or the word “fail” in regard to the failure of the Clinical Director to perform his statutory obligation, and the Court is satisfied that the alternative set out below is sufficient for the purposes. There was no argument or finding that he acted in bad faith and what was involved was a misinterpretation of the statutory provisions

13. The Court does not accept the argument made by counsel for the Clinical Director that a declaration in the form sought by the appellant would be personally embarrassing, as the reliefs sought related to his statutory office, not any personal or professional practice of the respondent.

14. The Court therefore will make an order as follows.

“A declaration that the respondent did not meet the statutory obligations imposed on him by the mandatory provisions of s. 13(A)(2) of the Criminal Law (Insanity) Act 2006 – 2010 to assess and give effect to the arrangements set out in the conditional order of discharge of the Mental Health (Criminal Law) Review Board.”