



THE COURT OF APPEAL

Neutral Citation Number [2020] IECA 197

Record Number: 2019/447

High Court Record Number: 2018/939JR

**Noonan J.
Faherty J.
Power J.**

BETWEEN/

KEITH HARRISON

APPLICANT/APPELLANT

-AND-

PETER CHARLETON

RESPONDENT/RESPONDENT

RULING of Mr. Justice Noonan delivered on the 23rd day of July, 2020

1. Judgment in this matter was delivered by the court on the 22nd June, 2020 (“the principal judgment”). The appeal was dismissed on all grounds. At para. 119 of the principal judgment, I indicated a provisional view that as costs follow the event in the normal way, the costs of the appeal should be awarded to the respondent. However, in the event of the appellant wishing to contend for an alternative order, the court gave liberty to him to deliver a written submission with liberty to the respondent to reply. Both parties have now delivered submissions on the issue of costs.
2. In summary, the appellant submits that there should be no order as to costs, either in this court or in the High Court. Essentially, the appellant complains that neither this court nor the High Court considered the alleged onus on the respondent to disclose matters pertinent to Chief Superintendent McGinn. The suggestion is that had facts been disclosed concerning the respondent’s knowledge of, and prior interaction with, C.S. McGinn as they allegedly ought to have been disclosed, the appellant would have been in a position to make a determination as to whether there was any potential for bias and/or applied to the respondent to recuse himself. Because the respondent did not take the steps that the appellant says he ought to have taken, the appellant was deprived of considering these matters which might have obviated the necessity for him bringing the within judicial review proceedings.

3. The appellant also argues that in the *inter partes* correspondence prior to the commencement of the proceedings, the respondent raised the issue of whether the appellant's legal team felt ethically able to promote the proceedings. The appellant further complains that the statement of opposition ought to have disclosed sufficient information so as to enable the appellant to decide whether or not he should continue with the proceedings and it failed to do so. Finally, the appellant points to the fact that the respondent argued that no apprehension of bias could arise by virtue of the absence of a "stake" on the part of C.S. McGinn in the outcome of the Disclosures Tribunal. This issue was decided against the appellant in the High Court which the appellant says "rendered an appeal inevitable". This court did not find it necessary to make any determination on this issue.
4. Neither of the parties has specifically addressed the provisions of the Legal Services Regulation Act, 2015 and in particular sections 168 and 169 thereof, together with the relevant provisions of Order 99 of the Rules of the Superior Courts as they stand since the 3rd December, 2019. The new regime applying post that date is considered in detail in the judgment of this court in *Chubb European Group SE v. the Health Insurance Authority* [2020] IECA 183. In the course of delivering a judgment with which the other members of the court agreed, Murray J. helpfully set out at para. 19 the principles to be applied by the court in determining costs issues post-December 2019. Section 169(1) provides that where the party seeking costs has been "*entirely successful*" in the proceedings, such party "*is entitled to an award of costs unless the court orders otherwise.*" In determining whether to order otherwise, the court should have regard to the "*nature and circumstances of the case*" and "*the conduct of the proceedings by the parties*". This includes conduct both before and during the proceedings and whether it was reasonable for a party to raise, pursue or contest one or more issues. The court's overriding general discretion is preserved by section 168(1)(a) and O. 99, r. 2(1).
5. It is clear that the respondent has been entirely successful in these proceedings. All issues considered by this court to be material have been determined against the appellant. Therefore, whether one adopts the criterion of costs following the event, or of being entirely successful, under either rubric the respondent should be entitled to his costs unless the appellant can demonstrate that there are special reasons why the court should depart from the normal rule.
6. In my view, the appellant's submissions amount to little more than an attempt to re-argue issues fully aired both in this court and the High Court, which, insofar as material to the court's decision, have been conclusively determined against the appellant. In particular, the appellant continues to complain about the respondent's alleged failure to disclose certain matters to him despite the fact that a full section of the principal judgment under the heading "Duty of Candour" is devoted to this issue. The appellant's submissions do not engage in any meaningful way with the actual findings of this court in the principal judgment.

7. In my view therefore, the appellant has not established any basis upon which the court should depart from the normal rule and the respondent is therefore entitled to the costs of the appeal and the costs of the proceedings before the High Court.
8. As this ruling is being delivered electronically, Faherty and Power JJ. have indicated their agreement with it.