



THE SUPREME COURT

[Appeal No: 154/2011]

**Clarke C.J.
MacMenamin J.
Charleton J.**

Between/

Kevin Tracey and Karen Tracey

Plaintiffs/Appellants

And

**Michael McDowell, The Minister for Justice Equality & Law
Reform, Ireland, The Attorney General, The Commissioner of An
Garda Síochána, the Director of Public Prosecutions, The Chief
Executive of The Courts Service, Bernard Neary, Edward Finucane,
John Keenan, Patrick Flynn, John Costello, Dermot O’Connell and
David O’Brien**

Defendants/Respondents

**Ruling of the Court delivered by Mr. Justice Clarke, Chief Justice,
on June 25, 2021.**

1. For the reasons set out in a judgment (see, *Tracey v. McDowell & ors* [2016] IESC 44), the Court allowed the appeal of the plaintiffs/appellants (“Mr. Tracey”) against a decision of the High Court striking out a number of proceedings. The appeal concerned six cases, which were struck out against all or most defendants by Kearns P. in the High Court. The proceedings set out in the title of this ruling were described in the judgment as the principal proceedings.

2. The only matter outstanding is the question of costs. A hearing in that regard was conducted on June 21, 2021. Both the first to fifth named respondents (“the State Respondents”) and the sixth named respondent (“the Courts Service”) were represented.

3. The State Respondents agreed that costs should follow the event but suggested that, relying on *Dawson v. Irish Brokers Association* [2002] IESC 36, the only amount that could properly be recovered by Mr. Tracey were sums reflecting expenses and outlay. Mr. Tracey contended that he should be entitled to some form of payment in respect of the time which he had devoted to the proceedings.

4. Counsel for the Courts Service adopted a similar position to that of the State Respondents as a fall back, but contended that there should be no order of costs in respect of the Courts Service. It seems to the Court that it is unnecessary to deal with the separate question of the liability or otherwise of the Courts Service in respect of costs, for it is agreed on behalf of the State Respondents that Mr. Tracey is entitled to an order against them in whatever manner the Court determines to be appropriate and there is no issue as and between the State Respondents and the Courts Service in respect of costs. In circumstances where it is clear, therefore, that any amount to which Mr. Tracey is deemed to be entitled will in fact be paid by the State

Respondents, there is no practical benefit to him having a second order for the same costs as against the Courts Service.

5. For those reasons, it seems to the Court that the only issue which needs to be resolved is Mr. Tracey's contention that he is entitled to some form of payment in respect of his time and effort.

6. The current law is to be found in *Dawson*. Mr. Tracey draws attention to the fact that there have been developments in this field in both England and Wales and also in Canada (see for example, *Mealing-McLeod v. The Common Professional Examination Board* [2000] EWHC 185 (QB), *R v. Legal Services Commission (Ex. P. Wulfson)* [2002] EWCA Civ 250, *Grand v. Gill* [2011] EWCA Civ 902, *Skidmore v. Blackmore* (1995) 122 DLR). However, it is clear that those developments stemmed from legislative or rule changes in those jurisdictions which do not have a counterpart in Ireland. In those circumstances, the Court does not, at this stage, feel that it is appropriate to depart from the established case law as found in *Dawson*. It follows that Mr. Tracey is only entitled to expenses and outlay, which, from the schedule which he supplied to the respondents, comes to the sum of €1,242. In that context, I note that counsel for the Courts Service suggested a lesser sum but, given that the order is being made as against the State Respondents who agreed that the larger sum just mentioned was the appropriate amount, it is unnecessary to address the differences between the respondents as to the calculations.

7. In those circumstances, the Court proposes to award Mr. Tracey his expenses and outlay measured in the sum of €1,242, with that order being against the State Respondents. There will be no order as to costs in respect of the Courts Service.