

THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 466 J.R.]

BETWEEN

F.N.

APPLICANT

AND

B.O'B

RESPONDENT

JUDGMENT of Mr. Justice Meenan delivered on the 8th day of March, 2019**Background**

1. The applicant was lawfully married to the respondent on 24 August 2007, she was granted a decree of judicial separation on 6 December 2010 and obtained a decree of divorce in the High Court on 15 April 2016.
2. There were three children of the marriage, A (born 2001), B (born 2004) and C (born 2008). Following a conviction for theft and deception, the respondent was given a prison sentence of seven and half years in 2014 and was released under licence in 2018.
3. In the course of the family law proceedings in the High Court a number of orders were made. Firstly, by order of 7 February 2014, the High Court ordered that the respondent would have access to two of the children on certain terms. It was further ordered that Professor Sheehan would meet with A to assist both the respondent and A re-establish a relationship so as to provide for access appropriate to A's stage of life.
4. By further order of the High Court, dated 6 October 2014, it was ordered, *inter alia*, that the respondent's current access arrangements in respect of the children continue pending further court order without prejudice to any order which may be made in respect of the respondent's access in the District Court and an order remitting any issues relating to access rights to the Dublin Metropolitan District Court.
5. Prior to his release from prison, the respondent brought an application pursuant to s. 11 of the Guardianship of Infants Act (the Act of 1964) in respect of the children's schooling and education. An order was made in respect of this by the District Court on 9 January 2018.
6. The respondent brought a further application to the District Court pursuant to s. 18A(1) of the Act of 1964 seeking an enforcement order in respect of the orders of the High Court as regards access. This application came on for hearing on 13 July 2017 and the District Judge made an order striking out the respondent's application as "the District Court did not have jurisdiction to deal with the matter." The respondent appealed this order of the District Court.
7. The appeal came before the Dublin Circuit Family Court on 6 February 2018 wherein counsel on behalf of the applicant informed the Circuit Court Judge that the court did not have jurisdiction to deal with the appeal. The Circuit Court Judge, however, refused to accept this. Further, the Circuit Court Judge made an order under s. 47 of the Family Law Act 1995 (the Act of 1995) appointing Ms. Caoimhe Ní Domhnaill to carry out a s. 47 report. The matter was adjourned for mention to 23 February 2018.
8. On 23 February 2018 the Circuit Judge indicated that the court had been informed that Ms. Ní Domhnaill did not have the capacity to deal with the preparation of a s. 47 report. The court did, however, make an order appointing Professor Jim Sheehan to prepare the report.

Judicial review proceedings

9. On 11 June 2018 the applicant was granted leave to apply by way of an application for judicial review for certain reliefs. These reliefs were: -

- "(a) An order of *certiorari* quashing the entire of the order of the Dublin Circuit Family Court made on 23rd February, 2018 pursuant to s. 47 of the Family Act, 1995.
- (b) If necessary, an order extending the time for the institution of the judicial review proceedings."

Relevant statutory provisions

10. Order 84, rule 21(3) of the Rules of the Superior Court ("the Rules") provides:-

"Notwithstanding sub-rule (1), the Court may, on an application for that purpose, extend the period within which an application for leave to apply for judicial review may be made, but the Court shall only extend such period if it is satisfied that: —

(a) there is good and sufficient reason for doing so, and

(b) the circumstances that resulted in the failure to make the application for leave within the period mentioned in sub-rule (1) either –

(i) were outside the control of,

(ii) could not reasonably have been anticipated by the applicant for such extension."

11. Section 18A (1) of the Act of 1964 provides: -

"(1) A guardian or parent of a child who has been —

(a) granted, by order of the court made under this Act, custody of, or access to, that child, and

(b) unreasonably denied such custody or access by another guardian or parent of that child,

may apply to the court for an order ("enforcement order") under this section.

12. Section 47 of the Act of 1995 provides: -

"(1) In proceedings to which this section applies, the court may, of its own motion or on application to it in that behalf by a party to the proceedings, by order give such directions as it thinks proper for the purpose of procuring a report in writing on any question affecting the welfare of a party to the proceedings or any other person to whom they relate from —

...

(6) Subsection (1) applies to proceedings—

(a) under the Act of 1964"

Consideration of issues

13. The application for judicial review was made some two and half weeks outside the three-month time limit provided for by the Rules. The Court, however, has the jurisdiction to extend time for the making of this application, as per Order 84, rule 21(3) of the Rules. The circumstances which gave rise to the delays are set out in an affidavit of the applicant dated 19 December 2018. At that time the applicant was represented by a different firm of solicitors than are currently representing her. The applicant informed her then solicitors of her concerns about a report to be prepared by Professor Sheehan and asked them what options were available to her. The applicant also asked them to consider getting advice from a specialist family law barrister. Notwithstanding this request, the applicant's former solicitors did not come back to her with the necessary information.

14. The applicant states that she was entirely unaware that it was possible for her to challenge the making of the order of 23 February 2018, directing preparation of a s. 47 report, by way of judicial review application. The applicant, not having received a response from her former solicitors, contacted her current solicitors on 5 June 2018 who informed her of the possibility to bring an application for judicial review. In the interim, the applicant met with Professor Sheehan in circumstances where she was anxious not to be in breach of a court order.

15. Seeking an extension of time Mr. Mark de Blacam S.C., on behalf of the applicant, submitted that the delay, short as it was, was due to circumstances outside the control of the applicant. She had, correctly, sought legal advice as to what her options were following the order of the Circuit Court on 23 February 2018 but had received no response. He further submitted that an extension of time would not cause any prejudice to the respondent.

16. The respondent, who appeared in person, submitted that by meeting Professor Sheehan on 29 May 2018 the applicant was, in effect, estopped from seeking to judicially review the order of the Circuit Court to direct the preparation of a s. 47 report.

17. I am satisfied that the applicant has shown "good and sufficient reason" to extend time. The failure to make the application within the time allowed by the Rules arose out of a failure on the part of the applicant's previous solicitors to give the advice which she had sought. The applicant, presumably, would only have sought this advice if she were minded to contest the order for a s. 47 report. In this context, I do not believe that meeting Professor Sheehan on 29 May 2018, whilst awaiting legal advice, constitutes an estoppel as against the applicant. Further, having sought legal advice without response from her former solicitors, the applicant made contact with her current solicitors on 5 June 2018. These facts, to my mind, constitute circumstances "outside the control" of the applicant. Further, I cannot see that any prejudice would accrue to the respondent by extending time for the purposes of making this application.

18. The second issue is the respondent's application under s. 18 of the Act of 1964 to seek enforcement of an order "of the court made under this Act". The orders which the respondent claims were breached were orders not of the District Court but of the High Court. Thus any proceedings in respect of an alleged breach of those orders should have been taken in the High Court not the District Court. Though it is correct that the orders of the High Court did remit to the Dublin Metropolitan District Court "any issues relating to access rights" I am not satisfied that this covered a breach of the order as alleged by the respondent.

19. It is the case that a court can be given jurisdiction to provide for methods of enforcement of the orders of another court, for example making an instalment order where a judgment has been granted. Such, however, are expressly provided for by statute. This is not the case here. Therefore, in my view, the District Court was correct in declining to hear the respondent's application under s. 18A(1) of the Act of 1964 due to the lack of jurisdiction. The Circuit Court ought to have refused the appeal of the respondent.

20. As the respondent's application was not properly before the District Court the appeal that followed was not properly before the Circuit Court and it follows, to my mind, that the Circuit Court Judge did not have jurisdiction to direct a report under s. 47 of the Act of 1995.

Conclusion

21. By reason of the foregoing, I will grant the reliefs sought by the applicant.