

**THE HIGH COURT****[Record No. 2003/7829P]****BETWEEN****PATRICK KEENA****PLAINTIFF****AND****FRANK BRADY AND THE LEGAL AID BOARD****DEFENDANTS****AND****IRELAND AND THE ATTORNEY GENERAL****THIRD PARTIES****Judgment of Ms. Justice Dunne delivered on the 15th December, 2004**

1. This is a case in which the plaintiff has brought proceedings against the defendants in respect of the refusal of legal aid to the plaintiff. The first named defendant is a servant and agent of the second named defendant and acts as its director.
2. The statement of claim herein sets out in general terms the gist of the plaintiff's claim. It is clear from the pleadings that the plaintiff did not have the benefit of legal assistance in drafting these proceedings. In addition to the normal pleadings prescribed by the rules, there is a further document described as "full endorsement of claim in case". It seems to me that this document delivered on 1st December, 2004 is more in the nature of a written submission than a pleading.
3. The basis of Mr. Keena's proceedings goes back to proceedings commenced by Mr. Keena's wife under the provisions of the Judicial Separation and Family Law Reform Act, 1989. As a result of those proceedings at which Mr. Keena was represented by a solicitor, a number of orders were made on 15th March, 1990. That order was then appealed to the High Court by the plaintiff and a number of further orders were made by Mr. Justice Barron on 25th October, 1990. In those proceedings Mr. Keena was again represented. The order says that he was represented by Counsel but Mr. Keena says he was represented only by Mr. Brady. I cannot in the absence of any evidence to the contrary save from Mr. Keena's assertion go behind the order.
4. One of the orders made by Mr. Justice Barron was in the following terms:  
  
"That the plaintiff do have the right to occupy the family home to the exclusion of the defendant until further order."
5. Mr. Keena takes great issue with this order. He rightly points out that the words "until further order" means that the order in question is not a final order and is one that could be revisited.
6. Apparently, shortly after the appeal was concluded Mr. Keena was imprisoned for contempt of court. Although the evidence of Mr. Keena was not as clear as one would like, I presume it was on foot of a breach of the barring order. It is clear that an application for legal aid was made on behalf of Mr. Keena with the assistance of a local TD, a Mr. Henry Abbott. It would also appear that he was unsuccessful. That application was apparently made in December, 1991. I haven't seen the application form in respect of that application.
7. As far as I can tell from the pleadings and from the submissions and evidence of Mr. Keena it appears that in effect Mr. Keena was anxious to appeal or review the order of Mr. Justice Barron made on appeal from the decision of the Circuit Court. In the course of trying to clarify the issue in this case, that is I think the only conclusion that I can reach.
8. Not only is Mr. Keena dissatisfied with the decision of Mr. Justice Barron but it is clear that he was also deeply aggrieved by his treatment in prison as a result of his committal for contempt. Clearly he has contemplated proceedings in this regard but I cannot say from the evidence when he first contemplated this.
9. It is obvious that the order of the High Court made by Mr. Justice Barron cannot be appealed. Nor is there any basis on which it can be judicially reviewed as urged by Mr. Keena. Obviously, if circumstances warranted such an application, an application might have been made to vary or set aside the order. However, that is not the thrust of the plaintiff's case. His case is that he was "wronged by the order". It is in that context that he sought legal aid to challenge the order.
10. In support of his argument in this case, Mr. Keena has argued that the right to legal aid is guaranteed to every citizen by virtue of the constitutional guarantees in respect of equality before the law, supporting the institution of marriage and vindicating the right to his good name.
11. Insofar as the equality point is concerned, Mr. Keena's argument was based on the fact that in the Circuit Court his wife was represented by a solicitor and counsel and he was represented by a solicitor only. I have already referred to the fact that before the High Court it appears on the face of the order he was represented by counsel though he contradicts this. In the absence of cogent evidence to the contrary I find that he was represented by counsel. Even if he was not so represented, this does not assist the plaintiff; the concept of equality as enshrined in the constitution does not mean that if one side before a court is represented by counsel, the other side must also be so represented.
12. The point made by Mr. Keena in relation to the constitutional position of the family is not so easily discerned. Insofar as it may be suggested that the orders made in the family law proceedings constitute an attack on the institution of the family, that is an argument that does not stand up in my view.
13. The final point relates to the vindication of his good name. Mr. Keena alleges that the orders made in the family law proceedings leading to his committal for contempt were an attack on his good name. Again this seems to me to be an attack on the integrity of the orders made by Mr. Justice Barron - clearly this cannot be done and there is no legal basis for so doing.
14. It is in the context I have outlined above that the plaintiff is challenging the legal aid board on the basis upon which it is constituted. He challenges the statutory instrument which currently constitutes the basis of regulating the scheme. He requests that the Statutory Instrument be referred by this court to the Supreme Court. Clearly this cannot be done.
15. Legal aid is a scheme provided by the state to assist people in need of legal advice and assistance. It is subject to regulations in the interests of all of us. It is not an unrestricted entitlement. There are conditions attaching to it. In principle, there can be nothing

wrong with such an approach.

16. The legal aid board has agreed to reconsider the position of Mr. Keena notwithstanding its letter of 7th August, 2002. In fairness, they have indicated that there is unlikely to be any change in their position if the application is on the same basis as before. Clearly the legal aid scheme is not there to provide litigants with legal advice and assistance to pursue claims that would clearly be unsuccessful, are unstateable and are untenable. Nothing Mr. Keena has said by way of submission or in the brief evidence he gave changes my mind.

17. I should add that Mr. Keena gave evidence after I invited him to do so. His evidence did not add to his legal submission.

18. Finally, I should say that I find it difficult to discern a stateable cause of action in the pleadings before the court.

19. I am dismissing the plaintiff's claim.