

**THE HIGH COURT  
FAMILY LAW**

[2021] IEHC 775  
[2021 No. 12 M]  
[2021 No. 14 M]  
[2021 No. 33 M]  
[2021 No. 53 M]

**IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT,  
1964, AS AMENDED**

**BETWEEN**

**W.D.**

**PLAINTIFF**

**AND**

**M.W.**

**DEFENDANT**

**EX TEMPORE JUDGMENT of Mr. Justice Jordan delivered on the 28/07/2021**

**1.** This matter comes before the court for a decision on a preliminary issue concerning jurisdiction in circumstances where Mr. D. has issued four separate sets of proceedings in the High Court. Each set of proceedings referring in the title to the Guardianship of Infants Act of 1964 and referring in the title to different sections or various sections of the 1964 Act.

**2.** The first special summons bears record number 2021/12M. The second special summons bears record number 2021/14M. The third special summons bears record number 2021/33M and the fourth special summons bears record number 2021/53M.

**3.** It is necessary to put these High Court proceedings in context in circumstances where applications under the Guardianship of Infants Act of 1964 and involving the same child or children have been dealt with in the District Court and on Appeal in the Circuit Court. I say the same child or children because the child at the centre of the

application concerning access is A. who was born in December 2008 but also involved in the proceedings is his older sister J. who was born in May 2004. J. is currently resident with Mr. D. and A. resides with his mother.

4. It is the position that proceedings in the District Court pursuant to the Guardianship of Infants Act of 1964 and involving these children have grown protracted because of hearings in that Court and on appeal in the Circuit Court.

5. It is also the position that Mr. D. , dissatisfied with some of the Circuit Court Orders, did purport to appeal orders made in the Circuit Court proceedings to the High Court.

6. I am subject to correction in relation to the record numbers because I am relying on notes, but the purported appeals which came before the Court on the 7<sup>th</sup> of December last bear record numbers 45/2020, 46/2020 and 51/2020. The Notices of Appeal were accepted when filed in the Central Office and the matters in fact came into the list and came before this Court as appeals for hearing, at which stage it became apparent that these were purported appeals of Circuit Court Orders made in relation to appeals from the District Court. In other words, there was no valid appeal before this Court in relation to the Orders made in the Circuit Court. The right of appeal from the District Court to the Circuit Court was availed of and the Orders made in the Circuit Court could not be appealed further to this Court because as I explained to Mr. D. on the 7<sup>th</sup> of December of last year, if I have the date correct, one appeal is provided for and there is no appeal from the Circuit Court outcome on the hearing of the District Court appeals. As a result, those three matters on the 7<sup>th</sup> of December last were struck out on the basis there was no jurisdiction in this Court to entertain the purported appeals and this Court reserved the costs in circumstances where Mr. D. effectively said that he had misunderstood the

position and was not contesting the point made by the Court that the Court had no jurisdiction to deal with the matters.

7. At that time, this Court had hoped, perhaps naively, that it would not be asked to revisit the issues litigated in the District Court and on appeal in the Circuit Court. The Court's hopes in that regard proved to be in error. The position is that in addition to the District Court proceedings and the Circuit Court proceedings there have also been judicial review proceedings.

8. Mr. D. has brought four applications for leave to apply for judicial review in relation to Orders made by both the District Court and the Circuit Court, two of those applications remain live, one has been adjourned to the 11<sup>th</sup> of October 2021 and is on notice to Ms. W. and the other, certainly as of the 12<sup>th</sup> of July this year remained at the *ex parte* stage. The record number for the one which is on notice to Ms. W. is 2020 No. 897 JR. In addition, there is another purported appeal to the High Court in relation to a Circuit Court decision on a District Court appeal and that purported appeal bears record number 2021 No. 13CAF. Mr. D. has explained to the court that this purported appeal bearing record number 2021 No. 13CAF is a purported appeal in respect of the refusal of the Circuit Court Judge when finalising a District Court appeal to grant a stay on her order. Once more the same issue arises in relation to that purported appeal as arose in respect of the purported appeals which were before the court on the 7<sup>th</sup> of December of last year.

9. In addition to the District Court proceedings, the Circuit Court proceedings, the purported appeals of the Circuit Court orders, the four special summonses which are before the Court today and the judicial review proceedings, it appears that there is also a separate set of plenary proceedings which I do not have a copy of but which are referred to in the papers before me or in submissions rather which were made on the

last occasion that this matter was before the Court. These separate plenary proceedings which are not before the Court today bear record number 2021 No. 417P.

**10.** In addition to those proceedings which I have mentioned, Mr. D. has on a number of occasions since the 7<sup>th</sup> of December of last year sought to have listed before this Court an *ex parte* application or applications concerning the children and concerning A. in particular. These efforts by Mr. D. to have *ex parte* hearings in respect of urgent matters were the subject matter of emails from Mr. D. to the Court and were passed on by the Registrar to me. It was pointed out, although it is not the function of the Court to offer legal advice, to Mr. D. that in order to bring any application in the High Court one must have proceedings pending in the High Court.

**11.** In addition to the applications made to this Court, there has been or have been applications or attempted applications to the duty Judge sitting during vacation in relation to the child or children the subject matter of the District Court and Circuit Court proceedings. In addition, it would appear from the submissions of Mr. D. , that a document referred to as a cease and desist Order has been served on the school which A. is supposed to be attending and which school apparently, according to the submissions, as a result of the cease and desist Order served by Mr. D. has not proceeded with or progressed the enrolment of A. .

**12.** The matter was before the Circuit Court in the proceedings bearing record number DCAFL00005/2019 most recently on the 28<sup>th</sup> of April of 2021. The proceedings were entitled in the matter of the Guardianship of Infants Act 1964 between D. , applicant, and W. , respondent. I will read the order:

“The District Court Appeal herein coming on for hearing before [REDACTED]  
Family Law Circuit Court sitting in [REDACTED] this day on behalf of the applicant,  
Mr. D. whereupon it on reading the pleadings and documents filed herein and

on hearing the evidence adduced and what was offered by the applicant in person and [REDACTED]

[REDACTED] for the applicant and [REDACTED]

[REDACTED]

[REDACTED] for the

respondent, the court doth order affirm order of the District Court grant custody to Ms. W. regarding access if Mr. D. wants access he has to complete a parenting course, listen and carry out same. Mr. D. is to attend personal therapy, listen and carry out same. A. is to continue in therapy and is to go to school in [REDACTED] and play sport where A. wishes to play and experts opinion is to be noted. Application for costs granted, application for stay refused.”

**13.** In these High Court proceedings Mr. D. is clearly seeking to re-litigate the issues that have been litigated over a protracted period in the District Court and in the Circuit Court. He is seeking orders pursuant to the Guardianship of Infants Act 1964 concerning access, custody, parenting time with A. and orders allowing for or providing for the reunification, contact and establishment of a meaningful relationship between J. and A. .

**14.** In his written submissions to the court in the introduction section of the eighteen page submissions which I have studied carefully, Mr. D. says this application relates to special summonses regarding the rights of minor children J. and A. . The applicant is seeking access contact and parenting time with his only son A. . The applicant is seeking reunification contact and the restoration of a meaningful relationship between his offspring J. and A. . These Orders are quintessentially matters dealt with by way of directions under the Guardianship of Infants Act 1964 which applications in respect

of the children were the subject matter of the District Court proceedings, when I say children, as I said before, essentially in relation to A. but with J. also involved. The issues which Mr. D. seeks to litigate or re-litigate in this Court are matters which were the subject matter of applications in the District Court and on appeal in the Circuit Court.

**15.** The children the subject matter of these High Court proceedings are the same children the subject matter of the family law proceedings in the District Court under the Guardianship of Infants Act 1964 and the outcome of which applications were dealt with on appeal in the Circuit Court.

**16.** In his submissions to the Court today, orally, Mr. D. has said amongst other things “I want to end the conflict”. He indicates that he doesn’t wish the matter to be remitted to the Circuit Court. It would not be a case of this Court remitting anything to the Circuit Court. The issue here is whether or not this Court has jurisdiction to entertain the applications made in the special summonses - or to entertain the High Court proceedings initiated by the special summonses which I have referred to.

**17.** Mr. D. has said that “the only place I can get resolution is here in the High Court” which in fact is not so. The District Court has jurisdiction, has exercised jurisdiction, and Mr. D. has availed of his right to appeal those decisions and have those determined in the Circuit Court on appeal. The problem is that Mr. D. is dissatisfied with the outcome in the District Court and on appeal in the Circuit Court and wants to re-litigate the matters here in the High Court. The applications in each of the special summonses are nothing more than an attempt to dress up the applications made in the District Court and dealt with on appeal in the Circuit Court as something else.

**18.** Mr. D. has said to the court “the last place I want to be is in the courts”. It is difficult not to observe in relation to that remark or submission by Mr. D. that if the last place he wants to be is in the courts it is very difficult to understand the width and breadth of his litigation in the High Court, without mentioning at all the hearings in the District Court and the Circuit Court.

**19.** Mr. D. says “I am looking for this court to end the litigation”. This Court is proposing to end this litigation but for reasons different than those urged upon it by Mr. D. and in a different way to what Mr. D. would like to occur - in a different way because this Court does not propose to embark again on the Guardianship of Infants Act applications dealt with in the District Court and in the Circuit Court over a protracted period. Mr. D. has said that he has advice from the free legal aid centre but says in fairness to him that he is in the hands of this Court as to jurisdiction and of course that has to be the position. This Court is obliged to apply the law and if it does not consider that it has jurisdiction to entertain proceedings because they have already been dealt with, the same issues in the District Court and the Circuit Court, then this Court is obliged to strike the matters out for want of jurisdiction.

**20.** In relation to another submission made by Mr. D. where he has said “I don’t want to be entangled in the court system”, it is necessary to observe if Mr. D. does not wish to be entangled in the court system he has done quite a good job of entangling himself in the High Court system which situation is ongoing even outside of this list with two separate judicial review matters apparently pending in the High Court. Mr. D. says “I need and the children need these proceedings to stop”. I have absolutely no doubt that the children need these proceedings to stop. It is curious that Mr. D. has made a submission that the children should not be involved in this litigation and at the same time in the proceedings before the court and in paperwork submitted to the court

by Mr. D. there is in addition to an affidavit of a consulting clinical psychologist Ms. G. , an affidavit of his daughter, J. sworn in February of this year in support of Mr. D.'s case. I should say also for completeness that there is a detailed affidavit of Mr. D. sworn on the 21<sup>st</sup> of July of this year. I have read and I have considered these papers in order to inform myself of the background to a greater extent than I had been but there is nothing in any of the affidavits which goes in any way towards persuading me that this Court has any jurisdiction to deal with these matters. This is a situation of saturation litigation of the worst possible kind because it involves children and their welfare. It is inimical to the interests of these children that this volume of litigation should be going on in their lives and should be initiated and pursued to the extent that it has been and is being pursued by Mr. D. who proclaims that he has their welfare and best interests at heart. What is occurring here is an abuse of the process of the courts and is wholly and completely unacceptable and should not and cannot be tolerated.

**21.** The District Court sitting in [REDACTED] on the 8<sup>th</sup> of July 2019 made the following order pursuant to an application by Ms. W. for an enforcement order under s.18A (1) of the Guardianship of Infants Act 1964 as amended. The Court upholds the applicant's complaint and sentences the respondent Mr. D. to one months' imprisonment with custody of A. to the applicant, recognisances were fixed at €200 own bond in the event of an appeal and €100 cash lodgement.

**22.** The District Court appeal came before the Circuit Court on a number of occasions on an interim basis but it appears that Mr. D. was granted access from the very first time the matter appeared in the Circuit Court on the 25<sup>th</sup> of July of 2019. This is the appeal which came before the Circuit Court for full hearing on the 28<sup>th</sup> of April of 2021 and I have already recited the order that was made on the 28<sup>th</sup> of April 2021. It is worth noting that the imprisonment issue was not dealt with in the Circuit Court



order because at an interim stage on the 6<sup>th</sup> of December of 2019, the Circuit Court set aside the prison sentence and Ms. W. made no objection to the prison sentence being set aside. Mr. D. was represented by a legal team in the District Court and in the Circuit Court until he discharged his legal team in July 2020. He then had a fresh legal team for his District Court appeal in April of 2021 but he discharged that legal team during the hearing.

**23.** It is urged on behalf of Ms. W. that these proceedings before this Court are misconceived. It is pointed out that the right of appeal from the District Court to the Circuit Court is provided for by s.84 of the Courts of Justice Act of 1924 as amended by s.57 of the Courts of Justice Act 1936 which provides:-

“an appeal shall lie in all cases other than criminal cases from any decision of a judge of the District Court to the judge of the Circuit Court within whose circuit the court in which decision is given is situated and a decision of the judge of the Circuit Court on any such appeal shall be final and conclusive and not appealable”.

**25.24.** The decision made by the Circuit Court on each of the appeals from the District Court is a final decision. The Court cannot have a situation where a party avails of the right of appeal provided by law and then seeks to re-litigate the issues, pretending them to be something else when that is not so, in the High Court. If it was otherwise, litigation would never end or litigation would become at the very least considerably more protracted which when dealing with children is to say the least of it undesirable and contrary to their welfare and best interests.

**26.25.** I have already dealt with the purported appeals from the Circuit Court which were dealt with by this Court on the 7<sup>th</sup> of December last and I have to say that it is disheartening to see that Mr. D. has launched another such appeal which no doubt will

come into the list and will have to be dealt with in similar fashion as those dealt with on the 7<sup>th</sup> of December last.

27.26. It needs also to be pointed out in the context of this application concerning jurisdiction that Mr. D. is fully aware of the rights available to him to challenge the Circuit Court orders if there is a basis for doing so as his avenue of redress is to seek leave to apply for judicial review. He has sought judicial review in a number of applications - four in all, two of which remain pending in the High Court.

28.27. The issues concerning custody access and the welfare of A. and J. are matters which the District Court can deal with. Moreover, they are matters which the District Court has dealt with and they are matters which the Circuit Court has dealt with on appeal from the District Court.

29.28. As happens when lay litigants present their cases and the court has to allow some latitude in this regard, there are many of the submissions in support of his application by Mr. D. , if not most of his submissions, which are wholly irrelevant to the issue of jurisdiction. In fact, there is no submission of substance by Mr. D. in relation to the issue of jurisdiction and there is no answer contained in his written submissions - no acceptable answer or explanation to the question how can these matters be re-litigated in this Court.

30.29. Mr. D. needs to reflect on his position in life and on the position of his children. It seems to me that he is a loving father insofar as the two children are concerned and certainly without hearing any evidence in the case it seems to me that whatever infirmity there might be in that proposition I should proceed on the basis that he is a loving father and that what he is doing in the proceedings which he has initiated is as a result of his desire to be involved in the lives of both children and his desire that both children be involved in each other's lives. When I say he needs to reflect and take stock of his

position and situation in life and that of his children, I do so because what is happening here is undoubtedly impacting on the children. It is impacting on their mother also and it is impacting on Mr. D. and it needs to stop. It simply has to stop and insofar as this Court is concerned these proceedings will stop today because they must stop today. The court has no jurisdiction to entertain them.

31.30. I need also to observe and repeat a paragraph from the order of the 28<sup>th</sup> of April 2021 that A. is to continue in therapy and is to go to school in [REDACTED] to play sport where A. wishes to play and experts' opinion is to be noted. If it is the position that [REDACTED] school is being some way impeded in allowing the enrolment of A. or in allowing his commencement in that school after the summer break then that is wrong. It is not a matter for this Court to enforce the order but if Mr. D. breaches a Court Order which has been served on him with the penal endorsement on it, then he knows that he is liable to be incarcerated for breach of the court order if the matter is brought back before the Circuit Court Judge who having heard the evidence in relation to the alleged breach believes that a contempt of the court order has occurred which should be sanctioned by imprisonment. I make that observation for this reason - it is not in the interests or the welfare of A. that his schooling be in any way impacted by any difference of opinion which exists between his father and mother and which difference of opinion was the subject of the proceedings in the District Court and in the Circuit Court or at least in the Circuit Court where that issue was addressed in the court order. The Circuit Court order addresses where A. is to attend school and Mr. D. should support the position in that regard and not rebel against the decision of the Circuit Court Judge unless of course it is that this issue is the subject of one of his two pending judicial review proceedings and he manages to persuade the judge dealing with either one or both of those judicial review proceedings that the order or some part of

the order ought to be set aside. That is not an arena in which I am going to enter because the judicial review proceedings are not before me.

32.31. Towards the end of his submissions Mr. D. again said “I want an end of this torment in the children’s lives” or words to that effect. He went on to say and repeat once more that “this is about access and contact with my only son and he and his sister” that is his access and contact with A. and A.’s access and contact and relationship with J. . - the matters which the District Court and the Circuit Court concerned themselves with.

33.32. In all of the circumstances, and having regard to the written submissions of both sides, the affidavit submitted by Mr. D. from which background information and context is available, the court order of the 28<sup>th</sup> of April 2021, the titles of and the claims set out or matters set out in the special endorsement of claim of each of the four special summonses, I am satisfied that this Court has no jurisdiction to deal with these matters because they were dealt with in the District Court and the Circuit Court. The applications in relation to the children and A. in particular were what the District Court and Circuit Court proceedings were about. The Court simply cannot tolerate or allow this type of saturation litigation to continue.

34.33. It seems to me, and I am considering whether I strike out the proceedings for want of jurisdiction or dismiss the proceedings for want of jurisdiction, it may be an exercise in semantics but in any event it seems to me that the appropriate order insofar as these cases are concerned is to hold that this Court does not have jurisdiction to entertain the proceedings for the reasons which I have already outlined in my judgment and in those circumstances and in the absence of jurisdiction I will dismiss the proceedings in each of the four cases, 2021 No. 12M, 2021 No. 14M, 2021 No. 33M, 2021 No. 53M for want of jurisdiction. If there was any issue concerning the

correctness of that Order, and I do not believe there to be, I would simply strike out the proceedings for want of jurisdiction but I am holding there is no jurisdiction and dismissing the proceedings for that reason and in accordance with what I have said in the judgment. I will hear you Ms. A. in relation to the issue of costs and then I will hear you on that issue Mr. D. .

35.34. Insofar as these proceedings are concerned, Ms. W. is represented by the Legal Aid Board. The Legal Aid Board has applied for the costs of defending these proceedings. Mr. D. has opposed the application for costs in these proceedings against him. It is the position that on the 7<sup>th</sup> of December of last year this Court reserved the costs in respect of the unfounded appeals which had been brought or purported appeals which had been brought from the Circuit Court in relation to its decisions on the District Court appeals. The Court had hoped that Mr. D. would mend his ways in terms of his campaign of saturation litigation and contrary to what he suggests what appears to be nothing other than the bombarding of Ms. W. with litigation.

36.35. I have listened carefully to what Ms. W. has said in relation to reserving the costs of these proceedings. I do not know when the costs will be reserved to. Indeed I thought that was perhaps something of an infirmity in the Orders that were made by this Court on the 7<sup>th</sup> of December of last year but I note that the Circuit Court awarded costs on the 28<sup>th</sup> of April of this year.

37.36. There is nothing which Mr. D. has urged on the court to persuade it to depart from the principle that the costs ought to follow the event. In fact, the matters apparent and referred to in the course of the judgment I have given in this matter emphasise the need of the court to have costs follow the event in cases which should never have been brought.

38.37. It is the position, and I appreciate what Mr. D. says that orders for costs against him will involve some hardship, that he is fortunate in many respects that these proceedings are dealt with together on a preliminary application in relation to jurisdiction. I am not persuaded that there is any reason why I should depart from the principle that ought to be applied. I appreciate that these are family law proceedings but quite often in family law proceedings the one deterrent that does exist to prevent litigants abusing the court process and to prevent saturation litigation and the bombarding of the other side with court proceedings is to make the appropriate order in respect of costs if and when those proceedings are disposed of.

39.38. The proceedings were dismissed just now for want of jurisdiction and I am granting Ms. W. her costs in each set of proceedings to be adjudicated in default of agreement and I would hope that going forward Mr. D. will appreciate the exposure to legal costs that he is creating for himself by this campaign of litigation in respect of matters that have been dealt with in the District Court and in the Circuit Court and can be revisited there if there is good reason to do so.

40.39. In that latter respect, it would seem to me that for as long as Mr. D. is involved in his campaign of litigation and for as long as he fails to complete a parenting course and fails to attend personal therapy and follow the advice he receives at both - for as long as that situation continues it seems likely that Mr. D. will remain intent on exposing himself unnecessarily to orders for costs against him. So costs in all sets of proceedings against Mr. D. including any reserved costs in these proceedings, although there may be none, but including any reserved costs to be adjudicated in default of agreement.