APPROVED
NO REDACTION NEEDED

THE COURT OF APPEAL

CIVIL

Appeal Number: 2024 179

Neutral Citation No: [2024] IECA 280

Pilkington J.
Allen J.
O'Moore J.

BETWEEN

A.B.

APPLICANT/APPELLANT

AND

A JUDGE OF THE DISTRICT COURT

RESPONDENT

EX TEMPORE JUDGMENT of Mr. Justice Allen delivered on the 19th day of November, 2024

1. This is an *ex parte* appeal by Mr. A.B. – a litigant in person – against the judgment and order of the High Court (Hyland J.) delivered and made on 25th June, 2024 refusing Mr. B.'s application for leave to apply by way of judicial review for an order of *mandamus* requiring a judge of the District Court to sign a case stated for the opinion of the High Court as to whether he – the District Court judge – was correct in law to refuse an application made by Mr. B. for a case stated to the High Court.

2. For some time prior to 7th February, 2023 Mr. B. was married to Ms. B. They have two children. On 7th February, 2023 the Circuit Court granted a decree of divorce in respect of the marriage. The Circuit Court granted custody of the children of the marriage to Ms. B. and ordered that Mr. B. was to have access as was then in place and agreed between the parties.

3. On 6th September, 2023 Mr. B. appeared before the District Court when, on the application of Ms. B. made pursuant to s. 6 of the Domestic Violence Act, 2018, the District Court judge made a safety order. The District Court order as drawn *inter alia* prohibited Mr. B. from *"following or communicating (including by electronic means) with the applicant/the dependent person(s)"* – which Mr. B. understands to mean his children. The order provided that it was to remain in force for three years until 5th September, 2026.

4. At the time of the Circuit Court divorce proceedings, Mr. B. had civil legal aid and was represented by a solicitor and counsel. The same solicitor appears to have acted or offered to act for Mr. B. in the safety order proceedings, but Mr. B. took the view that the solicitor was not acting in his best interests and discharged him. Not least with the benefit of hindsight, that appears to have been very unwise.

5. On 18th December, 2023 Mr. B. applied to the District Court for *"a declaration to the effect that the court safety order was null and void and cannot be rectified as the District Court lacked authority to make such an order"* and *"a declaration from the [District] Court confirming that the order is null and void ab initio."* The premise of that application was that the District Court did not have jurisdiction to make an order which, as Mr. B. put it, negated and undermined the previous order of the Circuit Court. That application was refused.

6. On 15th February, 2024 Mr. B. applied to the District Court for a case stated to the High Court. That application was an application pursuant to s. 2 of the Summary Jurisdiction Act, 1857 expressing Mr. B.'s dissatisfaction with the determination of the District Court

judge to refuse his *"void order application"* as erroneous on a point of law and requesting the District Court judge to state and sign a case setting forth the facts and grounds of the determination for the opinion of the High Court. This was what is known as an application for an appeal by way of case stated.

7. Ordinarily, a litigant who is dissatisfied with a decision of the District Court as being erroneous on a point of law is entitled to an appeal to the High Court by way of case stated. However, s. 4 of the Act of 1857 provides that if the District Court judge is of opinion that the application *"is merely frivolous"* he or she may refuse to state a case but is required, on the request of the applicant, to sign and give to him a certificate of refusal. That is what happened in this case. On 20th February, 2024 the District Court judge signed a certificate of refusal to state a case, by which he certified that he had refused to state a case as he considered that the application – that is to say the application for a case stated – was frivolous.

8. There is a procedure in the Summary Jurisdiction Act, 1857 by which an applicant who is refused an appeal by way of case stated can challenge the refusal. Mr. B. did not avail of that procedure, but nothing turns on that.

9. Instead, on 15th April, 2024 Mr. B. applied to the High Court (Hyland J.) for leave to apply by way of judicial review for an order of *mandamus* requiring the District Court judge to state and sign a case for the opinion of the High Court. He appears to have filed his papers on 4th March, 2024 but to have moved his application on 15th April, 2024. While Mr. B. did not spell it out in terms, the substance of his application was that the District Court judge was not entitled to have taken the view that Mr. B's application was frivolous.

10. In the course of the hearing before the High Court on 15th April, 2024, Hyland J. asked Mr. B. whether he had appealed the order of 6th September, 2023 or applied for an extension of time to appeal. He had not, but the High Court judge's questions appear to have

prompted an application by Mr. B. on 1st May, 2024 to the District Court judge for an extension of time to appeal against the order of 6th September, 2023 and for the release of the DAR – or a transcript of the DAR – on that date. That application appears to have been made on notice to Ms. B. by notice dated 15th April, 2024 and was refused. It appears that when the matter was listed for judgment before the High Court on 25th June, 2024 the High Court judge was unaware of the application for an extension of time that had been made in the meantime.

11. On 25th June, 2024 Hyland J. delivered a reasoned judgment on Mr. B's application. The judgment was given orally but Mr. B. was later provided with a transcript of the DAR.

12. The judge first recalled that an applicant for leave is required to demonstrate that he has arguable grounds, and that the threshold is a low one. Reading from the statement of grounds, the judge identified the application as relating to *"a void order application presented to [the District Court judge] regarding an ultra vires District Court order prohibiting all communication and access to my children, which undermined an existing Circuit Court order."* Mr. B.'s case was that the District Court order was *ultra vires* and unlawful and that the District Court judge had demonstrated *mala fides* intent.

13. The High Court judge looked at the application which had been made to the District Court judge to set aside his own order which was entitled *"Application void order"* and Mr. B.'s *"Statement of Truth and Fact"* filed in support of it – or at least with it – which was sworn on 18th December, 2023. She then looked at Mr. B.'s application for a case stated and the certificate of refusal of 20th February, 2024.

14. The High Court judge identified the power conferred by s. 4 of the Summary Jurisdiction Act, 1857 to refuse an application for case stated which is frivolous, and said:-

> *"And I think it is important to say here that the wording frivolous in law in this context does not mean light-hearted or made in bad faith or superficial or anything*

like that. What it means is that it is not a substantial and serious claim, and … it is one made without merit – in other words, again, substantive legal merit and that echoes the words of the Act. And the question that I must consider is whether or not the applicant has identified any arguable grounds to say that the decision of the District Court to refuse to certify a case under the 1857 Act is one that is arguable in law …"

15. I pause here to say that there is no suggestion that the High Court judge erred in her interpretation of the Act of 1857 or in her identification of the test to be applied on an application for leave.

16. The High Court judge found that there was no authority for the proposition that the District Court had jurisdiction to determine what Mr. B. called a void order application. She said that she was not familiar with a void order application in Irish law.

17. The judge looked carefully at the written legal submissions which had been filed by Mr. B. These submissions referred to English case law which – the judge thought – might not have been properly understood but there was no reference to any Irish case. Effectively, Mr. B., by his *"void order application"*, had sought to have the District Court judge review his own decision. That was not – said the High Court judge – the appropriate way to proceed. Rather, Mr. B.'s remedy was by way of appeal to the Circuit Court. There being no procedure which would allow a District Court judge to revisit his own decision, the High Court judge concluded that the District Court judge had been correct in identifying the application for a case stated as frivolous and without merit, within the meaning of the Act of 1857.

18. The High Court judge concluded that – low as the threshold was – Mr. B. had not identified any arguable grounds that the District Court judge had erred in law and refused leave.

19. By notice of appeal filed on 23rd July, 2024 Mr. B appealed against the judgment and order of the High Court on seven grounds.

20. Mr. B. is aggrieved by the order made by the District Court on 6th September, 2023. That is understandable because the order – or at least the order as drawn – has the effect of preventing him communicating with his children.

21. However, five of the grounds of appeal are directed to the substance and effect of the safety order of 6th September, 2023 rather than to the certificate of refusal of the case stated application of 20th February, 2024 which was the sole and exclusive focus of the leave application.

22. Citing Article 42A of the Constitution, Mr. B. asserts that the best interest of the children are the paramount consideration in all decisions affecting them. That is correct, but it has nothing to do with Mr. B.'s *"void order application"* or the refusal by the High Court of leave to challenge the refusal by the District Court judge to state a case. Similarly, Mr. B.'s right to family life guaranteed by Article 41 of the Constitution; the child's right to be heard under the Guardianship of Infants Act, 1964 and the Children and Family Relationships Act, 2015; Mr. B.'s and Ms. B.'s parental right and responsibilities under the Guardianship of Infants Act, 1964; and the children's rights under Article 9 of the United Nations Convention of the Rights of the Child simply do not go to the legal validity of Mr. B.'s *"void order application"* or the decision of the District Court judge to refuse his application for a case stated.

23. The first ground of appeal is that the High Court judge failed to properly consider the allegation of *mala fides*. Mr. B. identifies three instances – he calls them examples – of what he alleges amounted to *mala fides* on the part of the District Court judge. The first is the making of the safety order of 6th September, 2023 which, he says, undermined the Circuit Court order in relation to access. The second is the refusal to sign a case stated. And the

third is the refusal of Mr. B.'s application for an extension of time to appeal against the safety order.

24. The internet is a wonderful resource. It is also a repository of mountains of rubbish. In the same way as paper will not refuse ink, every crank and quack is able to upload twaddle expressed in pseudo legal language – often liberally sprinkled with capital letters as if emphasis or shouting creates credibility – which may not be readily recognisable by a lay person as fake law. Litigants in person, and, I suppose, lawyers – and, I suppose, judges – must be careful to establish the provenance of what is to be found there. Lawyers will be able to critically assess what they find but litigants in person may not be.

25. Mr. B.'s *"void order application"* appears to have originated in an article which he found on the internet entitled *"THE VOID ORDER"* which purports to have been written by an English solicitor advocate with a variety of other qualifications in psychology and social science. Perversely, the article starts with the proposition that *"The interesting and important nature of a 'void' order of a Court is not fully understood and appreciated in England …"* It becomes apparent from what follows that whatever about the legal profession in England generally, this is certainly true in the case of the author. The article refers to a considerable number of English cases. Hyland J. contented herself with saying that these may not have been properly understood. I prefer to say that it is perfectly clear that they have been fundamentally misunderstood.

26. The proposition that the District Court safety order undermined the Circuit Court access order was fundamentally misconceived. As a matter of first principle, custody and access orders can always be varied in the light of changed circumstances. In this case, the District Court order was made following events which post-dated the Circuit Court order. The earlier Circuit Court custody and access order cannot have ousted the statutory jurisdiction of the District Court to deal with the later application for a safety order.

27. More to the point, perhaps, whatever Mr. B.'s complaints may have been as to the conduct of the safety order hearing and however dissatisfied he may have been with the outcome, the District Court simply did not have jurisdiction to review or revisit its order. It did, as I will come to, have jurisdiction to deal with an application to vary the safety order; but that is not what it was asked to do. Mr. B.'s remedy was to appeal. In principle – and, for the avoidance of any conceivable doubt, it did not happen in this case – if a District Court judge so errs in his or her approach to a hearing as to exceed his or her jurisdiction, a party affected may apply to the High Court for an order of *certiorari*. But – as the High Court judge found – the District Court has no jurisdiction to judicially review its own orders.

28. There was in Mr. B.'s statement of grounds and in his verifying affidavit a reference to *mala fides*. But the only basis for that was the mere fact that the District Court judge had refused to state and sign a case or, perhaps, had refused the *"void order application."* Litigants in person and hob lawyers often have recourse to Latin tags which they do not understand in the hope that they might lend verisimilitude to imagined propositions of law. I am not to be thought to say that there was anything in the criticism made of the District Court judge, but the height of it was that he had erred in his assessment of the evidence and/or application of the law. There was no basis for, still less evidence to support, a complaint of bad faith. It follows that there was no need for the High Court judge to engage with a bald and baseless allegation.

29. Mr. B.'s complaint at para. 3 of ground 1 of the grounds of appeal as to the conduct of the District Court judge in the course of his extension of time application on 1st May, 2024 – which, it will be recalled, was after Mr. B. had moved his application to the High Court but before judgment was delivered – was no part of the High Court application and cannot be a ground of appeal. The simple explanation for the fact that it was not referenced in the judgment of the High Court is that the High Court judge was not told about it.

30. The sixth ground of appeal asserts that the principles of natural justice and fairness require that decisions affecting an individual's rights must be made through fair procedures: which is correct. Mr. B. suggests that the High Court judge did not give enough weight to the substantive issues and allegations regarding the District Court judge and his – alleged – denial of fairness and natural justice to both Mr. B. and his children. This, again, I am afraid, is jumbled and misconceived.

31. The High Court application was an application for leave to apply by way of judicial review of the decision of the District Court judge on 20th February, 2024 to refuse to sign a case stated. Whether Mr. B. understood it or not – and it rather appears that he did not – the only basis on which leave might have been granted was if he had identified an arguable ground or grounds for his contention that the District Court judge was wrong to have refused Mr. B.'s application for a case stated. This, in turn, would have required Mr. B. to have identified an arguable legal basis for his contention that the District Court judge had jurisdiction to review his own order. He did neither. Mr. B.'s *"void order application"* was obviously and unquestionably misconceived. If, in the wording of s. 2 of the Summary Jurisdiction Act, 1857 Mr. B. was dissatisfied with that determination as being erroneous in point of law, he – Mr. B. – was wrong in law because there was no legal basis for his dissatisfaction. It follows that the District Court judge was correct in his conclusion – in the wording of s. 4 of the Act of 1857 – that the application for a case stated was frivolous; and that the High Court judge was correct in her conclusion that Mr. B. had not demonstrated any arguable ground on which leave might have been granted.

32. I would therefore dismiss the appeal and affirm the order of the High Court.

33. There is, however, something that I need to add.

34. While Mr. B.'s *"void order application"*, his application to the District Court for a case stated, his application to the High Court for a judicial review of the refusal of the District

Court judge to state a case, and his appeal to this Court were all misconceived, I think that I must say something about the form of the District Court order of 6th September, 2023 which has given rise to this misguided litigation. I emphasise that this Court knows nothing of the circumstances which gave rise to Ms. B.'s application for a safety order; that this Court has no role in reviewing the substance of the decision of the District Court; and that nothing I say is to be construed or misconstrued as a criticism of the District Court judge.

35. Ms. B's application came before the District Court on a summons issued pursuant to s. 6 of the Domestic Violence Act, 2018.

36. Section 6(2) of the Act of 2018 provides that:-

> *"(2) Where the court … is of the opinion that there are reasonable grounds for believing that the safety or welfare of an applicant or a dependent person so requires, it shall … by order (in this Act referred to as a 'safety order') prohibit the respondent from doing one or more of the following:*
>
> *(a) using or threatening to use violence against, molesting or putting in fear the applicant or the dependent person;*
>
> *(b) if he or she is residing at a place other than the place where the applicant or that dependent person resides, watching or besetting a place where the applicant or the dependent person resides;*
>
> *(c) following or communicating (including by electronic means) with the applicant or the dependent person."*

37. The order of 6th September, 2023 as drawn appears to me to be a template: not an order based on a template, but a template based on s. 6 of the Act of 2018.

38. The order recites that on the evidence given the court was of opinion that there were *"reasonable grounds for believing that the safety/welfare of the applicant and any dependant person so requires."* The jurisdiction of the District Court is engaged where it is of opinion

that there are reasonable grounds for believing that the safety or welfare of the applicant of or a dependent so requires. It may very well be that the circumstances are such that both the safety and the welfare of the applicant so require, but the order as drawn does not show whether it was one or the other or both. Moreover, the recital refers to *"any dependant person"* without identifying whether there was any such dependant person or persons, or of there was or were, who they were.

39. Almost precisely mirroring s. 6(2) of the Act, the order as drawn prohibits the respondent from:-

> *"using or threatening to use violence against, molesting or putting in fear the applicant or the dependent person,*
>
> *watching or besetting a place where the applicant or the dependent person(s) reside(s);*
>
> *following or communicating (including by electronic means) with the applicant/the dependent person(s)."*

40. Save that the dependent person or persons are not identified, the first two elements of the order as drawn make perfect sense. However, I struggle with the third. It is understood by Mr. B. as an absolute prohibition on him communicating with his children. To my mind, if that was intended it would be first of all draconian and secondly, I would have expected that the order to have been absolutely unambiguous: spelling out that it applied to the applicant and the dependent person or persons and identifying who they were.

41. Mr. B. is aggrieved by the making of the safety order generally, but the particular focus of his grievance is on the third element. Mr. B.'s application for a transcript of the DAR for 6th September, 2023 was refused but he recalled this morning that what the District Court judge said was *"safety order granted."* He also suggested that Ms. B. had not sought

an order prohibiting him from having any contact with the children. If that is so, the order as drawn does not reflect the order made by the District Court judge.

42. Order 45E, r. 3 of the District Court Rules provides that:-

> *"The Court may correct any clerical mistake in a judgment or order, or any error arising in a judgment or order from any accidental slip or omission, at any time on the application by notice of motion of the party seeking the correction on notice to the party sought to be affected by the correction."*

43. Less technically, s. 6(8) of the Act of 2018 allows an application to be made at any time for the variation of a safety order.

44. Mr. B.'s expertise is in information technology. He candidly acknowledged in response to a question from the Court that he has no legal expertise. Following the making of the order of 6th September, 2023, Mr. B. allowed his time for appeal to run out while he mounted and pursued his *"void order application."* Following the refusal of his extension of time application on 1st May, 2024 he allowed his time to appeal against that refusal to run out while he waited for the transcript of the High Court decision. With no disrespect, it is clear that Mr. B. does not know what he is doing. I would encourage Mr. B. to reengage with his solicitor.

Pilkington J. – I have listened carefully to the judgment just delivered by Allen J. and I agree with it.

O'Moore J. – I also agree with the Judgment of Allen J. and in particular, I would like to associate myself with the observations he has made about the District Court order and the need for Mr. B. to take legal assistance and get out of the procedural labyrinth in which he finds himself.