THE COURT OF APPEAL

(CIVIL)

Neutral Citation Number: [2017] IECA 106

RECORD NO. 372/2016

Birmingham J.
Mahon J.
Edwards J.

BETWEEN/

DAVID WALSH

RESPONDENT

- AND–

THE MINISTER FOR JUSTICE AND EQUALITY, THE DIRECTOR OF PUBLIC PROSECUTIONS, THE COURTS SERVICE, JUDGE ALICE DOYLE AND THE GOVERNOR OF CORK PRISON

APPELLANTS

JUDGMENT of Mr. Justice Mahon delivered on the 23rd day of March 2017

1. This is an appeal from part of a judgment of the High Court (Humphreys J.) delivered on 13th June 2016, and the consequential order directing the release of the respondent from prison pursuant to Art. 40.4 of the Constitution. The respondent opposes the appeal and has made oral submissions to this court in support of that opposition.

2. The background to these proceedings can be briefly stated as follows. On the 31st May 2016 at Waterford Circuit Court, repossession proceedings came on for hearing before the presiding judge (Her Honour Judge Alice Doyle). The plaintiff in the proceedings was Bank of Ireland Mortgages and the defendant was Ms. Feana Walsh, a sister of the respondent. Ms. Walsh was not legally represented and did not personally appear in court. The respondent purported to appear on his sister's behalf and sought the court's leave to address it in that capacity. Leave was firmly refused by the learned circuit judge and there followed an increasingly heated exchange between her and Mr. Walsh in open court and which resulted in the respondent being found in contempt of court for which he was sentenced to two weeks imprisonment. This exchange was precipitated by the learned circuit judge's refusal to permit the respondent to address the court on his sister's behalf, a decision which the learned High Court judge deemed to be *correct*.

3. A full transcript of the proceedings in Waterford Circuit Court has been provided to this court, and I have also had the benefit of listening to the Digital Audio Recording (DAR) of the proceedings. The DAR was also made available to the learned High Court judge, but he declined to listen to it when invited to do so.

4. At the outset, it is important to state that while the transcript of the Circuit Court proceedings and the DAR clearly reflect the fact that other individuals frequently interrupted and indeed disrupted the court, the respondent has emphasised that he was in court on that day solely on his sister's behalf, and was not in any way linked to, or associated with, others engaged in that disruptive behaviour. I accept the respondent's assurances in this respect, and I also accept that his motivation for the stance taken by him on the day was entirely related to, as he considered it, the protection of his sister's interests. There were other repossession cases listed on the day and there was, by all accounts, a group of people in court protesting on behalf of other defendants in such cases, and intent on disrupting the work of the court.

5. The respondent persistently refused to accept the learned Circuit Court judge's ruling denying him a right of advocacy on behalf of his sister citing, *inter alia*, the Power of Attorney Act 1996. The respondent rejected the ruling that he was not entitled to address the court or otherwise maintained that it was acting without jurisdiction on approximately thirteen occasions before being threatened with a finding of contempt. The respondent continued to vociferously object to the court's jurisdiction before again being warned that he would be found in contempt of court. The second warning fell on deaf ears and the learned Circuit Court judge then formally found the respondent to be in contempt of court, to which he replied "That is fine". The respondent was ordered to be arrested and removed from the court.

6. Later in the day the Walsh repossession proceedings were resumed. There followed a period in which the learned Circuit Court judge was continually interrupted and shouted down by unknown persons in what might reasonably be described as an atmosphere of near anarchy. This is very vividly illustrated by listening to the DAR. This very heated atmosphere must have been extremely difficult, unpleasant, disruptive and indeed intimidating for the judge, court staff and members of the public not engaged in such behaviour.

7. By way of illustration of the objectionable nature of the behaviour of some individuals in the court, when one of the interrupters was asked by the learned Circuit Court judge for his name, he replied *"I have many names"* and *"my son calls me father and me mother calls me son, what name exactly do you want?"*

8. Following a period of relative calm in which the Walsh repossession proceedings were concluded, the respondent, and a Mr. Kavanagh, who had also been arrested and removed from court for disruptive behaviour, were brought back into court. The respondent was offered a solicitor under the Legal Aid Scheme but he declined this offer. He was informed that he was *"in criminal contempt"* because he had continued to disrupt the court's business. He also declined the opportunity to apologise to the court and he refused to accept that he had done anything wrong. The learned Circuit Court judge carefully explained to the respondent that he had continued to interrupt the court and had insisted on speaking despite having been ordered to desist from doing so. The respondent was then sentenced to two weeks imprisonment. On occasions during this final exchange between the learned Circuit Court judge and the respondent, other unidentified individuals can be heard raising their voices in clear defiance of the court. The other individual, Mr. Kavanagh, when addressed by the learned Circuit Court judge apologised to the court and was declared free to leave.

9. The learned High Court judge, in the course of his judgment, considered the circumstances in which the respondent had been sentenced under the heading *"Was the detention proportionate?".* He stated, at para. 22:-

> *"22. It is clear that disruption of court proceedings does constitute contempt in the face of the court, which in principle can be dealt with there and then by the judge concerned: see Morris v. Crown Office [1970] All E.R. 1079; Law Reform Commission, Consultation Paper on Contempt of Court (July, 1991) pp. 6 and 24; and In re Rea 2 L.R. Ir. 429 (Q.B. Div. 1878) (a case of a solicitor who was committed for contempt, having "shouted at the court in a most violent and unseemly manner" (at p. 430)).*"

10. The learned High Court judge went on to say as follows:-

> *"23. However disruption of court proceedings comes in many forms. The applicants in the Morris case were engaged in a calculated and coordinated campaign of disruption. The applicant in the present case rather appears to be someone who came to court under a fundamental misapprehension as to whether he had a legal entitlement to address the court, and had a consequent difficulty in accepting the court's correct ruling in that regard.*
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> *24. As distinct, say, from a person who uses language which is an affront to the administration of justice, who engages in disruption by way of protest or physical aggression in a court room, or who by words or gestures threatens any person within or in the precincts of the court, the sort of behaviour for which the present applicant stands condemned, namely speaking out of turn, constitutes what could be regarded as common or garden contempt.*
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> *25. In such a case, it is not always necessary for a judge faced with such a contemnor to go the formal route of a finding of contempt followed by arrest, detention and sentence. In many instances it will be sufficient, and therefore more proportionate, simply to direct a person to leave the courtroom, or if he or she fails to do so, to direct the relevant Superintendent and members of the Garda Síochána to compel the contemnor to leave, using reasonable force if necessary.*
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> *26. It is not necessary to arrest an individual in order to require him or her to leave a courtroom, or indeed any premises… Had Mr. Walsh been simply escorted from the courtroom, he would have been entirely at liberty to go anywhere he was entitled to go. This would not include an entitlement to go back into the courtroom because his disorderly conduct there provided an ample basis for him to be excluded."*

11. The learned High Court judge went on to express his view it *was preferable and more proportionate* that what he described as "common or garden" disruption of the type exhibited in the instant case should be dealt with by exclusion from the court rather than by arrest and detention.

12. At para. 29, the learned High Court judge stated:-

> *"29. Should similar disruption arise in another case of a nature that simply constitutes speaking out of turn, in my view, the appropriate course is simply to exclude the contemnor from court without directing their arrest (but by authorising Gardaí to use reasonable force if necessary). Such a procedure avoids the need for detention and therefore for any consequent Article 40 inquiry. If arrest is required, it would be appropriate (to ensure that the proportionality of that action is clear to any reviewing court) that the judge taking that course would state expressly that merely excluding the person would be inadequate to address the affront to the administration of justice committed in the case (unless the nature of the disruption is such that it is obvious that mere exclusion would be an insufficient response). A court has an inherent power to exclude a disrupter, with or without a formal finding of contempt. It can certainly do so without such a finding. But it can also legitimately hold the common or garden disrupter to be in contempt and then exclude them. It is not necessary, following a finding of contempt, to take any specific further action thereafter. Arrest, detention and sentence are not automatically required following a finding of contempt…".*

13. The learned High Court expressed his view that there was no error in the finding by the learned Circuit Court judge that the respondent had been in contempt of court.

14. For the reasons briefly indicated above but stated in greater detail in his judgment, the learned High Court judge deemed the respondent's imprisonment to be disproportionate and unnecessary. Having briefly considered the validity of the warrant for the detention of the respondent and, although expressing the view that there was an error on the face of the warrant, he did not feel it necessary to deal with that aspect of the case, and he proceeded to direct the release of the respondent from prison pursuant to Article 40.4 of the Constitution. No issue therefore arises in relation to the validity of the warrant for consideration by this court.

15. I would respectfully disagree with the learned High Court judge's observation that the appellant was merely 'speaking out of turn'. The respondent's behaviour in court, and his persistent refusal to accept a ruling from the presiding judge may have been, in itself, in terms of its gravity and, in the overall scheme of things relatively mild contempt. Nevertheless, it was contempt and the ruling to this effect by the presiding judge was deemed correct by the learned High Court judge. Contempt is contempt, whether it be (as described by the learned High Court judge), *common or garden* contempt or something more serious. A presiding judge must be afforded very wide discretion as to how to deal with such situations, and has a wide discretion to make a judgment call as to whether the mere expulsion from court of the individual in question is sufficient and appropriate or whether it is necessary to impose a more severe penalty, including imprisonment. Ultimately, the decision as to how best to proceed is a matter which ought to be left to the discretion of the presiding judge.

16. That is not to say that a decision by a presiding judge as to how he or she deals with a person guilty of contempt is never open to review. Fair procedures and basic justice should always be central where such situations arise. In the instant case, the respondent was repeatedly afforded the opportunity to accept the ruling of the learned Circuit Court judge. He was also given the opportunity to be represented by, and take advice from, a legally aided solicitor, and he was also given the opportunity to apologise. He very clearly declined both offers.

17. A particular feature of this case is the fact that the learned Circuit Court judge was not simply dealing with the respondent's refusal to accept her ruling and his persistence in addressing the court in the face of that ruling, she was also dealing with a very difficult and intimidating atmosphere in the court caused, I accept, by people unconnected to the respondent. This situation required a firm response to ensure that the court was allowed to do its work. In the particularly difficult circumstances in which the learned Circuit Court judge found herself on the day in question, merely removing the respondent, and others, without further sanction, may not have sufficiently calmed the atmosphere to enable the court continue its work. Ultimately, what was required to deal with the

situation was a matter for her as presiding judge. There is a strong public interest in ensuring that the administration of justice should not be disrupted and that courts be allowed to function for the common good, and ultimately, the responsibility to ensure that such happens rests with the presiding judge.

18. I am therefore satisfied that the decision of the learned Circuit Court judge to imprison the respondent for two weeks for contempt of court was reasonable, proportionate and lawful.

19. Accordingly I would allow the appeal.