THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 575 J.R.]

BETWEEN

RAY HALL AND SUSAN HALL

APPLICANTS

AND

STEPSTONE MORTGAGE FUNDING LIMITED

RESPONDENT

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 15th day of February, 2016

1. By letter of offer dated 22nd August, 2007, the respondent agreed to advance to the applicants the sum of €300,000 to be secured by mortgage on the family home of the applicants at Abbeylands, Duleek, Co. Meath. The funds were duly advanced, but since 2009, the applicants have been in default of payment. On 20th March, 2014, full repayment of the total amount outstanding was demanded by the respondent.

2. On 14th May, 2014, the respondent issued a civil bill against the applicants seeking possession of the applicants' family home. The application for possession was listed for hearing on 16th July, 2015 before Her Honour Judge Leonie Reynolds. At that hearing, Mr. Hall represented himself and the second named applicant, as he did before me. While in strict theory this was a concession to the second named applicant, as, where unavailable herself, she only had a right under rules of court to be represented by her husband in the District Court, but not any other court, I would not consider that the representation of one spouse by the other infringes any basic legal principle in the way that other lay representation does (see *Knowles v. Governor of Limerick Prison* [2016] IEHC 33, para. 17), especially where the proceedings concern them both, and doubly so where there is no objection from the other side, so I permitted Mr. Hall to proceed in that manner in this application.

3. The hearing in the Circuit Court was in certain respects unusual, in that it was interrupted by two contempt of court matters, one of which was particularly significant.

4. Firstly, Mr. Paul Coddington, who was assisting the applicant in the Circuit Court as he did at the hearing before me, was arrested in the course of the hearing for alleged contempt of court. I am told that the allegation was that Mr. Coddington was recording the proceedings although he denies this, and Mr. Hall states that no recording was ever identified. Mr. Coddington says that paperwork he had in his hands was taken from him during this process, and that he was put in a cell. He says he last saw the paperwork beside his shoes and phone outside the cell he was placed in. He was later returned to court in a very dishevelled state, it is said, missing his clothing from the waist upwards and bleeding.

5. This apparently provoked a further intervention from another person in attendance, Dr. Finbarr Markey, which was also treated as a contempt by the learned judge – quite rightly, obviously, as Dr. Markey had no business intervening in the proceedings.

6. I should, in fairness to the learned trial judge, also draw attention to the fact that a number of Mr. Hall's own interventions to the Circuit Court were somewhat indisciplined, to use as neutral a term as possible, and indeed his initial version of his statement of grounds before me contained allegations of a scandalous and vexatious nature which he has since commendably retreated from.

7. By way of example of his interventions before Judge Reynolds, he told the learned judge that "*I accept and acknowledge your oath of office and I am the man you swore it to*". This intervention was, in the language of Scalia J. (dissenting) in Obergefell v. Hodges 576 U.S. (2015) (slip op.) p. 7, "*couched in a style that is as pretentious as its content is egotistic*."

8. Following the arrest and removal of Mr. Coddington, Mr. Hall said to the learned judge *"[c]an I have an adjournment your Honour I am way too upset now to continue. Anything I had in my head …".* At this point his intervention tailed off. The request was refused by the learned judge. She then made an order for possession in favour of the respondent. After doing so and putting a 9-month stay thereon, Mr. Hall said that *"during the fracas there … two pieces of evidence were removed from there"*. Judge Reynolds replied that *"[i]f you have a complaint you can make it to the appropriate authorities Mr. Hall. I have dealt with your application*."

9. Mr. Hall supports his complaint regarding the refusal of the adjournment with affidavits from other persons present at the time. Such evidence reinforces the conclusion that he was too upset to proceed at the time he sought the adjournment.

10. Subsequently, *habeas corpus* proceedings were launched seeking the release of Mr. Coddington, and on the return to the order, the application was conceded by the State.

11. The applicant now seeks leave to apply for judicial review to quash the possession order. I previously dealt with an aspect of the application in *Hall v. Stepstone Mortgage Finance Limited (No. 1)* [2015] IEHC 737, in which I ruled that the applicant was correct in naming Stepstone Mortgage Funding Ltd. as the respondent, rather than the learned judge. In the present judgment, I address the issue of whether leave to bring judicial review of the order of the Circuit Court should now be granted.

12. In their amended statement of grounds and oral submissions, the applicants seek leave to quash the order under a number of headings, which I will deal with in sequence as follows. As noted above, Mr. Hall appeared in person on behalf of himself and the second named applicant. Mr. Michael O'Sullivan, B.L., appeared for the respondent.

Alleged failure to answer questions
13. Mr. Hall seeks leave on the basis that questions he put during the hearing were allegedly not answered. He appears to have raised issues in relation to whether a tender of offer was accepted and allegations regarding incorrect account numbers which he said were not read out when the affidavits were being opened. On the first aspect, Mr. O'Sullivan says that the question was answered but, either way, the point is irreverent because it could not furnish grounds for judicial review of the Circuit Court order. On the second point, Mr. Hall appears to be labouring under the misapprehension that matters need to be read out in open court before they are taken into account by the judge. Again, a failure to read out any material in open court does not furnish grounds for relief by way of judicial review.

Complaint regarding other cases being heard "simultaneously"
14. During the possession hearing, issues arose regarding contempt of court allegedly committed by Mr. Paul Coddington and Dr. Markey, matters to which I will return. The hearing involving the applicants had to be interrupted to deal with these matters. Mr. Hall complains that contempt proceedings against Mr. Coddington and Dr. Markey were heard quite "simultaneously" with his matter. As set out above, this is not correct. His matter was adjourned briefly to allow those contempt matters to be dealt with. This allegation is simply misconceived but in any event could not provide grounds for intervention by way of judicial review.

Alternative allegation that proceedings were interrupted
15. Alternatively, Mr. Hall characterises the proceedings involving Messrs. Coddington and Markey as interruptions, and complains that the fact of interruption gave rise to an unfairness.

16. I do not consider that the applicants have an arguable case to set aside the order of the Circuit Court by reason of the interruptions alone. If grounds for dealing with contempt in the face of the court arise, by their nature such matters are likely to arise spontaneously and without a great deal of warning. Of necessity, this may involve an interrupting a hearing. There is no basis to set aside the decision merely because of an interruption without more.

17. The applicants do not have a legal right not to have their application interrupted by other matters. That is separate from the question of whether the incident involving Mr. Coddington furnishes grounds for the present application under the heading of fair procedures.

Alleged interference by Gardaí with Mr. Hall
18. Mr. Hall has also alleged that he was intimidated by Gardaí in the course of making his submission, that a member of An Garda Síochána stood on his foot and so on. These are not insignificant allegations against public servants, and as such should be specifically pleaded, which they are not. Even allowing for the considerable latitude in relation to pleadings which can be afforded to a lay litigant (a matter to which I will refer further below), in the absence of proper pleading of an allegation of this type he is not entitled to leave on these grounds. Again, this complaint is separate from his complaint about the removal of paperwork in connection with the arrest of Mr. Coddington.

Interventions from the bench
19. He also submits that he has an arguable case for relief by reason of the number of what he calls "*interruptions*" from the learned trial judge. Firstly, comments or questions from the bench are interventions, not interruptions. But more fundamentally, there is no due process right to make submissions without having to deal with interventions or questions from the bench, leaving aside a situation where the level of intervention is so relentless and hostile as to imperil the appearance of a fair hearing. There was nothing like that in this case, and even if Judge Reynolds intervened 23 times as alleged by the applicants, this does not give rise to arguable grounds to set aside the decision.

Refusal of adjournment
20. Mr. Hall complains that after Mr. Coddington's arrest, he applied for an adjournment on the grounds that he was emotionally distraught, and this was refused. I accept that Mr. Coddington was actively involved in the process of assisting Mr. Hall. One would have thought that a situation where a litigant finds that a person assisting him is arrested in the course of the hearing is a rather unusual one. Mr. Hall told the learned judge and this Court that he was upset and I have no doubt that this is the case.

21. I would have no difficulty accepting the proposition that a person in Mr. Hall's situation on the day would be likely to feel some responsibility for Mr. Coddington's plight, and at the very least feel distracted from his own case by the fact that his assistant's personal liberty was now in issue.

22. With this in mind, and particularly given the unusual and indeed somewhat dramatic nature of the interruption to the application against the applicants, I am of the view that it is arguable that fair procedures required an adjournment, at least even a short one, either because of the upset to Mr. Hall or because of the damage caused to his capacity to defend himself by reason of the arrest of his chosen assistant, or both.

Removal of paperwork
23. Mr. Hall complains that when Mr. Coddington was arrested, members of An Garda Síochána removed various items of paperwork which Mr. Coddington had access to, which Mr. Hall intended to rely on in the course of his defence.

24. Mr. O'Sullivan submits that it is still not clear what these items of paperwork were, and also that, given the nature of Mr. Hall's defence, they could not have made any difference, given that his defence was primarily based on his attempting to tender a ludicrously small sum to the respondent. However, I do not consider that, especially at the leave stage, I can say that these matters override the importance of justice being seen to be done.

25. Mr. Hall failed to tell the learned judge that his paperwork was missing as of the time at which he had applied for an adjournment. However, I think it is reasonable to infer that his level of upset may have contributed to this failure. He did raise the issue with the learned judge after she had made the possession order, and at that point Judge Reynolds told him to take the matter up with other authorities. She did not specifically address it in terms of the fairness of the hearing that had just concluded; although in fairness to her, that was not the basis it was put to her by Mr. Hall.

26. Despite his failure to raise the matter with the court at the time he applied for an adjournment, I consider in the circumstances that it is arguable that there was objectively a breach of fair procedures in Mr. Hall not having access to documentation that was brought to court for the purpose of assisting him.

Duty to put correct facts before the court
27. Mr. O'Sullivan, relying on *Adams v. D.P.P.* [2000] 4 JIC 1201 (Kelly J.), contends that leave should be refused in any event

because Mr. Hall's initial application put forward a series of incorrect factual allegations. Whatever about certain matters that were put on the papers but not pursued, the central point of Mr. Hall's complaint to me was that there was unfairness arising out of a refusal of an adjournment in circumstances where what Mr. Hall described as a "*fracas*" had occurred, interfering with his presentation of his defence. Far from being incorrect, this central allegation is consistent with all material furnished since the initial application, including the transcript.

28. This application must be viewed in the context that *"[w]here a lay litigant is involved, pleadings may be confused. Traditionally, in every court, judges have done all that they can constitutionally do to assist"* (*Talbot v. Hermitage Golf Club* [2014] IESC 57 *per* Charleton J., at para. 48). As long as the other party is not unfairly penalised, a court will usually go to considerable lengths to assist lay litigants and will allow considerable latitude to them in stating their case (*Flynn v. Desmond* [2015] IECA 34 *per* Mahon J., at para. 19). The U.S. Supreme Court has likewise held that papers drafted by lay litigants should be held to "*less stringent standards than formal pleadings drafted by lawyers*" (*Haines v. Kerner* 404 U.S. 519, 520 (1972) (*per curiam*) (see also *Rowe v Gibson* (U.S. Court of Appeals for the 7th Circuit, 19th August, 2015 (Posner J.)) for a recent example of how far courts can permissibly go to assist a lay litigant who has a legitimate complaint but has failed to make it in the legally correct manner.)

29. The problem with the applicant's initial papers was that they were more scandalous and embarrassing than they were culpably inaccurate. It is an unfortunate but not uncommon feature of lay litigation that any kernel of arguable grievance can be obscured by a cloud of scandalous material, and, if so, such litigants need to be told to confine themselves to proper matters. Obviously it is different if the claim is all scandal and no substance: in such a case it must be dismissed as soon as possible. But that is not the case here. To dismiss all claims by lay litigants that contain even severable scandalous material would be unduly harsh in a situation where, frequently, the litigants concerned simply do not know, and need to have it pointed out to them, where the line is to be drawn. Particularly bearing in mind the entitlement and duty of the court to afford a degree of latitude to an unrepresented party, and also bearing in mind the need for fairness to any other parties, I see no basis to refuse leave in respect of any alleged difficulties with the applicant's initial presentation of the application. If there were any significant difficulties, I do not consider that any particular injustice in this regard is occasioned to the respondent, particularly as the scandalous material was not pursued and I put the respondent on notice of the application at a very early stage and did not entertain the application in detail when it was originally made *ex parte*.

Order

30. For the foregoing reasons, there will be an order giving leave in this case on the grounds I have identified as arguable. As this will involve an amendment to the proceedings, it is necessary to set out the form of the amendment required in terms of the allegations which the applicants wish to make that can now be pursued. I will, therefore, order as follows:-

(i) The applicants will have liberty to file an amended statement grounding an application for judicial review. The amended statement may seek, as a sole relief, an order of certiorari in relation to the order of Her Honour Judge Reynolds of 16th July, 2015. The said relief may be sought on the sole grounds that a breach of fair procedures occurred by reason of:-

(a) the refusal of an adjournment application made by the first named applicant on behalf of himself and the second named applicant, which said refusal did not comport with fair procedures and/or the appearance of fair procedures because the first named applicant was upset and/or his defence of the application had been impaired in circumstances where Mr. Paul Coddington who had been assisting him had been arrested for alleged contempt of court; and/or

(b) the fact that written materials which the first named applicant intended to rely on, in defending the proceedings on behalf of himself and the second named applicant, became unavailable to him as a result of the arrest of Mr. Coddington, thereby contravening his entitlement to fair procedures and/or the appearance of fair procedures.

(ii) That leave be granted in accordance with the statement of grounds as so amended. Leave to pursue any other grounds referred to in the existing statement of grounds is refused.

(iii) The applicants will have three weeks to serve the respondent with the amended statement and an originating notice of motion.

(iv) The order of Judge Reynolds of 16th July, 2014 will be stayed pending the final determination of the proceedings.

(v) Costs will be reserved.