

APPROVED

REDACTED



THE COURT OF APPEAL

Record Number: 2023/77

Binchy J.

Neutral Citation Number [2024] IECA 9

Allen J.

Burns J.

BETWEEN/

LW and RL

APPELLANTS

- AND -

THE HEALTH SERVICE EXECUTIVE

RESPONDENT

COST RULING of Ms. Justice Tara Burns delivered on the 17th day of January, 2024

1. The substance of this appeal was dealt with in a written judgment delivered on 9 October 2023, with which Binchy and Allen JJ agreed ([2023] IECA 244). For the reasons set out in that judgment, the conclusion of the Court was that the appeal must fail. After some consideration regarding the appropriate order to be made, it was determined to affirm the order of the High Court which had been made in favour of the appellants.

2. At paragraph 42 of the judgment I expressed the provisional view that, as the appellants had been entirely unsuccessful in their appeal, the normal rule that costs follow the event should apply. However, I indicated that if the appellants wished to contend otherwise, they could within fourteen days of the electronic delivery of the judgment, file and serve a short written submission – not exceeding 1,000 words – in which event the respondent would have fourteen days to file and serve a response, similarly so limited.
3. On 22 October 2023, the appellants filed a written submission contending that the respondent should not have costs of the appeal awarded to it and that the appropriate order, in the particular circumstances of the case, was no order as to costs. The respondent also filed written submissions wherein it sought that the costs of the appeal be awarded to the respondent.
4. The appellants were unsuccessful in obtaining any of the reliefs which they had sought in their proceedings before the High Court (Meenan J) [2023] IEHC 48. However, a declaration, which they had not sought, was granted in their favour in the following terms:-

"[T]he respondent is under a continuing duty to provide LW with the appropriate mental health treatment and services in accordance with law, in particular the provisions of s. 7 of the Health Act 2004 (as amended)"

5. Costs of the High Court proceedings were thereupon granted to the appellants.

6. Surprisingly, the appellants appealed the declaration made in their favour, together with the refusal of the reliefs which they had sought.
7. As referred to in my substantive judgment, the case which the appellants sought to make before this Court was quite different to the case they had made before the High Court with the focus turning to the provision of mental health services and treatment to the first named appellant by the Central Mental Hospital. This was at variance to the case pleaded and argued before the High Court which was one focused on the provision of community based mental health treatment to the first appellant by the local community mental health service.
8. For the reasons given, the Court could not consider the “new” case which was being argued before us as it had not been argued before the High Court; the pleadings did not support such a case being made; and that case, in reality, related to determining the meaning and effect of the High Court order, which was inappropriate for an appeal court to consider. Indeed, I pondered in the substantive judgment delivered in this matter as to whether separate proceedings seeking to determine the meaning and effectual implementation of the terms of the declaration granted by the High Court were perhaps the more appropriate vehicle for the case sought to be argued before us.
9. Section 169(1) of the Legal Services Regulation Act 2015 provides:-

"A party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those

proceedings, unless the court orders otherwise, having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties, including –

(a) conduct before and during the proceedings,

(b) whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings,

(c) the manner in which the parties conducted all or any part of their cases,

.....”

10. The appellants argue that having regard to the particular circumstances of this case, an exception to the rule that costs follow the event should be made; that the appeal raised issues of general public importance; and that we held that a full medical assessment should take place.

11. I do not accept that matters of general public importance arose in the appeal. While the first appellant’s mental health situation is extremely concerning from both a personal and public perspective, it cannot be categorised as a matter of general public importance within the meaning of the case law (See *Doyle v. Criminal Injuries Tribunal* [2021] IECA 131). Furthermore, prosecuting an appeal which was so far divorced from the original proceedings was not appropriate. In addition, this Court did not hold that a full medical assessment should take place but rather opined that it was hard to see how the carrying out of such an assessment was not

covered by the terms of the High Court order. That is quite a different interpretation.

12. I am of the view that the normal rule that costs should follow the event should not be displaced in this matter; that the appeal was misconceived; and that the appellants had an appropriate forum open to them to litigate the extent of the appropriate mental health treatment and services which the respondent was under a duty to provide.

13. Accordingly, an order for costs of the appeal, to include the costs of this application, will be ordered in favour of the respondent as against the appellants to be adjudicated upon in default of agreement.

14. As this ruling is being delivered electronically, Binchy and Allen JJ have authorised me to say that they agree with it.