

THE HIGH COURT

[2017 No. 951 SS]

IN THE MATTER OF AN APPLICATION PURSUANT TO ARTICLE 40.4.2° OF THE CONSTITUTION OF IRELAND

BETWEEN

B.L.

APPLICANT

AND

THE GOVERNOR OF CASTLEREA PRISON

RESPONDENT

AND

THE HIGH COURT

[2009 No. 48 CAF]

BETWEEN

C.L.

APPLICANT

AND

B.L.

RESPONDENT

(No. 3)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 21st day of December, 2017

1. In *B.L. v. Governor of Castlereah Prison (No. 1)* [2017] IEHC 569, Binchy J. refused to order the release of the applicant under Article 40.4 in relation to his imprisonment for contempt arising from breach of a Circuit Court order for payment of maintenance in family law proceedings. In *B.L. v. Governor of Castlereah Prison (No. 2)* [2017] IEHC 737 [2017] 11 JIC 2105 I declined to order release in a subsequent Article 40 relating to the same detention. I am now dealing with measuring the costs of the No. 2 proceedings, and with a motion brought by his wife Ms. C.L. seeking an *Isaac Wunder* order and orders in relation to costs of the family law proceedings, which are discussed at some length in the No. 2 judgment. I have heard from Mr. B.L. in person, from Mr. Remy Farrell S.C. (with Mr. John Gallagher B.L.) for the State respondents to the Article 40 application, and Ms. Eileen O'Leary S.C. for Ms. C.L.

Adjournment application

2. At the outset of the application Mr. B.L. applied for an adjournment, stating that he had "a lot on", that he had been in Castlereah Prison, that this was a long running case and that he claimed that the arrears in maintenance involved had been paid. He had in fact been released from Castlereah Prison since the 30th November, 2017, although he did not volunteer that information. Ms. O'Leary submitted that the adjournment application "has to be seen for what it is, a further part of his protracted campaign to frustrate the legal process". I entirely agree. It seems to me that the adjournment application is very much a part of the applicant's campaign of disruption of the legal process overall. He failed to give any notice whatsoever to the other parties of his intention to seek an adjournment. Rather than even phoning in advance he simply turned up and applied on the day, and as Ms. O'Leary put it, the objective seems to be to "put all lawyers to the maximum amount of inconvenience" by giving "no notice to anybody". While Mr. L's adjournment application is ostensibly related to his difficulties from not having legal representatives, there is a complete lack of any evidence of any actual effort to get legal representatives - simply a bare assertion that he cannot properly deal with the matter without lawyers. Most crucially on the facts of this particular matter, he had lawyers in this case and was represented by solicitors and junior counsel until he dismissed them in the course of the Article 40 proceedings. It is also clear that he was able to produce bank drafts for a significant amount of money in order to purge his contempt despite representing to me earlier that he was without funds. It seems to me that the adjournment application is purely strategic and without merit or evidential foundation.

The State's application for costs in the Article 40 proceedings

3. I ordered that the State's costs in the Article 40 proceedings would be measured by the court and I have heard evidence from Mr. Karl Gordon of the CSSO, who gave evidence regarding the drafting and preparation of a bill of costs and its service on the applicant on 8th December, 2017. I am satisfied that the bill of costs is a fair and reasonable estimate of the costs incurred on behalf of the State and that it is appropriate to measure the costs in that amount. Therefore, I will measure the respondent's costs in the Article 40 proceedings in the amount of €25,402.99 and having heard the parties I will give the applicant in the Article 40, Mr. B.L., seven days to pay.

Application for Isaac Wunder order

4. Ms. O'Leary applies for an *Isaac Wunder* order against Mr. B.L. She says that Ms. C.L. is a mother with a number of dependent children who has been put to enormous hardship by a campaign of obstruction of the court process and multiple frivolous applications. It is clear to me that the criteria for the grant of an *Isaac Wunder* order as set out by MacMenamin J. in *McMahon v. W.J. Law and Company LLP* [2007] IEHC 51 (para. 21) are more than amply satisfied in this case. Mr. L. has habitually instituted vexatious or frivolous applications. He has done so for the improper purpose of frustrating the family law proceedings. There has been a continual rolling forward of issues into subsequent actions. Furthermore, he has never paid any costs against him awarded in proceedings to date. There will therefore be an order restraining Mr. B.L. from instituting any application or proceedings in any manner including but not limited to by way of summons, notice of motion or *ex parte* application otherwise than:

(a) in the case of applications or proceedings in the District Court, with the prior consent of the President of the District Court;

(b) in the case of applications or proceedings in the Circuit Court, with the prior consent of the President of the Circuit Court; and

(c) in the case of applications or proceedings in the High Court, with the prior consent of the judge for the time being in charge of the family law list in the High Court.

5. I will further order that in making any such application for leave to make an application, Mr. L. must furnish to the President or judge as the case may be, a copy of my judgment in *B.L. v Governor of Castlereagh Prison (No. 2)* [2017] IEHC 737 [2017] 11 JIC 2105, which sets out the history of this matter.

Ms. C.L.'s costs in the family law proceedings

6. Ms. O'Leary on behalf of Ms. C.L. furnished a document prepared by Ms. C.L.'s legal cost accountants Connolly Lowe, which was sent to the applicant on 8th December, setting out a breakdown of costs incurred under different headings in respect of orders to date. Mr. B.L. did not give any acceptable or weighty explanation for not having replied to that email. In relation to points 5 and 6 on the document, these relate to the costs of High Court orders of 22nd July, 2014 and 22nd May, 2017, where costs have already been awarded to Ms. C.L., and I will measure the professional fee of Ms. C.L.'s solicitors in the amounts of €1,000 plus VAT and €10,000 plus VAT respectively, on the basis of the estimate provided by Connolly Lowe which appears to me to be fair and reasonable. In relation to the orders specified in paras. 1 to 4 of the document, that is orders of 14th April, 2011, 27th July, 2011, 7th December, 2012, and 17th February, 2014, those costs have been reserved by the High Court and it seems to me to now be appropriate to award those costs to Ms. C.L. and in doing so I have regard to the full history in the matter, largely as set out in my No. 2 judgment, but in addition to that I have been furnished with a complete set of the pleadings in the family law proceedings, including all orders and I have regard to that material. Having so awarded those costs I will measure those costs in the amounts as specified in the estimate prepared by Connolly Lowe, namely €15,000 plus VAT, €1,500 plus VAT, €1,500 plus VAT and €2,000 plus VAT respectively, being sums that appear to me to be fair and reasonable. The ultimate award then to Ms. C.L. in respect of her solicitors' professional fees will be €31,000, and to that sum must be added fees for counsel, which again have been estimated by Connolly Lowe at para. 7 of their email at €40,000 and that again in the circumstances having regard to the material I have referred to appears to me to be fair and reasonable, so I will measure those costs by way of professional fees at €71,000. In addition there will be an order for payment of VAT of €16,330. I am told that Ms. Hickey, Ms. C.L.'s solicitor, estimates a figure of €500 for outlay. While that is not specifically vouched, it necessarily follows from the extensive papers before me that a very considerable amount of outlay was involved and under those circumstances I infer that a figure of €500 is reasonable in the extreme, so I will allow for that sum.

7. So the ultimate order then under this heading is there will be an order for payment by Mr. B.L. to Ms. C.L. of €87,830 and again having heard the parties I will afford seven days to pay that sum. Further, having heard the parties I will award Ms. C.L. the costs of the application for costs and for the *Isaac Wunder* order, which I will measure at €3,460 inclusive of VAT, a figure suggested by Ms. O'Leary which I think is reasonable in the extreme, and again seven days to pay that sum.

Overall order

8. To summarise, the overall order will be:

(i). that there be an *Isaac Wunder* order against Mr. B.L. in the terms set out in this judgment; and

(ii). consequent on the orders for costs set out in this judgment, including the award of reserved costs in the family law proceedings to Ms. C.L., that within 7 days Mr. B.L. pay to the Governor of Castlereagh Prison the sum of €25,402.99 in the Article 40 proceedings and to Ms. C.L. the sum of €91,290 in the family law proceedings.