Neutral Citation [2012] IEHC 605

THE HIGH COURT

[2009 No. 540 J.R.]

BETWEEN

JASON ROBINSON

APPLICANT

AND

DUBLIN CITY COUNCIL, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

Judgment of Mr. Justice Hedigan delivered on 24th day of October, 2012.

1. In these proceedings the applicant seeks judicial review by way of *certiorari* and certain declarations of a decision communicated to him on the 5th January, 2009 refusing his appeal against the decision of the Housing Authority refusing his application for succession to a tenancy at 35F, St. Michan's House, Greek Street, Dublin, 7.

2. The proceedings arise from the following facts which are largely undisputed. At some stage after the death of his father, the applicant moved out of his parents' home and into the house of his grandmother. She had resided there as a tenant of the Housing Authority since 1964. He lived there according to his application to succeed to the tenancy since 2005. At that time he was registered on the rent book as living with his grandmother. In her later years, his grandmother suffered from Alzheimer's disease and he acted as her carer. On the 22nd June, 2008 his grandmother died.

3. Early in July the applicant applied to the Housing Authority to be allowed to succeed to his grandmother's tenancy. On the 14th July, 2008 he was refused. He appealed against this refusal but on the 30th July, 2008 was refused. A demand for possession was made at this time but was not complied with. On 17th October, 2008, a notice to quit was served by the Housing Authority. This notice demanded possession be delivered up by 8th December, 2008. Prior to this date, the applicant made further representations to the Housing Authority. These were unsuccessful and he was informed of this on 5th January, 2009. He did not deliver up possession of the premises.

4. The Housing Authority moved to seek a warrant for possession pursuant to s. 62 of the Housing Act 1966. The summons in this respect issued on 21st January, 2009 and was returnable in the District Court on 2nd April, 2009. It was served on 3rd February, 2009. On this date it was adjourned to 4th June, 2009. On the 21st May, 2009 judicial review papers were filed and upon the applicant's appearance on the 25th May, 2009 leave was granted.

5. The applicant's essential complaint is that the procedure is not in accordance with his rights under Article 8 of the European Convention on Human Rights as enunciated in the recent decisions of the European Court of Human Rights in *Yordanova v. Bulgaria* of 24th April, 2012, *Bjedov v. Crotia*, 29th May, 2012 and *Buckland v. United Kingdom*, 18th September, 2012. He argues that in these recent cases, the Strasbourg Court has held that where a person proposed to be evicted from his home wishes to raise the proportionality and reasonableness of his eviction, he is entitled to do so even where he has no legal entitlement to remain in the property.

6. It is pleaded by the respondents that the applicant's delay must disentitle him to the relief he seeks. It is argued that the provisions of Order 84, rule 21 which apply to these proceedings – the new rule applies only to proceedings brought after January 2012 – provide that the application for judicial review must be made promptly and in any event within three months or six months where, as here, the relief sought is *certiorari*.

7. The application was made on the 21st May, 2009. It purported to be of a decision communicated to the applicant on the 5th January, 2009. Even on this reckoning of time, the application is out of the time specified in respect of the declarations sought and four and a half months after the decision in respect of which *certiorari* is sought.

8. What is the date from which time runs in this case? This question has been dealt with by the courts in a number of cases. In *Dublin City Council v. Fennell* [2005] 1 I.R. 604, 638 – 639, delivering the unanimous judgment of the Supreme Court, Kearns J., as he then was, stated:

> *"The parties' legal rights and obligations were, in my view, fixed and determined once the wheel was set in motion by the service of a notice to quit, an act which triggered the provisions, requirements and consequences of s. 62 of the Housing Act 1966. That is the moment when the invocation of legal rights determined the applicable law and the position of the parties."*

Following this decision, in *Quinn v. Athlone Town Council* [2010] IEHC 270, this Court held that:

> *". . . it is to be noted that the decision to serve a notice to quit is made by the local authority only after it has concluded that the tenant has breached the terms of his or her tenancy, e.g. by anti-social behaviour. The tenancy is then terminated by a series of almost automatic steps during which no provision exists for any form of inquiry into the merits of this decision by the local authority."*

Later;

> *"The notice to quit was served on the applicant on 25th September, 2008. This is the relevant date from which time should run."*

Furthermore, in *Rock v. Dublin Corporation* (unreported, Supreme Court, 8th February, 2006), dealing with the statutory scheme for

housing, Geoghegan J. delivering the ex tempore judgment of the Supreme Court stated;

> *"In this case, the Court is satisfied that the time when the judicial review should have been sought was as soon as possible after the notice to quit was served because at that stage, the appellant had knowledge of the decision of the manager. Also one must interpret the word 'promptly' in Order 84 of the Rules of the Superior Courts which require that application must be brought promptly. But that word 'promptly' must be interpreted as meaning promptly in the circumstances of the case, so there is always a contextual element in relation to the word 'promptly' in that rule.*
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> *In these housing cases, it is very important for the reasons which I have indicated that the management of the housing pool be conducted in an orderly and speedy manner by the Council, whose duty . . . is to the general body of people in need of housing and not to any particular individual at least not in this particular context. In order that that can be carried out in an orderly manner, it is essential that the application be brought as speedily as possible. In this case that would have been as quickly as possible after the service of the notice to quit."*

9. Thus the courts are very clear in their view of when time starts to run in these housing cases and how Order 84, rule 21 is to be interpreted in that regard. Proceedings that seek to challenge decisions of the Housing Authority must be brought as quickly as possible following service of the notice to quit. The reason for this view, firmly expressed by the courts, is that rights and obligations are engaged when a notice to quit is served and it is thus the point of departure for the relevant time limits and in the context of housing cases, because of the urgency of the need for housing, applicants must move without delay. Applicants for judicial review of such a notice to quit should normally move within days or weeks.

Here, clearly, no such compliance with this firmly expressed view of the courts can be found. There is no explanation furnished for his delay other than that the applicant continued until January 2009 to engage with the Housing Authority in relation to the tenancy. Such engagement cannot, in my view, alter the validity and full effect of the notice to quit. Even were this not so, the applicant's engagement with the Housing Authority ended conclusively on 5th January, 2009. His application for judicial review should have been made by the end of that month if not earlier.

10. In the circumstances, I consider this application to be far outside the time limits wherein it should have been brought and so must refuse the application for the reliefs sought. This preliminary finding being dispositive of the case, I will not address the other issues raised herein.