Neutral Citation [2016] IEHC 730

THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 618 J.R.]

BETWEEN

JOHN GAYNOR (A BANKRUPT)

APPLICANT

AND

COURTS SERVICE OF IRELAND AND THOMAS KINIRONS

RESPONDENTS

AND

NOEL SHERIDAN AND PETER QUINN

NOTICE PARTIES

AND BY ORDER

OFFICIAL ASSIGNEE

NOTICE PARTY

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 16th day of December, 2016

1. In November, 2015 the applicant sought leave to apply for judicial review in relation to the refusal by the Courts Service to accept his application for an order setting aside a bankruptcy summons. On 13th November, 2015, I directed him to make that application on notice. Having heard from the parties I refused the application for leave (*Gaynor v. Courts Service (No. 1)* [2015] IEHC 876, Unreported, High Court, 30th November, 2015), *inter alia* by reference to the ruling by Costello J. (who was dealing with the bankruptcy matter) that the applicant would not be disadvantaged by the failure to accept the application to set aside the summons and that he could raise his points by way of defence.

2. The applicant then appealed the refusal of leave to the Court of Appeal (2015/591) on 3rd December, 2016. On 7th December, 2015, he was adjudicated bankrupt before Costello J. On 3rd March, 2016, the Court of Appeal (Kelly P.) struck out the appeal in relation to the leave refusal with liberty to re-enter. The liberty to re-enter seems to have been premised on compliance with directions of that court.

3. At the same time the applicant sought to show cause against the adjudication. That application was dismissed by O'Connor J. on 20th April, 2016.

4. Separately the order of adjudication of bankruptcy was appealed to the Court of Appeal (2016/6) out of time. The Court of Appeal (Ryan P., Irvine and Fulham JJ.) dismissed the appeal in relation to the bankruptcy adjudication on 10th October, 2016. An application for leave to appeal to the Supreme Court is pending in relation to that matter.

5. The applicant has now brought a notice of motion dated 8th December, 2016 seeking to re-enter the judicial review at High Court level, as well as a number of other reliefs that are ancillary in nature and only arise if the matter is re-entered.

6. As the applicant has been adjudicated bankrupt since the original application, I required him to make his present application on notice to the official assignee in whom the property of the applicant is vested pursuant to s. 44 of the Bankruptcy Act 1988. That provision generally transfers to the official assignee the applicant's right to litigate, at least where his property rights are concerned (see *A.A. v. B.A.* [2015] IESC 102). The authority referred to in Eiffe, Houston and Wylie *The Judicature Acts* (Dublin, 1891) p. 503 indicates that a bankrupt party may act himself or herself where litigation imposes "*a personal liability*" as with an injunction (citing *Deuce v. Mason* 41 L.T.N.S. 573). Given that the present application is directed against the process of bankruptcy rather than property matters it would seem however that this motion is, in principle, one which the applicant can bring in his own right.

7. The applicant has generally sought to re-argue points already decided but his main relevant point (insofar as it can be untangled from the material presented) appears to be an allegation that in the bankruptcy proceedings he was not in the end afforded the benefit of the initial ruling that he could raise any of his points in relation to the summons (which ruling was a matter I relied on in refusing leave). Accordingly it is submitted that it is just that he be allowed to re-enter the judicial review application. I have heard from the applicant in person, from Mr. Frank Crean B.L. on behalf of Mr. Sheridan and Mr. Quinn and from Mr. Edward Farrelly B.L. and Ms. Úna Nesdale B.L. on behalf of the official assignee.

8. The application is fundamentally misconceived. The order of 30th November, 2015, brought the judicial review to an end at High Court level. I do not have jurisdiction to re-enter a matter which is in effect a final order, absent special circumstances such as do not arise here (see *e.g., In re Greendale Developments Ltd.* [2000] 2 I.R. 514).

9. The applicant is in the wrong court. The liberty to re-enter given by the Court of Appeal referred to re-entry in that court, not in the High Court. Separately, I have already rejected at the arguability stage the proposition that the Central Office were incorrect in declining to accept the applicant's papers, for the simple reason that those papers did not comply with rules of court. That was fatal to the applicant's case even if Costello J. had never given the applicant the assurance he now wishes to complain about. Furthermore, the relief sought (even if it could be granted) is now an irrelevance as matters have moved on. The summons which the applicant originally sought to set aside has in effect been superseded as a legally operative and relevant instrument by an order of the court which the applicant has appealed. His remedy (already availed of) is to challenge that order by application to set aside or by appeal.

Order

10. Accordingly I will refuse the application for leave to re-enter the judicial review and the other relief sought in the applicant's notice of motion.