



THE COURT OF APPEAL

CIVIL

NO REDACTION NEEDED

[2020 No. 147]

**Birmingham P.
Edwards J.
Costello J.**

BETWEEN

GEMMA O'DOHERTY & JOHN WATERS

APPELLANTS

AND

THE MINISTER FOR HEALTH AND IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

AND

DÁIL ÉIREANN, SEANAD ÉIREANN AND AN CEANN COMHAIRLE

NOTICE PARTIES

RULING of the President delivered (via electronic delivery) on the 30th day of April 2021 by Birmingham P.

1. In this case, the Court has delivered a written judgment dismissing the appeal against the decision of the High Court to refuse leave. As is the practice at this time, we indicated a preliminary view that it would appear to be a case where the appropriate order would be that costs follow the event. However, we indicated that we would entertain and consider an application to depart from the ordinary rule. There has been such a request from the unsuccessful appellants. While the request for departure was not received within the time specified when judgment was being delivered, the members of the Court have nonetheless given consideration to the issue.
2. As is well known, the long-standing rule of practice that costs follow the event has now been given statutory support by virtue of s. 169 of the Legal Services Regulation Act 2015. The unsuccessful appellants nonetheless contend that the Court should exercise a discretion to depart from the statutory rule. From the authorities, it is clear that for there to be a departure, there would have to be something "special or unusual" or "exceptional". The appellants point to a number of factors which they suggest would justify a departure.

3. Firstly, they say that this was a matter which should have been dealt with on an ex parte basis and that there was no need for the involvement of the respondents or notice parties at leave stage. If the appellants' view about the merits of their proceedings are correct, then leave should have been granted. If they are incorrect, and it was a case where leave was properly refused, then that could have happened without the involvement of the respondents or notice parties. They point out that they appeared as litigants in person, not professionally represented, and so the respondents and notice parties were not at risk of an adverse order in relation to costs being made against them. Finally, they say that the proceedings were brought in the public interest, raising issues of great importance, and were not brought with a view to achieving any personal gain or advantage for the appellants.
4. I have not been persuaded that this is a case for departing from the ordinary rule. The respondents and notice parties were put on notice and, as the judgment delivered in this Court makes clear, given the importance of the issues raised, it is not at all surprising that would have happened. The appellants persisted in advancing their proceedings, even when the extent of the difficulties that they faced should have been apparent.
5. I am also not impressed with the argument that because the appellants conducted this litigation as litigants in person, that the respondents could take comfort from the fact that they were not at risk of an adverse order as to costs. In fact, the respondents and notice parties had to devote time and resources to dealing with the case and it would be quite unjust if the ordinary rule as to costs did not apply.
6. Neither am I persuaded by the public interest exception arguments. The proceedings, while obviously relating to issues of great importance, did not involve issues of any real legal novelty, and certainly did not involve the development of jurisprudence in that regard. There is a distinction to be drawn between proceedings that would be of interest to the public, or a section of the public, and proceedings that can be genuinely regarded as public interest proceedings. I do not believe that the present proceedings can properly be regarded as falling within the category of public interest proceedings.
7. In my view, the appropriate order at this stage is one dismissing the appeal and requiring the unsuccessful appellants to pay the costs of the respondents and notice parties of the appeal, with those costs to be adjudicated upon in the absence of agreement.
8. As the events of the COVID-19 pandemic required this judgment to be delivered electronically, the views of my colleagues are set out below.

Edwards J:

I have had the opportunity to read the ruling delivered by the President and I agree with the conclusion reached therein.

Costello J:

I have read the ruling of the President and I agree with both his reasoning and the decision.