

## THE HIGH COURT

## JUDICIAL REVIEW

[2016 No. 336 J.R.]

BETWEEN

B.L.

APPLICANT

AND

C.L.

RESPONDENT

**JUDGMENT of Mr. Justice White delivered on the 22nd day of May, 2017**

1. This is an application to quash an order of the Circuit Family Court made on 18th February, 2016, on the Midland Circuit when the applicant was directed to be attached and brought before the court at the earliest opportunity to show cause he should not be committed to prison on foot of his failure to obey an order of the Circuit Family Court of 8th April, 2008.

2. The applicant filed a statement grounding an application for judicial review on 16th May, 2016.

3. The reliefs sought upon which he was granted leave were:-

(i) an order of *certiorari* that the order and warrant both dated 18th February, 2016, be quashed;

(ii) a declaration that there is no motion for the attachment and committal of the applicant herein presently before the court as O. 37 has not properly been complied with; and

(iii) a declaration that the Courts Service Sligo are acting prejudicially to the applicant herein by listing such a motion where the proper documents required by O. 37 have not been filed in the proper sequence.

4. The grounds upon which he was granted leave were, according to O. 37 for the rules to be properly obeyed, there must be evidence in the court files that the following 12 steps had been taken, strictly in this order, the seven documents that must be filed or underlined and marked, any deviation from a step or omission of a step or it being out of order negates the procedure and proceedings must be reinstituted from step one. Set out in the statement of grounds of 16th May, 2016 are the fifteen steps which the applicant alleges or required to establish jurisdiction. The applicant swore a verifying affidavit on 16th May, 2016, setting out from his perspective the history of the matrimonial dispute between the applicant and the respondent.

5. By order of the court of 27th June, 2016, the court refused to grant leave on certain grounds and reserved judgment which was duly delivered on 8th July, 2016. In addition to the leave granted in relation to reliefs sought by the applicant, the court permitted the applicant to include a further ground namely that the order of 18th February, 2016, failed to specify with particularity, the conduct alleged to amount to contempt of court.

6. To support that leave order, the applicant filed an amended statement grounding application for judicial review on 25th October, 2016. He also issued a motion on 14th October, 2016, returnable for 25th October, 2016. The respondent filed and served a statement of opposition on 24th November, 2016, and filed and served a detailed replying affidavit of 24th November, 2016, setting out from her perspective the history of the marital dispute between the applicant and the respondent.

7. The judicial review was heard on 14th March, 2017, and judgment was reserved to this date.

8. Considering all the pleadings in the judicial review and the book of orders and pleadings in the judicial separation proceedings, the court has come to the conclusion that the applicant seriously misled the High Court on his application for the leave order.

9. The applicant over a period of nine years has engaged in a deliberate and conscious way to disobey and thwart the original substantive judicial separation order made on 8th April, 2008. This has been comprehensively set out in the replying affidavit of the respondent which sets out the detailed history of the proceedings since the judicial separation order, and the subsequent attempts to have it enforced. On reading the verifying affidavit sworn by the applicant on 16th May, 2016, he has distorted the history of the proceedings.

10. The applicant for a number of reasons contested the application of the respondent for judicial separation pursuant to the Judicial Separation and Family Law Reform Act 1989, and the Family Law Act 1995.

11. The parties were married in 2002 and they have two children, LR, now aged 16; and K now aged 13. The Family Civil Bill was originally issued on 14th March, 2007. This recited that unhappy differences had arisen between the parties. The pleadings recorded that the then applicant, the present respondent, had received notice that a judgment mortgage had been registered against the family home and that any prior documentation had not been disclosed to her. She was concerned that the present applicant had been irresponsible with money throughout the entire marriage and had borrowed money and failed to discharge same. The applicant was working as a Caretaker with a local authority and was also a cattle and sheep farmer and the respondent was working as a chef. There were a number of preliminary orders made in the proceedings.

12. In the substantive action after a full hearing when both the applicant and respondent were represented by solicitor and counsel, His Honour Judge Nolan made comprehensive orders. The family home was to be transferred to the respondent and the applicant was to pay the sum of €80,000 in part discharge of a mortgage registered against the family home within a period of six months. The court directed that another farm be sold if the sum of €80,000 was not discharged by the applicant.

13. The intention of the trial judge was that the farm land would remain in the ownership of the applicant and that the family home

together with payment of part of the mortgage outstanding of €80,000 would be vested in the respondent. Maintenance was ordered at €300 a week for the benefit of the children.

14. The applicant defaulted on the terms of the judicial separation order by failing to discharge the sum of €80,000 and then engaged in behaviour with the intention of obstructing and preventing the implementation of the order. The applicant's behaviour included misleading both the Circuit Family Court and High Court on appeal, issuing a veiled threat to a prospective purchaser of one of the farms. There were numerous attachment and contempt applications brought before the courts and orders made. None of this was revealed to Humphreys J at the leave application

15. The respondent in her statement of opposition has set out carefully the history of this application. A motion was issued on 12th October, 2015, by the respondent's solicitor originally returnable for 8th December, 2015, together with a grounding affidavit which was served on the respondent. On the return date the presiding judge considered it prudent to direct personal service again of the order of 8th April, 2008, with a penal endorsement, despite the fact that the order had been served on a number of previous occasions on the applicant. This was served on 13th December, 2015, personally on the applicant. This Court is satisfied that the applicant knew of the proceedings and the adjournment dates and chose not to attend court.

16. Because of the history of these proceedings and the numerous orders made and orders previously of attachment and committal, the applicant had unique and personal knowledge of his flagrant disregard of the provisions of the court order of 8th April, 2008. I am satisfied that Humphreys J. had he been made aware of the detailed history of these proceedings would have understood why the motion was not more particularised

17. It is desirable that any motion for attachment and committal should particularise the non-compliance. The essential element of a motion for attachment and committal is to ensure that the order with the penal endorsement is served personally on the person whose compliance with the order is sought. The trial judge was careful to ensure that once the motion came before her that the comprehensive order of 8th April, 2008, was re-served on the applicant personally. The applicant because of the history of these proceedings could not have been unaware of those aspects of the court order which had not been complied with.

18. The most serious aspect of the breach by the applicant was his failure to protect the family home from judgment mortgages and to make the payment of €80,000 as set out in para. 3 of the order of 8th April, 2008.

19. The motion which was issued and served on the applicant to seek attachment and committal was not struck out by the Circuit Family Court in Sligo but was determined in accordance with law and the order of 18th February, 2016, was properly made because of the applicant's failure on an ongoing basis to discharge his responsibilities pursuant to the court order of 8th April, 2008.

20. By a series of actions of deliberate obstruction and misrepresentation, this matter has now been before the courts for nine years without the matter being substantially advanced with a huge build up of outstanding debt, interest and legal costs. The application is refused on all grounds.