

THE HIGH COURT

JUDICIAL REVIEW

[2014 No. 463 J.R.]

BETWEEN

M.C.

APPLICANT

AND

CLINICAL DIRECTOR - CENTRAL MENTAL HOSPITAL

RESPONDENT

AND

MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

NOTICE PARTY

JUDGMENT of Mr. Justice Eagar delivered on the 25th day of July, 2016

1. This Court gave judgment in the above case on 20th June, 2016 and an application for costs was heard by this Court on 27th June, 2016.

2. Mr. Finlay S.C. on behalf of the respondent applied for the costs of the case for his client. He submitted that the Supreme Court decision in *Dunne v the Minister for Environment, Heritage and Local Government* [2007] I.E.S.C. 60 established that costs follow the event, save for exceptional circumstances.

3. He said that cases that are moot should not be taken against the Health Service Executive without proper cause. In this case, the applicant was granted all that she wished for, in that she had been unconditionally discharged. Both his client and the notice party had been in correspondence with the applicant's solicitors, indicating that in the circumstances of an unconditional discharge, they presumed that the proceedings would be withdrawn.

4. By letter dated 12th January, 2015 the solicitors for the applicant indicated that while some of the relief sought in their application for leave was moot, nevertheless certain reliefs had not been extinguished or rendered moot by the order for conditional discharge. Mr. Finlay referred to the Supreme Court decision of *The Child and Family Agency v. O.A.* [2015] I.E.S.C. 52. Mr. Finlay characterised the judgment as one where the court held that orders for costs should not be made against a public body save in exceptional circumstances.

5. Mr. Aston S.C. on behalf of the notice party indicated that the notice party was not seeking costs.

6. Dr. Craven S.C. on behalf of the applicant said he would not disagree with the position in law outlined by Mr. Finlay, however, he made two observations. The first was the net issue in the case, that is the statutory obligations pursuant to s. 13(A) of the Criminal Law (Insanity) Act, 2006 as amended had not been previously considered or litigated and that this should be taken into account by the Court. He stated that while the Court in its final paragraph does seem to suggest an issue of mootness, the Court gave reasons why the relief was not to be granted and he argued that in those circumstances the Court should consider granting the applicant costs in the matter.

7. Order 99, rule 1 provides that,

"(1) The costs of and incidental to every proceeding in the Superior Courts shall be in the discretion of those Courts respectively."

8. In *Grimes v. Punchestown Development Co. Ltd.* [2002] 4 I.R. 515 Denham J. stated that the normal rule is that costs follow the event unless the court for special reasons otherwise directs.

9. Clarke J. in *Veolia Water U.K. Plc. v. Fingal Co. Council (No. 2)* [2006] I.E.H.C. 240 stated:

"[T]he overriding starting position should remain that costs should follow the event. Parties who are required to bring a case to court in order to secure their rights are, *prima facie*, entitled to the reasonable costs of maintaining the proceedings. Parties who successfully defend proceedings are, again *prima facie*, entitled to the costs to which they have been put in defending what, at the end of the day, the court has found to be unmeritorious proceedings."

10. Order 99, rules. 1 (3) and (4) provided that the costs of every issue of fact or law follow the event unless the Court otherwise orders.

11. In *Dunne v the Minister for Environment, Heritage and Local Government* [2007] I.E.S.C. 60 Murray C.J. stated,

"The rule of law that costs normally follow the event, that the successful party to proceedings should not have to pay the costs of those proceedings which should be borne by the unsuccessful party, has an obvious equitable basis. As a counterpoint to that general rule of law, the court has a discretionary jurisdiction to vary or depart from that rule of law if, in the special circumstances of a case, the interests of justice require that it should do so. There is no predetermined category of cases which fall outside the full ambit of that jurisdiction. If there were to be a specific category of cases to which the general rule of law on costs did not apply that would be a matter for legislation since it is not for the courts to establish a cohesive code according to which costs would always be imposed on certain successful defendants for the benefit of certain unsuccessful plaintiffs.

Where a court considers it should exercise a discretion to depart from the normal rule as to costs, it is not completely at

large but must do so on a reasoned basis, indicating the factors which in the circumstances of the case, warrant such a departure. It would be neither possible or desirable to attempt to list or define what all those factors are. It is invariably a combination of factors which is involved. An issue such as this is decided on a case by case basis and decided cases indicate the nature of the factors which may be relevant but it is the factors or combination of factors in the context of the individual case which determine the issue. Accordingly any departure from the general rule is one which must be decided by a court in the circumstances of each case.”

12. In this case the applicant’s solicitors sought a conditional discharge of M.C. and were successful. They subsequently persuaded the notice party to amend the conditions of the conditional discharge.

13. Because of the issues relating to the dispute between the respondent and the notice party, the respondent did not make the necessary arrangements for:

- (a) facilitating compliance by the patient who is the subject of the proposed order with the conditions of the order;
- (b) the supervision of the patient; and,
- (c) providing for the return of the patient to the designated centre under s. 13 (B) in the event that he or she is in material breach of his or her conditional discharge.

14. In those circumstances, the proceedings taken concerned the dispute that had taken place between the respondent and the notice party.

15. The proceedings were initiated on 30th July, 2014. It was as a result of these proceedings that the notice party granted the applicant an unconditional discharge in December, 2014. Whilst this Court found in favour of the respondents vis-à-vis their dispute with the notice party, this Court believes that this case falls into the exceptions to the rule that costs follow the event having regard to the above factors.

16. The Court also takes into account the factor that the statutory obligations of the respondent pursuant to s. 13(A) of the Criminal Law (Insanity) Act, 2006 as inserted by s. 8 of the Criminal Law (Insanity) Act, 2010 had not been previously considered or litigated.

17. Delaney & McGrath in *Civil Proceedings in the Superior Courts*, 2nd Ed., (Round Hall, 2005) set out useful headings for those exceptional cases:

a. Under the heading “Test cases”, the case of *Curtin v. Dáil Éireann* [2006] IESC 27 is set out. In that case, the Supreme Court exercised its discretion to award Curtin half the costs of the proceedings in both the High Court and the Supreme Court, in circumstances where the Court was satisfied that it had to consider questions which to some extent went beyond the specific issues raised and had to provide a guide for the Oireachtas as to the procedure to be followed.

b. Under the heading “Public interest challenges”, Delaney & McGrath state,

“In the case of public interest challenge, not only may a court decline to make an order that an unsuccessful applicant or plaintiff pay the costs of the successful respondent or defendant, it may go further and order the successful party to pay the costs of the unsuccessful party”.

18. Whilst it is clear in this case that this was an application seeking to provide for the private interests of the applicant, I am also satisfied that the proceedings in this case have raised public law issues which are of great importance. This Court also distinguishes the Supreme Court decision of *The Child and Family Agency v. O.A.* [2015] I.E.S.C. 52 from the present case on its facts, as that case dealt with District and Circuit Court issues, which had been a cause of concern for some years. In those circumstances I am exercising my discretion on the basis of these factors to require the respondents to pay 50 % of the applicant’s costs of and incidental to the proceedings.