



THE COURT OF APPEAL

Neutral Citation Number: [2018] IECA 65

[2017 No.140]

[2017 No. 232]

[2017 No. 252]

**The President
Birmingham J.
Whelan J.**

IN THE MATTER OF

A.C.

A WARD OF COURT

WOC 8900

JUDGMENT of the President delivered on 14th March 2018

Introduction

1. This judgment of the court deals with three appeals that were heard on 27th November 2017, at a time when the court, at the conclusion of the hearing, made another direction that is relevant. The appellant here is Mr. C and the matter giving rise to all the disputes is his concern for the manner in which his mother is being treated in hospital or nursing home in the south of Ireland by doctors and nurses and care personnel employed by the HSE.

2. The three motions with which the court is immediately concerned in this judgment arose out of the publication by Mr. C of video and other material on social media which concerned, pictured, and described his mother's treatment.

History

3. The matter began in July 2016 when Mr. C brought an application in the High Court for an inquiry under Article 40 of the Constitution, alleging that his mother, who is now very elderly, was being unlawfully detained by the HSE in hospital in the south of Ireland. The court directed an inquiry, and on application of the hospital made shortly thereafter, dispensed with the attendance of Mr. C's mother on the ground of her infirmity. The original application was heard by Kelly P. and on conducting the constitutional inquiry the judge held that Ms. C was not being detained unlawfully, as claimed by her son. In light of the evidence that was presented to the court in the course of the Article 40 inquiry, Kelly P. invoked his Wardship jurisdiction to direct a medical examination of the elderly lady.

4. On receipt of the medical report, the President addressed the question of Wardship, and on 19th August 2016, following inquiry in that regard and on application of the General Solicitor, the court made an order admitting Ms. C into Wardship. Mr. C had made the original Article 40 application on behalf of his mother and was present in court for the hearing into Wardship. He was not consulted on the decision to dispense with the presence of his mother in court at the Article 40 inquiry, a matter about which he complains.

5. These matters concerning the determination of the Article 40 inquiry and the exercise of Wardship jurisdiction are the subject of appeal by Mr. C and of issues raised by the General Solicitor through counsel as to Mr. C's entitlement to appeal a matter concerning a Ward. But they are not the matter of this judgment. Indeed, it bears emphasizing that Mr. C has not appealed the substantial determination of Kelly P. as to Wardship.

6. In January 2017, the General Solicitor became concerned about material that Mr. C put up on social media concerning his mother and including video recording of her and of treating personnel. In an affidavit dated 9th March 2017, the General Solicitor outlined the content of these recordings. It appeared that Mr. C had secretly made video recordings which he put on Facebook, together with commentary of a kind that the General Solicitor claimed was offensive and wrong. It was also alleged that this conduct by Mr. C represented an invasion of the privacy of Ms. C and of the persons treating and caring for her; her dignity was also interfered with. The High Court enjoined the publication of the material. When it was not taken down, proceedings for attachment and committal were brought. The High Court made orders in that regard and Mr. C was brought before the court to answer the contempt allegation. He was represented by solicitor and counsel on the occasion and he undertook to comply with the court orders and to remove the material from the Internet and proceeded to do so. The court, in those circumstances, did not order the imprisonment of Mr. C, but Kelly P. warned him as to the serious consequences that would follow any repetition. The court also awarded costs against him.

Discussion

7. The three appeals that are the subject of this judgment are the order granting the injunction (dated 20th March 2017); the order of attachment directed to the Gardaí to arrest Mr. C and bring him before the Court (dated 25th April 2017) and the order holding him in contempt and awarding costs against him (dated 3rd May 2017). It seems to me that there is no basis for these appeals. Moreover, the court was satisfied that Mr. C's real complaint concerns the fate that his Article 40 application met with and the circumstances in which his mother was taken into Wardship. In that circumstance, the court reserved judgment on the three instant appeals and offered to provide assistance to Mr. C to pursue the underlying matters of apparent substance that seemed to be what he wanted to dispute. Solicitor and counsel have now been engaged to assist Mr. C on these other questions. Obviously, the court is not making any comment on the merits or the availability of an entitlement to challenge in respect of those matters.

8. The reasons why there is no basis for these appeals is clear from what I have said above. Ms. C was taken into Wardship on the

basis of evidence that was before the High Court. The General Solicitor was entitled and, indeed, obliged to move the court for prohibition of publication of video and verbal commentary of and about the Ward and also of those treating her whose privacy had also been disrespected. Therefore, as to the propriety of the injunction granted by the High Court, there is and can be simply no issue. Similarly, since the material was not taken down in observance of the court order, the move to enforce it by attachment and committal cannot be criticised. Matters of service of the order could be debated at the committal hearing as the court complains about the manner in which the Gardai executed the warrant. Any complaints that Mr. C has in that latter regard may be pursued by him independently. Faced with the option of imprisonment or compliance with the court order, Mr. C wisely chose obedience. I do not think that because he agreed to remove the material under threat of court process of enforcement means that he cannot appeal. The reason why I reject his appeal is not because he is prevented from appealing, but rather because there is no basis of appeal.

9. On these motions and appeals, there is a simple path of logic. Mr. C's mother was made a Ward of Court. The material that he put up on social media represented an invasion of her dignity and privacy and also of those caring for her. The High Court, when moved on the application of the General Solicitor, the proper person to make such an application, granted an injunction. Mr. C did not obey the injunction and was brought to court to answer his alleged contempt. He was faced with the choice at that point of enforcement by the court of its own order or obedience. The court then did not proceed to enforcement or punishment of past contempt, but did make an order for costs. Nothing in that process gives rise to any legitimate complaint on the part of Mr. C.

10. It follows, in my view, that there is nothing in these appeals to give any ground for setting aside these orders.