



THE COURT OF APPEAL

Neutral Citation Number [2020] IECA 262

Record Number: 2017/573

**The President
Costello J.
Haughton J.**

**IN THE MATTER OF BARRY SHEEHAN, A SOLICITOR
IN THE MATTER OF THE SOLICITORS ACTS 1954-2015
IN THE MATTER OF THE SOLICITORS DISCIPLINARY TRIBUNAL**

BETWEEN/

**BARRY SHEEHAN
PRACTISING UNDER THE STYLE OF BARRY SHEEHAN, SOLICITOR
APPELLANT**

- AND -

**SOLICITORS DISCIPLINARY TRIBUNAL, BERNARD BINGHAM, VIOLA BINGHAM
RESPONDENTS**

- AND -

LAW SOCIETY OF IRELAND

NOTICE PARTY

COSTS JUDGMENT of the Court delivered by Ms. Justice Costello on the 4th day of June 2020

1. The appeal was dismissed and the normal rule under O.99 RSC is that costs follow the event. This rule has now been given statutory effect in s.169(1) of the Legal Services Regulation Act 2015. The onus is on the losing party to advance special circumstances justifying a departure from this rule. The appellant argued that this was such a case and asked that there be no order as to costs in favour of the Tribunal or the Law Society, but the court does not accept his submissions.
2. Neither the Law Society of Ireland ("the Law Society") nor the Solicitors Disciplinary Tribunal ("the Tribunal") were amicus curiae, as he sought to suggest. He joined the Tribunal as a respondent, despite their objections. Kelly P. directed that they both be on notice, as the parties likely to have an interest in the outcome of the jurisdictional challenge. It is entirely misleading to suggest that either, or both, the Tribunal or the Law Society could have chosen not to engage in the jurisdictional challenge part of the statutory appeal.
3. The appellant could not validly invoke any of the statutory exceptions which might justify a court in exercising its discretion to vary the order that costs follow the event. There were no transcendent issues of law clarified. There was no failure by the Tribunal or the Law Society to accept an offer of settlement, or any equivalent failure which might engage the s.169(1) jurisdiction.

4. The Law Society was joined to the proceedings by order of the High Court on 12 January 2017, specifically to address legal arguments raised by the appellant which the second and third respondents were not in a position to address, and which arose as grounds of appeal against the finding of misconduct made by the Tribunal. In all the circumstances, it was reasonable and proper for the Law Society to be joined as a Notice Party, and for the Society to participate in the hearing before the High Court and this court on appeal. Insofar as the appellant suggests in his submission that the Tribunal is a successor to the Disciplinary Committee of the Law Society, and did not need to be separately represented, the appellant fails to acknowledge that the Society and Tribunal are entirely separate, independent bodies with no overlap of function. Pursuant to the Solicitors (Amendment) Act 1994, the Solicitors Disciplinary Tribunal was established and the disciplinary functions previously exercised by the Disciplinary Committee of the Society were transferred to the Tribunal – a separate and independent statutory body. It follows that there is no basis for withholding costs from the Law Society on the basis that its participation in the proceedings was unnecessary, given the participation of the Tribunal.
5. The crisis created by the Covid-19 pandemic cannot afford a reason not to award costs as the crisis is likely to be ruinous for many litigants, including opposing parties, and thus leniency in favour of one impacted party may be at the expense of another party equally or possibly more impacted by the crisis.
6. Finally, it is important to bear in mind that these proceedings are a statutory appeal arising from professional regulatory proceedings. Even where a regulatory body loses regulatory proceedings, it is not always appropriate to award costs to the successful professional due to the role of a regulatory authority. The reasons for this apply a fortiori where the professional sues the regulatory authority and loses.
7. The appellant cannot escape the normal consequences that costs should follow the event.
8. The second and third respondents, as litigants in person, are entitled to their expenses.