



**THE COURT OF APPEAL**

**Neutral Citation Number [2020] IECA 275**

**Record Numbers: 2019/138, 2016/475, 2016/542**

**High Court Record Number: 2014/484COS**

**Noonan J.  
Haughton J.  
Binchy J.**

**IN THE MATTER OF KELLY TRUCKS LIMITED (IN VOLUNTARY LIQUIDATION)  
AND IN THE MATTER OF THE COMPANIES ACTS 1963 - 2012**

**BETWEEN**

**GERARD MURPHY (LIQUIDATOR)**

**APPLICANT**

**-AND-**

**JAMES KELLY AND ANNE KELLY**

**RESPONDENTS**

**Record Numbers: 2019/135, 2019/137, 2016/476**

**High Court Record Number: 2014/333COS**

**IN THE MATTER OF KELLY TRUCKS LIMITED (IN VOLUNTARY LIQUIDATION)  
AND IN THE MATTER OF THE COMPANIES ACTS 1963 - 2012  
AND IN THE MATTER OF THE COMPANIES AMENDMENT ACT 1990**

**BETWEEN**

**GERARD MURPHY (LIQUIDATOR)**

**APPLICANT**

**-AND-**

**JAMES KELLY ANNE KELLY THOMAS CLARKE NEHAAL SINGH KELLY TRUCKS  
STROKESTOWN LIMITED  
(NOW KELLY TRUCK STROKESTOWN DAC) AND  
KELLY TRUCKS (BALLAGHADERREEN) LIMITED**

**RESPONDENTS**

**Record Number: 2019/182**

**High Court Record Number: 2014/28COS**

**IN THE MATTER OF KELLY TRUCKS LIMITED (IN VOLUNTARY LIQUIDATION)**

**BETWEEN**

**COSTELLO TRANSPORT LIMITED**

**APPLICANT**

**-AND-**

**NEHAAL SINGH**

**JUDGMENT (*Ex Tempore*) of the Court delivered by Mr. Justice Noonan on the 1st day of October, 2020**

1. These appeals arise out of a very lengthy history of proceedings between Mr. Murphy, the liquidator of Kelly Trucks Limited, and Mrs. Anne Kelly, a director of that company and the beneficial owner of a 50% shareholding in the company with her husband also owning 50%. I do not propose to refer in detail to the history of this matter other than to gratefully adopt the detailed chronology of events set out in the judgment of the High Court (Murphy J.) delivered on the 15th January, 2009 in one set of appeals.
2. Suffice to say that a company called Costello Transport Limited purchased a truck from Kelly Trucks Limited which it alleged was defective and in respect of which it brought proceedings claiming damages which were ultimately successful resulting in a decree in favour of Costello Transport together with an order for costs. Shortly after this, Kelly Trucks Limited went into voluntary liquidation and a Mr. Nehaal Singh was appointed liquidator with the support of Mr. and Mrs. Kelly. As a creditor of the company, Costello Transport objected to Mr. Singh's appointment and sought to have him replaced by its nominee, Mr. Gerard Murphy.
3. Costello Transport brought an application in that regard before the High Court which was heard by that court (Baker J.) and determined on the 17th February, 2014. The application was opposed by Mrs. Kelly on behalf of the respondents and by an *ex tempore* judgment given on the same date, Baker J. acceded to the application and substituted Mr. Murphy as liquidator. That order was never appealed and accordingly is now unassailable. When the order of Baker J. replacing Mr. Singh with Mr. Murphy was perfected, it was immediately apparent that it contained errors. In particular, it recorded that the order had been made by the Master of the High Court pursuant to s. 228 of the Companies Act 1963, which refers to compulsory rather than voluntary liquidation. The correct section should have been s. 277.
4. In order to rectify this, the creditor, Costello Transport, brought an application under O. 28, r. 11, commonly known as the "Slip Rule" before Baker J. on the 13th of April, 2015 which was again opposed by Mrs. Kelly who had been made a notice party by Cregan J. Baker J. gave judgment the same day amending the errors in the order. It is notable that the original Notice of Motion did mention s. 277 and also sought such further or other relief as the court might think fit. It is also notable from the DAR extract of the hearing on 17th February relied upon by Mrs. Kelly today, that while Baker J. did incorrectly advert to s. 228 in directing the removal of Mr. Singh as liquidator and appointing Mr. Murphy as his replacement, Baker J. does not refer to any particular section but makes the appointment "pursuant to the Act".
5. Mrs. Kelly attempted to appeal that judgment by bringing an appeal in the name of Mr. Singh which was met with an application to strike out the appeal by Mr. Murphy on the basis that Mrs. Kelly was not entitled to purport to represent Mr. Singh by bringing an

appeal before this court. That application was heard by this court on the 19th October, 2015 and the appeal was struck out.

6. Subsequent to the making of Baker J.'s original order substituting Mr. Murphy, he instituted two sets of proceedings by originating notice of motion under the Companies Act, the first seeking, *inter alia*, to make Mr. and Mrs. Kelly personally liable for the debts of the company (the asset recovery proceedings) and secondly, their disqualification as directors (the disqualification proceedings). Both of these motions proceeded through the Chancery List in the normal way and were subject to a number of procedural case management orders, the primary effect of which was to put those proceedings on hold pending the determination of Mrs. Kelly's purported appeals to the Court of Appeal and the Supreme Court.
7. Following the final determination of those matters, the asset recovery and disqualification proceedings (together the substantive proceedings) proceeded to hearing before the High Court (Murphy J.) who ultimately delivered a judgment in relation to both motions on the 15th January, 2019. Arising from that judgment, on the 28th February, 2019, Murphy J. made a number of orders *inter alia*, making Mr. and Mrs. Kelly personally liable for the debts of the company and disqualifying them as directors for a period of seven and a half years. All of these proceedings were heard on affidavit. Mrs. Kelly delivered replying affidavits and at all times conducted the hearings in person on her own behalf and on behalf of her husband. No other party participated.
8. Immediately following the judgment of Murphy J., Mrs. Kelly brought an application for a trial on a point of law which was, in effect, an application to reverse her own judgment. This application was refused by a third order made on the 28th February, 2019.
9. Shortly after the making of final orders by Murphy J., Mrs. Kelly brought a further motion on the 22nd February, 2019 which was said to be also brought under the Slip Rule and sought to have the original order of Baker J. of February 2014 amended, again in effect by reversing it. This application was heard by Baker J. on the 7th March, 2019 when it was refused on two bases, namely that the Slip Rule had no application to the reliefs sought by Mrs. Kelly and in any event, the application was brought too late. The final relevant proceeding was an application made on the 24th January, 2019, brought after the written judgment of Murphy J. but before the final orders. That was an application to the Court of Appeal to extend the time to appeal the Slip Rule order made by Baker J. on the 19th May, 2015. This application was refused by the Court of Appeal on the 23rd July, 2019.
10. There are a total of seven appeals now before this court which can be grouped into three. The first group of three appeals in chronological order relate to the procedural orders made during the course of the High Court proceedings in October and November of 2016. Given that the proceedings were subsequently heard and finally determined by the High Court since the filing of those appeals, they have largely become moot or at least overtaken by events to the extent that even if successful, they would have no meaningful effect. The second set of appeals relates to the substantive proceedings and is an appeal

from the entirety of the judgment of Murphy J. and the three orders made by her to which I have referred. The final appeal is brought against the order of Baker J. of the 7th March, 2019 refusing Mrs. Kelly's Slip Rule application.

11. I should also refer to the fact that on the 30th September this year, the day before these appeals were listed for hearing, Mrs. Kelly issued a motion before this court which was made returnable to the hearing of the appeals and again in essence, it seeks to challenge the original order made by Baker J. in 2014 substituting Mr. Murphy as liquidator of the company. Mrs. Kelly sought this morning to have that motion heard and determined and to have her appeals adjourned until that happened. The Court rose to consider that application and having done so, refused it. Although the respondent in these appeals, Mr. Murphy, has had no opportunity of responding to this motion, the court permitted Mrs. Kelly to make submissions in relation to this motion in tandem with her submissions on these appeals.
12. The fundamental argument underlying all of these appeals made by Mrs. Kelly is that the orders of Baker J. first, appointing Mr. Murphy in February 2014 and second, correcting the original order in April 2015, are invalid and should not be allowed to stand. Mrs. Kelly advances many reasons why she says this will be so. However, Mrs. Kelly cannot escape the fundamental fact that these are final orders of the High Court made some five and six years ago in respect of which no successful appeal was brought and accordingly stand unimpeached. No conceivable basis has been advanced by Mrs. Kelly upon which this court could have any jurisdiction to interfere with these orders and they must be recognised as final and binding by this court. Mrs. Kelly complains of the fact that she has been repeatedly told that she cannot re-litigate matters finally determined against her and she considers this to be an infringement of her rights. Essentially however, that is the nub of the difficulty she faces because in each instance, without exception, both in terms of these appeals and Mrs. Kelly's motion, the basis upon which they are advanced is that the original orders of Baker J. cannot be allowed to stand. No matter how many applications and appeals that are brought by Mrs. Kelly that remains the position and irrevocably so. As in that regard I can do no better than to refer to paragraph 136 of the judgment of Murphy J. in this matter: -

"136. As can be seen from the history of this application Mrs. Kelly has repeatedly sought to go behind orders made by various judges of the High Court, in order to advance an argument that this court has no jurisdiction. The mechanism provided by our law for questioning the validity of an order made by a court is an appeal that order, to a higher court or, in appropriate circumstances, to seek judicial review. Mrs. Kelly has appealed or sought to appeal multiple orders made by the High Court in the course of this application, including the original order granting judgment to Costello Transport Limited arising from the supply of a defective truck, and the order removing Mr. Nehaal Singh as liquidator, and the order made by Baker J. 13th April, 2015 under the "Slip Rule", all of which have been unsuccessful. Mrs. Kelly has also sought to challenge before me the validity of orders made by Gilligan J. and White J. Mrs Kelly is simply unwilling to accept the validity of any court order

with which she is not in agreement, be that an order of the High Court, the Court of Appeal or the Supreme Court. This court cannot and will not look behind the orders made by other members of this court, or courts of superior jurisdiction to this court, whose rulings I am bound by law to follow. Accordingly the court finds that Mrs Kelly's arguments are fundamentally misconceived and rejects her preliminary claim on the issue of jurisdiction."

13. Regrettably again today, Mrs. Kelly has chosen not to engage with the arguments made against her or the substance of the appeals but rather has elected to rely on a repetition of the proposition advanced on numerous occasions in these proceedings that the original orders of Baker J. made in 2014 and 2015 are invalid.
14. Dealing first with the appeals in the substantive proceedings (Murphy J.) the only ground of appeal in reality is whether the trial judge was correct to accept that Mr. Murphy had been validly appointed. That as I have already said is the subject of a final, binding and un-appealable order of the High Court (Baker J.) made in proceedings in which Mrs. Kelly participated fully. There is therefore no obvious basis upon which it can be said that this order does not bind Mrs. Kelly but even if she had not been a notice party to those proceedings, I accept the submissions made on behalf of Mr. Murphy that the order made substituting Mr. Murphy as liquidator was an order that operated *in rem*, in other words was valid as against the whole world in terms of determining Mr. Murphy's status and would be binding on Mrs. Kelly for that reason in any event. Murphy J. was therefore bound to accept the validity of the earlier order made by Baker J. and was perfectly correct to do so. These two appeals must accordingly fail. In respect of the third appeal concerning Murphy J.'s refusal to set aside her judgment, this was, to say the least, an unorthodox application and really in effect amounted to no more than an application by Mrs. Kelly to Murphy J. to reverse her judgment on the basis that it was wrong. That was clearly an unstateable application and was correctly rejected by Murphy J. on the basis that Mrs. Kelly's remedy was an appeal to this court.
15. Turning now to Mrs. Murphy's Slip Rule application to Baker J. in March 2019, this again was simply put, an application by Mrs. Kelly to Baker J. to reverse her own order. It was not in any sense an application to correct simple clerical errors in a judgment or order as was the case with Mr. Murphy's original application in April, 2015. I am therefore satisfied that the trial judge (Baker J.) was perfectly correct to dismiss this application for the reasons which she gave, with which I agree entirely.
16. Turning finally to the procedural appeals, I will for completeness deal with these although they are in substance and effect moot. Each of these orders were in the nature of case management orders, two of them made by White J. simply re-entering the substantive proceedings into the list following the final conclusion of Mrs. Kelly's challenges to the order of Baker J. The third order made by Gilligan J. was an order linking the asset recovery proceedings with the disqualification proceedings and giving them a hearing date. Even if there were any grounds for interfering with these orders, and there are none in my view, the court would in any event be extremely slow to interfere with such

case management orders for the reasons explained in the judgment of the Supreme Court in *Dowling v. Minister for Finance* [2012] IESC 32 where Clarke J. (as he then was) speaking for the court said:

“3.5 Against that background it seems to me that this court should only intervene if there is a demonstrated degree of irremediable prejudice created by the relevant case management directions such as could not reasonably be expected to be remedied by the trial judge (or at least where the chances of that happening were small) and where therefore, unusually, the safer course of action would be for this court to intervene immediately to alter the case management directions.”

17. In this case, Mrs. Kelly has demonstrated no prejudice of any kind arising from the making of the orders complained of and for that additional reason, this court should not interfere with them.
18. Dealing finally with Mrs. Kelly’s motion before the court today, this is yet again another attempt by Mrs. Kelly to reopen and revisit the orders of Baker J. which, for the reasons I have already explained, is impermissible.
19. Accordingly for these reasons, I would dismiss each of these appeals and the motion.