THE COURT OF APPEAL

UNAPPROVED **NO REDACTION NEEDED**

Neutral Citation Number [2020] IECA 340

[2019 478]

Ní Raifeartaigh J.
Murray J.
Collins J.

BETWEEN

JOHN HANRAHAN

APPELLANT

AND

MINISTER FOR AGRICULTURE AND FOOD

RESPONDENT

JUDGMENT of Ms. Justice Ní Raifeartaigh delivered on the 3rd day of November 2020

1. This is an appeal from an order of the High Court (Meenan J.) dated 21st November 2019 refusing to grant an adjournment of the hearing in the Non-Jury list of a motion issued by the appellant. The motion was listed for hearing on 27th November 2020.

Background

2. To understand the motion, it is necessary to refer to the substantive proceedings which issued in 2006 and were the subject of final decision (by the Supreme Court) in 2018. In 2006, the appellant brought a claim for damages against the respondent ('the Minister') arising out of the unlawful destruction of cattle owned by him. In 2010, the High Court (McMahon J.) found in favour of the appellant and awarded him damages in the amount of €304,320.00. He

made certain orders as to costs and granted a stay on the award of damages but ordered that the Minister should forthwith pay the appellant a sum of €180,000.00 on account of the damages and undertake to pay interest on the balance of any damages over and above that sum which may be payable.

3. There was both an appeal and a cross-appeal to the Supreme Court. On 16th January 2017, the Supreme Court directed the part payment of a further sum of €54,000 to the appellant on the same terms.

4. On 18th October 2017, the Supreme Court gave its decision (with the sole judgment being delivered by O'Donnell J.) and varied the damages as awarded by the High Court in the amount of €299,320.00 (a net difference of €5000.00 from the High Court award). It adjourned the matter to deal with costs and calculation of interest.

5. This was not the only litigation in which the appellant had been involved during that period. He also brought unsuccessful judicial review proceedings, and the Revenue Commissioners successfully brought proceedings against him. Various garnishee orders were made in respect of the damages awarded in the present proceedings. The Minister took the view that it would be appropriate to set-off monies owed to the appellant as a result of the present proceedings against monies owed by the appellant in other proceedings.

6. On 12th January 2018, - being a date before the Supreme Court had made its final order on interest and costs in the present proceedings - the Minister issued a motion in the High Court seeking to set off debt owed by the appellant to him in relation to costs of other proceedings. This was grounded upon an affidavit of Derek Elliott which set out details of the other litigation and explained what the Minister wished to do by way of set-off. It is not necessary for present purposes to set out the Minister's position on these matters in any detail here.

7. On 16th February 2018, the Supreme Court dealt with the costs and calculation of the interest in the present proceedings and ordered that the interest to be paid was €64,104.57, and

the total sum to be recovered by the appellant €363,424.57 (being the damages plus interest), but that payments already made should be deducted. The appellant was also awarded 75% of the costs of the appeal and no order was made for the cross-appeal.

8. On 19th February 2018, the Minister withdrew the motion in the High Court concerning the set-off and on that date the High Court (Coffey J.) struck the motion out with no order.

9. On 22nd February 2018, the appellant sought an order "compelling the defendant to abide by the order of the Supreme Court". On 23rd February 2018, Coffey J. refused the order.

The motion the subject of the adjournment application which is the subject of this appeal

10. It appears that the appellant was and is keen to have the issue of set-off clarified by the High Court. On 24th July 2019, the appellant filed a motion seeking "an order and a declaration as to whether the Defendant has a right to set off the costs owed to him as against other sums owed by the Defendant to the plaintiff". A return date of 31st July 2019 was given. On that date, Coffey J. set out a timetable to be followed for matters such as the filing of affidavits.

11. Mr. Peter Clifford swore a replying affidavit on 21st August 2019. The appellant swore an affidavit on 12th September 2019. I do not propose to deal with the contents of those affidavits because the appeal is not concerned with the merits of the motion but rather the refusal of an application for adjournment of the hearing of the motion.

The first hearing date: 16th October 2019

12. On 7th October 2019, the matter came before Noonan J. for mention. At this stage, the appellant was pressing for an early hearing date and accordingly, the date of 16th October 2019 was fixed for hearing.

The second hearing date: 23rd October 2019

13. The appellant applied to adjourn the hearing date of 16th October 2019, without notice to the respondent. A provisional hearing was fixed for 23rd October subject to the Minister's

availability. This proved not to be suitable for the Minister and it was moved to 30th October 2019.

The third hearing date: 27th November 2019

14. This date was also the subject of an application for adjournment by the appellant and it was ultimately set down for 27th November 2019.

The refusal of adjournment decision the subject of this appeal

15. On 21st November 2019, six days before the hearing date, the plaintiff attended the call-over list being presided over by Meenan J. and applied for an adjournment of the hearing on 27th November on the grounds that: -

i. He had only recently received documentation from the Minister which he said necessitated his filing a further affidavit.

ii. His ill health. The plaintiff provided a letter from his oncologist dated 9th October 2019.

iii. He wished to join the Minister "personally" to the proceedings.

16. Meenan J. refused to grant the adjournment sought and left it in for hearing on 27th November 2019. Meenan J. refused the adjournment application on three grounds. The order of Meenan J. in this regard is the only order under appeal.

17. To complete the narrative, I note that on 27th November 2019, the hearing date, the appellant again sought an adjournment before Meenan J. who refused the application and sent the matter for hearing to Simons J. who also refused to adjourn the matter. He then invited the appellant to proceed with his motion and the appellant chose not to do so. Simons J. then dismissed the motion. However, none of these orders are under appeal. The only order under appeal is the order of Meenan J. dated 21st November 2019 refusing to grant the adjournment sought on that date.

18. Further, this appeal is not concerned with the merits of the issue of set-off raised in the motion; that was never adjudicated upon by Simons J. because the appellant did not proceed with the motion on the hearing date, having been refused the adjournment he was seeking.

The Appeal

19. The appellant submits that Meenan J. should have granted him an adjournment of the hearing fixed for 27th November when he applied for that adjournment on 21st November 2019. He refers to the various reasons offered in support of that application at the time: (i) his ill-health; (ii) the fact that he had only recently received some documentation from the Minister; and (iii) the fact that he wished to join the Minister "personally" to the proceedings.

20. He submits that the refusal to grant him the adjournment sought denied him the right to a fair hearing of the issue the subject of the motion. He submits that the judge was in error having regard to the fact that no prejudice was to be suffered by the respondent. He submits that the judge failed to proportionately and properly apply the relevant law to an adjournment application.

21. The appellant also submits that he was not treated fairly and was not properly listened to, and that this is part of a pattern which has manifested itself throughout proceedings against the Minister at various times.

22. Subsequent to the hearing of the appeal, the appellant furnished the Court with the medical certificate which he had shown to Meenan J. in support of the adjournment application on 21st November 2020 in order that the Court might precisely see what was before the judge by way of medical evidence at that particular moment in time.

23. The Minister submits that the matter is entirely moot because the hearing date of 27th November 2019 has come and gone, on which date there were further unsuccessful applications for adjournment by the appellant (including an attempt to persuade the Court of Appeal to grant him an adjournment on that date between the decision of Meenan J. and before the decision of

Simons J.), followed by a decision on his part not to proceed with the motion as a result of which the motion was struck out.

24. The Minister also points out that the hearing date had been postponed at the request of the appellant a number of times, despite the appellant himself having originally pressed for an early hearing date on 6th October 2019 and that the High Court did seek to accommodate him as best it could.

25. The Minister says that insofar as the appellant was basing his adjournment application in part upon the recent receipt of documents from him, the documentation in question consisted of a short submission and booklet of authorities which could not properly have given rise to any need to respond by way of affidavit. Further, the Minister was already a party to the proceedings and joining the Minister 'personally' was not a proper basis for an application. As to the health grounds, it is submitted that Meenan J. was entitled to refuse the application and that his decision fell well within the discretionary range of a High Court judge making case management decisions.

Decision

26. This appeal is not concerned with the merits of the whether the Minister is entitled to engage in a set-off as between sums owed by the Minister to the appellant in these proceedings and any sum owed by the appellant in other proceedings. It is concerned solely with the very narrow issue of whether Meenan J. was entitled, acting properly within his discretion, to refuse to accede to the appellant's application for an adjournment on 21st November 2020.

27. I am of the view that the appeal in respect of the order made on 21st November 2019 is entirely moot. The decision was a case management decision, which was overtaken by events on 27th November 2019, the date of hearing, upon which date the appellant made several further adjournment applications which were considered by two successive High Court judges

(Meenan J. and Simons J.) all of which were unsuccessful. The dismissal of the motion itself is not the subject of appeal.

28. Further, I am of the view that the appeal should fail on its merits even if it were not moot. In *Rice v Muddiman* [2018] IECA 402, Irvine J. said that "an appellate court will only set aside… a case management decision if the appellant can demonstrate that to fail to do so would call into question the proper administration of justice" and that "[a] significant margin of appreciation must be afforded to a High Court judge, particularly the judge charged with the administration [of a list] and the management of the Court's own scare resources…". In *Kildare County Council v. Reid* [2018] IECA 370, Peart J. said that the Court on appeal in respect of the refusal of an adjournment "should be slow to interfere with the manner in which the discretion was exercised and should do so only where a clear error is manifest". A similar view was expressed in *Defender Limited v. HSBC Institutional Trust Services Ltd* [2019] IECA 337.

29. The motion issued by the appellant at the end of July 2019 had, by the time he made his application for an adjournment to Meenan J. on 21st November, received its third if not its fourth hearing date since it was first mentioned on 7th October 2019 before Noonan J. On 7th November 2019, the appellant had been pressing for an early date, and the High Court sought to accommodate him by fixing 16th October. However, the appellant himself sought adjournment of the first date, and then an adjournment of the second date, both of which applications were acceded to. The date of 27th November 2019 was therefore the third hearing date which had been assigned at his request.

30. The appellant had received written submissions and a booklet of authorities from the Minister one week before the hearing. There is nothing particularly unusual about this. It was certainly not a step which required a further affidavit to be sworn by the appellant. The suggestion that the appellant needed to join the Minister "personally" was entirely without merit. This left the medical grounds as being the main reason to be considered by the High

Court judge. He was entitled to have regard to the contents of that report and make a decision within his discretion. The Court has seen the report which was submitted to Meenan J. at the relevant time. For reasons of privacy, I do not wish to set this out in full. Suffice to say that it indicated that the appellant had received a particular diagnosis in January 2016 and that he was commenced on various courses of treatment. He was unable to tolerate the full course of one treatment (the last session of which was in May 2016) and he was continuing with a second course of treatment. The doctor said that "the disease has remained controlled since" but that the appellant was experiencing side effects including significant fatigue, with the result that "he would be hard pressed to keep up with the demands of running his farm, let alone the pressures of the current litigation in which he is involved."

31. It may be noted that report (given its date) was two days after the mention of the case before Noonan J. on 7th October 2019 and pre-dated the fixing of the hearing date of 27th November 2019, which had been obtained at the appellant's own request following an earlier adjournment.

32. One cannot but have sympathy for Mr. Hanrahan by reason of both his health challenges and the protracted nature of his litigation with the State. However, I do not consider that the High Court judge exceeded the limits of his discretion in refusing the application for an adjournment on the grounds sought, having regard to the contents of the report, which indicated a condition which pertained at the time of the issuing of the motion and the fixing of three successive hearing dates (at the appellant's own request). A judge case managing a list in the High Court has to consider the position of both parties to litigation as well as the fact that court time is a valuable and scarce resource and many other litigants also wish to have their case listed for hearing and their cases heard. Applying the principles set out in the authorities above, I do not think that the appellant has reached the necessary threshold for setting aside this discretionary decision of the High Court.

33. I would dismiss the appeal. I would emphasise again that this judgment does not rule in any way of the merits of the issue of whether a set-off can lawfully be done nor does it constitute a bar to that issue being litigated in the future. The judgment is concerned solely with the refusal of an adjournment of the appellant's motion on 21st November 2019.

34. Because this judgment is being delivered electronically, I wish to record that Murray and Collins JJ. have read the judgment and are in agreement with it.

35. As the respondent has been successful in this appeal, my provisional view is that the respondent is entitled to the costs of the appeal.. If the appellant wishes to contend for a different order, he has liberty to apply to the Court of Appeal Office within 14 days for a brief hearing on the issue of costs. If such hearing is requested and results in an order in the terms I have suggested, he may be liable for the additional costs of that hearing. In default of receipt of such application within 14 days, an order in the terms proposed will be made.