



THE COURT OF APPEAL

Record Number: 2023/97
High Court Record Number: 2004/19212P
Neutral Citation Number [2024] IECA 8

Noonan J.

Faherty J.

Meenan J.

BETWEEN/

COLM MURPHY

APPELLANT

-AND-

LAW SOCIETY OF IRELAND AND SIMON MURPHY

RESPONDENTS

COSTS RULING of Mr. Justice Noonan delivered on the 17th day of January, 2024

1. Judgment in this matter was delivered on the 12th December, 2023 ([2023] IECA 310). The court expressed the provisional view that as the respondents (the Society) had been entirely successful, the Society should be entitled to its costs of this application. The parties were afforded the opportunity to contend for an alternative order by written submission and Mr. Murphy has now done so.
2. This was an application by Mr. Murphy for an extension of time within which to appeal a consent order of the High Court made on the 11th December, 2017. That order directed,

inter alia, that Mr. Murphy's claim would be limited to the matters pleaded in an amended statement of claim delivered on the 1st July, 2011 together with updated particulars of the plaintiff's claim furnished on the 23rd October, 2017. The application to extend time was brought by Mr. Murphy over five years from the date of the order he sought to appeal.

3. The essential basis for the application was that since the making of the order, further evidence had come to light which, it was claimed by Mr. Murphy, would have led him to refuse consent to the order had he been apprised of it at the relevant time. Some of this "*new evidence*", falling under a substantial number of headings, was claimed by Mr. Murphy to have been concealed from him by the Society in certain instances, but in others he had become aware of the evidence independent of any involvement of the Society.

4. In the judgment delivered by this Court, it was found in respect of each matter advanced by Mr. Murphy that he had both failed to explain the lengthy delay in applying for an extension of time and failed to establish any arguable ground of appeal. The application was further held to be misconceived and an abuse of process.

5. In his submissions on costs, Mr. Murphy identifies the provisions of s. 169 of the Legal Services Regulation Act, 2015 concerning costs which provides that a party who is entirely successful is entitled to an award of costs in their favour unless the court orders otherwise having regard to the circumstances of the case and the conduct of the proceedings by reference to a number of matters identified in the section.

6. Mr. Murphy contends that the court retains the jurisdiction to exercise its discretion with regard to the allocation of costs in any particular matter and in this case, it should do so because of what Mr. Murphy claims to be the outrageous conduct of the Society. He says that this conduct comprises the deception of various courts and the withholding of information. He purports to give examples of this conduct. The allegations made by Mr.

Murphy in this regard have been made repeatedly throughout the course of these very lengthy proceedings and none have been upheld in any of the many judgments delivered herein to date. They continue to be vehemently denied by the Society.

7. Mr. Murphy concludes his submissions by inviting the Court to defer its adjudication on the question of costs pending the issuing of a motion by him “*calling on the court to look at these issues (the conduct of the solicitors involved) as preliminary issues*”. Mr. Murphy does not indicate the manner in which he contends the Court should exercise its costs jurisdiction herein, but presumably it is either on the basis that he should get his costs or there should be no order as to costs.

8. It is clear that the Society has been entirely successful in this application and is, *prima facie* therefore, entitled to its costs under s. 169. The section provides that the court may depart from this *prima facie* position having regard to various matters including the conduct of the parties before and during the proceedings and whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings. Mr. Murphy suggests that the conduct of which he complains falls within this category so that the Court should exercise its discretion against awarding the Society the costs to which it would in the normal way be entitled.

9. The difficulty with that submission however is the one I have already identified, namely that the alleged conduct of which complaint is made by Mr. Murphy has never been established in any of the many pieces of litigation in these proceedings that have to date occurred. In those circumstances, I am satisfied that Mr. Murphy has established no basis which could justify a departure from the *prima facie* rule identified in s. 169. Nor has he established any valid reason for the postponement of a ruling on the costs of this application.

That conclusion is further supported by the Court's finding that this application was misconceived from the outset and an abuse of process.

10. The Court's provisional view is therefore confirmed and the Society will be awarded its costs of this application to include the costs of the written submissions concerning the issue of costs.

11. As this ruling is delivered electronically, Faherty and Meenan JJ. have authorised me to record their agreement with it.