

THE HIGH COURT

JUDICIAL REVIEW

[2012 No. 746 J.R.]

BETWEEN

JOSEPH LAVERY

APPLICANT

AND

JUDGE JOHN McBRIDE

RESPONDENT

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 5th Day of June, 2018

1. In *Lavery v. D.P.P. (No. 3)* [2018] IEHC 185 [2018] 3 JIC 1310 (Unreported, High Court, 13th March, 2018) I outlined the eleven previous High Court actions taken by Mr. Lavery and the *Isaac Wunder* order made against him on 4th July, 2016. In *Lavery v. McBride (No. 1)* [2018] IEHC 299 (Unreported, High Court, 30th April, 2018) I gave the applicant permission pursuant to the *Isaac Wunder* order to bring a motion to set aside an order of Hogan J. made on 10th June, 2013, having regard to a possible issue regarding the form of the order given that it did not record the basis on which the D.P.P. was heard in the proceedings.

2. The proceedings relate to an underlying offence of not having had road tax on 7th April, 2012. The applicant was convicted of that offence and sought *certiorari* of the conviction. He makes the present application to revisit the order of Hogan J. dismissing those judicial review proceedings. Mr. Tom Conlon on behalf of the D.P.P. avers that the D.P.P. "was *the* legitimus contradictor *in the context of these proceedings*" although the order does not in fact say that.

3. Procedural complexity arose as result of two further steps taken by the applicant:

(i). The applicant appealed the order now complained of (Supreme Court record no. 359/13). The D.P.P. then cross-appealed as to costs (Supreme Court record no. 369/13). At a call over before Denham C.J. on 10th July, 2014, the applicant stated that he wished to withdraw the appeal and re-enter the case in the High Court. Denham C.J. indicated that he could either go on with the appeal or not, but not re-enter the matter in the High Court. The appeals were then transferred to the Court of Appeal and were given Court of Appeal record numbers 2014/940 and 950 respectively. Both appeals were ultimately struck out on 4th May, 2018 by Birmingham J. with liberty to re-enter.

(ii). The applicant previously brought a motion to set aside the order of Hogan J., which was made returnable before Kearns P. on 21st October, 2013 when the matter was then withdrawn.

4. I have heard from Ms. Lily Buckley B.L. for the D.P.P. and from Mr. Lavery in person.

5. Ms. Buckley has advised me of her note of Hogan J.'s ruling to the effect that the D.P.P. was dealing with the matter as *legitimus contradictor* and she accepts that the order as drawn up does not precisely reflect that actual ruling but rather refers to having heard "*the respondent*". Ms. Buckley confirms that this was not a case where the Chief Prosecution Solicitor merely stood in to represent Judge McBride, but rather that the D.P.P. appeared in her own right. I would normally suggest that such a slip-rule-type issue be sent back to the original judge, in this case Hogan J. However, given the pressures on the Court of Appeal at the present moment in time, I do not think I would be massively thanked for that, so I will deal with this issue myself.

6. It seems to me that a basis for correcting the error in the order as perfected pursuant to the slip rule has been made out. I do not think that the procedural complexity introduced by the applicant and outlined above is disqualifying in terms of correcting that error. However, I should say that no basis has been set out to, and indeed on the materials before me there is no jurisdiction to, revisit the actual decision to allow the D.P.P. to appear as *legitimus contradictor*.

Order

7. Accordingly, pursuant to the slip rule (O. 28 r. 11) I will amend the order of 10th June, 2013 made by Hogan J. to delete "*respondent*" and substitute "*the D.P.P. as legitimus contradictor*" in the first paragraph and the two references in the second paragraph. I will also amend the order so that it is addressed not just to the applicant in person but also to the "*Chief Prosecution Solicitor*". Otherwise the relief sought by the applicant is refused.

Postscript - Costs

8. I refuse the D.P.P.'s application for costs of the present motion and make no order as to costs given that there was an element of error in the order as originally perfected.