

THE HIGH COURT

[2021] IEHC 310

[Record No. 2019/382 MCA]

BETWEEN

REYNALDO BLANCO AND VIRULYN AVELLANSOSA

APPELLANTS

AND

THE RESIDENTIAL TENANCIES BOARD

RESPONDENT

AND

MICHAEL WHELAN

NOTICE PARTY

RULING ON COSTS delivered electronically by Mr. Justice Barr on the 23rd day of April, 2021

1. The substantive judgment in this matter was delivered on 12th March, 2021. It concerned an appeal by the appellants pursuant to s.123 of the Residential Tenancies Act 2004 (as amended) against a decision of the Residential Tenancies Tribunal that a notice of termination which had been served by the notice party was valid. The appellants were unsuccessful in that appeal.
2. In their written submissions dated 24th March, 2021, the appellants have requested that the court should (a) provide in its order that they should be allowed remain in the property until the end of the current school year. The basis for this request will be outlined later. (b) They also seek an order for payment of their costs on the basis that the issues raised in their appeal come within the category of public interest litigation, under which parties who are unsuccessful in their proceedings may still be awarded their costs. In the alternative, they submit that no order for costs should be made against them.
3. The appeal in this case was heard in conjunction with an appeal in *Stulpinaite v. Residential Tenancies Board*. The substantive judgment in each case was the same. The respondent and the notice party rely on the submissions lodged in that appeal in respect of the issues raised herein concerning a stay on the order to vacate and on the issue of the costs.
4. In essence, the appellants seek to be allowed to remain on in the property until the end of the school year, due to the fact that they have four children ranging in age from seventeen years to six years. Three of the children have special needs and are accommodated within mainstream and special schools, which are reasonably close to their current home.
5. The first named appellant is a health care assistant. He has had to cut his hours of work to look after his wife and children. In particular, his wife is recovering from cancer. She remains on "maintenance" treatment for this disease. She also has Type 1 Diabetes and is at high risk if she were to contract Covid-19.
6. The court has been informed in the appellants' written submissions that they are now number nineteen on the housing list, which means that they have a relatively high

priority. However, they would not expect to get an offer for some time, as they require a four bedroom house.

7. In the *Stulpinaite* case, the notice party gave a written undertaking that he would allow a period of 28 days from perfection of the court order for the appellant in that case to vacate the property. The court assumes that a similar written undertaking has been given in this case.
8. This is a very sad case. The appellants are in very difficult circumstances. The first appellant is only able to manage part-time employment, due to his responsibilities in caring for his sick wife and children. The second appellant does not enjoy good health. They have four children, three of whom have special needs. In these circumstances, particularly where the interests of children with special needs are engaged, the court must proceed with particular care. Having given the matter careful consideration, the court is satisfied that it is appropriate to give the appellants until 25th June, 2021 to vacate the property.
9. In the *Stulpinaite* case it was submitted on behalf of the respondent and the notice party that the court did not have jurisdiction to permit the unsuccessful appellants further time to vacate the property, in view of the fact that the court had not either overturned or varied the Determination Order made by the respondent herein. The court is satisfied that in the circumstances of this case, where the interests of children with special needs are engaged, the court has jurisdiction to make an order that is necessary to protect the interests of those children. Accordingly, the court is satisfied that it does have an inherent jurisdiction to make the order that it has done in this regard.
10. Turning to the issue of costs, the court does not accept that the appellants are entitled to an order for payment of their costs. For the reasons set out in the *Stulpinaite* ruling on costs, the court is not satisfied that the issues raised in the appeal were issues of general public importance, such as to bring the appellants within the general provision applicable to public interest litigation. Accordingly, the court refuses to make any order that the respondent or the notice party pay the appellants' costs of the appeal.
11. For the reasons set out in the *Stulpinaite* ruling on costs, the court is satisfied that the appropriate order to make in this case is that each party should bear their own costs of the appeal.
12. The final order shall be in the following terms:
 - (a) Dismiss the appellants' appeal.
 - (b) An order directing that the appellants shall vacate the property on or before 25th June, 2021.
 - (c) An order that each party bear their own costs of the appeal.

- (d) The parties are to file a copy of their written submissions in the Central Office within four weeks, in compliance with Practice Direction HC 101.