THE HIGH COURT

[2024] IEHC 527

[Record No. 2022/4507P]

BETWEEN

THE BOARD OF MANAGEMENT OF WILSON'S HOSPITAL SCHOOL

PLAINTIFF

AND

ENOCH BURKE

DEFENDANT

JUDGMENT of Mr Justice Mark Sanfey delivered on the 26th day of August 2024.

Introduction.

1. On 19 July 2024, I delivered a judgment ([2024] IEHC 453) on the defendant's application, made on 28 June 2024, to set aside the judgment and order of Owens J in the proceedings delivered on 19 May 2023 and 17 July 2023 respectively.

2. In my judgment, I refused the defendant's application, and stated that I would dismiss it. I indicated that my preliminary view was that the plaintiff was entitled to its costs of the application against the defendant, but permitted the parties to submit written submissions of not more than 1,000 words by Friday 26th July in the event that either of them wished to contend for a different order.

3. In the event, the defendant proffered a written submission, complying with the direction of the court both as to timeliness and the specified word limit. The plaintiff did not deliver a written submission.

Discussion

4. The defendant submitted that no costs order should be made. He contends that "an exceptional issue of constitutional justice existed" [para. 5], and that the court, notwithstanding that Mr Burke had been excluded from the trial by the order of the court, "…was nonetheless still under an obligation to rule on the constitutionality and legality of the principal's demand in deciding whether or not my suspension was unlawful"… [para. 11].

5. The defendant claims that my judgment of 19 July 2024 is "based on a fundamental untruth" that the defendant "chose not to" seek to vindicate his rights or prosecute his claim that his constitutional rights had been breached. He complains that I "refused to deal with the central issue" of what the defendant alleges is the "lack of legal basis for the principal's demand…" [para. 15].

6. The defendant submits that the grounds he sets out "constitute substantial reasons of an unusual kind that strongly dictate that the court should depart from the general principle in the matter of costs herein…it would be an affront to justice in the circumstances to impose a costs order [on the defendant] …" [para. 18].

7. The award of costs in relation to the application is governed by the principles set out in s.169 of the Legal Services Regulation Act 2015. In as far as relevant to the present application, s.169(1) provides as follows:

> "169. (1) A party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings, unless the court orders otherwise, having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties including –

(a) conduct before and during the proceedings,

(b) whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings,

(c) the manner in which the parties conducted all or any part of their cases, …".

8. The defendant was entirely unsuccessful in his application. His submissions on costs are essentially an attempt to re-argue the application, and to raise grounds which have already been rejected by the court. There is nothing in those submissions which would suggest that, although unsuccessful, it was reasonable for the defendant to raise, pursue or contest any of the issues in the application.

9. The application was inappropriate and should not have been made. The plaintiff has been entirely successful in defending it. The only "affront to justice" would be if the plaintiff were not awarded its costs of the application.

Order

10. There will be an order forthwith dismissing the defendant's application and awarding the costs of the application to the plaintiff as against the defendant, such costs to be adjudicated in default of agreement.