



THE HIGH COURT

[2024] IEHC 581

[Record No. 2022/952JR]

BETWEEN

FINTAN JONES

APPLICANT

AND

**CHIEF APPEALS OFFICER, SOCIAL WELFARE APPEALS OFFICE AND MINISTER FOR
SOCIAL PROTECTION**

RESPONDENTS

**JUDGMENT of Ms. Justice Marguerite Bolger delivered on the 9th day of October
2024**

1. This is an application for declaratory relief and *certiorari* of a decision of the first named respondent (hereinafter referred to as "the respondent") of 23 June 2022 disallowing the applicant's appeal in relation to the cessation of his COVID-19 Pandemic Unemployment Payment ("PUP") arising from the applicant's receipt of an income from part-time insurable employment of approximately €50 per week. The applicant had appealed the decision to stop his PUP payment. He claimed an entitlement to be treated the same as a self-employed person who was entitled, pursuant to the scheme, to earn up to €960 in an eight-week period from their self-employment without losing their PUP payment. In email correspondence with the respondent prior to the impugned decision, the applicant had requested an oral hearing. The respondent did not respond to that request but issued the decision without any oral hearing. The applicant pleaded in his statement of grounds that he requested an oral hearing "*due to inter alia the clear conflict between parties involved*". The applicant also pleaded a failure by the respondent to give reasons for their decision. In the course of oral submissions,

the applicant also raised a fair procedure point arising from the respondent's failure to furnish him with a copy of a submission received from the Department.

2. The applicant also sought an extension of time, to which the respondent raised two procedural points of opposition. Firstly, that the reasons for the extension of time sought fell short of what O. 84 required and, secondly, that the applicant had failed to exhaust his alternative statutory remedy.

Extension of time

3. The application was opened on 4 November 2022, some six weeks after the three month time limit for judicially reviewing the decision of 23 September 2022. This is quite different from many applications for extensions of time where an applicant was late by a short period of a few days.

4. Order 84, rule 21(3) and (4) set out what the court must be satisfied of in order to exercise its discretion to grant an extension of time. The applicant has identified a number of matters in his professional and personal life which he says merits the extension of time he requires. He says his busiest work time of the year is June to September and that he had been working five to six nights a week, usually not getting home until 6.00am, as a result of which he "*was unable to arrange matters with [his] solicitor*" (at para. 21 of the applicant's grounding affidavit). He also referred to his domestic responsibilities as his family's primary caregiver. In August to September 2022, his youngest child entered sixth year in school which required the applicant to spend a considerable amount of his time looking after his child's school affairs, as well as the "*active and engaged parenting*" that he says his child requires during periods of change and/or stress.

5. The applicant does not suggest any difficulties in locating or instructing his solicitors, unlike what occurred in *Mocanu v. Chief Appeals Officer* [2023] IECA 176, but says he was unable to "*arrange matters*" with his solicitors due to the demands his work and parenting responsibilities placed on his time.

6. The applicant is clearly a busy person, both at home and at work. However he has not identified anything, such as a diagnosed medical need, that might render his situation different to the busy, lived experience of many working parents of very young and not so young children. The demands that were made on the applicant's time over the summer and autumn of 2022, on which he relies in seeking an extension of six weeks, were not

exceptional. The applicant, like any litigant, is expected to attend to arranging matters with his solicitors within the statutory time period.

7. The respondent does not plead any negative effect as a result of the applicant's delay. The court must have regard to any effect as may be asserted, but that does not mean that the absence of any such effect gives rise to an entitlement to an extension of time. As stated by Allen J. in *Mocanu*, at para. 41:

"If what is behind this argument is a proposition that the absence of litigation prejudice to the respondent in meeting the substance of the case is a factor that should be afforded such weight as to generally justify an extension of time, it is wrong."

8. Finlay Geoghegan J. in *O'S v. Residential Institutions Redress Board* [2018] IESC 61 said it was a matter of the court balancing all factors in the interest of justice in exercising its discretion. In doing that, I have taken account of the existence of a time limit of three months. I also have had regard to the decision of the Court of Appeal in *Mocanu* where even more serious difficulties in locating a solicitor (rather than the difficulties this applicant had in arranging matters with his solicitor) were found to be insufficient to satisfy the court that it should exercise its discretion to extend the time. I have also had regard to the decision of the Court of Appeal in *Mocanu* distinguishing the *O'S* decision due to the different circumstances before it (also applicable here) to the effect that the applicant retained their statutory entitlement to seek a review under s. 318 of the Social Welfare Consolidation Act 2005 at any time, a point that was properly conceded by the applicant's counsel during oral submissions.

9. The circumstances of an applicant's busy life causing difficulties in arranging matters with their solicitors is well short of a good and sufficient reason for the court to exercise its discretion in favour of extending time. I refuse the extension of time that has been sought.

Other issues raised

10. It is not appropriate for this court to consider either the second procedural point in relation to an alternative remedy or the substantive grounds on which the applicant sought relief. In *FD v. Chief Appeals Officer* [2023] IECA 123, Donnelly J. stated, at para. 49, "...it would not usually be appropriate for the court to engage in deciding the substantive issue as a precursor to deciding an alternative remedy exists." A similar point in relation to a preliminary issue on time was made by Allen J. in *Mocanu* where he stated, at para. 63:

“In circumstances in which the appeal to this court against the refusal by the High Court to extend the time for an appeal from the decision of the respondent fails, it is neither necessary nor appropriate that consideration be given to the substance of the intended appeal.”

Indicative view on costs

11. My indicative view on costs is that the respondent is entitled to their costs, not only because they have succeeded in opposing the applicant’s application for an extension of time, but also having regard to the contents of a letter of 27 June 2023 sent by the respondent’s solicitors to the applicant’s solicitors after the institution of the within proceedings raising, *inter alia*, the issue of time as well as what they said was the existence of an alternative remedy. That letter advised the applicant to withdraw the proceedings and indicated that if he agreed to do so, the respondent would agree to bear their own costs, but otherwise the proceedings would be fully defended.

12. I will put the matter in before me for mention at 10.30am on 15 October for the making of final orders including costs.

Counsel for the applicant: Derek Shortall SC, Keivon Sotoodeh BL

Counsel for the respondents: Aoife Carroll BL