



# THE HIGH COURT

2024 No 886 JR

[2024] IEHC 734

**BETWEEN**

**NILAND & OTHERS**

**APPLICANTS**

**AND**

**THE MEDICAL COUNCIL & THE PRELIMINARY PROCEEDINGS COMMITTEE**

**RESPONDENTS**

## **JUDGMENT of Ms. Justice Mary Rose Gearty delivered on the 20<sup>th</sup> of December, 2024**

1. This is a ruling on an application for leave to judicially review a decision of the second Respondent. The background to the case is tragic, in that a young woman died in hospital, which led to an investigation into the circumstances of her death. Her family, the Applicants, have serious reservations about the events surrounding her death and have raised substantial issues about the fairness of the subsequent investigation into her medical care.
2. The main grounds, albeit not the only grounds, for this application were in respect of the procedures adopted by the Preliminary Proceedings Committee (“PPC”) of the Medical Council in reaching a decision in respect of the alleged negligence of a treating doctor on the night of the young woman’s untimely death. The Applicants claim that the Respondents did not accept submissions from them in respect of alleged failures of care and did not consider a medical report prepared by an expert retained on their behalf. There was an allegation of objective bias in respect of one member of the PPC who had served with the doctor in a different context for a sufficient period to raise concerns about the issue of objective bias in respect of their professional relationship.
3. The Respondents were put on notice of the application and met the application for leave by conceding that specific orders, consistent with the statement of grounds, could be made: they have conceded the point in respect of the

objective bias issue and have agreed that the matter can be remitted to a differently constituted PPC. Importantly, the Respondents have confirmed in correspondence that submissions can be made on the Applicants' behalf to that Committee. The letter offering this compromise specifically notes that this includes making submissions in respect of an expert report which the Applicants had argued was not considered in the impugned decision.

4. The Applicants objected to the proposal that the matter be dealt with in this way and asked the Court to list the matter for hearing. It was submitted that this is a case in which the family had concerns about the Respondents' investigation and procedures and that they wanted a High Court hearing to determine the matters raised. It is argued that there are live issues in respect of the parameters of the PPC hearing and the family's rights and that the legal test, that there are arguable grounds for leave, is easily satisfied in this case.
5. While there may have been arguable grounds for the application when it was first made, that is not the only issue for determination at leave stage. There is no authority to support the proposition that if one party concedes the case in a substantial way, the Court is nonetheless required to embark on a hearing as the parties are entitled to know the Court's view. I am sympathetic to these Applicants and understand why their instructions are to proceed. However, this is a misguided view as to what they can achieve. As a matter of law, the most substantial part of any relief that they can obtain in the High Court is now being offered to them in the form of a full rehearing, before a differently constituted PPC. Most significantly, the very report that opens the question of potential negligence is one that they now have been reassured will be considered by that newly constituted PPC. Further, they know that their submissions will be received and considered.
6. Any objection to this matter being remitted, instead of granting leave to review the last decision and embarking on a full hearing, can only be based on a misunderstanding of the role of the courts. The most effective relief I can offer to the parties is to remit the case to the decision maker and that has always been the case. The PPC is the body which will ultimately assess the case, whether or not there is a High Court hearing. Any mistrust on the Applicants' part cannot be addressed by removing the decision from a body that is, under law, charged with making the decision. Understandably, the family wants a decision as early as possible, and this decision will also expedite matters to a very large degree.
7. If there is any lack of fair procedures in the new decision, that will be a matter for the Applicants to consider in due course. It is not this Court's role to direct

or prescribe what procedures must be used at this stage. Insofar as any leave application is a matter for the court's discretion, the substantive issues between the parties have been addressed. Given the concessions made in the letter dated 19th November 2024, this application for leave has transformed into an application in which the Court is asked to predict how the Respondents will conduct the new hearing.

8. In submissions, I was asked to reject the proposition that the case is moot and it was said that the Respondents are trampling on the rights of the Applicants. This is not correct. The core elements of the case have been conceded and a fair resolution offered. The resulting hearing is the most obvious remedy that could be available after a High Court hearing in all essential ways. This brings my discretion into play and the most effective and fair decision, in all the circumstances, is to accede to the Respondents' application.
9. I will grant leave to seek the reliefs sought in the statement of grounds and will also now grant *certiorari* on the basis conceded and remit the case for re-hearing, noting the offer to accept submissions, in particular submissions in respect of the family's expert report. I was told that Counsel strongly opposes the application for *certiorari* and remittal and is surprised by it. However, that is clearly the offer made by the Respondents in writing and it could not have been surprising. The letter makes it clear that the Applicants will be entitled to make submissions to the Respondents. The courts' resources are limited and the matters arising in this list are almost all urgent and, to the parties in every case, vitally important. In a case like this, however tragic, it would be an ineffective use of these scarce resources to set the matter down for hearing and I must accede to the application to grant the orders sought on the basis outlined.
10. The Applicants are entitled to their costs and the Respondents have conceded as much. The costs will be adjudicated if the parties cannot agree the sum.
11. These orders are being made today but will not be perfected until on or before the 10<sup>th</sup> of January 2025 to enable the Applicants to consider the ruling.