

THE HIGH COURT

JUDICIAL REVIEW

[2012 No. 746 J.R.]

BETWEEN

JOSEPH LAVERY

APPLICANT

AND

JUDGE SEAN McBRIDE

RESPONDENT

AND

[2013 No. 682 J.R.]

BETWEEN

JOSEPH LAVERY

APPLICANT

AND

JUDGE SEAN McBRIDE

No. 1

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 30th day of April, 2018

1. I gave an outline history of the applicant's previous eleven High Court actions when giving judgment in *Lavery v. D.P.P. (No. 3)* [2018] IEHC 185 [2018] 3 JIC 1310 (Unreported, High Court, 13th March, 2018). The applicant is subject to an *Isaac Wunder* order I made on 4th July, 2016, so now seeks leave of the court to issue three notices of motion. The main issue for present purposes is whether any grounds have been shown that would make the issue of such motions appropriate and I can deal with the motions under the headings of the two separate judicial reviews to which they relate.

***Lavery v. McBride* [2013 No. 682 J.R.]**

2. Mr. Lavery seeks to set aside firstly an order of Cregan J. joining the D.P.P. as a notice party on 12th May, 2014. He has not shown any grounds for error in that order let alone of such a nature as to warrant it being set aside four years later; and in any event the order is somewhat superseded by the final order in that case.

3. Secondly, he seeks to set aside that final order, an order of 13th November, 2014 made by McDermott J. dismissing the proceedings, which in turn was amended by a further order on 12th October, 2015 to reflect the fact that the D.P.P. had become involved as a notice party and that costs were in favour of the D.P.P. Subsequent to that, the applicant applied to Kelly P. for leave to seek to set aside the two orders of McDermott J. and that was refused on 29th April, 2016. The applicant sought leapfrog leave to appeal from the Supreme Court against that order which was refused by the Supreme Court on 11th November, 2016: *Lavery v. McBride* [2016] IESCDET 132. It is clearly an abuse of process to revisit the issue yet again. In any event, an appeal would have been the appropriate remedy.

***Lavery v. McBride* [2012 No. 746 J.R.]**

4. The applicant was granted leave to seek judicial review in this matter by Dunne J. on 22nd August, 2012. The application was substantively dismissed by Hogan J. by order of 10th June, 2013. According to the Central Office system, no order was drawn up adding the D.P.P. as a notice party, so at least an arguable question mark over the D.P.P.'s participation may arise in view of the applicant's statement that she did so participate. The final order perfected on foot of Hogan J.'s decision does not seem to refer to her as having participated so it is possible that there may be an error in that order, if the applicant is correct. It seems to me that a *prima facie* issue in that regard does arise in the applicant's proposed motion. Some of his grounding affidavit is scandalous but that can be dealt with by the court in due course when considering the application down the line. It may be that the most the applicant can get is an appropriate amendment to the order, perhaps under the slip rule, rather than an order setting it aside, but that can be considered in due course.

Order

5. Accordingly, I will:

- (i). refuse the application for leave to issue the proposed notices of motion in *Lavery v. McBride* [2013 No. 682 J.R.] and
- (ii). give the applicant liberty to issue the proposed notice of motion in *Lavery v. McBride* [2012 No. 746 J.R.].