

THE HIGH COURT

[2020] IEHC 568
[2019/717 JR]

BETWEEN

JOHN O'CONNELL

APPLICANT

AND

THE TAXING MASTER (PAUL BEHAN)

AND

THE COURTS SERVICE

AND

**THE MINISTER FOR JUSTICE AND EQUALITY; THE ATTORNEY GENERAL AND IRELAND
RESPONDENTS**

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 11th day of November, 2020.

1. On the 9th of September 2020 I refused Mr. O'Connell leave to apply for the orders sought in these proceedings. The judgment was delivered electronically, and the parties were therefore invited to communicate electronically with the Court on any issues arising from the judgment. The parties did so, though regrettably one of those communications was not brought to my attention until late October.
2. The third, fourth and fifth Respondents ("the State Respondents") applied for their costs in resisting the application for leave. In so doing, they relied on my judgment, the provisions of sections 168 and 169 of the Legal Services Regulation Act 2019, the judgment of the Court of Appeal (Murray J.) in *Chubb European Group SE v. Health Insurance Authority* [2020] IECA 183, and the provisions of Order 99 of the Rules of the Superior Courts.
3. The State Respondents summarise their position in the following way:-

"[...] whether one adopts the Order 99 criterion of costs following the event, or the 2015 Act criterion of a party being entirely successful, under either rubric the State Respondents should be entitled to their costs as there are no special reasons why the Court should depart from the normal rule."

I accept the proposition that, in the circumstances of the current case, it is for Mr. O'Connell to show that there are special circumstances justifying a departure from the normal rule that costs follow the event or that the party which is "entirely successful" should be awarded its costs.
4. Mr. O'Connell made a number of submissions on costs, and a separate submission on the contents of my judgment which I will deal with at the end of this ruling.
5. On costs, Mr. O'Connell contends that he should be awarded his costs (with an immediate payment out of €2,000 to allow him to pursue his appeal against my judgment) on the grounds that the "Procedure/Rules of the Taxing Master allowed [him] to have the Decision of the Taxing Master reviewed Judiciary." However, as is apparent from my judgment, Mr. O'Connell has not been given leave to seek judicial review because of the way in which he has approached the application for leave, notably (but not exclusively)

because of his failure to join necessary parties to the proposed proceedings. Given the reasons for my decision, it would not be logical to award Mr. O'Connell some or all of his costs on the basis of the first reason advanced by him.

6. Mr. O'Connell makes a second argument on costs, which is that no order as to costs should be made because he has been subject to "a relentless attack on his Constitutional Rights for nearly two decades", this attack has left him and his family in ruins, and the State has failed to protect these rights despite the State's superior ability to do so. I have no detail in respect of any of these claims. In particular, Mr. O'Connell has drawn no connection between these complaints and the bringing of a judicial review application for which I have decided he should not be granted leave. The State Respondents have been responsible and reasonable in the way they have met the application for leave. They have been put to expense by Mr. O'Connell bringing his application. It has been unsuccessful. The argument made by Mr. O'Connell that he should not pay the costs of the State Respondents for the reasons advanced in these circumstances is not convincing.
7. Thirdly, Mr. O'Connell argues that his underlying complaint about the alleged breach of his constitutional rights has not been determined. That is so, but this situation has arisen for the reasons set out in my earlier judgment; these reasons are attributable to Mr. O'Connell, and not to the State Respondents, and I therefore do not see this as a reason to refuse the State Respondents their costs.
8. Mr. O'Connell's final argument on costs is that he should be granted a stay on any costs order in favour of the State Respondents. He is entitled to such a stay in the event that he appeals my earlier judgment; that judgment might, of course, be upset on appeal and it would be unfair on Mr. O'Connell if in the meantime steps were taken by the State Respondents to enforce an order for costs against him.
9. Applying the principles advanced by the State Respondents, and having considered the arguments put forward by Mr. O'Connell, I will make an order granting the State Respondents their costs in resisting the application for leave to seek judicial review, and will place a stay on such order in the event that Mr. O'Connell appeals my decision to refuse him leave.
10. I will now deal with the distinct issue raised by Mr. O'Connell in his email of the 14th of September 2020. He says the following:-

"I have a number of issues with the Judgement but I would draw your attention to one specific part of the Judgement on page 3 paragraph 4 the first 2 sentences. It refers to a Order which I have no record of. If this document was forwarded to the Judge/Court, I would appreciate a copy as it's concerning to me a document may have been exhibited as evidence which I have no knowledge of. If there is no document it might be removed from the Judgement if possible. As this would clarify the Issue in the Appeal which I hope to issue shortly."

11. When the application for leave came before me, Counsel for the State Respondents addressed me generally on the application before Mr. O'Connell opened it in detail. Mr. O'Connell had no objection when asked by me about this proposed course of action. In his address, Counsel told me that Mr. O'Connell's application for leave had originally been one that was to be made on an *ex parte* basis; however, the judge before whom the *ex parte* application was listed determined it appropriate that the application be made on notice to the proposed Respondents. Mr. O'Connell did not take issue with the accuracy of this description of the procedural history of his application, which also explained why the State Respondents were aware of, and present at, what would ordinarily have been an application involving Mr. O'Connell alone.
12. Consistent with what I was told at the hearing for leave, my judgment refers to the Court ordering that the application be made on notice to the intended respondents. I do not know if this direction was embodied in any formal Order: for the purpose of the relevant section of my judgment, it was not necessary that this be done. Contrary to the concerns expressed by Mr. O'Connell in his email, no document has been forwarded to me by any party without his knowledge.
13. The only documents provided to me after the hearing for leave are these which I stipulated (at the end of the hearing) that I should see in order to be able to give a properly informed decision on the application. There was no objection by either Mr. O'Connell or the State Respondents to these documents being provided to me, and being considered by me for the purpose of my judgment. Mr. O'Connell's worry that I have been provided with documents or evidence of which he is unaware is without foundation.