



THE COURT OF APPEAL

Court of Appeal Record Number: 2023/272
Neutral Citation Number [2024] IECA 32

Whelan J.

Burns J.

O'Moore J.

BETWEEN/

REGINALD CARROLL

APPLICANT/APPELLANT

-AND-

**COMMISSIONER OF THE GARDA SÍOCHÁNA, RESIDENTIAL
TENANCIES BOARD, TERRY ROWLAND AND MARGARET ROWLAND**

RESPONDENTS

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 9th day of February, 2024

1. This is an appeal by the applicant/appellant (Mr. Carroll) against a decision of the High Court (Hyland J.) to refuse him leave to seek judicial review. This judgment will be structured under the following headings:-

- (i) The application before the High Court;
- (ii) The judgment of the High Court;

- (iii) The appeal;
- (iv) Decision

(i) The application before the High Court

2. On 5 June 2023 Mr. Carroll lodged papers applying for leave to seek judicial review. The proposed respondents were the Garda Commissioner, the Residential Tenancies Board, and Mr. Carroll's landlords (Terry Rowland and Margaret Rowland). The judicial review application appears to relate to two sets of proceedings. The first of these are criminal proceedings in which Mr. Carroll and Terry Rowland are being prosecuted for assault. The second set of proceedings arise from a determination by the Residential Tenancies Board (the RTB). The RTB had found that Mr. Carroll had engaged in anti-social behaviour in respect of the tenancy which he holds from the Rowlands in premises in County Donegal. The RTB had also found that the notice of termination served by the Rowlands on Mr. Carroll was valid, that Mr. Carroll should vacate the premises, and that Mr. Carroll was in breach of his obligations under the tenancy agreement "*by keeping a cat on the dwelling without the prior written permission of the landlord.*" Finally, the RTB found that Mr. Carroll was obliged to pay outstanding rent from 18 June 2021, and should have refunded to him the entirety of Mr. Carroll's security deposit of €500 once Mr. Carroll vacated the rental property.

3. This determination gave rise to enforcement proceedings before the District Court. At the time that Mr. Carroll lodged the judicial review papers, the relevant District judge had fixed 28 June 2023 for a "Peremptory Enforcement hearing of the landlord and tenant case".

4. Mr. Carroll identified a connection between the landlord and tenant proceedings and the assault proceedings. The connection which he believes to exist is that he alleges that Mr. Rowland assaulted him, and that Mr. Rowland should be convicted of assault. As already noted, Mr. Rowland is charged with assault, as is Mr. Carroll. Mr. Carroll believes that the assault charges should be determined before the final enforcement proceeding, presumably because any finding that Mr. Rowland assaulted Mr. Carroll would be of assistance to Mr. Carroll in the landlord and tenant dispute. In addition, Mr. Carroll wishes to have the assault proceedings preceded by what he describes as “forensics”. Mr. Carroll alternatively describes the “forensic” stage as (a) the carrying out by the Garda Commissioner (or his staff) of a DNA analysis of a spade and three rocks involved in an attack on Mr. Carroll by Mr. Rowland or (b) the making available of the three rocks and the spade to Mr. Carroll on foot of discovery under Order 31 of the Rules of the Superior Courts. Mr. Carroll further believes that following the “forensic” stage (whatever form that takes) there should then be a “review of charges” which should result in the charges against Mr. Carroll being dropped, and an upgrading of the charges against Mr. Rowland to “Serious Harm charges”. In addition, Mr. Carroll believes at that point in time Margaret Rowland should also be subject to “Serious Harm charges”.

5. It is necessary to give this very brief overview of Mr. Carroll’s position in order to make sense of the reliefs sought by him in the initial papers lodged on 5 June of last year. I will now set out the reliefs sought by Mr. Carroll in those proceedings:-

- *An ex parte Emergency order staying both these matters in An Clochán Liath, Dungloe Donegal DC next for peremptory hearing of enforcement 28.6.23 pending Appeal of both matters to Circuit Court, with request they both be heard therein*

because of Abuse of Process in DC regarding Forensics Sequencing DARs for mth delay. And improper setting of Enforcement 5.5.23 Final hearing.

- *Also granting permission to appeal to Circuit Court outside 14 day time limit, as notable, having been refused such Leave by DC on 30.5.23 without reason given.*
- *It is requested the High Court orders the Discovery/Disclosure of Forensics on items requested and subsequently refused by An Clochán Liath (Dungloe) DC 8.11.22. Something clearly establishes a right of Applicant under Constitution and numerous other ECHR etc. requirements as well as principles of Natural Justice. Namely Spade/Weapon and Rocks thrown at window by Landlord Terry Rowland and brought to DC 8.11.22 in Evidence bags. Also a sample of DNA from Terry Rowland for comparison, to be taken involuntarily if necessary.*
- *It is requested that it orders the Assault cases An Clochán Liath (Dungloe) under case 2021/117573 against both Applicant and Landlord be stayed/delayed until such Disclosures are fully presented therein and time is allowed for their Assimilation beforehand.*
- *It is requested further to Disclosures on Forensics that a Review of charges be made and potentially Serious Harm charges be brought against Landlord/Wife and those against Applicant be dropped. Because of unfairness by Milford District Superintendent's Office, it is requested a review be carried out by Chief*

Superintendent's Office, Letterkenny under supervision of High Court with written rationale supplied.

- *It is requested that imposed Enforcement proceedings 2022/00056 under RTB Determination of 28.7.21. DR 10121-67512/TR 0321-004817 be stayed/delayed until Assault case 2021/117573 under summons MDDO 13 199869/21 has been concluded.*

- *If necessary for above it is requested that An Clochán Liath (Dungloe) DC case for Enforcement be Enjoined to this JR for this purpose with Solicitors Kerrin, Hickman and O'Donnell of 2 Binden Street, Ennis, Co. Clare... and Landlord Terry Rowland of 396 Ballyoulster Park, Celbridge, Co. Kildare also.*

- *It is requested all these matters be transferred to High Court or Circuit Court Letterkenny these are concerns as expressed of unhealthy collusion between DC Judges and local Police. To this effect Leave to Appeal is required to be granted by HC following a refusal of Leave by DC Judge Brendan O'Reilly 30.5.23 when he set a Peremptory Enforcement hearing for 28.6.23 refusing again Forensic Evidence Disclosures previously refused 8.11.22 as Transcripts extracts.*

6. It will be very clear that a number of these reliefs simply could not have been granted. For example, at no time has Mr. Carroll explained the procedure that would enable a District Court prosecution for assault to be transferred to the High Court. To take another example, it is by no means clear what jurisdiction exists on the part of the High Court to direct that a Chief Superintendent's Office carry out a review of a subordinate District Superintendent's Office. Finally, and to take a third example, it is difficult to see what jurisdiction exists on

the part of the High Court to “enjoin” a firm of solicitors to the judicial review (in the event that leave to seek judicial review is granted).

7. After the papers were lodged, but before the application could be moved, Mr. Carroll filed a further document described as:-

“Affidavit/legal submissions for judicial review hearing 20.9.23.”

8. 20 September was the date on which the application for leave to seek judicial review was to be heard.

9. In this document, Mr. Carroll stated that the Enforcement Proceedings went ahead on 28 June 2023. A reserved judgment was given on 26 July 2023. While Mr. Carroll, in his September document, refers to this as a “Reserved Negative Judgment”, it is probably more accurate to describe it (as Mr. Carroll does elsewhere) as a simple order of the District Court. By that order, the District Judge directed:-

- “1. That the Respondent Tenant and all persons residing in the above dwelling shall vacate and give up possession of the property ...
2. An order for possession of the said premises in favour of the Applicant herein;
3. An order for costs of the Application to the Applicant to include an order for costs of the hearings on 5 May 2023 and 30 May 2023 and 28 June 2023 and a certificate for counsel in the sum of €5,794.50:
4. A stay on the execution of the Order for Possession for a period of one month from the month [sic] from the date hereof.”

10. In his September document, Mr. Carroll described this Order as “Manifestly Erroneous” and stated that the Order “should be quashed by the High Court ...”

11. In this appeal, Mr. Carroll places great emphasis on the fact that he informed the High Court judge that the hearing on 28 June had proceeded, and that an order on foot of that hearing had been made.

12. Significantly, however, Mr. Carroll had not presented the High Court judge at the hearing on 20 September 2023 with an amended statement of grounds. This meant that the statement required to ground the application for judicial review as filed on 5 June 2023 was unchanged at the time of the September hearing. The reliefs sought were therefore out of date, given the fact that the District Court had conducted a hearing and made a decision. The grounds also needed to be supplemented, possibly along the lines agitated by Mr. Carroll in his September document. However, in understanding the judgment of the High Court (and Mr. Carroll’s complaints about it) it is essential to keep in mind the fact that no amended papers had been prepared by Mr. Carroll in support of his application for leave.

(ii) The judgment of the High Court

13. In her judgment, the High Court judge noted that the application arose “out of a decision of the District Court of 26 July 2023”; para. 1 of the judgment. At para. 2, the High Court judge goes on to refer to the District Court Order of July 2023, which (as the trial judge noted) itself refers to a hearing on 28 June 2023.

14. The precise terms of the District Court Order are set out in the High Court judgment.

15. At para. 4, the judgment of the High Court states:-

“After the decision of the District Court was handed down, the Applicant appealed to the Circuit Court.”

16. In fact, in the hearing before us Mr. Carroll seems to suggest that he had entered some sort of pre-emptive appeal against the District Court Order. Be that as it may, both the High Court and this Court are invited to proceed on the basis that there has, in fact, been an appeal of the District Court decision.

17. At para. 5, the High Court judgment records Mr. Carroll’s position that he wishes simultaneously to appeal and to seek judicial review the District Court Order as the stay granted by the District Court had expired as of 20 September 2023, and that:-

“He says that he has not been in a position to extend or appeal that stay and that his hearing is unlikely to come on in the Circuit Court in Letterkenny before January 2024 and that leaves him in a vulnerable position in relation to the Order of the District Court, which directs him to vacate and give up possession of the property, in similar terms to the Determination Order made by the Residential Tenancies Board in 2021”; para. 5 of the High Court judgment.

18. It is of some significance, given the position taken by Mr. Carroll on the appeal, that the High Court judgment goes on as follows:-

“6. Before I return to that issue, I want to observe that there is a fundamental problem with the papers that the applicant has lodged. That is at least partially because when he brought this application for leave, the decision of the District Court of 26 July 2023 had not been handed down. The statement of grounds does not therefore identify the decision of the District Court as the subject of an order of certiorari. Instead it seeks various reliefs in respect of other matters, including

matters that relate to an assault case between the applicant and the landlord that has been heard, on the basis of what I have been told by the applicant in November of this year.

7. In those circumstances, the grounds that had been set out are completely irrelevant in relation to the challenge to the District Court decision since the District Court decision was not yet in being at the time the papers were lodged. There is no possibility of leave being granted on the basis of these papers as they do not identify why the applicant wishes to challenge the decision of the District Court or identify the District Court decision. If I was persuaded that this was a case where I should consider giving leave, I could of course adjourn the application and permit the applicant to amend his papers. But I am going to explain why I think that is not an appropriate course for the following reasons.”

19. Mr. Carroll was highly critical of the High Court judgment. With regard to para. 7 he said that this is *“something she cannot say”*. In a document headed *“Affidavit/legal submissions to file hearing of 1.2.24”*, and prepared for the hearing before this Court, Mr. Carroll sets out an email which he sent on 22 September 2023 to the High Court registrar claiming that portions of para. 7 and para. 8 of the judgment were *“entirely false”*. The suggestion is made that the trial judge had chosen *“to pretend”* that the September document was not before her at the time of the hearing of 20 September.

20. I will return to these complaints later in the judgment. However, it should be said at this point in time that the complaints are utterly without foundation.

21. The judgment goes on to set out the provisions of s.124 of the Residential Tenancies Act 2004 and, in particular, the broad jurisdiction on the part of the District Court *“to revisit the Determination Order when deciding whether or not enforce it”*; para. 10 of the judgment.

Given its broad jurisdiction, and given that there would be a full rehearing before the Circuit Court on appeal, the judge felt that an appeal would be more appropriate for Mr. Carroll than a judicial review. The reasons for this are encapsulated in para. 12 of the judgment:-

“It is also quite clear to me that the grounds upon which he wishes to challenge the District Court decision are wide ranging and they cover the entirety of the decision of the District Court. The applicant has not explained to me why the appeals are insufficient or inadequate or limited in any way and why judicial review, on the other hand, would be more suitable. Indeed, judicial review is a much more limited remedy, as the applicant would not be allowed, for example, to challenge the merits of the decision in judicial review. It is quite clear from his submissions and from his papers that he wishes to take issue with the merits of the District Court’s decision.”

22. In passing, it is worth noting that this paragraph of the judgment (like several other parts of the ruling) make it plain that the trial judge has engaged fully with the supplemental affidavit/submissions provided by Mr. Carroll. The trial judge could simply not have made this observation about Mr. Carroll’s unhappiness with the merits of the District Court decision without considering carefully his document dated 20 September 2023.

23. More substantively, the analysis of the trial judge as to the appropriateness of an appeal (as opposed to a judicial review) is quite unimpeachable. As we will see, the trial judge’s approach in this regard is not something with which Mr. Carroll took seriously took issue at the hearing of the appeal.

24. Having decided that an appeal was a more appropriate vehicle for ventilating Mr. Carroll’s unhappiness with the decision of the District Court, the trial judge went on to note that the only reason which Mr. Carroll had given as to why judicial review would be more

suitable was because of the fact that he had not been able to obtain a further stay on the Order of the District Court. The trial judge continued (at para. 14):-

“When I am deciding whether or not to exercise my discretion to refuse leave on the basis that there is a more suitable alternative remedy, I must look at all of the circumstances. An important part of the circumstances are, in my view, the fact that the Circuit Court appeal is an entirely suitable appeal for him, and indeed is much more suitable than judicial review. That is in my view an overriding consideration. The fact that it appears, insofar as I have been able to glean from the oral submissions of the applicant, that he may have difficulties or is experiencing difficulties in relation to an appeal against the stay, is effectively a matter for the Circuit Court in Letterkenny. Nothing is on affidavit in relation to that issue. I cannot second guess another court process. Matters must take their course before that court. I would note however, that the Order of the District Court has not been executed and we are now some three weeks past the elapse of the stay. Nor has the applicant exhibited any correspondence in relation to the execution of the District Court Order.”

25. For those reasons, the application for leave was refused on two grounds. The first ground was that *“The papers don’t identify that the applicant is seeking an order of certiorari in relation to the decision of 26 July 2023, and they do not identify the grounds for so doing”*; para. 16 of the judgment.

26. In the same paragraph of her judgment, the trial judge went on to find that *“even if the papers were in order, the applicant has an adequate alternative remedy.”*

(iii) The appeal

27. The grounds of appeal are lengthy and unfocused. They begin (at para. 1) requesting that *“improvement of these grounds... be allowed before substantive hearing of a Barrister’s assistance be obtained.”* They continue (at para. 2) describing the events of 17 January 2021 which resulted in a *“2 way Assault case ongoing in Dungloe DC set for Final Hearing 9.11.23.”* The grounds of appeal continue over several pages setting out Mr. Carroll’s complaints over a range of issues. They include a range of allegations which are simply unfounded. For example, the District judge assigned to hear the enforcement case is described as an *“attack”* judge. The trial judge in the High Court was not *“going to accept Leave or grant stay, probably influenced by [another judge] or Regr.”* It is also claimed that the trial judge *“ignored fresh affidavit for 20.9.23 hearing under her nose...”*. There is simply no evidence whatsoever for these unpleasant allegations and I therefore find them to be completely baseless and without merit. As noted, the trial judge carefully considered the information contained in the 20 September 2023 document, so to assert that it was *“ignored”* is simply untrue. At one stage during the hearing of the appeal, Mr. Carroll was asked what evidence there was for another of his disturbing allegations. This is his assertion that the landlord and tenant Enforcement Proceedings should have been summarily dismissed, but that the District judge did not do so *“simply because president of DC’s office was annoyed at refusal requests and instructed him to get Appellant come what may.”* Mr. Carroll’s response to the request for the evidence underpinning this quite serious allegation was meandering, incoherent and unconvincing.

28. It may be considered preferable simply to ignore allegations such as those made by Mr. Carroll. In some cases, that may be the appropriate course of action. However, this sort

of groundless abuse of members of the judiciary has now become such a feature of litigation that it is necessary (at least on occasion) to call it out for what it is.

29. While I have carefully considered the entirety of the contents of the notice of appeal, it was extremely helpful that at the hearing of the appeal Mr. Carroll summarised the two essential complaints he has about the judgment of the High Court. The first is that he believes that the trial judge was wrong in saying that his papers were not in order and did not take into account events subsequent to 5 June 2023. The second is a concern that he needs leave to seek judicial review in order to obtain a stay on any action being taken on foot of the District Court Order of July 2023.

(iv) Decision

30. I will now deal with the first of Mr. Carroll's complaints. He has simply misunderstood the comments of the trial judge when she said, on a number of occasions, that his papers were not in order. She was not, in these portions of her judgment, ignoring the fact that Mr. Carroll had told her that the hearing in the District Court proceeded in June, that an order had been given in July, and that he now wished to have that order quashed. That was set out clearly in his September 2023 document. However, the trial judge was quite correct in saying that the statement of grounds were, as of 20 September 2023, hopelessly outdated. These were the papers which would have to be amended to reflect both the actual reliefs which Mr. Carroll was seeking as of September 2023, and the grounds for those reliefs. The trial judge was therefore quite correct in her comments about the form of the proceedings as they stood at the time of the application before her. With regard to the substance of Mr. Carroll's complaints, she was clearly completely aware of those and took them into account in her judgment.

31. Mr. Carroll's first ground of appeal therefore fails.

32. The second issue of concern to Mr. Carroll is the question of the stay. At the hearing of this appeal, Mr. Carroll presented to us a letter sent by the solicitors for the landlords on 26 July 2023 which indicated that (in the light of the District Court Order) on the expiry of the stay the landlords would take steps to enforce that order. Notably, there was no threat that the landlords would (as they had in the past) break locks and seek to forcibly re-enter the premises themselves. On the contrary, it was stated that the landlords would make application to the County Registrar or to the Local Sheriff for the purpose of procuring enforcement of the order for possession after the stay expired. Quite properly, the trial judge placed emphasis on the fact that no steps had been taken to enforce the order three weeks after the stay had elapsed. That was the situation when she heard the application on 20 September 2023. Some months later, this remains the case. When asked by this Court whether any steps had been taken by the landlords to enforce the order notwithstanding the fact that the stay had expired in late August of last year, Mr. Carroll could not identify any such steps.

33. In addition, it became apparent at the appeal hearing that Mr. Carroll had not brought any motion in the Circuit Court seeking to extend the stay. While inevitably it will take some time for the hearing of his substantive appeal to get on, it must be possible for the Circuit Court to accommodate within a reasonable time any motion brought by Mr. Carroll seeking an extension of the stay on his removal from his home.

34. Whether or not any such motion succeeds, in deciding this appeal the question for this Court is whether or not the trial judge exercised her discretion in a way that should be reversed. In my view, the trial judge did not exceed the legitimate exercise of her discretion in coming to the view that an appeal was a more suitable alternative remedy, and that the possible difficulties in relation to the obtaining of a stay from the Circuit Court “*is not*

sufficient to tip the balance in [Mr. Carroll's] favour as to persuade [her] to grant leave"; para. 15 of the judgment.

35. Neither of the grounds of appeal agitated by Mr. Carroll at the hearing justify the overturning of the High Court order. For the sake of completeness, I should note that (in his notice of appeal) Mr. Carroll recast the reliefs which he wanted the court to grant. At the time of the notice of appeal, the following reliefs were sought:-

"2. Also to stay the assault case, as initial JR, until Forensics provided.

3. Discovery under RSC see Order 31 or as directed for Forensics on Spade/Rocks and Leixlip statements landlords might have made to police Feb 21...."

36. As I have set out earlier in this judgment, certain orders were sought in respect of disclosure and the ordering of the assault cases in the original statement of grounds filed in June 2023. The seeking of these reliefs was not considered in the High Court judgment. The extent to which these were pressed, or sought at all, by Mr. Carroll at the hearing before the High Court is unclear. However, in his affidavit/legal submissions for the appeal hearing Mr. Carroll concluded:-

"It is respectfully requested that Court reserves its Judgment until results of assault case are available, this was initially requested before it went ahead 26.6.23 when JR23/637 was filed 7 June 23."

37. Asked about this at the hearing of the appeal, Mr. Carroll confirmed that he wished this Court to reserve its judgment until the assault case proceeds later this month. Mr. Carroll told the Court that the assault case is listed, on a peremptory basis, for the 12th of February 2024. An earlier listing was vacated, we were told, because at the last minute Mr. Rowland was unavailable to attend because he had contracted Covid.

38. Seeking orders for discovery or forensics in respect of an assault case, and subsequently requesting the court not to deliver its judgment until after the trial of the assault charges has been held, makes no sense. This strongly suggests that Mr. Carroll is not seriously seeking this discovery or that these forensics be ordered, at least by this Court. If they were truly needed for the hearing of the assault case, he would not ask us to reserve judgment until after the trial of the assault allegations has taken place. In any event, there is nothing in the judgment of the High Court to suggest that any basis for the seeking of those orders before that court was in fact advanced by Mr. Carroll at that time. Equally, during the course of the hearing before this Court Mr. Carroll did not provide any coherent basis for orders of this type in the circumstances of this case.

39. I would dismiss the appeal in its entirety. Given that these proceedings have not involved the participation of any other party, there is no issue of costs to be decided by this Court.

40. Whelan and Burns JJ agree with my judgment.