APPROVED
NO REDACTION NEEDED

THE COURT OF APPEAL

CIVIL

Appeal Number: 2024/195

Neutral Citation Number [2025] IECA 17

Allen J.

BETWEEN/

V.B.

APPLICANT/APPELLANT

- AND –

THE CHILD AND FAMILY AGENCY

RESPONDENT

EX TEMPORE JUDGMENT of Mr. Justice Allen delivered on the 23rd day of January, 2025

1. This is an appeal by Ms. V.B. – who is unrepresented – against an order made by the High Court (Gearty J.) pursuant to O. 28, r. 11(b) of the Rules of the Superior Courts – the slip rule – correcting a clerical error in the order made by her on 14th February, 2024.

2. The Court of Appeal ordinarily sits in divisions of three judges. However, s. 7A of the Courts (Miscellaneous Provisions) Act, 1961 – which was inserted by s. 8 of the Court of Appeal Act, 2014 – was amended by s. 111 of the Courts and Civil Law (Miscellaneous Provisions) Act, 2023 which inserted a new sub-section 6A.

3. Section 7A(6A) now allows certain appeals to be heard and determined by the President of the Court of Appeal sitting alone or by such other judge of the Court of Appeal sitting alone as may be nominated by the President of the Court of Appeal. Those appeals which may be heard and determined by a single judge of the Court of Appeal are listed in s. 7A(6B) and include, in para. (c) an appeal against an order made pursuant to the slip rule.

4. This, as I have said, is an appeal against an order made under the slip rule and I have been nominated by the President of the Court of Appeal to hear and determine it as a judge of the Court of Appeal sitting alone.

5. It is important that I should draw attention to s. 7A(6C) of the Act if 1961. This provides that where a judge nominated by the President of the Court of Appeal under s. 7A(6A)(b) hears an appeal under sub-s. (6A) and it appears to him or her that it is in the interests of justice that the appeal be heard by a division of three judges, he or she shall refer the appeal for hearing by such a division. Thus, the assignment by the President of the Court of Appeal of a single judge is, in a sense, provisional and the nominated judge must consider whether it is in the interests of justice that the appeal be referred for hearing by a division of three judges.

6. In the ordinary way the books of appeal were lodged in the Court of Appeal Office and sent to me and I read the papers. Before I sat this morning, I carefully considered whether this was an appeal that should be heard by a division of three judges and was of the view that it was not. On the papers, the appeal appeared to me to be one which was procedurally rather tangled but in which the substantive issue was clear and straightforward.

7. However, I do not understand the power – and duty – to refer the appeal to a division of three judges to be exhausted when the single judge sits to hear such an appeal. Rather, I understand s. 7A(6A)(b) as entitling – and requiring – a single nominated judge to refer the appeal to a division of three judges if appears to him or her at any time before he or she has

determined the appeal that it is in the interests of justice to do so. Having heard the oral submissions, I am firmly of the view that this it would not be in the interests of justice that this appeal be referred to a division of three judges and I will determine it.

8. On 13th December, 2021 Ms. V.B. filed judicial review papers in the Central Office of the High Court. The statement of grounds and grounding affidavit named as respondents Tusla, the Child and Family Agency; the Legal Aid Board; the Office of the Ombudsman; and the Commissioner of An Garda Síochána. The statement of grounds and the grounding affidavit were identical. The first two and a half pages listed eighteen reliefs, and the grounds were set out in the following twelve pages. The list of reliefs was lettered A to R. The substance of the application is not material for present purposes, but it is useful to recall that Ms. V.B. set out her grievances under a number of headings: Courts Service – Mallow District Court; Courts Service – Cork Circuit Court; Legal Aid Board; The Office of the Ombudsman; the Minister for Education; District Court judiciary; Circuit Court judiciary; and significant issues for necessary judicial review.

9. I pause here to note that O. 84, r. 20(1) of the Rules of the Superior Courts provides that no application for judicial review shall be made unless the leave of the court has been obtained. Thus, strictly speaking, those identified in the title to the statement of grounds and grounding affidavit as respondents were not respondents but proposed respondents.

10. The leave application was assigned a record number 2021 No. 1063 JR and was logged into the system as an application in which Ms. V.B. was the applicant and Tusla, Child and Family Agency; Legal Aid Board; Office of the Ombudsman; and the Commissioner of An Garda Síochána were respondents.

11. Ms. V.B.'s *ex parte* leave application was opened before the High Court (Meenan J.) on 17th January, 2022 and adjourned to 7th February, 2022 and then to 14th February, 2022. By order made on 14th February, 2022 Meenan J. gave liberty to Ms. V.B. to file and serve a

notice of motion solely on the Child and Family Agency seeking leave to apply by way of an application for judicial review solely for the reliefs set out at paras. C and D of her statement of grounds. Those reliefs were orders of *certiorari* to quash five Circuit Court orders and 31 District Court orders which had been obtained by the Child and Family Agency, and so the Child and Family Agency was the correct and only respondent. As I will come to, the application insofar as the Legal Aid Board was adjourned for a week.

12. On 21st March, 2022 Ms. V.B. issued her notice of motion. Correctly, the only reliefs claimed were those set out at paras. C and D of the statement of grounds and the notice of motion was directed only to the Child and Family Agency – as well, of course, as the Registrar of the High Court. The title to the notice of motion suggested that as well as Tusla, the Child and Family Agency, the Legal Aid Board, the Office of the Ombudsman and the Commissioner of An Garda Síochána were respondents and showed the Minister for Education as a notice party but the motion was served only on the Child and Family Agency and defended only by the Child and Family Agency. Incidentally, the replying affidavit filed on behalf of the Child and Family Agency on 3rd May, 2022 showed the Child and Family Agency as the only respondent, as did further affidavits of Ms. V.B. filed on 6th May, 2022 and 30th May, 2022. On 10th June, 2022 a second replying affidavit was filed on behalf of the Child and Family Agency. The copy of that affidavit in the books filed by Ms. V.B. on this appeal appears to have been altered. The printed affidavit identifies the Child and Family Agency as the only respondent but someone has added in manuscript the word *"Tusla"* and *"Legal Aid Board, Office of the Ombudsman"* and *"Commissioner of An Garda Síochána"*. These words were clearly added after the affidavit was sworn because the changes were not initialled either by the deponent or the practising solicitor before whom it was sworn.

13. In due course, Ms. V.B.'s motion was heard by the High Court (Gearty J.) who delivered a written judgment on 8th February, 2024. The title to that judgment correctly

showed Tusla, the Child and Family Agency, as the only respondent. For the reasons given, Ms. V.B.'s leave application was refused. The order of the High Court consequent on that judgment was made on 14th February, 2024. The title to the order as drawn suggested that Tusla, the Child and Family Agency; the Legal Aid Board; the Office of the Ombudsman; and the Commissioner of An Garda Síochána were respondents and the Minister for Education a notice party and recited that the court had heard the applicant and counsel for the *"first named* "respondent and refused the application with costs to the *"first"* respondent. Strictly speaking the title was wrong and the reference to Tusla, the Child and Family Agency as the *"first"* respondent was wrong, but it was absolutely clear from the body of the order – as was the fact – that no one other than Ms. V.B. and the Child and Family Agency had anything to do with the application and order.

14. On 13th March, 2024 Ms. V.B. filed a notice of appeal to this Court against the judgment and order of the High Court (2024 No. 72). The title to the notice of appeal suggested that the Legal Aid Board, the Office of the Ombudsman, and the Commissioner of An Garda Síochána were respondents – as well as Tusla, the Child and Family Agency – and that the Minister for Education was a notice party, and the notice of appeal was addressed to all four *"respondents"*. It was served on all four *"respondents"* and the Minister for Education.

15. The notice of appeal (2024 No. 72) had a return date of 12th April, 2024. At the directions hearing before the Court of Appeal counsel instructed by the Chief State Solicitor appeared to say that neither the Garda Commissioner nor the Minister were properly parties to the appeal, but Ms. V.B. insisted that they were. Because the appeal concerned children it was given a hearing date for 11th July, 2024 on the basis that any doubt – if any – as to the status of all those upon whom the notice of appeal had been served other than the Child and Family Agency would be dealt with by a slip rule application to the High Court. In the event,

the slip rule application was made by the Garda Commissioner and Minister for Education who, in truth, had never had anything to do with the proceedings, rather than by the Child and Family Agency.

16. On 20th June, 2024 the Chief State Solicitor filed a motion in the Central Office of the High Court on behalf of the Garda Commissioner and the Minister for Education to correct the clerical errors in the order of 14th February, 2024 by removing the Commissioner as respondent and removing the reference to the Minister as a notice party. That notice of motion was directed to, and served on, Ms. V.B., the Child and Family Agency, the Legal Aid Board and the Office of the Ombudsman and was grounded on an affidavit of Mr. Mark Nother, an assistant principal officer in the Department of Education, and Inspector Anthony Harrington, an Inspector of An Garda Síochána.

17. Mr. Nother exhibited a letter of consent dated 14th June, 2024 from a firm of solicitors on behalf of the Legal Aid Board and letters of consent dated 17th June, 2024 from the Child and Family Agency and the Office of the Ombudsman. He also exhibited correspondence from the Department of Education to Ms. V.B. and the principal registrar of the High Court in March and April, 2024 in which the Minister was trying to understand why a notice of appeal had been served on her and by which Ms. V.B. was asked to consent to the correction of the title to High Court order. Inspector Harrington exhibited a copy letter dated 14th June, 2024 from the Chief State Solicitor to Ms. V.B. seeking her consent to the correction of the High Court order to remove the reference to the Garda Commissioner.

18. The motion was heard by the High Court (Gearty J.) on 2nd July, 2024 in the presence of the applicant and – in the order in which the appearances were taken – of counsel for the Minister for Education and the Garda Commissioner; counsel for the Legal Aid Board; counsel for the Office of the Ombudsman; and counsel for the Child and Family Agency. Gearty J. said that the title to the written order did not reflect the order which she made –

which, she said, was perfectly clear throughout the judgment – and that she must correct the written order.

19. By order of the High Court dated 2nd July, 2024 it was ordered pursuant to O. 28, r. 11(b) – the slip rule – that the title of the order made on 8th February, 2024 and perfected on 14th February, 2024 be corrected to reflect the correct title of the proceedings, being V.B. and Tusla, the Child and Family Agency. That order was perfected on 3rd July, 2024.

20. The purpose of the slip rule application was to remove any doubt there may have been in Ms. V.B.'s mind as to the scope of her appeal in 2024 No. 72 in advance of the date fixed for the hearing of that appeal. That appeal was heard by this Court on 11th July, 2024 and, for the reasons given in an *ex tempore* judgment delivered by Binchy J. (with which Pilkington J. and I agreed) (the transcript of which was later published at [2024] IECA 192) was dismissed.

21. On 31st July, 2024 Ms. V.B. filed a notice of appeal – 2024 No. 195 – against the judgment and order of the High Court (Gearty J.) of 2nd July, 2024. She named as respondents Tusla, Child and Family Agency; Legal Aid Board; Office of the Ombudsman; and Commissioner of An Garda Síochána, and the Minister for Education as notice party: and served them all. That is the appeal now before the Court.

22. The notice of appeal listed twenty grounds over just short of three pages and eleven paragraphs in about a page and a half under the heading *"the legal principles related to each numbered ground and how that/those legal principle(s) apply."*

23. The grounds of appeal were clearly misconceived.

24. Ms. V.B. expressed dissatisfaction with the order made by Meenan J. on her initial application and the progress of so much of that application as Meenan J. allowed to proceed. The suggestion that *"at no time since applicant filed this case in Central Office in December 2021 did any respondent or notice party make any request to come off record"* fails to

recognise that – other than the Child and Family Agency – there was no respondent or notice party.

25. The notice of appeal sought to make much of the fact that those upon whom the notice of appeal had been served had attended at the Court of Appeal directions hearings; without acknowledging that the purpose of their appearance was to protest that they ought never to have been served.

26. There are a number of gratuitous and obviously baseless insults directed to those misdescribed by Ms. V.B. as respondents, as well as Meenan and Gearty JJ. The suggestion that the *"respondents"* had colluded together to change the High Court order is based on a fundamental misunderstanding of the slip rule. The object of the motion issued on 20th June, 2024 was not to change the High Court order but to correct a clerical mistake in the order as drawn so that it would correctly reflect the order made by the High Court judge.

27. One of Ms. V.B.'s complaints is that the High Court judge used random letters in relation to her in the title to her judgment. This was clearly done to anonymise a judgment delivered in a case which had been heard in the High Court – as the appeal in 2024 No. 72 was heard in this Court – on the basis that the publication or broadcast of any matter that would or could identify the applicant had been prohibited.

28. Ms. V.B.'s proposition that the effect of the High Court order of 2nd July, 2024 was to interfere with or otherwise undermine her appeal to this Court is similarly misconceived. The effect of the order under appeal was not to remove any respondent to Ms. V.B.'s appeal but to correct a mistake in the High Court order. The moving parties' object was not to remove them as respondents to the appeal but to put beyond any conceivable doubt – and I do not believe that there was any doubt – that they ought not to have been served with the notice of appeal. From the point of view of the High Court judge – as the judge made clear – the slip rule application brought to the judge's notice that a clerical error had been made in drawing

up the order; which error needed to be corrected. The formulation of the notice of motion to *"remove the Commissioner of An Garda Síochána as a respondent"* and to *"remove reference to the Minister for Education as a named party"* was, perhaps, inelegant but the substance of the application was perfectly clear.

29. Each of the Child and Family Agency, the Legal Aid Board, the Office of the Ombudsman, and, jointly, the Garda Commissioner and the Minister for Education filed extensive respondents' notices traversing the grounds of appeal. I have to say that in reading the papers I wondered whether they might simply have said that the order under appeal simply corrected an obvious error in the order of 14th February, 2024, which did not reflect the order pronounced by the judge; and left it at that: but the submissions are the responsibility of counsel who are entitled to make such arguments as they deem necessary.

30. In her written submissions filed on 12th December, 2024 Ms. V.B. first presaged an application for a transcript of the DAR of the directions hearings on 25th October, 2024 and 6th December, 2024. It was by no means clear why she thought that she might need these transcripts and there was no reference to them in the course of the oral hearing this morning. At the first directions hearing the list judge gave routine directions as to the exchange of written submissions and the filing of the books of appeal. At the second directions hearing the list judge extended the time for the filing of Ms. V.B.'s submissions and the books of appeal.

31. The first substantive submission is that the order of 2nd July, 2024 jeopardised the hearing of appeal 2024 No. 72. As I have explained, this is based on a misunderstanding of the nature of the application to the High Court and the effect of the order then made. Ms. V.B. is quite correct to say that the High Court cannot interfere with the jurisdiction of the Court of Appeal but profoundly mistaken in her belief that it did. While any error of law made by a High Court judge is something that can only be corrected by the Court of Appeal,

an error which has the effect that a High Court order does not accurately record the order made by the judge may be corrected by the High Court judge – and not by the Court of Appeal.

32. The second point is that it is said that there are two High Court orders with different titles and a judgment with yet another title. The title shown in the order as originally drawn was wrong and needed to be corrected and was corrected. The corrected order shows what corrections were made and – by the indorsement of the registrar in the margin – the authority of the order of 2nd July, 2024 pursuant to which the corrections were made. The difference between the corrected order and the judgment is that the order shows Ms. V.B.'s name whereas the judgment identifies the applicant by randomly selected initials. In circumstances in which the judgment of 8th January, 2024 was marked by the judge *"Do not Publish on Website"*, I am not entirely sure why it was also anonymised but it is perfectly usual – and necessary before publication – to use a pseudonym to avoid disclosing the identity of a party. There is nothing in this point. Ms. V.B. is mistaken in her belief that the judge made two orders on 2nd July, 2024. The second copy order in the book is the order made by Gearty J. on 2nd July, 2024. The first copy order in the book is the corrected order of 14th February, 2024: which shows, in the margin, that it was corrected pursuant to the order of 2nd July, 2024.

33. The third point is a wholly improper allegation that the High Court judge somehow in a way which is entirely unspecified breached the Judicial Council Rules and the Bangalore principles.

34. The fourth point is that Ms. V.B. now asks this Court to overturn the District Court and Circuit Court orders which were the subject of her leave application, the order of the High Court refusing leave, and the order of this Court dismissing her appeal against that

order. Apart altogether from the fact that this application is misconceived, it is entirely unrelated to the order under appeal.

35. In her written and oral submissions, Ms. V.B. rehearsed at considerable length her complaints as to the District Court and Circuit Court orders and sought to revive her complaints in relation to the Child and Family Agency, the Garda Commissioner, the Legal Aid Board, the Office of the Ombudsman and the Minister for Education which were set out in her statement of grounds and in respect of which leave was refused by Meenan J. on 14th February, 2022. The refusal of leave to apply for judicial review has nothing to do with the order under appeal.

36. In the course of her oral submissions this morning, Ms. V.B. referred to another appeal 2022 No. 128 in which, she said, she had been successful; and in which, she said, the respondents to the appeal had been roasted by a division of this Court presided over by Faherty J. That appeal was not referred to in the grounds of appeal or in the written submissions but for completeness I asked the registrar for a copy of any order.

37. Ms. V.B. did have an appeal 2022 No. 128. It was a motion filed on 30th May, 2022 for an extension of time appeal against the order of the High Court (Meenan J.) made on 21st February, 2022 by which he refused Ms. V.B.'s application for leave to apply by way of judicial review for orders of mandamus directed to the Legal Aid Board. It will be recalled that on 14th February, 2022 Meenan J. dealt with the application in respect of each of the proposed respondents save the Legal Aid Board and put back that part of the application for a week – presumably for further consideration. On 14th November, 2022 this Court (Faherty, Binchy and Pilkington JJ.) extended the time for the appeal and gave Ms. V.B. leave to proceed by plenary summons for the reliefs sought against the Legal Aid Board. As between Ms. V.B. and the Legal Aid Board, the costs were reserved. However, Ms. V.B. was ordered to pay the costs of the Child and Family Agency and the Office of the Ombudsman who

appear to have been joined to an application which did not concern them. If anything, that appeal and order underlined that the Legal Aid Board was not party to the appeal in 2024 No. 72.

38. Having made the order which she did on 2nd July, 2024 to correct the order of 14th February, 2024, the High Court judge went on to make an order that Ms. V.B. pay the costs of the motion. Peculiarly, the title to that order – drawn after the judge had made her order for the correction of the title but before the corrected order was drawn – also shows Tusla, The Child and Family Agency, the Legal Aid Board, the Office of the Ombudsman and the Commissioner of An Garda Síochána as *"respondents"* but does not show the Minister for Education as a notice party. The order recites a motion by counsel for the fourth named defendant *(sic.)* and the notice party, and that the court heard counsel for the fourth named respondent and the applicant in person and – as far as costs are concerned – ordered that *"the respondents"* recover their costs of and incidental to the motion and order, such costs to be adjudicated in default of agreement. It goes on to identify Ms. V.B. (by her name) as *"Applicant in person"* and *"Chief State Solicitors Office, Solicitors for the Respondents."*

39. The very existence of the slip rule recognises that mistakes will be made in perfecting orders but I feel compelled to say that it was unfortunate that the order of 2nd July, 2024 – to correct an earlier mistaken order – was not all that it might have been. In fairness to the registrar who drew the order, it largely followed the inelegance in the drafting of the notice of motion.

40. As to the costs order made by the High Court, Ms. V.B.'s submission fails again to understand the nature of a slip rule application. Doing the best I can, the submission is that she should not be responsible for the costs occasioned by the error in the drawing of the order of 14th February, 2024. It is right in principle that a litigant should not have to bear the consequences of an error made by the system. The insuperable difficulty for Ms. V.B.,

however, is that the costs which she was ordered to pay were not occasioned by the drafting error but first, by Ms. V.B.'s attempt to seize upon and exploit an obvious mistake, and then her dogged opposition to the correction of the mistake.

41. As I read the papers, I was inclined to wonder why the slip rule application had not been made by the Child and Family Agency – the only other party to the substantive proceedings – rather than by the Minister for Education and the Garda Commissioner and I explored this with counsel at the hearing of the appeal. Counsel agreed that the application might have been brought by the Child and Family Agency and that that might have reduced the costs. However, Ms. Fay, for the Minister and the Commissioner, argued that by the service on them of the notice of appeal and Ms. V.B.'s insistence at the directions hearing that they had properly been served, Ms. V.B. created necessity for them to put their position beyond doubt. Pointing to para. 9 of the notice of appeal in 2024 No. 72, she submitted that it was clear that Ms. V.B. knew that she had been confined by the High Court order of 14th February, 2022 to proceeding against the Child and Family Agency, only, and that by serving the notice of appeal on the Minister and the Garda Commissioner, Ms. V.B. sought to capitalise on a clear error in the title to the order. I accept that submission. If, perhaps, with the benefit of hindsight, the problem might have been addressed otherwise than in the way it was, I think that the Minister and the Commissioner were entitled to address it in the way in which they did.

42. Order 28, r. 11 provides that clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected without an appeal. Order 28, r. 11(a) allows this to be done by the registrar, with the approval of the judge, where the parties consent and provide a letter of consent. By O. 28, r. 11(b) where the parties do not consent, a court application on notice to the parties is required. In this case, Ms. V.B. was asked to provide a letter of consent to the correction of the order but refused to do so. It

was not the error in the High Court order but Ms. V.B.'s obstruction of the correction of that error which necessitated the High Court application on notice and so gave rise to the costs.

43. For these reasons, the appeal against the order of the High Court of 2nd July, 2024 must be dismissed.