



## THE COURT OF APPEAL

Neutral Citation Number [2020] IECA 316

Appeal No 2020/004

**Donnelly J.**

**Collins J.**

**Binchy J.**

**BETWEEN**

**EUGENIE HOUSTON**

*Plaintiff/Appellant*

**AND**

**WENDY DOYLE**

**PRACTISING UNDER THE STYLE OF WENDY DOYLE SOLICITOR**

*Defendant/Respondent*

### **RULING of the Court delivered on 18 November 2020**

1. This is the Court's ruling on costs consequent on the judgment of Collins J (with which the other members of the Court agreed) delivered on 22 October 2020. For the detailed reasons set out in that judgment, the Court:

- Dismissed Ms Houston's appeal from the Judge's refusal to recuse herself

- Dismissed Ms Houston’s appeal from the order dismissing the proceedings
  - Allowed Ms Houston’s appeal from the *Isaac Wunder* order and set aside that order
  - Dismissed Ms Houston’s appeal from the order striking out the joinder application
  - Affirmed the orders for costs made by the Judge
2. The Court has since received brief submissions in writing from all of the parties in relation to costs which it has considered carefully.
  3. Ms Houston was substantially unsuccessful in her appeals and, *prima facie*, Ms Doyle is entitled to an order for costs against her. However, Ms Houston did succeed in having the *Isaac Wunder* order set aside and she says that she is entitled to the costs of that aspect of the appeals.
  4. As Collins J explained in his judgment, the *Isaac Wunder* order made by the Judge was made of her own motion, at the end of her ruling on the two motions before the Court. The order was not sought by Ms Doyle and the possibility of such an order being made was not canvassed on her behalf at any point in the High Court hearing. Accordingly, she was not responsible for the making of that order.

5. However, Ms Doyle chose to oppose the entirety of Ms Houston's appeal, including her appeal against the *Isacc Wunder* order. Her written submissions to this Court stated she accepted that the Judge “*had the jurisdiction to make such an Order in the currency of the application and in the particular circumstances of how the hearing itself unfolded before the Court and the approach of the Appellant*” and asked this Court to affirm “*all Orders from the Court below*” (emphasis added). In his oral submissions, counsel for Ms Doyle indicated that his client did not “*demur from the Isaac Wunder order*” though emphasising that it had not been made at her request. Counsel did not make any further submissions on the *Isaac Wunder* issue.
  
6. In her response to Ms Houston’s appeal, Ms Doyle could have made it clear that she was not seeking to stand over the *Isaac Wunder* order and did not intend to oppose Ms Houston’s appeal to that extent. She did not do so, however. It may be that she felt constrained from doing so precisely *because* the order was made by the Judge on her own motion and/or because the scope of the order made by the Judge extended beyond the disputes between Ms Houston and Ms Doyle. Conversely, it may be that she was happy to have the benefit of the order and did not want to give it up voluntarily. But even if Ms Doyle had indicated that she was not opposing the appeal insofar as it related to the *Isaac Wunder* issue, it is likely Ms Houston would have addressed the issue in her submissions, and the Court would have had to address it in its judgment, in any event. The nature and scope of the order made by the Judge here was such that it arguably could not simply be set aside by consent. Some Court scrutiny would have been required, though the debate would certainly have been briefer. However – and significantly - that would not have had any material impact on the duration of the

hearing before this Court.

7. The principal order made by the High Court here was the order dismissing Ms Houston proceedings. This Court has dismissed Ms Houston's appeal from that order. In the Court's opinion, that is the "*event*" for the purposes of assessing what order for costs it is just to make here.<sup>1</sup> Ms Doyle is the successful party on the appeals. While the order should reflect the fact that Ms Houston succeeded in having the *Isaac Wunder* order set aside, it appears to the Court that, in all the circumstances, the *contra item* is limited. The Court does not consider that it would be just to make an order for costs in Ms Houston's favour. The making of a separate order for costs in favour of Ms Houston would increase the cost and complexity of the costs adjudication process. Furthermore, the likely practical effect of such an order would be to substantially negate the benefit of any order for costs made in favour of Ms Doyle. That would not be a fair outcome in the Court's view.
8. Weighing as best it can all of the competing interests and considerations, the Court considers that the just order is that Ms Doyle should recover 75% of her costs, such costs to be the subject of adjudication in default of agreement.
9. Tully Rinckey also seeks a limited order for costs against Ms Houston. Tully Rinckey obviously had an interest in the appeal from the order of the Judge that dismissed Ms

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<sup>1</sup> While section 169(1) of the Legal Services Regulation Act 2015 does not use the language of "*event*" (other than in the shoulder-note), Ms Houston has not suggested that the sub-section has materially changed the law or suggested that Ms Doyle is not presumptively entitled to the costs of the appeals in the circumstances here.

Houston's application for their joinder as co-defendants (and also directed a payment of costs in their favour). The firm did not participate in the hearing, as a result of directions given by this Court on 13 March 2020.

10. The Court considers that Tully Rinckey should recover the costs of attending at that directions hearing (including the costs of briefing counsel for that purpose). Absent agreement, the *quantum* of those costs will be a matter for the Legal Costs Adjudicator. The Court does not consider it appropriate to make any wider order for costs in favour of Tully Rinckey, having regard to its limited involvement in the appeals.
  
11. The final issue that arises as to the order to be made relates to a stay. Ms Houston has flagged her intention to seek leave to appeal to the Supreme Court (other than in relation to the *Isaac Wunder* issue). That is her entitlement and accordingly the Court consider it appropriate to grant a stay in the usual terms, that is to say (i) there shall be a stay on this Court's order (other than the part that sets aside the *Isaac Wunder* order made by the Judge) for 21 days from the date of perfection of the order; (ii) in the event that an application for leave is made by Ms Houston within that period, that stay will continue pending the determination of her application for leave; (iii) in the event that leave is granted, that stay shall continue until the final determination of the appeal, save as may otherwise be ordered by the Supreme Court.
  
12. In her submissions, Mr Houston makes a number of assertions about the effect of the High Court's ruling and/or the effect of this Court's decision on her appeals from that ruling. The detailed judgment of Collins J speaks for itself and the Court therefore does

not consider it appropriate to address these assertions. For the avoidance of doubt, however, the Court should make it clear that it does not accept the suggestion that Ms Houston did not have sufficient time to address the Court at the hearing of her appeals. The Court should also make it clear that it does not accept the suggestion that, in the course of the appeal hearing, Ms Doyle admitted to misleading the High Court. It was accepted on Ms Doyle's behalf that, with the benefit of hindsight, the fact that the order of Allen J had been stayed by this Court might have been mentioned to the Judge. That is as far as the discussion went. Ms Houston was also aware of the fact that a stay had been granted (that stay having been granted on her application) and of course was free to advance whatever arguments she considered appropriate by reference to it. In any event, the order made by Allen J was affirmed by this Court on appeal.

13. Accordingly, the Court orders as follows:

- Ms Doyle shall recover from Ms Houston 75% of her costs of the appeals, such costs to be subject to adjudication in default of agreement.
- Tully Rinckey shall recover the costs of attending the directions hearing on 13 March 2020 (including the costs of briefing counsel for that purpose), such costs to be subject to adjudication in default of agreement.
- All the orders made by this Court (save for the order setting aside the *Isaac Wunder* order made by the Judge), including the costs orders above, shall be subject to a stay in the terms set out in paragraph 11 above.

