



THE COURT OF APPEAL

Neutral Citation Number [2020] IECA 317

Record Number: 2018/253

High Court Record Number: 2016/955JR

**Noonan J.
Faherty J.
Binchy J.**

BETWEEN/

**DAVID MONGANS AND MARGARET LISA MONGANS
AND MARGARET LISA MONGANS AS MOTHER AND NEXT FRIEND OF DAVID MONGANS
(A MINOR),
MICHAEL JAMES MONGANS (A MINOR)
AND MARTIN MONGANS (A MINOR)**

APPLICANTS/RESPONDENTS

-AND-

CLARE COUNTY COUNCIL

RESPONDENT/APPELLANT

COSTS RULING of Mr. Justice Noonan delivered on the 20th day of November, 2020

1. The court delivered judgment in this matter on the 24th September, 2020 allowing the appeal of the appellant. As appears from the principal judgment, the appeal was solely concerned with the costs of the proceedings in the High Court, which had become moot. One of the primary issues that arose was whether the acceptance by the respondents of an offer of accommodation by the appellant when the matter came before the High Court in May 2018, rendering the proceedings moot, secured for them an advantage which justified the continuation of the proceedings beyond March 2017 when a similar offer had been made by the appellant, but refused by the respondents.
2. At para. 11 of the principal judgment, I took the view that the alleged advantage secured by the respondents by continuing the proceedings beyond March 2017 had never formed part of the respondents' pleaded case, nor did it form any part of the reasons given for refusing the offer in March 2017 as stated by the respondents' solicitors in correspondence. I concluded, for the reasons set out in the judgment, that there should be no order as to the costs of the proceedings in the High Court with the exception of the motion to amend brought by the respondents, which should be awarded to the appellant.

At para. 20, I expressed the view that as the appellant had been entirely successful in both the appeal and cross-appeal, it should be awarded its costs of the appeal. The court gave liberty to the respondents to file written submissions if they wished to contend for a different order. They have now done so and the appellant has responded.

3. In summary, the respondents' written submissions amount to little more than an attempt by them to reargue the merits of the appeal, by continuing to insist that they secured an advantage by the continuation of the proceedings. Lest there be any doubt that the respondents are directly challenging this court's conclusions in that regard, it is made clear at para. 18 of their written submissions: -

"The discussion in paras. 10 and 11 of the judgment does not sufficiently take into account the manner in which the court's record was corrected in this regard during the appellants appeal."

4. This proposition, amounting as it does to an impermissible challenge to the judgment of this court, is advanced in support of the contention that there should be no order as to the costs of the appeal and cross-appeal or an adjusted costs order granting some percentage benefit to the respondents. It seems to me that such a submission is to be deprecated for the reasons I have identified.
5. I am satisfied that there is nothing contained in the respondents' submissions herein that would warrant the court departing from the normal rule and the views already expressed at para. 20 of the principal judgment. I am therefore satisfied that the appellant is entitled to its costs of the appeal and the cross-appeal, such costs to include the costs of the recent written submissions on the issue of the costs of the appeal.
6. As this ruling is being delivered electronically, Faherty and Binchy JJ. have indicated that they are in agreement with it.