



THE COURT OF APPEAL
CIVIL

APPROVED

NO REDACTION NEEDED

Court of Appeal Record Number: 2023/156

High Court Record Number: 2004/1921P
Neutral Citation Number [2024] IECA 259

Noonan J.
Faherty J.
Meenan J.

BETWEEN/

COLM MURPHY

APPELLANT

- AND -

LAW SOCIETY OF IRELAND AND SIMON MURPHY

RESPONDENTS

-AND-

Court of Appeal Record Number: 2023/154

High Court Record Number: 2006/371SP

BETWEEN/

LAW SOCIETY OF IRELAND

APPLICANT/RESPONDENT

- AND -

COLM MURPHY

RESPONDENT/APPELLANT

-AND-

Court of Appeal Record Number: 2023/155

High Court Record Number: 2009/12SA

BETWEEN/

LAW SOCIETY OF IRELAND

APPLICANT/RESPONDENT

- AND -

COLM MURPHY

RESPONDENT/APPELLANT

-AND-

Court of Appeal Record Number: 2023/155

High Court Record Number: 2009/12SA

BETWEEN/

LAW SOCIETY OF IRELAND

APPLICANT/RESPONDENT

- AND -

COLM MURPHY

RESPONDENT/APPELLANT

-AND-

High Court Record Number: 2009/14SA

BETWEEN/

LAW SOCIETY OF IRELAND

APPLICANT/RESPONDENT

- AND -

COLM MURPHY

RESPONDENT/APPELLANT

JUDGMENT of Mr. Justice Charles Meenan delivered on the 31st day of October 2024

Introduction: -

1. This is yet another application in the long running litigation between the appellant (Mr. Murphy) and the respondents, who I shall refer to as the “Law Society”. Mr. Murphy is appealing a judgment given by the High Court (MacGrath J.) on 31 July 2019. This lengthy and detailed judgment, dismissing Mr. Murphy’s claim, was given following some 15 days of hearing in 2018.

2. Following the delivery of the judgment by MacGrath J. Mr. Murphy brought a “re-entry motion” which was in effect a *Greendale* type application. This application was dismissed by the High Court on 26 July 2021 ([2021] IEHC 848). This judgment is also under appeal. These appeals are but two of many which Mr. Murphy currently has awaiting determination by this Court. In addition, Mr. Murphy has, unsuccessfully, brought a number of applications to extend time to bring appeals from orders made by the High Court over a decade ago.

3. Before this Court were some six motions. Three of these motions concerned an application by Mr. Murphy to adduce further evidence on appeal and the other three motions were applications for discovery against the Law Society and persons who are not parties to these proceedings. One and a half days were allocated to the hearing of the motions which, as one might expect, generated a considerable volume of documentation with all the associated expense. As it turned out, the Court dealt with all the motions in less than half a day for reasons that do not reflect well on Mr. Murphy.

4. The motions to adduce further evidence on appeal were premised on a number of matters which Mr. Murphy characterised as “*new evidence*”. In fact, bar one matter, all this so-called “*new evidence*” had been the subject of an application heard by this Court some five months earlier. The judgment of the Court was given by Noonan J. on 12 December 2023 (“the December Judgment”), in the course of which Mr. Murphy’s application was refused.

5. Mr. Murphy represented himself at the hearing in December 2023 but was represented by solicitor and counsel for the hearing of these motions. Solicitor and counsel were unaware of the December Judgment until, in the course of opening the application, they were informed by the Court of the existence of same. Mr. Murphy had clearly not only failed to inform his legal advisors of the December Judgment but also failed to make any reference

to the judgment in affidavits filed in support of the motions after its delivery. Such behaviour on the part of Mr. Murphy, a former solicitor, is inexcusable.

6. On being given an opportunity to consider the December Judgment counsel on behalf of Mr. Murphy, correctly, limited the application to admit further evidence to the following:

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“An order admitting to the court the new evidence consisting of the transcripts and pleadings in McMahon v The Law Society of Ireland 2011/569JR and the Book of Pleadings and Transcripts in Solicitors Acts matter Law Society of Ireland v Dennis McMahon 2011/55SA being the documents recently received from James Cahill in response to an application for discovery.”

“Application to admit new evidence”: -

7. This application has to be seen against the background of the litigation between Mr. Murphy and the Law Society that has been ongoing for close to 20 years. The background is set out clearly and concisely in the December Judgment at paras. 2-21, which I gratefully adopt for the purpose of this judgment.

8. Mr. Murphy’s application concerns the involvement and actions of Solicitor X on behalf of the Law Society in various proceedings between himself and the Law Society. Mr. Murphy alleges serious wrongdoing on the part of Solicitor X, including knowingly relying on forged documentation. Indeed, Mr. Murphy made a criminal complaint against Solicitor X which he withdrew following an application by the Law Society to the High Court. The solicitor in question is referred to as *“Solicitor X”* as she was subsequently made a Ward of Court. Mr. Murphy has exhibited the proceedings entitled *Dennis McMahon v The Law Society of Ireland 2011/569 JR*. In these judicial review proceedings Mr. Dennis McMahon, solicitor, was seeking a number of orders including: -

“An order of certiorari of the decision of the Complaints and Client Relations Committee of the respondent’s society made on the 31st day of May 2011, directing the Law Society to make an application to the President of the High Court either ex parte or by way of notice of motion, depending on counsel’s advice, for whatever reliefs as may be advised by counsel.”

The complaint against Mr. McMahon concerned the manner in which he handled settlement monies received by him on behalf of a client. Solicitor X, who worked in the regulatory department of the Law Society, swore a number of affidavits in the proceedings concerning the issues between Mr. McMahon and the Law Society. It would appear that these proceedings were settled before reaching a conclusion. There is no information concerning the terms of the settlement.

9. Mr. Murphy has already applied to this Court that he be permitted to rely on the *McMahon* proceedings as being “*new evidence*” in his appeals. This application was rejected for the reasons set out in the December Judgment at paras. 56 – 65. He now seeks an order admitting as “*new evidence*” the transcripts of these proceedings. It is very difficult to see how, as the Law Society proceedings concerning Mr. McMahon have been held by this Court not to be new evidence, that such does not also apply to the transcripts of the proceedings. However, I will deal with the application as it is now made.

10. The principles to be applied to this application have been clearly set out in *Murphy v Minister for Defence* [1991] 2 IR 161: -

- “(i) The evidence sought to be adduced must have been in existence at the time of the trial and must have been such that it could not have been obtained with reasonable diligence for use at the trial;*
- (ii) The evidence must be such that if given it would probably have an important influence on the result of the case, though it need not be decisive;*

(iii) *The evidence must be such as is presumably to be believed or, in other words, it must be apparently credible, though it need not be incontrovertible.*”

11. In applying these principles, the first matter that has to be looked at is whether the transcripts “*could not have been obtained with reasonable diligence for use at the trial*”. On 12 October 2022 Mr. Murphy applied to the President of the High Court for the transcripts of the *McMahon* proceedings to be released to him. In the course of the hearing Barniville P. questioned Mr. Murphy as to his knowledge of the *McMahon* proceedings and when he acquired it. The transcript reads as follows: -

“The President: This is where you say – you are referring to the McMahon case and you are saying most of your information comes from the late John Condon who was embroiled in controversy. I just have two questions arising out of that. Mr. Condon died in April 2019?

Mr. Murphy: That’s correct, Judge.

The President: You don’t say when you obtained this information from him?

Mr. Murphy: It was before that. Okay, Judge, John Condon had his own issues with the Law Society and it involved a lot about Solicitor X.

The President: No, no, it says he was embroiled in controversy.

Mr. Murphy: Sorry, Judge.

The President: You already say that. What I’m asking you is what you don’t say is when the information came to you from the late Mr. Condon? Obviously it was sometime before April 2019.

Mr. Murphy: Yes. And actually, it was about the time of the McMahon trial. But Judge, John Condon has his own issues.

The President: So about 2015, January 2015?

Mr. Murphy: *Correct Judge, yes. In fact, I would say it was within weeks after the trial, Judge. And I'm not trying to bring that any further. It was back then, Judge, I accept that...*

This exchange between Barniville P. and Mr. Murphy clearly establishes that as early as 2015 Mr. Murphy had knowledge of the *McMahon* proceedings.

12. In the course of a supplemental affidavit Mr. Murphy deposed “*(W)hile I had some detail of the McMahon situation at the time of the hearing it is only since then that the more complete story has come to light.*” It is noteworthy that nowhere in the course of answering Barniville P.’s questions as to when he acquired his knowledge of the *McMahon* proceedings did Mr. Murphy give any information or detail to support this averment.

13. Taking the above and noting that Mr. Murphy failed to take any step to pursue his application for discovery from the Law Society as requested in May/November 2021 leads me to the inevitable conclusion that the transcripts of the *McMahon* proceedings could have been obtained by him for use at his trial in the High Court.

14. There is no information that the transcripts would yield evidence to Mr. Murphy that probably would have had an important influence on the outcome of his case. The height of the claim made by Mr. Murphy is that Solicitor X was involved in his proceedings, which arose out of matters that occurred in the years 2003 to 2008, and the *McMahon* proceedings which commenced some years later in 2011. It would appear that the health issues concerning Solicitor X occurred during or following the *McMahon* proceedings. There is no evidence that the health of Solicitor X affected, in any way, Mr. Murphy’s litigation. Indeed, as was noted in the December Judgment at para. 6, Mr. Murphy accepted the findings of the Solicitors Disciplinary Tribunal in April 2009 and his appeal was effectively a plea in mitigation that he be subjected to a lesser sanction than being struck off. Presumably, Mr.

Murphy's acceptance of the findings of the Solicitors Disciplinary Tribunal was based on his own knowledge of his own misconduct as a solicitor.

15. By reason of the foregoing I am refusing the application to admit, as new evidence in Mr Murphy's appeal, the transcripts of the *McMahon* proceedings.

Application for discovery: -

16. Mr. Murphy brought three motions for discovery but at the hearing only sought discovery of the following: -

“All documents relating to issues concerning the health of Solicitor X in relation to her employment with the Law Society of Ireland and her retirement from that employment on medical grounds including but not limited to; correspondence, internal memos, emails and medical reports and details of any absences for medical reasons and issues relating to her retirement”.

17. The health of Solicitor X was central to Mr. Murphy's application to admit new evidence in his appeal. Given the December Judgment and this judgment refusing the application, it could not be said that the documents he seeks to discover are relevant or necessary for his appeal.

18. In any event, this is an application for discovery in the course of an appeal, no application having been made at first instance. This, in itself, raises a serious issue.

19. An application for discovery was considered by the Supreme Court in the course of a *Greendale* application in *Student Transport Scheme Limited v The Minister for Education and Skills* [2021] IESC 22. In giving the judgment of the court Clarke C.J. stated: -

“3.3 --- In that context, I fully agree with the submissions principally made by counsel for Bus Eireann (but also adopted by counsel for the Minister), which suggested that an application for discovery in the context of a so-called Greendale motion could not

be determined on the same basis as an ordinary application for discovery made while a case was, for example, pending trial in the High Court. ---”

and:-

“3.7 It follows, in turn, that exposing a party who is a respondent to a Greendale motion to an order for discovery operates itself as a further impairment of the derived right to finality which the party enjoyed by reason of the final decision of this court. In those circumstances it could only be the case that discovery can be ordered when it had been demonstrated that same was absolutely necessary in the circumstances of the case in question.”

20. Although Mr. Murphy’s application before this Court, strictly speaking, is not a *Greendale* application, similar principles apply. I am satisfied that an application to admit new evidence for an appeal is invoking a jurisdiction of the Court which should only be exercised sparingly and in exceptional circumstances. Therefore, I am of the view that Clarke C.J.’s statement on granting discovery only where “*absolutely necessary*” is applicable to this application. Mr. Murphy has failed to establish that the discovery he seeks is necessary, let alone absolutely necessary.

21. By reason of the foregoing, I refuse the application for discovery.

Conclusion: -

22. I am refusing Mr. Murphy’s applications. It follows that as the Law Society have been “entirely successful” in opposing the motions, they are entitled to their costs. However, should Mr. Murphy wish to dispute this he may do so by filing written submissions (not more than 1,000 words) within 14 days of the date of the delivery of this judgment. The Law Society may have a further 14 days thereafter to deliver its submissions (again not more than 1,000 words).

23. As this judgment is being delivered electronically, Faherty and Noonan JJ. have authorised me to record their agreement with it.