



THE COURT OF APPEAL - UNAPPROVED

Appeal Number: 2017/603
Neutral Citation Number [2024] IECA 72

Costello J.
Haughton J.
Binchy J.

BETWEEN/

GERARD HARA HILL

**PLAINTIFF/
RESPONDENT**

- AND -

THOMAS DOYLE

**DEFENDANT/
APPELLANT**

Ruling on Costs of Mr. Justice Binchy delivered on the 9th day of April 2024

1. These proceedings concern a claim made by the respondent against the appellant in respect of unpaid taxes, specifically, VAT, PAYE and PRSI. Judgment was handed down by this Court on 12th July 2023. The appellant was unsuccessful, and the appeal was dismissed. In the judgment I expressed a provisional view as regards the costs of the appeal, i.e. that since the respondent had succeeded entirely with the appeal, he was entitled to an order directing the appellant to pay his costs, to be determined by adjudication in the absence of agreement. However the judgment further provided that, if the appellant wished to contend for a different order, he could do so by way of written submissions, but that in the event that he did so, and that he was unsuccessful with his submissions, then he was at risk

of incurring a further order in respect of any additional costs incurred by the respondent in replying to his submissions.

2. The appellant delivered submissions on 26th July 2023, arguing that the Court should not make a costs order against him. Firstly, he argued that this was a case in which he had made overpayments of his liabilities to tax, but was denied credit in respect thereof on account of the statutory provisions whereby any claims for credits or refunds must be made within a period of four years. The appellant submits that the retention of these overpayments by the respondent violates Article 43 of Bunreacht na hÉireann and amounts to an unjust enrichment of the respondent. He submits that the relevant provisions of the legislation being s.99 of the Value Added Tax Consolidation Act 2010 and s.865 of the Taxes Consolidation Act 1997 are contrary to Bunreacht na hÉireann and the principles of natural justice.

3. The appellant further submits that he had difficulties in conducting his appeal, which was required to be conducted remotely owing to the Covid-19 pandemic. However, as his broadband connection was unreliable, the appellant was required to attend for a “hybrid hearing”, whereby he attended in the courtroom by himself, with each member of the panel of judges and also the representatives of the respondent to the appeal attending remotely. The appellant claims that he was disadvantaged as a result of the hybrid hearing.

4. The appellant also submits that there was an inordinate delay in the delivery of the judgment on the part of this Court, and that this amounted to justice being denied to the appellant. For all of these reasons, the appellant submits, the court should not award costs against the appellant.

5. The respondent on the other hand submits that he has been “entirely successful” in the appeal, as that term is used in s.169(1) of the Legal Services Regulation Act, 2015, and, as is provided for by that section, he is therefore entitled to an order for his costs against the

appellant. The respondent relies upon the decision of Murray J. in *Chubb European Group v. The Health Insurance Authority* [2020] IECA 183, in which Murray J., at para. 19 provides a summary of the general principles applicable to the costs of proceedings as a whole, in light of the provisions as to costs in the 2015 Act. These principles are:

“(a) The general discretion of the Court in connection with the ordering of costs is preserved (s.168(1)(a) and 0.99, r.2(1)).

(b) In considering the awarding of costs of any action, the Court should ‘have regard to’ the provisions of s.169(1) (0.99, r.3(1)).

(c) In a case where the party seeking costs has been ‘entirely successful in those proceedings’, the party so succeeding ‘is entitled’ to an award of costs against the unsuccessful party unless the court orders otherwise (s.169(1)).

(d) In determining whether to ‘order otherwise’ the court should have regard to the ‘nature and circumstances of the case’ and ‘the conduct of the proceedings by the parties’ (s.169(1)).

(e) Further, the matters to which the court shall have regard in deciding whether to so order otherwise include the conduct of the parties before and during the proceedings, and whether it was reasonable for a party to raise, pursue or contest one or more issues (s. 169(1)(a) and (b)).”

6. The respondent submits that the within appeal is a civil proceeding in which the respondent has been entirely successful. No part of the appeal has been allowed. The respondent further submits that there are no particular features or circumstances of this case so as to justify any departure from the general rule that costs must follow the event.
7. As to the manner in which the appeal was conducted, the respondent submits that the appellant was accommodated by the Court in the conduct of the appeal by enabling him to present his appeal in the physical setting of the courtroom on account of the technical difficulties that he had with his broadband connection, and the fact that the judges hearing the appeal and the other party were present remotely is not a basis upon which to refuse the respondent an order for costs. The respondent submits that the appellant was not placed at any disadvantage.
8. Further, the respondent submits that any delay in the delivery of the judgment of the court cannot reasonably be relied upon by the appellant so as to deprive the respondent of his entitlement to an award of costs.

Decision

9. In his first argument, the appellant seeks to rerun the substantive point made by him in the appeal i.e. that he was not liable for the taxes claimed on grounds of earlier overpayments of tax. I have already given judgment on this issue, in respect of which the respondent was “entirely successful”. It is not open to the appellant to rely on an argument which he advanced without success, to support an argument that he should not have costs awarded against him.
10. As to his suggestion that he was in some way disadvantaged by presenting his case in a courtroom where both the judges and the respondent were attending remotely, this is simply not the case. The appellant was in no way disadvantaged. All members of the court had a full set of the appeal papers, and the appellant was able to present his appeal just as he

would have done had the respondent and the members of the court been present. The fact that the appeal was conducted by way of a “hybrid hearing” as indeed were many other appeals and other court hearings during the Covid-19 pandemic, is not a basis upon which to deny the respondent an order for costs to which he is otherwise entitled.

11. Similarly, no delay in the delivery of a judgment could ever be a reason to deny a party an order for costs, it having no bearing upon the merits of the appeal.

12. As the respondent submits, he has been entirely successful in the appeal, and the appellant has failed to identify any factor, whether it be in the conduct of the respondent or in the nature and circumstances of the case such as to cause the court not to make an award of costs in favour of the respondent.

13. Accordingly, it follows that the respondent should be awarded all of his costs incurred in connection with this appeal, including any additional costs incurred in the making of written submissions in reply to those of the appellant in relation to costs.

14. Since this ruling is being delivered remotely, Costello J. and Haughton J. have authorised me to confirm their agreement with it.