[2020] IEHC 32

THE HIGH COURT

JUDICIAL REVIEW

[2019 No. 314 J.R.]

BETWEEN

G.M. (GEORGIA), I.G., G.M. (A MINOR SUING BY HIS FATHER AND NEXT FRIEND G.M.) AND M.M. (A MINOR SUING BY HER FATHER AND NEXT FRIEND G.M.)

APPLICANTS

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE AND EQUALITY, THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 22nd day of January, 2020

1. The applicants are a husband and wife and their two children. They applied for protection and were refused. An oral hearing of their appeal was held by the International Protection Appeals Tribunal on 10th July, 2018. Ms. Aoife McMahon B.L. instructed by Niall J. Walsh & Co. Solicitors on behalf of the Legal Aid Board appeared for the applicants.

2. The applicants received notification dated 8th October, 2018 that the appeal had failed. On 9th October, 2018 their solicitor indicated that they should apply for review of the permission to remain refusal, pursuant to s. 49 (7) of the International Protection Act, 2015, and that advices were being sought from counsel regarding judicial review of the IPAT decision. No such judicial review was in fact instituted, so therefore, even bearing in mind that no particular details were given of whether or when a formal opinion of counsel was produced, inferentially on these particular facts the applicants' lawyers did not think there were grounds to do so.

3. After the s. 49 (7) review applications were refused, in February and March 2019, the applicants sought alternative legal advices. Having been told by their previous solicitors that counsel had advised against there being grounds for judicial review of the s. 49 (7) review decision, they were "advised" by immigration consultants THL Legal, who on this evidence appeared to have improperly prepared court documents although they are not solicitors. That resulted in a Garda complaint and other investigations. The applicants also tried a number of other alternative firms of solicitors. Deportation orders were made in March 2019 and the applicants eventually got in touch with their present solicitors, Trayers & Co., on 10th May, 2019. A statement of grounds was filed on 24th May, 2019 challenging not just the deportation orders but also the IPAT decision of the previous year.

4. While an extension of time was granted without prejudice at the leave stage, that is now challenged by Ms. Sarah-Jane Hillery B.L. on behalf of the respondents. The essential explanations for the delay in challenging the original IPAT decision are, firstly, that the applicants were advised that papers had been sent to counsel regarding a possible judicial review and there is no evidence that counsel had come back with a definite position, and secondly, that the applicants were not advised to seek a second opinion. That almost by definition is not a good and sufficient reason.

5. To accept such an explanation would be to drive a coach and four through the legislation because it would apply to vast numbers of applicants, and indeed with a little adjustment could be made to apply to *any* applicant where the lawyers decide not to seek judicial review of a given decision. That would allow the dormant claimant to jerk into life months or years later and complain that the delay was the responsibility of their lawyers and not themselves. The fact that a lay client is relying on lawyers is not a basis to second-guess the lawyers' decisions or approach (see, by analogy, *Flanagan v. Ring & ors.* [2016] IEHC 155 and *Forum Connemara Ltd. v. Galway County Local Community Development Committee* [2016] IECA 59), unless it is clear that the legal advice was negligent or wrong, as in *F.G. v. Child and Family Agency* [2016] IEHC 156. But there is nothing like that here. I should add that the fact that no written opinion of counsel has been exhibited means nothing, especially because nobody has done anything to clarify the matter. The applicants can't rely on their own failure to do so in order to claim an absence of evidence from which they inferentially can propel themselves over the burden of proof. The non-production of a written opinion doesn't mean that one doesn't exist, or even if it doesn't, that oral advices weren't produced, or even if they weren't, that the lawyers weren't very well aware of the time period for judicial review and didn't consider that grounds to act existed. If we were just talking about the period when the applicants became entangled with THL Legal, different considerations might well arise, but Mr. O'Halloran, counsel for the applicants, is focused on the wrong time period. The operative period for the challenge to the IPAT decision is 28 days from being notified of that decision; and as regards *that* period the applicants have nothing going for them in terms of an explanation for the delay. Certainly no default, still less one warranting an extension of time, has been shown by their solicitors or counsel at that time.

6. Accordingly, the extension of time to challenge the IPAT decision must be refused. As Mr. Gary O'Halloran B.L. concedes that the challenge to the validity of the deportation orders is entirely dependent on the IPAT challenge, that must also be dismissed, and the injunction discharged.