

**THE HIGH COURT
JUDICIAL REVIEW**

[2022] IEHC 654
[2021 767 JR]

BETWEEN

P.B.

APPLICANT

AND

THE CHILD AND FAMILY AGENCY AND TUSLA

RESPONDENT

AND

ALEX McCluskey GUARDIAN AD LITEM ON BEHALF OF THE CHILD N.B.

NOTICE PARTY

JUDGMENT of Mr. Justice Charles Meenan delivered on the 28th day of November,

2022

Background

1. The applicant is the mother of N.B. who was born on 20 January 2016. N.B. was first taken into the care of the first named respondent pursuant to an order made under s. 17 of the Childcare Act 1991 (the Act of 1991) by Dundalk District Court on 19 February 2016. This was an “interim care” order and was extended on numerous occasions. A “care order” was made pursuant to s. 80 of the Act of 1991 by Dundalk District Court on 11 July 2017.

2. The applicant appealed the order of 11 July 2017 to the Circuit Court. The appeal was heard at Dundalk Circuit Court over a period of three days, 18 and 19 May 2021, and 21 June 2021. The order of the District Court was affirmed in respect of N.B. until he reaches the age of eighteen.

Legal proceedings

3. It would appear that these Judicial Review proceedings were opened in Court on 22 December 2021. In addition, the applicant also sought relief pursuant to Article 40 of the Constitution in proceedings having record number 2021/1830SS. By order of the High Court, 22 December 2021, both the Article 40 application and the within Judicial Review proceedings were adjourned to 17 January 2022 to be heard together. Directions were given as to service of affidavits.

4. On 17 January 2022 the applicant was represented by solicitors and counsel. An application was made for a copy of the DAR of the Circuit Court proceedings and leave was sought to file additional affidavits. On 22 February 2022, the applicant's solicitor was granted leave to come off record and since then the applicant pursued these proceedings in person. At a hearing on 28 March 2022, this court determined that as the issues set out in the Article 40 application were a replication of the issues in the Judicial Review proceedings, the matter would proceed by way of an application for leave for Judicial Review.

5. On 4 April 2022, Mr. Alex McCluskey was appointed as guardian ad litem for N.B. and joined as a Notice Party in the proceedings. The respondent was on notice of the application for Judicial Review and opposed the application for leave. The guardian ad litem filed an affidavit sworn 10 June 2022 stating that no issue was being taken with the conduct and hearing of the appeal in the Circuit Court.

6. Following a further exchange of affidavits, this court directed that the applicant identify in writing, firstly, whether the application was brought within time and, secondly, the basis upon which the decision of the Circuit Court was being challenged by way of Judicial Review.

Submissions

7. Both the applicant and the respondent have furnished this court with written submissions. In her submissions, the applicant made various complaints that appear to relate to a GDPR issue and what is described as “identity theft”.

8. The submissions filed by the respondent maintain that the application herein is out of time and that no want of jurisdiction and/or a failure to follow the correct and fair procedures in the hearing before the Circuit Court have been identified.

9. I have considered the various submissions made by the applicant in both these proceedings and the Article 40 proceedings.

10. Order 84 r.21 (1) of the Rules of the Superior Courts provide:

“An application for leave to apply for judicial review shall be made within three months from the date when grounds for the application first arose.”

The decision which the applicant seeks to challenge was made on 21 June 2021. It would appear that these Judicial Review proceedings were only opened on 22 December 2021, some six months after the order was made. The applicant maintained in an affidavit that she did apply for Judicial Review and was granted leave on 10 August 2021. However, the respondent states that they have no knowledge of any such proceedings nor have they been provided with copy of any order made. Even if an application was made on 10 August 2021, it would appear that there was no return date, and those JR proceedings were not pursued.

11. It should also be said that the applicant has advanced no “good and sufficient reason” to extend time. In the circumstances, I am satisfied that the Judicial Review proceedings are out of time.

12. Even though the Judicial Review proceedings are out of time, I propose to deal with the application for leave (including the Article 40 application) on its merits.

13. In the course of numerous affidavits and submissions the applicant has failed to identify any want of jurisdiction, lack of fair procedures, or any legal infirmity in the manner in which her appeal was heard in the Circuit Court in May/June 2021. This failure has to be seen against the background that on numerous occasions this court has explained to the applicant, a lay litigant, what would be required to be granted leave to challenge the order of the Circuit Court. Notwithstanding this, the applicant has failed to set out any grounds whatsoever upon which this court could grant her leave to challenge the order of the Circuit Court of 21 June 2021.

14. In the course of her submissions in the Article 40 application, the applicant submitted that the Act of 1991 is unconstitutional, as it was never translated into Irish as is prescribed by the Constitution. If the applicant wishes to pursue this, she may do so by way of the issue of plenary proceedings, naming the appropriate parties.

Conclusion

15. By reason of the foregoing, I am dismissing both the Judicial Review proceedings and the Article 40 proceedings (Record number 2021/1830 SS). With regards to costs, my provisional view is that I will not make any order for costs in this matter. Should any party wish to seek an order for costs, they may do so by way of a written submission (no longer than 1,500 words) to be filed no later than the 9th day of December 2022. I will list this matter on the 19th day of December 2022 for the purpose of making final orders.