**APPROVED** **[2023] IEHC 728**

THE HIGH COURT

2022 161 SA

IN THE MATTER OF THE SOLICITORS ACTS 1954 TO 2015

AND IN THE MATTER OF ORLA ELLIS SOLICITOR, PRACTISING AS ELLIS & CO. SOLICITORS, STATION HOUSE, SAINT BRIGID'S STREET, BALLINAMORE, CO. LEITRIM

BETWEEN

LAW SOCIETY OF IRELAND

APPLICANT

AND

ORLA ELLIS

RESPONDENT

**JUDGMENT of Mr. Justice Garrett Simons delivered *ex tempore* on 13 November 2023**

1. This is an application for permission to take up a transcript of the digital audio recording of a matter which was heard before me during a vacation sitting in August 2022. The application is made on behalf of the respondent in the underlying

proceedings. It is moved by her solicitor, Mr. O'Dwyer, on the basis of an affidavit that he has prepared.

2. (By way of background, it should be explained that these proceedings first came before me on 18 August 2022 when I was sitting as the duty judge during the long vacation. The affidavit and exhibits had been emailed to the registrar the previous afternoon and I had an opportunity to read them in advance. At the call over on 18 August 2022, the parties indicated that orders could be made on consent. These orders included orders suspending the respondent from practice as a solicitor and directing that the funds held in the respondent's office account and client account be paid to the Law Society of Ireland for reimbursement to clients in anticipation of potential claims on the Law Society's compensation fund. Although the grounding affidavit was not read aloud in court, the solicitor acting for the Law Society did outline the nature of the allegations against the respondent, including an allegation that large amounts of fees were transferred without authority and that charitable bequests had not been paid. It was further indicated that the Law Society anticipated a large number of claims against the compensation fund. The deficit was estimated at approximately €566,000).

3. The respondent has a concern that the content of the grounding affidavit, which was before the court on 18 August 2022, has since been referred to in the print media notwithstanding that the affidavit and exhibits were not "*read aloud*" in open court. I use that phrase "*read aloud*" deliberately. The suggestion seems to be that there was something untoward in this, and that the material was provided to the media inappropriately. (In particular, it is alleged that the material had been "*leaked*" to the media). The respondent now seeks a copy of the transcript of the hearing on 18 August 2022 to demonstrate that the grounding affidavit was not read aloud. All I am being asked to do today is decide whether or not to release the digital audio recording

("*DAR*"), but there is a suggestion that some restriction should be put on the subsequent use of the transcript.

4. In order to understand that point, it is necessary to say something about the entitlement of the media to report court proceedings. Leaving aside exceptions, such as, family law proceedings or proceedings involving minors, *bona fide* members of the print and broadcast media are generally entitled to report on anything that is relevant to court proceedings. This includes documentation that is on the court file, such as, affidavits, exhibits, and pleadings. The content of such materials can be referred to by the media provided that they are reported fairly and accurately.

5. Obviously, there is a restriction on any reporting that is sensationalist or unfair, but a member of the print or broadcast media is entitled to report accurately on the content of these types of documents notwithstanding that they have not been read aloud in open court. The reason for that is obvious. The practice and procedure of the courts has evolved, particularly in response to the coronavirus pandemic. More and more often, the judge hearing an application will have read the papers in advance. That is in ease of the parties, and results in a saving of time and costs because instead of time being spent unnecessarily reading out lengthy documents, the judge has read them in advance in his or her chambers and comes to court armed with information in relation to the case. It is critical, therefore, that the press who are reporting on the proceedings are entitled to refer to that documentation notwithstanding that it had not been read aloud in court. It is still part of the court record: the judge has read it, he or she will be relying on it and the exchanges between the judge and counsel will be based on that material.

6. This proposition has been discussed in some detail in my own judgment in *In re Independent News and Media plc* [2020] IEHC 384 (at paragraphs 59 to 63). It is also reflected in the Rules of the Superior Courts. The Data Protection Act 2018

(Section 159(7): Superior Courts) Rules 2018 (S.I. 660 of 2018) allow a *bona fide* member of the press or broadcast media to apply for the disclosure of information contained in a court record for the purpose of facilitating the fair and accurate reporting of a hearing in the proceedings to which it relates. This right applies even to information which represents "*personal data*" within the meaning of the General Data Protection Regulation (Regulation (EU) 2016/679).

7. On the facts of this case, there is no mystery about material which appears on affidavit being reported subsequently in the media notwithstanding that the affidavit was not read aloud in open court. Members of the media are perfectly entitled to report on the content of affidavits which have been read by the judge in advance of a hearing (unless the proceedings are being heard *in camera* or the judge directs otherwise). This has a constitutional underpinning: Article 34.1 of the Constitution of Ireland provides that, save in such special and limited cases as may be prescribed by law, justice shall be administered in public.

8. That is the background to the application. What I have specifically been asked to do today is, in the first instance, to decide whether the DAR can be released, and, secondly, at the suggestion of the Law Society, to consider whether some restriction should be put on the use of the transcript and whether a requirement should be imposed that the respondent must return to court if she wishes to rely on the transcript (in other legal proceedings). I address those two aspects as follows.

9. First, I am satisfied that this is an appropriate case in which to grant access to the DAR. It seems to me that if the respondent wishes to know precisely what happened in court on the previous occasion, she is entitled to see that in the transcript. These are important proceedings: they potentially impact upon her livelihood and her right to

practice as a solicitor. Accordingly, the respondent is perfectly entitled to read precisely what was said in court on the relevant day.

10. Secondly, then, I turn to consider whether any restrictions should be imposed on the use of the transcript. I refuse to impose any restrictions. It seems to me this follows as a mirror image of the principle of open justice which I have outlined earlier. What happened in court in August 2022 occurred in open court, there was no particular reason that it should not be reported. These proceedings are not a family law matter nor a minor matter; and there are no criminal proceedings in the background which might be adversely prejudiced by the reporting of what happened in court that day. I cannot see any reason, consistent with the administration of justice in public, to impose restrictions upon the use that the respondent makes of the transcript. If she wants to rely on it in other proceedings, so be it. I would not be overly optimistic as to the prospects of success of those proceedings but that is not a matter for me, that is a matter for the trial judge in those proceedings.

11. I should just add that, in some instances, a court may wish to impose restrictions on the use of transcripts to avoid an abuse of process. Unfortunately, there is a very small number of litigants (usually not represented by solicitor and counsel) who are disruptive of the business of the courts, and wish to have access to transcripts, and, on occasion, the original audio recording, for the purpose of committing a contempt of court. They wish to use the material by posting it online and editing it in a dishonest way. In such a case, an application to take up a transcript will normally be refused or, at the very least, the court will direct that a transcript will only be released subject to strict undertakings as to how it might be used. A similar restriction might be imposed in proceedings where there is a criminal context, e.g. there may be other related

criminal proceedings pending. It may well be inappropriate that the transcript be circulated beyond a certain limited number of people.

12. But those considerations do not apply here. This is a *bona fide* application by a respondent represented by a well-respected solicitor. I see no concerns in relation to the use of the transcript in that regard. So that is my ruling. I grant an order allowing the taking up of a transcript of the DAR of the hearing on 18 August 2022. This is subject to the usual undertaking, required under Order 123 of the Rules of the Superior Courts, that the party seeking the transcript must undertake to pay the costs of same. My order will formally record that I have declined to impose any restrictions on the use which might be made of that transcript. I will make no order in respect of the legal costs of today's application.