

**THE HIGH COURT**

**Judicial Review**

**[2024] IEHC 401**

**Record No.: 2023/406JR**

**Between:-**

**JOHN MAHON**

**Applicant**

**AND**

**LYNN MCGEOWN as personal representative  
of TOM MURPHY deceased**

**Respondent**

**Ex Tempore Judgment of Mr. Justice Oisín Quinn delivered 3 July 2024**

**Introduction**

1. In these judicial review proceedings, the Applicant seeks an Order of *Certiorari* quashing the Order of the Circuit Court made on 20 March 2023 in proceedings between these parties wherein the Circuit Court, following a plenary hearing, granted the Respondent an Order for possession of the property at 491 Bluebell Avenue, Dublin 12 together with a three month stay on the execution of the order (the “Order”). The Applicant currently resides at the property.

**The Grounds of Challenge**

2. The principal ground of challenge is the Applicant’s contention that he was denied a fair hearing on 20 March 2023.
3. Specifically, in the Statement of Grounds, he then makes five particular points, as follows:-
  - (i) The Order was granted in a ‘summary fashion’;
  - (ii) The Circuit Court allegedly disregarded the Applicant’s motion before the Circuit Court, returnable to the same date as the trial, which motion sought to establish as a preliminary issue that the Respondent (the Plaintiff before the Circuit Court) did not have sufficient capacity or competence to maintain the proceedings;
  - (iii) The Circuit Court judge is alleged to have failed to afford the Applicant the opportunity to open or refer to documents in evidence;

- (iv) It is alleged that the Respondent, at the hearing on 20 March 2023, did not give evidence to sustain the claims before the Circuit Court;
  - (v) It is alleged that the Applicant was not afforded the opportunity to call his witness, open or refer to his defence to an earlier District Court proceeding or the Circuit Court proceedings, or to refer to his affidavits, exhibits or submissions in evidence.
4. At the hearing of these proceedings on Tuesday 2 July 2024, the Applicant (who represented himself with the assistance of his father) clarified and sought to adjust the case he was making.
  5. Firstly, he contended that his main complaint was actually about matters that occurred before the hearing on 20 March 2023. In particular, he contended that he had been denied discovery. This was clarified to mean that he had sent letters seeking discovery, that the Respondent's legal advisors had disputed his entitlement to the documents sought, and, accordingly, he did not have the benefit of discovery. He confirmed that he had not brought a motion about discovery and had not raised the issue at the hearing. This complaint has no substance and in any event falls outside the ambit of the Statement of Grounds and accordingly is also outside the Order granting leave.
  6. Next, he accepted that the Circuit Court Judge had not prevented him from making his case, calling any witnesses, referring to any documents or otherwise challenging the position of the Respondent or advancing his own case. This concession was inevitable as a careful review of the transcript of the DAR of the hearing of the 20 March 2023 demonstrates no such problems.
  7. Thirdly, he sought to reformulate his point at paragraph 3(ii) above to mean that the Respondent should have been declared as being incompetent to give any evidence about matters prior to letters of administration issuing to her on 19 December 2019 as personal representative of the late Thomas Murphy, deceased (who had been the original named Plaintiff in the Circuit Court proceedings). His complaint was that his motion was 'not decided' by the Circuit Court judge.
  8. Finally, he contended that in truth his complaint was that the Circuit Court judge just had not considered the points he was making, and it was a 'summary process' and reference was made to the ECHR decision in *Connors v UK* (2004) 40 EHRR 189.

### **Submissions**

9. Both sides filed helpful written submissions.

#### *The Applicant's Submissions*

10. The Applicant, with the assistance of his father as a McKenzie Friend, made succinct submissions and positively engaged with the Court in relation to questions and discussion of issues.
11. The Applicant clarified that he had only three points of any significance to make about the accuracy of the transcript of the DAR from the 20 March 2023. These were:-

- (i) on page 14, line 15 there were two transcription errors, and that the sentence should read that the Applicant (who at this juncture in the hearing was reading from one of his own affidavits) was referring to ‘proprietary estoppel’ and ‘promissory estoppel’;
  - (ii) page 3, line 25 the word ‘only’ should read ‘or any’; and
  - (iii) page 20, line 18, the Applicant said that some words were left out which he believes reflected the Respondent’s Counsel seeking for the Order for possession to take effect immediately (the Respondent’s Counsel did not think that was what was said, but either way the Circuit Court Judge indicated he was going to give a stay and ultimately decided to give a three month stay on the order for possession).
12. The Applicant confirmed that he had not sought to call any witnesses and that he was no longer complaining that he had been prevented from so doing.
13. Faced with the numerous occasions in the transcript where the Circuit Court Judge explains what is happening; asks the Applicant to explain his case; asks whether the Applicant has any questions; affords time to the Applicant to talk to his father (who was also helping the Applicant as a McKenzie Friend in the Circuit Court); allows the Applicant cross-examine the Respondent; allows the Applicant read out his Affidavit; explains the issues; invites the Counsel for the Respondent to re-explain her submissions; repeatedly asks the Applicant whether he has anything else he wishes to add, the Applicant (who did not dispute the accuracy of any of these portions of the transcript) ultimately accepted he was not in fact really making any criticism of the Circuit Court judge at all.
14. Ultimately the Applicant clarified that his case was now based on the points at paragraphs 5, 7 and 8 above.

*The Respondent’s Submissions*

15. Counsel for the Respondent submitted that the hearing was a plenary hearing which had been conducted fairly; *Connors* was distinguishable as it involved a summary administrative procedure leading to eviction (leaving aside the additional point that it involved a state party).
16. She submitted that Order 23 of the Circuit Court Rules allows Affidavit evidence to be admitted at a plenary hearing and that the Applicant’s affidavit had been read into the record by him at the plenary hearing without objection from the Respondent.
17. Counsel submitted that the motion about the preliminary issue was grounded on an affidavit of the Applicant which made it clear that it was a motion challenging the lawfulness of the Respondent’s ability to continue the case on behalf of the late Thomas Murphy. Counsel carefully explained how this issue had been addressed in submissions and evidence from the Respondent and clearly ruled on by the Circuit Court Judge. In addition, Counsel pointed out that the transcript showed that the Respondent had not, in any event, given any evidence about matters she was not competent to testify about.

18. Counsel submitted that the discovery complaint was outside the case but in any event had been responded to properly and there had been no motion.
19. Counsel explained that the Applicant had been allowed make his case, had accepted at the hearing that he had signed the document (wherein as part of agreeing to withdraw his challenge to a District Court order for possession made in November 2013, he had agreed to vacate the property back in 2014 within 90 days).
20. Counsel also explained that the record from the Property Registration Authority was properly introduced into evidence and indicated that the late Thomas Murphy was registered as the legal owner of the property.

### **Decision**

21. I am satisfied that the Applicant has not made out a case for *Certiorari* of the Order made by the Circuit Court Judge of 20 March 2023. I am satisfied that the submissions of Counsel on behalf of the Respondent are correct.
22. A review of the transcript demonstrates clearly that this was a fair hearing. The Circuit Court judge went out of his way to explain matters and to afford the Applicant the opportunity to make his case. Indeed, Counsel for the Respondent assisted in this process by fairly and fully identifying the issues arising, including the issues raised by the Applicant's motion.
23. The complaint about discovery is not well made and falls outside these proceedings, not having been included in the Statement of Grounds.
24. There was ample evidence adduced to entitle the Circuit Court judge to make the ruling he made on the preliminary motion (which was that the Plaintiff had 'the requisite authority' to maintain the proceedings) and also to grant the Order for possession. In that latter regard, the transcript indicated that there was evidence available to the Circuit Court to show there was a District Court Order for possession made in favour of the late Thomas Murphy; that he had been the registered owner of the property with the PRA; that the Applicant accepted he had signed the document agreeing to vacate the property in 2014 and the Circuit Court judge was entitled to conclude he had reneged on the commitment made.
25. The Applicant's defence evidence in relation to these matters was read into the record from his Affidavit of April 2017 and was clearly considered by the Circuit Court Judge as is made clear from his ruling and earlier exchanges with the Applicant as reflected in the transcript.
26. The Respondent did not purport to give evidence about any matters she was not competent to give evidence about.
27. The hearing was not a 'summary process' but a plenary hearing; the case of *Connors v UK* (2004) 40 EHRR 189 (relied upon by the Applicant) is therefore not apposite.

### **Conclusion**

28. For the foregoing reasons, the Applicant has not established a basis for the relief sought and accordingly the claim for relief is refused.