

**THE HIGH COURT
JUDICIAL REVIEW**

[2025] IEHC 60

RECORD NO. 2025 4 JR

BETWEEN/

**MY LOVELY HORSE RESCUE, CLARE ANIMAL WELFARE, WORKING
ANIMAL GUARDIANS, DOGS ANGELS IRELAND, WICKLOW ANIMAL
WELFARE, THE HAVEN RESCUE**

APPLICANTS

-AND-

**THE MINISTER FOR RURAL AND COMMUNITY DEVELOPMENT,
IRELAND AND THE ATTORNEY GENERAL**

RESPONDENTS

-AND-

THE IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

NOTICE PARTY

**EX TEMPORE JUDGMENT of Mr. Justice Jordan delivered on the 31st day of
January 2025.**

1. This is an application on behalf of the applicants My Lovely Horse Rescue, Clare Animal Welfare, Working Animal Guardians, Dogs Angels Ireland, Wicklow Animal Welfare and The Haven Rescue. It is an application for injunctive relief which is effectively seeking a reprieve in relation to the effect of the Regulations which are

effective as and from tomorrow and which would require the euthanising of XL Bullies in the care of the applicants.

2. The relief which is sought at para. 1, which I am disposed to granting, but I will expand on that thinking before I conclude, at para. 1 is an injunction restraining the Minister for Rural and Community Development, her servants or agents or anyone having notice of the making of the order sought from seizing and/or euthanising XL Bully dogs, on the basis that they are XL Bully dogs within the meaning of the Regulations from dog shelters of any relevant bodies within the meaning of the Regulations pending the determination of these proceedings. I am disposed to granting that relief.

3. I am not disposed to granting the relief which is sought at para. 2 which is an injunction restraining the Minister for Rural and Community Development, her servants or agents, from enforcing the ban on rehoming of dogs covered by the Regulations due to take effect on 01 February 2025 pending the determination of these proceedings. It seems to me that if I was to grant that relief I would be allowing a coach-and-four to be driven through the Regulations. These Regulations exist for very good reason which I have touched on earlier, illustrated, but not confined to, the horrendous injuries caused to a number of people in recent years. Horrendous injuries, lifechanging injuries caused to a young boy in Wexford, horrendous injuries caused to two individuals in Cork, injuries to a one-year old child snatched out of the arms of her mother in Kerry, injuries to an eight-year-old in Dublin last year, injuries to an ISPCA worker in Longford last year and the death of a woman in Limerick, death caused by her two XL Bully dogs.

4. The need for the regulation of dogs and the need for the regulation of XL Bullies is self-evident from that brief illustration of the harm caused by these dogs who can be unpredictable and extremely violent and who can cause and do cause death and very

significant injury when they attack. The need for the regulation of such dogs is manifestly obvious.

5. On the other hand, when one reads the affidavits of those involved with these charitable and voluntary organisations looking after and rescuing dogs one cannot but be touched by the extent of the care and sacrifice made by these individuals. They look after animals and care for them and it is very obvious that the impact of the regulations on such individuals is significant. It is a matter which has to be looked at in the balance, decent people looking after dogs, caring for them, having to look at, in some instances, the prospect of friendly well-behaved young healthy dogs being put to death.

6. It is necessary to look at the relief sought in these proceedings in the round, in order to do justice to everyone and in order to have regard to the public danger that these animals not infrequently present. Having regard to the public danger which exists because of attacks by XL Bullies, I will not grant the relief which is sought at para. 2. However, the position in relation to the substantive case is that a hearing date has been fixed for 27 February next, a few weeks away, and I have to consider the consequences of not granting the injunctive relief which is sought at para.1 against that backdrop.

7. The test for the granting of interlocutory relief is as set out in the legal submissions of the applicant and the respondent. It is the position that there is here a fair question to be tried or an arguable case, that is already established and is not contested in terms of that ground existing.

8. It is the position that damages would be a grossly inadequate remedy in terms of the practical reality of not granting the injunctive relief sought at para. 1 because the dogs would be dead or could be dead, and you cannot bring a dead dog back to life. If ultimately the applicants in the case do succeed, and I express no view on that save to say that there is a fair question to be tried, a good arguable case, it would be a travesty

to look back and reflect on the fact that many animals were euthanized who should not have been. It is the position as pointed out in the legal submissions on the part of the respondent that the jurisdiction which I am being asked to exercise here is a jurisdiction that must be very sparingly exercised and that is for obvious reasons, as Clarke J. said in *Okunade v Minister for Justice & Ors* [2012] IESC 49, [2012] 3 IR 152 ;

“There is a further feature of judicial review proceedings which is rarely present in ordinary injunctive proceedings. The entitlement of those who are given statutory or other power and authority so as to conduct specified types of legally binding decision making or action taking is an important part of the structure of a legal order based on the rule of law. Recognising the entitlement of such persons or bodies to carry out the remit without undue interference is an important feature of any balancing exercise. It seems to me to follow that significant weight needs to be placed into the balance on the side of permitting measures which are prima facie valid to be carried out in a regular and orderly way. Regulators are entitled to regulate. The lower courts are entitled to decide. Ministers are entitled to exercise powers lawfully conferred by the Oireachtas. The list can go on. All due weight needs to be accorded to allowing the systems and processes by which lawful power is to be exercised to operate in an orderly fashion. It seems to me that significant weight needs to be attached to that factor in all cases...an order or measure which is at least prima facie valid (even if arguable grounds are put forward for suggesting invalidly) should command respect such that appropriate weight needs to be given to its immediate and regular implementation in assessing the balance of convenience.”

9. I agree with what is said there. The courts cannot willy nilly set aside the effect of regulations which are brought in by a regulator for good reason. Considering the

issue and having regard to the jurisdiction which should be exercised sparingly, an appropriate balance seems to me to grant the relief which is sought in para. 1 of the notice of motion and refuse the relief which is sought at para. 2.

10. I am not dealing with the substantive hearing but it might be worthwhile mentioning once more, as I did in the course of discussions with counsel, the fact that these regulations do not cater for the opportunity for error that seems to me to exist. It does seem to me to be an issue of concern that a patently wrong decision could result in the death of a dog who should not have been euthanized when a review of the decision or a possibility of some administrative challenge to that decision would have avoided that state of affairs - but that is a matter ultimately for the substantive hearing in terms of the wording of the regulations and the finality of the decision making under the regulations.

11. I should say that there are well intentioned, well-motivated people on both sides of the argument which exists in relation to the ban on XL Bullies and the euthanizing of XL Bullies. That needs to be said in circumstances where it is such an emotive issue. It is clear that public safety needs to be protected. It is clear that that was the core consideration in terms of the introduction of the regulations. It is however apparent, as I have said already, that there is a fair question to be tried. There is an arguable case insofar as the applicants' challenge to the Regulations is concerned and that is the reason having regard to the authorities and the principles that I have to follow before granting an injunction of the nature sought that is the reason I am granting the relief at para. 1 and I will repeat the wording. I think the wording should be "an interlocutory injunction restraining the Minister for Rural and Community Development, her servants or agents or anyone having notice of the making of the order sought from seizing and/or euthanizing XL Bully dogs on the basis that they are XL Bully dogs within the meaning

of the Regulations from dog shelters of relevant bodies pending the determination of these proceedings”. I will refuse the relief at para. 2. I will grant liberty to apply, and I will reserve the costs of the application.

12. In relation to costs Ms McDonagh has correctly pointed out that the court should deal with costs and there is provision now in the rules to that effect - or it is recommended that costs be dealt with at the interlocutory stage. However, this case is different for a whole host of reasons. Firstly, the applicants weren't entirely successful in that they did not get the injunctive relief sought at para. 2. Secondly, there is an early hearing date which has altered the landscape in every respect - it would be a different application before me if it were not for the fact that there is a hearing of the substantive issue fixed for 27 February next. I take the point that there may be another Judge dealing with the matter but ultimately it seems to me that the justice of the case does require that the Judge who deals with the substantive matter also deals with the costs of this application. So I will reserve the costs of this application to the trial Judge.