SUPREME COURT

DETERMINATION

IN THE MATTER OF THE SOLICITORS ACTS 1954 TO 2011

AND IN THE MATTER JAMES WATTERS & STEVROY STEER SOLICITORS OF JAMES WATTERS & CO SOLICITORS RICHMOND OFFICE SUITE RICHMOND SQUARE MORNING STAR AVENUE DUBLIN 7 SOLICITORS

AND IN THE MATTER OF AN APPLICATION BY DEBRA EDNEY JAMES TO THE SOLICITORS DISCIPLINARY TRIBUNAL FOR INQUIRY INTO CONDUCT OF TWO SOLICITORS ON THE GROUND OF ALLEGED MISCONDUCT RECORD N) 2018/DT97

Neutral Citation: [2021] IESCDET 29

Supreme Court record no: S:AP:IE:2021:000005

Court of Appeal record no: none

High Court record no: 2019 No. 62 SA

Date of Determination: Thursday, 11th March 2021

Composition of Court: O'Donnell J., Charleton J., Woulfe J.

Status: Approved

APPLICATION FOR LEAVE TO APPEAL TO WHICH ARTICLE 34.5.4° OF THE CONSTITUTION APPLIES

RESULT: The Court does not grant leave to the Applicant to appeal to this Court directly from the High Court.

REASONS GIVEN:

ORDER SOUGHT TO BE APPEALED

COURT: High Court

DATE OF JUDGMENT OR RULING: 18th December, 2020
DATE OF ORDER: 18th December, 2020
DATE OF PERFECTION OF ORDER: 21st December, 2020
THE APPLICATION FOR LEAVE TO APPEAL WAS MADE ON 8th January, 2021 AND WAS IN TIME.

General Considerations

1. The general principles applied by this court in determining whether to grant or refuse leave to appeal, having regard to the criteria incorporated into the Constitution as a result of the Thirty-third Amendment, have now been considered in a large number of determinations and are fully addressed in both a determination issued by a panel consisting of all of the members of this court in *B.S. v. Director of Public Prosecutions* [2017] IESCDET 134, (Unreported, Supreme Court, 6 December 2017) and in a unanimous judgment of a full court delivered by O'Donnell J. in *Quinn Insurance Ltd. v. PricewaterhouseCoopers* [2017] IESC 73, [2017] 3 I.R. 812. The additional criteria required to be met in order that the so-called leapfrog appeal directly from the High Court to this court can be permitted were addressed by the court in *Wansboro v. Director of Public Prosecutions* [2017] IESCDET 115, (Unreported, Supreme Court, 20 November 2017). Accordingly, it is unnecessary to revisit the new constitutional architecture for the purpose of this determination.

2. Furthermore, the application for leave filed and the respondent's notice are published along with this determination (subject only to any redaction required by law) and it is therefore unnecessary to set out the position of the parties in any detail. No aspect of this ruling has precedential value as a matter of law.

Decision

3. This is an application for leave to appeal directly to this court from the judgment of the High Court (O'Connor J. – [2020] IEHC 688), pursuant to Article 34.5.4**°** of the Constitution. The judgment of the High Court is a comprehensive account of a complex set of proceedings in which the applicant acted for herself without legal representation, although it should be said that she apparently has, herself, a legal qualification obtained from the United Kingdom.

4. The applicant had appealed to the High Court from the decision of the Solicitors Disciplinary Tribunal ("S.D.T.") of the 2nd of August, 2019, where that tribunal had concluded that a large number of complaints made by the applicant in respect of the conduct of the respondents, who were her solicitors, either did not on a *prima facie* basis disclose conduct which could be construed as misconduct, or had been adequately rebutted, or were not supported by evidence.

5. The background to the applicant's complaints is recounted in the judgment in the High Court. It appears that she had been resident in this jurisdiction for some time, but prior to that had been resident in the U.K. She had applied for a contributory pension on the basis of her "impression" that national insurance contributions either paid or credited by her (it is not clear) in the United Kingdom constituted a qualifying period of insurance equivalent to the paid full rate contributions which would oblige the Irish authorities under Article 6 of Regulation EC 883/2004 to aggregate the U.K. contributions for the purposes of calculation of eligibility for a contributory pension in this jurisdiction.

6. The applicant's application was refused and appealed by her to the Social Welfare Appeals Office. The applicant then attended at the respondents' office on the basis that the first named respondent had been identified on the firm's website as a specialist in social welfare law. She requested that a named counsel be retained. Advices were provided, and consultations held. The respondents requested an oral hearing before the Social Welfare Appeals Officer. During the course of these proceedings, the applicant paid to the respondents the sum of

€1,230 in fees in June, 2018. Ultimately, the appeal was refused, albeit with regret. Judicial review proceedings were not commenced in part, it appears, because the applicant now takes that the view that her "impression" was false, and that as a matter of law there was no prospect of her U.K. national insurance contributions being accepted as eligible for a calculation for eligibility for the pension. She also contends that the High Court judgment was deficient because it did not determine whether or not she was correct in this regard.

7. The S.D.T. found that this and related complaints, related to the adequacy of work done by the respondents, and did not disclose conduct which could amount to misconduct. The High Court held a *de novo* hearing, and dismissed the applicant's appeals against these complaints, and other related complaints, save in respect of certain complaints relating to the respondent solicitors' compliance with s. 68 of the Solicitors (Amendment) Act 1994, which the High Court remitted to the S.D.T. and requested that it deal with those complaints expeditiously.

8. The applicant now contends that the decision of the High Court involved points of general public importance and that there are exceptional grounds justifying appeal directly to this Court. She contends that "all the evidence [*she*] adduced was rejected for not meeting the "standard expected of a solicitor"" and because she "did not appreciate the law of evidence in this State". She also contends that this was inconsistent with the observations of the E.Ct.H.R. in *Airey v. Ireland* [1979] 2 E.H.R.R. 305 ("*Airey v. Ireland*") that the "possibility to appear in person … does not provide the applicant with an effective right of access". The applicant also complains that she was not permitted to adduce further evidence before the S.D.T. after her last affidavit and a sequence of affidavits was submitted. She also contends that the alleged failure by the S.D.T. and High Court was a failure to comply with s. 4 of the European Convention on Human Rights Act 2003 requiring the Courts to take judicial notice of the decisions of the European Court of Human Rights ("E.C.T.H.R."). She further contends that the interests of justice favour an appeal.

9. In relation to the exceptional grounds justifying a leapfrog appeal, the applicant asserts that she is now 70 and "would not live to see a final decision in the matter here sought to be appealed", but does not provide any support for that contention either by reference to the state of her health or the anticipated length of time before an appeal could be heard before the Court of Appeal.

10. Since the applicant's application and the respondents' response thereto, and the High Court judgment, are all publicly available it is not necessary to further summarise the arguments made. It is, perhaps, necessary to observe that the applicant may have misconstrued both the High Court judgment and the relevant statute law and jurisprudence. To take only one example, the judgment's reference to a failure to adduce evidence of the standard expected of solicitors is not, as the applicant appears to believe, a comment on the standard of evidence adduced by the applicant, but rather that there was no evidence as to the standard to be expected of a solicitor in the circumstances arising in this case by reference to which it could be concluded that there was even a *prima facie* evidence of misconduct. It is also apparent that "all the evidence" adduced by the applicant was not excluded whether for this reason or otherwise. Neither the decision in *Airey v. Ireland* nor the sentence quoted from the judgment appear relevant to the applicant's proceedings. The fact that s. 4 of the 2003 Act requires judicial notice to be taken of Convention provisions and decisions of the E.Ct.H.R. does not appear to give rise to any factual or legal issue. It is also not apparent that any complaint the applicant made about the absence of further affidavit before the S.D.T. was ventilated in the High Court.

11. It is not apparent to this court that the application herein raises any issue of law of general public importance. Rather, it is quintessentially a matter, which if the applicant continues to contend that the High Court decision was incorrect, where appeal lies to the Court of Appeal. Furthermore, and in any event, the court is satisfied that the applicant has not established that there are exceptional grounds

justifying an appeal directly to this court pursuant to the provisions of Article 34.5.4°. Accordingly, leave to appeal to this Court is refused.

And it is hereby so ordered accordingly.