

Neutral Citation No: [2018] NIQB 110

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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 09/04/2018

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

(QUEEN'S BENCH DIVISION)

IN THE MATTER OF A NUMBER OF APPEALS

MAREK BELKOVIC v BELFAST HEALTH AND SOCIAL CARE TRUST,
DR TOAL AND PARTNERS, MEDICAL PRACTICE

RADKO BELKOVIC v BELFAST HEALTH AND SOCIAL CARE TRUST,
REGIONAL HEALTH AND SOCIAL CARE TRUST

KEEGAN J

Introduction

[1] I heard this case towards the end of last term when a number of appeals were listed together in the High Court. Mr Radko Belkovic appeared to pursue his own appeals and he also appeared in relation to the appeals brought by his brother, Mr Marek Belkovic. I provided an *ex tempore* ruling which I now comprise into this written decision for the benefit of the parties.

[2] The respondents to the appeals were represented by Ms Finnegan BL and Mr Millar BL. I heard submissions from all parties which were helpful. I have now had an opportunity to review the written material which I should say is extensive in determining a way forward regarding these two sets of appeals. I bear in mind in looking at a case like this the overriding objective to deal with cases in a fair and proportionate manner. I am sure that the two litigants in this case, who do not have lawyers, want to get to an end point in terms of their litigation. So certainty is also very important in my view. Now I am going to deal with the appeals that are brought before me in sequence.

The appeals of Mr Radko Belkovic

[3] Mr Radko Belkovic appeared as a litigant in person to pursue his appeals. The context of his appeals, as far as I can glean from the papers, is a civil bill issued

in the County Court and dated 22 July 2015. This contains a claim for £30,000 damages for upset, distress, inconvenience, breach of contract and loss of damage by reason of the negligence, discrimination and breach of statutory duty of the defendants, its servants and agents, in and about the health service provided to the plaintiff. The main statutory provision relied upon is the Disability Discrimination Act 1995. There is a long history to this case but in a nutshell it relates to treatment Mr Belkovic sought in relation to his eyes which he says was not provided in Northern Ireland and was subsequently provided outside the jurisdiction by the Gemini Eye Clinic.

[4] Doing the best I can from the papers which are, I should say, rather repetitive, it looks like the pleadings are complete and the case should be ready to proceed in the County Court, save for the appeals which raise two issues:

- (i) Firstly, that His Honour Judge Devlin was wrong not to recuse himself from the case.
- (ii) Secondly, that the Order for directions of 3 October 2017 was wrong regarding the calling of an expert Dr Stodulka and wrong in respect of the directions the judge gave to Mr Radko Belkovic in relation to presentation of his medical evidence.

[5] Now, as I have said, Mr Radko Belkovic appeared in this appeal as a litigant in person and I heard his submissions. I have read his written arguments and I understand that he has taken some time to compile these; that is why I did not decide the case right away. I have now considered all of the materials put before me.

[6] My conclusions are as follows:

- (i) Regarding the recusal appeal there are very many complaints raised about Judge Devlin. I am not going to rule on these at this stage. I am going to refer everyone to the dicta of Stephens J, as he was, in the reported decision of *Belkovic v Toal & Another* [2015] NIQB 104. In that case a similar issue arose in relation to a judge and the appeals were stayed. The points raised by the learned judge in that decision were broadly that there would be no adjudication on the merits of a recusal appeal at an interlocutory stage, that it was satellite litigation, and also that there was protection for a litigant given that an appeal to the High Court was a re-hearing. There is obvious strength in that view in terms of an interlocutory appeal of this nature given that the necessity for it will depend on the ultimate outcome before the lower court. However, given the course I am taking in the case of Marek Belkovic I am simply going to adjourn that appeal because it involves similar issues.
- (ii) Regarding the second appeal, which is to do with the medical evidence, the submissions of everyone have been very helpful particularly Mr Belkovic. I have looked carefully at the directions made which are contained in the Order

of 3 October 2017. In my view the order is not wrong, particularly as Mr Belkovic in his submissions said he was not pursuing a medical negligence case. In my view the Order is not prejudicial to Mr Belkovic in any way given that the judge has referred to the various options available to Mr Belkovic and that fact that the case is subject to review. That appeal is therefore dismissed.

The appeals of Mr Marek Belkovic

[7] I then turn to the appeals of Marek Belkovic. I did allow Mr Radko Belkovic to speak to these appeals despite counsel's strong objections. Otherwise I would have had no idea what the appeals were about. Mr Marek Belkovic is clearly unable to attend court as he is described as having a range of physical and cognitive problems. I have read the reports of Dr Richard Thompson in that regard. I must say that Mr Radko Belkovic was cooperative and of assistance in terms of dealing with this issue. In summary he said he did not really want to represent his brother, Marek, but he could not get a solicitor. He also said that he wanted his case and Marek's case to be separate. I am hoping that this indicates a purposive approach to getting these cases dealt with.

[8] However, there does remain an issue about the representation of Marek Belkovic which I have considered in some detail. I asked counsel for assistance regarding this issue of representation for Marek Belkovic but counsel made the point that they did not want to run up costs for their client in terms of filing arguments and dealing with this any further. However, both counsel raised a strong objection to Radko Belkovic being a McKenzie friend for Marek Belkovic. Counsel collectively referred to various decisions of Stephens J, as he then was, and Lord Justice Gillen in this regard and these have been helpful and I have considered them.

[9] The representation issue is problematic because I bear in mind the ultimate aim to achieve fairness in every case which is embedded in domestic law and also finds expression in Article 6 of the European Convention on Human Rights. Marek Belkovic has particular medical issues, he is Slovakian, he does not have English as a first language, and he has a number of cases outstanding which need dealt with. His brother does not feel that he is the best person to represent him. The other parties do not consider Radko Belkovic to be an appropriate McKenzie friend. However, at the moment there is nobody else.

[10] So there is an issue specific to the facts of this case. However, this is an issue that I consider has general application to other cases where litigants in person are involved and particularly where litigants in person have the characteristics of this litigant in terms of his physical and mental health needs and his language difficulties. In the circumstances, and in an effort to get these cases dealt with in an effective and efficient way, I am going to ask the Attorney General to act as an amicus in this case. In the first instance I would be grateful if the Attorney General

could advise regarding the appropriate representation for Marek Belkovic and also assist in relation to the other issues which are pertinent in this case.

[11] The court needs to get a view as to what is at issue to fully and fairly assess the case brought by of Marek Belkovic. I should say I also canvassed a number of options which remain live, for example, the Official Solicitor assessing competency, evidence being taken on commission, the use of an interpreter. The appeals of Marek Belkovic will therefore be adjourned.

Conclusion

[12] I am taking the course I have explained above as I consider there is an inherent difficulty in progressing this case in terms of representation. I am of the view that this issue may arise in other cases. So I consider that the best course is to review the remaining appeals in approximately six weeks' time, the Attorney General having been asked to assist the court.

[13] Finally, I direct that a transcript be made of this ex tempore judgment, and subject to any corrections I may make, this will be provided to Mr Radko Belkovic and the other relevant parties and the Attorney General as soon as possible.

[14] I will reserve any costs issues until the end of this case.