



THE COURT OF APPEAL

**UNAPPROVED
NO REDACTION**

**Record Number: 2022/80
High Court Record Number: 2020/1022JR**

Donnelly J.

Neutral Citation Number [2023] IECA 164

Noonan J.

Binchy J.

BETWEEN/

ANTONIO CASIMIRO LOPES

APPLICANT/APPELLANT

-AND-

LEGAL AID BOARD

RESPONDENT/RESPONDENT

JUDGMENT of Mr. Justice Noonan delivered on the 23rd day of June, 2023

1. This appeal is brought by the appellant, Mr. Lopes, from a refusal of the High Court (Phelan J.) to grant him leave to seek judicial review of a decision of the respondent (“the Board”).
2. The decision of the Board which Mr. Lopes seeks to challenge is a refusal to provide him with legal aid in respect of High Court personal injuries proceedings commenced by him in 2016. The background to those proceedings appears to be that in July 2010, Mr.

Lopes underwent surgery which he alleges resulted in a medical condition. He alleges that in July 2011, his then General Practitioner, Dr. Anthony Lee, prescribed a particular type of proprietary medication for an unrelated complaint. Mr. Lopes alleges that this drug was contraindicated for people suffering from the condition mentioned above and in consequence of the prescription, he suffered personal injuries. Although in his personal injury summons, Mr. Lopes appears only to make allegations of negligence against Dr. Lee, he subsequently obtained the leave of the High Court to join the manufacturer of the drug A. Menarini Pharmaceuticals Ireland Limited, as a co-defendant.

3. Mr. Lopes has at all times acted as a litigant in person in these proceedings, described in the High Court judgment as the “Lee/Menarini” proceedings. These proceedings appear to have advanced to the stage of a notice of trial having been served by Mr. Lopes in 2018. It would appear that Mr. Lopes also instituted separate proceedings against Waterford University Hospital arising out of broadly the same circumstances and although the court has not seen copies of the pleadings in that case, it would appear to relate to Mr. Lopes’ treatment in that hospital in respect of the matters said by him to have arisen in consequence of the prescribing of the proprietary drug. Of relevance in relation to the Lee/Menarini proceedings, on the 18th February, 2019 the High Court made an order for discovery in those proceedings against Mr. Lopes directing him to discover, *inter alia*, the pleadings and particulars in his claim against Waterford University Hospital to the defendants in the Lee/Menarini proceedings. In making that order, the court clearly was satisfied that those pleadings were both relevant and necessary for the fair disposal of the issues, presumably having regard to the overlapping factual matrix in both cases.

4. Against that background, Mr. Lopes made an application to the Board for legal aid in 2019 in respect of the Lee/Menarini proceedings only.

5. Following a receipt of the application for legal aid, the matter was assigned to Mr. Garrett Searson, solicitor, in the Board's Waterford office. Mr. Lopes produced a certain amount of documentation with his original application but Mr. Searson considered that this was insufficient to enable a proper assessment of the application and accordingly sought significant additional documentation from Mr. Lopes including, in particular, copies of the proceedings in his claim against University Hospital Waterford. However, Mr. Lopes refused to provide this documentation as he considered that he had made sufficient information available for a decision about representation to be made. While some further documentation was furnished, it was not deemed sufficient and the application was refused. Whilst Mr. Lopes complained about this decision, making serious allegations about Mr. Searson, he did not appeal it. In particular, he contended that the Board were not entitled to see the pleadings and documents in the University Hospital Waterford case because he was not seeking legal aid in respect of that.

6. In March 2020, Mr. Lopes made a fresh application for legal aid. Again, the Board drew attention to outstanding documentation of which it required sight. In response, Mr. Lopes again declined to furnish the documents in relation to the other proceedings and continued to make serious allegations against Mr. Searson. Detailed correspondence was sent on numerous occasions by the Board setting out with particularity the documentation which remained outstanding. Given the difficulty that had arisen, Mr. Searson referred the matter to the Board's head office for determination and on the 22nd July, 2020, the Board decided to refuse the application in reliance on s. 28(4)(d) of the Civil Legal Aid Act, 1995 which provides as follows: -

“(4) Notwithstanding *subsection (2)*, the Board may refuse to grant a Legal Aid Certificate if it is of the opinion that –

...

- (d) such information as is reasonably required by the Board from the applicant to enable it to make a decision on whether to grant a Legal Aid Certificate or not has been provided by him or her.”

7. Mr. Lopes appealed this refusal to the Appeal Committee Panel who dismissed his appeal on the 23rd October, 2020 on the same grounds and for the same reasons. He was notified of the decision on the 27th November, 2020.

8. Arising out of the latter decision, Mr. Lopes applied to the High Court *ex parte* for leave to seek judicial review and the court directed that the application be made on notice to the Board. The first ground advanced by Mr. Lopes is that the Board had in fact sufficient information to make a decision to grant him a certificate but failed to do so. He complains of the alleged collection of information by the Board from third parties. He says that the Board was wrong to refuse on the basis that he had declined to provide records in relation to the University Hospital Waterford case as he was not seeking legal aid in respect of that piece of litigation. He complains that the Appeal Committee received information about his case to which he was not privy, but does not identify this. He effectively restates these grounds in a number of different ways throughout his statement of grounds.

9. In her written *ex tempore* ruling, the High Court judge reviewed the factual background and the relevant legal test that is applicable in applications for leave to seek judicial review. I do not understand Mr. Lopes to cavil in any way with the correctness of the legal principles identified by the judge. She identified the three broad grounds of challenge to the decision as being first, error in concluding that he had not provided the information reasonably required by the Board to reach a decision, secondly unfairness in the appeals process and thirdly improper communication with third parties. She analysed each of these headings in

turn in reaching the conclusion that no arguable ground had been advanced such as would entitle Mr. Lopes to leave and she accordingly refused the application.

10. In its decision to refuse legal aid dated the 22nd July, 2020, and subsequently upheld on appeal, the Board identified the sole reason for refusal pursuant to s. 28(4)(d) as being the failure and refusal of Mr. Lopes to provide the Board with a complete set of medical records and pleadings in relation to his related case against University Hospital Waterford. The Board considered that these documents were essential to its consideration of the case noting that the High Court had ordered discovery of these documents in the Lee/Menarini proceedings on the 18th February, 2019.

11. The criteria for obtaining legal aid are set out in s. 28 of the 1995 Act. Section 28(2) sets out a number of cumulative criteria that must be satisfied for eligibility. These include, at (b) that the applicant has as a matter of law reasonable grounds for instituting the proceedings and, at (c), that the applicant is reasonably likely to be successful in the proceedings. In order to form an opinion as to whether or not the applicant for legal aid satisfies these criteria, it is axiomatic that the Board has access to all documents which may be relevant to a consideration of whether there are grounds for proceeding and if so, whether the applicant is likely to be successful. Clearly a fundamental requirement to that assessment in any clinical negligence claim is the relevant medical records that relate to the matters in issue.

12. It is not in dispute in this case that Mr. Lopes was treated in University Hospital Waterford for complaints alleged by him to arise directly from what he characterises as the mis-prescription of the proprietary drug for him by Dr. Lee. It seems to me to be beyond argument that both the medical records and the pleadings relating to the University Hospital Waterford claim are potentially highly relevant to his claim against Dr. Lee and Menarini.

Clearly, the High Court was of the same view in ordering that he make discovery of those documents, an order that would not in the normal way be made unless the High Court were satisfied that the documents were both relevant and necessary for the fair disposal of the issues arising in the Lee/Menarini proceedings.

13. It must follow therefore that on any reasonable view of the matter, an appraisal of these documents was necessary before the Board could be in a position to reach a conclusion as to Mr. Lopes' chances of success in the proceedings in which he was seeking legal aid. It might, for example, emerge that a conclusion was reached in the hospital in Waterford that the prescribed medication had nothing to do with his complaints. It might emerge, for example, that he had given quite a different version of events to his treating doctors in Waterford Hospital to that given to Dr. Lee. That is of course speculation, but these examples are given merely to illustrate the potential importance and relevance of these documents to the assessment that the Board was required to carry out under s. 28. It seems to me that the power of the Board to refuse a certificate under s. 28(4)(d) on the basis of the information "reasonably required" by the Board imports an objective test so that for example, the Board could not validly decline legal aid on the basis of some entirely arbitrary or capricious request for information. However, as I have said, by any objective measure it seems to me that it could not be said that the information required by the Board in this case from Mr. Lopes was other than reasonably required.

14. It is often said that judicial review is concerned with the lawfulness of a decision and not with its merits and frequently, litigants in person confuse the two. That is true in this case also. Mr. Lopes seeks to advance the contention that the Board was simply wrong to conclude that it needed this information to form a view, and that, it appears to me, is in reality little more than an appeal on the merits. It is not however the function of the High Court or

this Court on appeal to consider the merits of the matter but rather whether the decision made by the Board was one that was made within jurisdiction. There is nothing to suggest that it was not.

15. It is regrettable to note that like many litigants in person, in his notice of appeal Mr. Lopes has included many gratuitous and scandalous allegations about the trial judge deciding the matter on the basis of documents sent to her after the hearing, an entirely unsubstantiated allegation, and bias towards Mr. Lopes by allowing the respondent to discuss the case with her “behind closed doors”. Such groundless and contemptuous allegations against judges are unfortunately not uncommonly made by disappointed litigants in person who view any decision adverse to them as evidence of bias on the part of the judge. Again, not uncommonly, Mr. Lopes makes what the trial judge correctly characterised as wild allegations against all and sundry including not only the solicitor in the Legal Aid Board dealing with the matter but also the solicitor for one of the parties to his personal injuries claim against whom he alleges corruption. Needless to say, these allegations are entirely unfounded, not supported by a shred of evidence and ought never have been made.

16. I am therefore entirely satisfied that no error of any kind has been demonstrated in the judgment of the High Court, less still any unfairness or impropriety in the conduct of the hearing in that court and I would accordingly dismiss this appeal.

17. As the Board has been entirely successful in this appeal, it would seem to follow that it is entitled to its costs. If Mr. Lopes wishes to contend for a different order, he will have liberty to deliver a written submission not exceeding 1,000 words within 14 days of the date of this judgment and the Board will have a similar period to reply likewise. In default of receipt of such submissions, an order in the terms proposed will be made.

18. As this judgment is delivered electronically, Donnelly and Binchy J.J. have authorised me to record their agreement with it.