THE HIGH COURT

[RECORD NO 2017 732 JR.]

BETWEEN

C & ORS.

APPLICANT

AND

GALWAY COUNTY COUNCIL

RESPONDENT

JUDGMENT of Ms. Justice O'Regan delivered on the 21st day of December, 2017

Issues

1. The applicants, comprising an effective single mother and her five children, members of the travelling community, in these proceedings seek to quash two decisions of the defendant. Leave was afforded on the 23rd October, 2017.

2. In the statement of grounds of the 25th September, 2017, the applicants seek to quash the respondent's decision of the 3rd July, 2017 refusing continued emergency accommodation to the applicants which decision is asserted as being an error in law, irrational, in breach of the applicants' constitutional rights under Articles 40.1, 40.3, 42, and 42 A of the Irish Constitution as well as in breach of Article 8 of the European Convention on Human Rights and Article 2 of the first Protocol to the Convention.

3. In addition the applicants seek to quash the decision of the respondent of the 28th June, 2017, a decision on appeal against the earlier decision of the 26th April, 2017. In that appeal decision the respondent upheld deferring the applicants' housing application for a one year period. In the statement of grounds the applicants assert that such a decision was similarly flawed to the decision of the 3rd July, 2017, and in addition the deferral matrix used by the respondent is asserted as being unlawful.

4. To support the applications it is further asserted that the respondent failed to assess the applicants' housing needs and the educational needs of the children (both applications). It is asserted that the respondent fettered its discretion in failing to apply s. 22 of the Housing (Miscellaneous Provisions) Act, 2009, and in failing to properly construe its powers under s. 10 of the Housing Act 1988 (referable to the decision of the 03/7/17) and in failing to have regard to the applicants' constitutional rights and rights under the European Convention on Human Rights as incorporated into Ireland by the European Convention on Human Rights Act 2003 and thereby left the applicants exposed to the risk of being without shelter (both applications).

5. The applicants assert that by withdrawing emergency accommodation, the respondent failed to accommodate the youngest applicant with his attendance at a specialised placement and thereby failed to exercise its statutory functions compatible with the sixth named applicant's right to education as protected by Art. 42 of the Constitution, further, thereby acted inconsistently with its own criteria for withdrawal of emergency homeless accommodation. It is complained that the respondents did not have regard to the applicants' family's vulnerable status in either impugned decision.

Factual background

6. The first named applicant, then a mother of three children, first applied to the respondent to be placed on its housing list on the 27th July 2010. The applicants were placed on the housing list on or about the 16th September, 2010 and the first named applicant made a subsequent application for herself and her children by way of application of the 29th August, 2011. In both such applications the applicant indicated that in the previous five years she did not have a conviction for disorderly conduct in a public place. She identified O as an acceptable location.

7. By October 2016 the applicant then had five children and was up until that time living in private rented accommodation. She received a notice of termination of the tenancy and subsequently presented on the 1st February, 2017 as homeless seeking emergency accommodation. The applicants were so accommodated save for a brief period because of an altercation with third parties, at a hotel where the applicants were then staying following a risk assessment. Once the risk had abated the applicants were again furnished with emergency accommodation by the respondent which ultimately ended on the 3rd July, 2017. Ending on the 29th of November, 2016, the respondents had carried out four subsequent assessments following the initial assessment in or about July 2010, ending on the 29th of November, 2016.

8. The sixth named applicant has autism and other medical and intellectual problems for which he requires significant educational, developmental and medical supports. The third and fourth named applicants also receive educational support for milder issues.

9. On the 1st June, 2017, the respondent offered the applicants transitional accommodation at T Co. Galway, a four bedroomed dwelling, being the only four bedroomed dwelling available to the respondent. The respondent states that the applicant family was prioritised. On or about the 30th June, 2017, the applicant refused the offer of accommodation following inquiries and on the basis that there was no similar placement for the sixth named applicant available in T to that available in Galway, being a 5 day specialised placement. By letter of 30th June, 2017, the respondent indicated that emergency accommodation for the applicants would cease on 3rd July, 2017, on the basis that the applicants were in receipt of a reasonable offer of accommodation. The applicants have been living at an undisclosed location since the 3rd July, 2017.

Emergency accommodation

10. In the statement of opposition of the 21st of November, 2017, the respondent asserts that

a. by making the premises in T available by offer of the 1st June, 2017 the defendant fulfilled its duties to the applicants.

b. that the respondent had, contrary to the assertion by the applicants that the respondent failed to have regard to the applicants' circumstances, made four reassessments of the applicants' situation, the last such reassessment on the 29th November, 2016.

c. the respondent states that it was pursuing legitimate policy considerations and the orderly administration of its functions.

d. the respondent asserts that s. 22 of the Housing (Miscellaneous Provisions) Act, 2009, does not in fact deal with emergency accommodation but rather is concerned with persons on a housing list.

e. the respondent points out that the applicants do not have a constitutional right to accommodation or socioeconomic finance.

f. the respondent was pursuing a legitimate aim necessary in a democratic society and formed the view that the accommodation offered was reasonable and therefore when the applicants refused same they were no longer homeless or qualified for assistance under s. 2 and/or s. 10 of the Housing Act, 1988.

11. In a letter of the respondent of the 1st June, 2017, in the offer of the accommodation in T, it is quoted that by virtue of s. 2 of the 1988 Act, if there is a refusal of a reasonable offer of a dwelling that meets the accommodation needs of the household, such household may not for the period of one year commencing on the date of refusal, be entitled to be qualified as homeless. The respondent now acknowledges that s. 2 does not contain any such provision.

12. Section 2 of the 1988 Act provides that a person shall be regarded by a housing authority as being homeless if there is no accommodation available which in the opinion of the authority, the applicant and a person reasonably expected to reside with him, can reasonably occupy or remain in occupation of, and he is, in the opinion of the authority, unable to provide accommodation from his own resources.

13. Section 10 of the 1998 Act includes a provision that, where accommodation is made available, the housing authority may at any time specify a period for which the accommodation ought to be so made available to that person.

14. During the course of submissions the applicants acknowledged that s. 22 of the 2009 Act did not apply to emergency accommodation.

15. The first named applicant in her principal affidavit of the 21st September, 2017, sets out why she believes it is irrational for the respondent to believe that the offer in T was reasonable. The applicant exhibits a significant number of reports in her affidavit a number of which predate the offer of the 1st June, 2017. Of those which post-date the offer: -

(a) there are two letters from Dr. F, consultant paediatrician, respectively dated the 1st June, 2017 and the 20th June, 2017, indicating that the accommodation in T would make the placement secured for the sixth named applicant very difficult, that the applicant children were settled in schools and require a house within the city and that, *inter alia*, four of the applicant children have significant needs. Dr. F also subsequently indicated that she was concerned as to the relocation to T notwithstanding there were three excellent schools suitable for the sixth named applicant in T however placements were not available save in one, for a two to three day period as opposed to the five day period, available in Galway.

(b) BC, a psychologist, in a communication of the 18th May, 2017, (although pre-dating the letter of 01/06/2017) indicated that the third named applicant, born on the 20th September, 2004, would benefit from access to various mobile computer applications.

(c) The principal of the children's primary school, in a communication of 9th June, 2017 indicated he was concerned if the fourth named applicant was unable to attend his school because of the significant supports for his special educational needs available there.

(d) Dr. HD, a G.P., in a communication of the 1st June, 2017, indicated that a lack of a permanent address was a significant disadvantage to the family and, that the applicant family be given a house.

(e) MT, Social Worker of the Early Intervention Centre, in a letter of the 1st June, 2017, also asked for suitable permanent housing for the family.

(f) Pam Mahoney, of the Traveller Movement, in a letter of the 7th June, 2017, expressed the view that new schools in T would not be in the best interest of the children.

16. The first named applicant complains that she would have to drive approximately 100 miles per day to accommodate the children in their schools in Galway if the family were to move to T.

17. The respondent counters that the premises offered is the only four bedroom dwelling available within the respondent housing stock proximate to Galway, that it does not have housing stock within Galway City, that in offering the property in T to the applicants they were in fact prioritised and the respondent had communicated with Galway Simon to ensure that all appropriate supports for the family would be made available in T including, for example, the two to three day placement for the sixth named applicant in a facility similar to the facility which was available to him in Galway for a five day period. The respondent points to the fact that the applicant has complained that the nature of emergency accommodation has significant adverse consequences for the sixth named applicant's well-being and by offering the four bedroomed accommodation this aspect of the sixth named applicant's problems would be addressed. The respondent states that it cannot fulfil a wish list for the applicant, it must have regard to its limited resources and the demands of others on those resources. The respondent states that it is for the respondent to assess whether or not the accommodation is reasonable and points to the judgment of Baker J. in *Mulhare v. Cork County Council* [2017] IEHC 288, and in particular para. 41 thereof where the court states: -

> "It seems to me outside my competence, and not a matter for judicial review, to direct that the respondent would provide a house within the narrow geographical radius identified by the applicants as suitable for their needs, as to do so would be to engage in an assessment of the housing stock and of the needs of the applicants which are outside the power of a court."

The applicant suggests that that statement was made in the context of an application for *mandamus* directing the respondent to provide housing for the applicants within a five mile radius of where one of the applicants was receiving medical treatment, and therefore this judgment is not relevant.

I do not accept that the succinct statement of law in para. 41 of the judgment of Baker J. aforesaid is confined to such applications as was made in the case before her, but in fact is consistent with general jurisprudence such as the Supreme Court judgment in

Henry Denny & Sons (Ireland) Ltd Minister for Justice Social Welfare [1998] 1 IR 34 when Hamilton CJ cautioned "… [T]he courts should be slow to interfere with the decision of expert administrative tribunals. Where conclusions are based upon an identifiable error of law or an unsustainable finding of fact…such conclusions must be corrected."

The aforesaid statement of Baker J is also in keeping with *T.D. v Minister for Education and Ors* [2001] 4 IR 259, where the Chief Justice stated: -

> "I would have the gravest doubts as to whether the courts at any stage should assume the function of declaring what are today frequently described as "socio-economic rights".

The Chief Justice having earlier stated that save with regard to rights unequivocally established, some degree of judicial restraint is called for in identifying new rights.

18. The respondent suggests that it is not for the respondent to vindicate the constitutional rights and European Convention on Human Rights of the applicant, however I am satisfied they must certainly have regard to these rights in their decision making process. Such claimed rights refer to equality before the law, personal rights, the best interest of the children, a right to education, and the right to private life and family life.

19. Insofar as jurisprudence contained within *Meadows v. Minister for Justice and Ors* [2010] 2 IR 701, is claimed as applicable, I would accept this proposition.

20. In a letter of the 28th June, 2017, the respondent furnished to the applicants its decision vis-à-vis the deferral of the applicants' status within the respondent housing list. The said letter also indicated that emergency accommodation available to the applicants would cease on the 3rd July, 2017.

21. Although the applicants laid considerable stress at the hearing on the unlawfulness of the respondent deferring for a one year period, the applicants homeless status, in fact no such complaint arises within the statement of grounds (the complaint as to deferral being in relation to the applicants placement on the housing list) and indeed the only possible decision which was made on the 3rd July, 2017, there being no decision in writing, was to implement the advice of the respondent to the applicant, of the 28th June, 2017, to the effect that emergency accommodation would cease on 3rd July, 2017.

22. I am satisfied that there is ample scope within the provisions of s. 2 and s. 10 for the respondent to come to such a decision, the respondent being satisfied that reasonable accommodation was offered to the applicants, the reasonableness of such accommodation had taken into account the housing and other needs of the applicants, so that the respondent in such offer was thereby doing the best within its resources to balance and facilitate the needs identified by the various applicants to the best of its ability. In the letter of the 28th June, 2017, being a three page decision, it was indicated that the respondent gave due consideration to the significant correspondence filed on behalf of the applicants, the decision making was informed by all relevant information held by the respondent and the supporting documentation was reviewed including the need for housing as a matter of urgency and the applicants vulnerability. The letter identified that the house in T was the only four bedroom available to the respondent and that the related supports which would be available by Galway Simon would address the applicant's concerns insofar as possible and within the remit of the respondent to do. The letter stated that the approach of the respondent was fair and reasonable and proportionality was applied having regard to the full circumstances of the family who were prioritised.

23. By reason of the foregoing, I am satisfied that the applicants have failed to establish that the decision to withdraw emergency accommodation on the 3rd July, 2017, (assuming a decision was made on that date) in all of the circumstances breached the jurisprudence contained in Meadows aforesaid, or breached any constitutional right or right under the European Convention on Human Rights, of the applicants or any of them.

24. The applicants did not tender any evidence as to a want of suitable education available to the applicants in T save as mentioned in the various reports exhibited by the first named applicant in her affidavit and herein referred to. The applicants have failed to establish that the decision was irrational or unlawful in any manner so as to secure an order of certiorari of the decision to terminate emergency accommodation.

Housing list

25. The aforesaid communication of the 28th June, 2017, from the respondent to the applicants comprises the respondents appeal decision in respect of the earlier decision made by the respondent on the 26th April, 2017, to defer the housing application for a one year period.

26. I am satisfied that the applicant has not made out a claim to support the contention that the decision breached the applicants constitutional rights as asserted or rights under the European Convention on Human Rights, was unlawful or irrational, disproportionate or comprised a fettering of its own discretion. The respondent did have regard to the vulnerability of the applicant family, and did not take into account (as generally asserted without specifics) irrelevant factors or fail to take into account relevant factors. This view is based on: -

> (1) The foregoing conclusions concerning the decision to withdraw emergency accommodation apply equally to the decision to defer the housing application.
>
> (2) I am satisfied that s. 66 of the Local Government Act, 2001, does in fact enable the respondent to do any necessary or ancillary thing to comply with its functions under the Housing Acts 1966-2014, in or about a discharge of its functions under s. 14 of the Housing (Miscellaneous Provisions) Act, 1997. S. 14 (A) (II) of the 1997 Act enables the respondent to defer a housing application of an applicant including on grounds if the applicant fails to provide information to the respondent when asked to do so. The applicant was clearly asked in her application in 2010 and again in 2011, if she had any conviction for disorderly conduct in a public place for the preceding five year period and on each occasion answered she did not, whereas in fact she had such a conviction in 2009. In the events the first named applicant has 89 convictions although it is asserted that these are minor offences, having been dealt with in the District Court.
>
> (3) Insofar as the applicants assert that the deferral matrix in fact fettered the discretion of the respondent, or indeed that the scoring achieved by the applicant in such matrix was unreasonable, I am satisfied that this assertion is not supported by the content of the matrix itself which provides at its opening that it is intended to assist and inform. It identifies that repeat offences would be at the high end of the scoring scale with the provision of false information scoring either zero or five. Insofar as the scoring for timeline is concerned, it is indicated that if the offence is committed within

the last two years and is habitual, scoring of four to five might be achieved. A deferral would be occasioned for a score greater than 9 out of 20. The first named applicant's most recent convictions were in January, June, and July of 2016 and the most up to date offence occurred in November, 2015.The deferral matrix document identifies that each applicant will be dealt with on an individual basis and the discretion in respect of all matters is an express right and can be applied where deemed appropriate. I am satisfied that the scoring identified by the respondent was made within jurisdiction with ample evidence available to the respondent to determine such a scoring and that the content of the matrix itself establishes that it is not an inflexible policy as was dealt with in such cases as *Dunne v. Donoghue* [2002] 2 IR 533.

Conclusion

27. By reason of the foregoing, I am satisfied that the applicants have not established a right to an order quashing either the decision of the 28th June, 2017 or the decision (if any) of the 3rd July, 2017, therefore the relief claimed in the statement of grounds is refused.