



THE COURT OF APPEAL

**Kelly J.
Peart J.
Irvine J.**

2014/59

2014 No. 603 J.R.

Between

WILLIAM FITZGERALD

APPLICANT/APELLANT

AND

JUDGE TERENCE FINN

RESPONDENT

**EX TEMPORE JUDGMENT of Mr. Justice Kelly delivered on the 12th
day of October 2015**

1. In October 2014, Mr. Fitzgerald commenced judicial review proceedings in the High Court and the named respondent was Judge Terence Finn of the District Court.
2. The reliefs sought in the judicial review were as follows: first, he sought the referral to the European Court of Justice for preliminary ruling the question: "*Under what conditions and at what stage of proceedings is it a*

requirement for companies to be represented by a legal professional? ” the second relief sought was an order that the digital audio recording (DAR) device be active during all proceedings relating to the applicant; third, he sought a declaration that anyone before the court be entitled to make a personal DAR of the proceedings; fourth, he sought a stay on proceedings until the DAR is implemented; fifth, he sought an order for costs.

3. When the application was moved ex parte, there was a direction given that it be on notice. On the ultimate hearing before Noonan J. Tipperary County Council was represented.

4. It was represented because this application is brought in respect of proceedings in which it is involved in the District Court in Cashel. In that court, Tipperary County Council is suing a company called Munster Wireless Limited and it is the desire of Mr. Fitzgerald to appear on behalf of that company.

5. The general law in relation to the representation of companies in litigation is that settled by a decision of the Supreme Court in *Battle v. Irish Art Promotion Centre Limited* [1968] I.R. 252. In general it can be said that a limited company may not be represented by a director or a member of the company.

6. However, as is clear from what took place in the District Court in this instance, the District Judge, notwithstanding that decision, and in the exercise of his discretion has permitted and will permit Mr. Fitzgerald to represent

Munster Wireless Limited. So Mr. Fitzgerald will have his desire, in that he will be entitled on the hearing of the matter before the District Court to appear on behalf of Munster Wireless Limited.

7. The District Judge has made it clear that that is what is going to happen. When the matter was before Noonan J., as is clear from the transcripts, he took the view that that being so, then the question raised by the applicant was a moot one. The question is, does Mr. Fitzgerald have an entitlement to judicial review with a view to having it ascertained as a matter of law, whether or not he is entitled to appear for Munster Wireless Limited, in circumstances where the District Judge has made it clear that he is permitting him so to? The issue is no longer live and consequently, on that basis, the High Court judge declined to grant judicial review.

8. In my view he was correct. To grant leave would be to have a judicial review on a point which is moot. As I pointed out, during discussion with Mr. Fitzgerald, there are all sorts of circumstances where interesting legal questions and conundrums can be conjured up. The courts are not debating societies. We have to deal with cases by reference to the facts of each case. The fact here is that insofar as Munster Wireless Limited and Mr. Fitzgerald are concerned in the proceedings at present before Cashel District Court, he will have full entitlement to appear on behalf of that company and that disposes of his complaint in that regard. I would uphold the order made by the High Court judge.

9. The second element of complaint relates to the DAR. I am unable to ascertain any legal right that somebody would have to a DAR in advance of having some legitimate complaint pertinent to what went on in the District Court whether by way of reference either to his opponent or to the behaviour of the judge. There is however nothing to prevent Mr. Fitzgerald from taking a contemporaneous note of what goes on in the District Court. He may employ a stenographer if he is minded so to do. But I do not see that there is any justiciable issue which arises concerning the DAR in this case. In any event, it does not seem to me that it is any matter that can be addressed by Tipperary County Council who were the parties put on notice when the application was before the High Court judge. In my view, the High Court judge was correct in declining to grant leave to apply for judicial review in respect of the DAR issue also. For my part I would dismiss this appeal and affirm the order of the High Court.

Peart J.: I would also dismiss the appeal for the same reasons pronounced by Mr. Justice Kelly.

Irvine J.: I also agree with the judgment delivered by Mr. Justice Kelly.

Kelly J.: So that brings the matter to an end and this appeal is dismissed.

The order of the High Court is affirmed.

No Redaction Needed

Approved
P. Kelly

A COPY WHICH I ATTEST
Ben
FOR REGISTRAR