Neutral Citation No: [2024] NICA 88 ***Judgment: approved by the court for handing down (subject to editorial corrections)****	***Ref:*** **McC12679** ***ICOS No:*** ***Delivered:*** **05/12/2024**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND KING'S BENCH DIVISION (JUDICIAL REVIEW)

BETWEEN:

RADKO BELKOVIC

Appellant:

and

NORTHERN IRELAND PUBLIC SERVICES OMBUDSMAN

Respondent:

Appellant: Self–representing
Mr Philip McAteer (instructed by Elliott Duffy Garrett Solicitors) for the Respondent

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Before: McCloskey LJ, Horner LJ and McBride J

McCLOSKEY LJ (*delivering the judgment of the court*)

Introduction

[1] Radko Belkovic (the "appellant") brings these proceedings against the Northern Ireland Public Services Ombudsman ("NIPSO"). By his judgment delivered on 23 January 2024 Humphreys J decided and made orders to the following effect:

(i) Dismissing the appellant's four applications for leave to apply for judicial review.

(ii) Dismissing the appellant's application under Order 18, rule 19, RCC purporting to strike out the "defence" of NIPSO (the quotation marks being apposite as no "defence" had been served by NIPSO).

(iii) Dismissing the appellant's application for discovery of documents pursuant to Section 32 to the Administration of Justice Act 1970 and/or Order 24 RCC,

in circumstances where no claim for damages for personal injuries had been brought by the appellant against NIPSO.

The appellant appeals to this court against these orders.

Overview

[2] It is appropriate to highlight certain features of the voluminous materials generated by the appellant in these proceedings. First, the four Order 53 statements occupy in excess of 170 pages of dense type and are formulated in terms of variable coherence. Humphreys J is to be commended for the skill and industry which he displayed in deciphering the essence of the appellant's multiple challenges. Each of them is in one way or another related to the appellant's health and associated issues of health care. To summarise:

(i) The first judicial review challenge relates to NIPSO's dismissal of the appellant's complaint about a refusal by the relevant health authority to finance medical treatment for him in the Czech Republic.

(ii) The second judicial review challenge arises out of a decision by NIPSO dismissing the appellant's complaint about services provided to him by his General Medical Practitioner's practice.

(iii) The third judicial review challenge relates to a decision by NIPSO that a further comparable complaint by the appellant would not be accepted for investigation.

(iv) The fourth judicial review challenge entails an attack on a draft NIPSO investigation report arising out of a further complaint by the appellant relating to his medical treatment or the lack thereof.

[3] As this synopsis demonstrates, the appellant's applications under Order 18, rule 19 RCC and Order 24 RCC were doomed to failure.

Order 41 RCC

[4] The second noteworthy feature of the appellant's materials worthy of highlighting is that each of the judicial review leave applications consisted of, in addition to the aforementioned Order 53 statements, an "affidavit" purportedly sworn by the appellant. In the bundles before this court there are six "affidavits" which, examined in chronological sequence, and having regard to the requirements of Order 41 RCC, invite the following observations:

(i) The first affidavit appears on its face to be regular.

(ii) In the second "affidavit", one finds the title "AFFIDAVIT", the appellant purports to "make oath and say as follows …" and there is no jurat.

(iii) While the third "affidavit" is superficially regular, there are questionable alterations to both the day and the month when it was purportedly sworn.

(iv) The jurat of the fourth "affidavit" is notable for (a) the incomplete address at which it was purportedly sworn and (b) the indecipherable signature of the solicitor concerned.

(v) The fifth affidavit appears to be regular.

(vi) Ditto the sixth.

[5] The importance of scrupulous adherence to the requirements of Order 41 RCC has been emphasised by the courts repeatedly. The **duties** arising out of Order 41 are imposed on litigants and solicitors alike. Order 41 does not have the status of an optional menu of choice. The exercise of swearing an affidavit and thereby transmitting to the court sworn evidence is a solemn one. Anything short of full compliance with Order 41 can have grave consequences for litigants and solicitors alike. The reason for this is that failures of this kind are manifestly antithetical to the administration of justice and, ultimately, undermine the rule of law. It is timely to emphasise that nothing short of the highest standards in this respect will be tolerated by the courts. For the avoidance of doubt, these standards apply fully to unrepresented litigants.

Litigation history

[6] The name "Belkovic" has become increasingly familiar to the courts of this jurisdiction in recent years. The judicial decisions which have come to the attention of this court (all accessible online and with a neutral citation number) are the following:

(i) By its judgment delivered on 24 February 2014 – [2014] NIQB 25 – the High Court dismissed the appeal of Marek Belkovic against an order of the Queen's Bench Master staying his action for personal injuries pending his attendance at medical examinations on behalf of the defendants. It appears from the judgment that Mr Belkovic was unrepresented and had some assistance from a "McKenzie friend."

(ii) On 16 December 2014 – [2014] NIQB 139 – the High Court gave its final judgment in the same case, finding in favour of Mr Belkovic. Paras [2]–[11] of the judgment of Gillen LJ are noteworthy:

"[2] During the course of a large number of reviews that were carried out in this case in 2013, I permitted the plaintiff's brother to act as a McKenzie Friend ("MF") with the accompanying right to represent and present the plaintiff's case albeit the defendants had opposed this step. I concluded that there were very exceptional circumstances in this case pointing to it being in the interests of justice for the MF to represent the plaintiff. Those circumstances included that:

- my perception of the plaintiff's state of health was that it would be difficult for him to conduct the case on his own even with the help of a conventional MF approach,

- the MF, who was a brother of the plaintiff, had largely conducted the case to date,

- solicitors in the past had been found to be unacceptable to the plaintiff,

- the MF had indicated that he would not be giving evidence and thus was not a witness in the case,

- the plaintiff's language difficulties and lack of understanding of court procedures were such that even with the assistance of interpreters I discerned that the case would be subject to excessive delay and procedural difficulty without the invocation of a MF to represent him.

[3] On a number of occasions during the course of these proceedings and this hearing, despite cautionary warnings by me, the MF abused that concession. The court, witnesses (both medical and non-medical) and the counsel/solicitor representing the defendants were on occasions abused verbally with totally unfounded allegations of racism/fascism/fraud/mendacity coupled with vulgar abuse emanating from the MF. Although on some occasions the MF apologised in the aftermath, indicating that he was under stress himself, I recognised that this behaviour was unacceptable.

[4] One of a large number of similar instances will suffice to illustrate the tenor of these outbursts. In an

email to Mr Hagan the solicitor for the defendant of the 25 March 2014 the MF recorded:

> 'Next time Mr Hagan, watch your dirty mouth what you have been saying in emails. I will teach you respect. You fascist racist person that destroyed my brother health. I will put you to prison where you belong! You criminal. Read documents ttahcing (*sic*) with accusation that you are responsible for my brother worsening health condition and be careful what you are going to say because this time I will put you to prison where you belong. Make sure you will reply within 14 days and then I am going proceed with a claim upon you. And make sure you criminal person that all confirmation that you shredded you are going provide. Do you understand fascist!!!'

[5] Several times during the trial strong submissions were made by Mr Fee QC, who appeared on behalf of the defendants with Ms Simpson, that I should withdraw the concession for this MF to represent his brother and insist the trial proceed without his participation. On each occasion, after rising to give time for measured and dispassionate consideration to the issue and not without considerable hesitation, I refused Mr Fee's submissions but strongly cautioned the MF as to his behaviour in the wake of apologies that he usually gave.

[6] Thus, for example in the course of an interlocutory judgment that I gave refusing an appeal by the plaintiff from the decision of Master Bell staying the plaintiff's action pending his attendance at medical examinations on behalf of the defendant (*Belkovic v DSG International PLC and First Choice Selection Services* Unreported GIL9168), I recorded at paragraph 24:

> 'I take this opportunity to remind the McKenzie Friend that whilst I have taken the exceptional step of allowing him to represent the plaintiff notwithstanding that he is not a lawyer because of my perception of the plaintiff's state of health and his language difficulties, I will not hesitate to revoke that concession if the MK exercises that right in a

> manner that is unreasonable, likely to impede the efficient administration of justice or bring the process into disrepute by virtue of baseless allegations.'

[7] In doing so I was conscious of at least three important factors. First, the need to ensure fairness to both the defendant and the plaintiff in the hearing. Secondly, that the rule of law and the court process must not be challenged by such behaviour. Thirdly, that I as a tribunal of fact should not allow myself, even unconsciously, to be adversely influenced against the plaintiff by these outbursts. On the other hand I balanced my awareness of the need for this case to be tried efficiently, without delay and in a cost effective manner. It was already 9 years since the accident triggering these proceedings, there had been a very long history to this case with a highly unusual number of case reviews, and a large number of witnesses, both medical and non-medical often on subpoena from the plaintiff, had been called to give evidence. The cost of these proceedings were starting to spiral. It was a case that cried out for finality. Having again considered the medical reports before me I reminded myself that it might be difficult for this plaintiff to conduct the case on his own at any time and it seemed unlikely that yet another set of solicitors would be found acceptable to him. The trial itself should not have lasted more than a few days if appropriately conducted.

[8] Invoking the spirit of Order 1 rule 1A of the Rules of the Court of Judicature, I concluded that despite the absence of insight into this behaviour by the MF, the interests of justice including the costs already incurred and time expended, required that I permit this case to continue until its completion with the MF representing the plaintiff given that with robust case management this behaviour could be controlled to a material extent.

[9] Accordingly, on occasions in this case, particularly where cross-examinations were becoming an exercise in abuse, I had cause to firmly warn the MF that I would not permit witnesses to be subjected to such unfounded abuse and prohibited him from continuing to cross-examine in such circumstances. I also on occasions imposed a time limit on the length of examinations in chief and cross-examinations which the MF was conducting in

circumstances where I determined he was time wasting. I consider these were appropriate steps to take in circumstances where the process was being abused.

[10] I conclude on this preliminary issue by making two observations. First, I remain conscious of the views expressed by Kay J in *Tinkler and Another v Elliott* [2012] EWCA Civ 1289 where he said at paragraph 32:

> 'An opponent of a litigant in person is entitled to assume finality without expecting excessive indulgence to be extended to the litigant in person. It seems to me that, on any view, the view that the litigant in person "did not really understand" or "did not appreciate" the procedural courses open to him … does not entitle him to extra indulgence … the fact that if properly advised, he would or might have made a different application then cannot avail him now. That would be to take sensitivity of the difficulties faced by litigant in person too far.'

[11] I was therefore aware of the need to ensure that the indulgence I extended to the MF in this case should not prejudice the defendant. I concluded that the behaviour of the MF in this instance, whilst thoroughly unacceptable at times, did not prevent the defendant having a fair trial. At an appropriate stage I shall consider however whether the conduct of this case by the MF should have cost implications in so far as it may be argued that the trial was unnecessarily prolonged by his behaviour."

(iii) By its judgment delivered on 24 February 2015 – [2015] NIQB 22 – the High Court determined the issue of costs in the same proceedings. Para [18] is noteworthy:

> "As I have indicated at paragraphs 3, 5, 9 and 60 the judgment, a great deal of time was taken up in this trial by the McKenzie Friend voicing wholly unfounded allegations against the court, counsel, solicitor and medical and non-medical witnesses leading on several occasions to applications by counsel for the defendant to withdraw his right to act as a McKenzie Friend. Whilst it is right to say that the plaintiff's evidence was spread over 3 days, (albeit this also included time wasted for at least

> one further outburst by the McKenzie Friend) a not insubstantial part of the remaining 9 days of the hearing was taken up dealing with this behaviour and with the McKenzie Friend wastefully spending time unselectively pursuing the issue of the alleged absence of pre-existing degenerative change notwithstanding all the medical evidence to the contrary. In addition to my own overall assessment of the situation, I had the benefit of the time spent in examination and cross examination calculated by the Court Office of several witnesses which I provided to the parties for comment. Reviewing the matter as a whole I have concluded that the plaintiff's recoverable costs in respect of the actual trial shall be abated by 25% overall and the defendant should be entitled to offset against the plaintiff's recoverable costs 25% of its trial costs during which period counsel and solicitor were quite unnecessarily engaged in parts of the trial which did not serve to progress the matter in any meaningful fashion."

(iv) The ensuing appeal of Mr Belkovic to the Court of Appeal resulted in (a) an increase in his special damage from £13,900 to £19,250 and (b) a dismissal of his challenge to the costs order of the High Court: [2015] NICA 59. Rejecting the argument of the "McKenzie Friend" that the plaintiff's costs should not be adversely affected by the misconduct of that person, the Court of Appeal endorsed fully its earlier decision in *Peifer v WELB and Another* [2008] NICA 49 deprecating time wasting, repetition, the failure of parties to concentration on relevant issues and the pursuit of irrelevant issues and questions: see paras [17]-[18].

(v) By its judgment delivered on 04 December 2015, the High Court stayed the appeals of Marek Belkovic against a decision of the County Court whereby the judge concerned refused to recuse herself from hearing as determining the plaintiff's substantive claims in personal injury proceedings: [2015] NIQB 104.

(vi) On 20 May 2016, in an interlocutory appeal by Marek Belkovic against an order of the County Court in personal injury proceedings (three separate cases) refusing applications to permit Radko Belkovic (evidently this appellant) to act as McKenzie Friend, the High Court affirmed the order under challenge and stayed the proceedings on the ground that they represented inappropriate satellite litigation: [2016] NIQB 48. Paras [3]–[4] and [13] are especially noteworthy:

> "Those are the proceedings which the plaintiff has issued. The plaintiff's brother, Mr Radko Belkovic, applied in the County Court to His Honour Judge Devlin for leave to act, not only as the plaintiff's McKenzie Friend, but also as

an advocate. Mr Radko Belkovic has no legal qualifications. He can speak English, though he is not entirely comfortable with that language and in my assessment would not have the ability to articulate in English the fine nuances of answers or concepts. His Honour Judge Devlin refused the application in all three cases and it is against that decision that the plaintiff has appealed to this court. Immediately after His Honour Judge Devlin had given judgment, Mr Radko Belkovic then intervened and according to the note which I have behaved in an abusive and threatening manner, in that he told the court that he would:

> '… be taking all of you to Strasbourg and you will shut up your mouths, your fascist mouths forever when the Strasbourg Court makes a fair decision.'

He further described the defendant's legal representatives or the court itself, it was not clear which, as:

> 'Racist people, racist monkeys, monkeys in a cage.'
>
> 'Fascists.'

Mr Radko Belkovic then proceeded to leave the court in which His Honour Judge Devlin had given judgment.

[4] This is not the first occasion upon which Mr Radko Belkovic has acted in this way in court proceedings. Conduct such as that is quite unacceptable and in the exercise of discretion in this court I have refused the plaintiff's application that Mr Radko Belkovic should be his McKenzie Friend, and I have refused the plaintiff's application that Mr Radko Belkovic should have any advocacy rights."

[13] Finally, the plaintiff's brother, Radko Belkovic, is entirely unsuitable as an interpreter. On the basis of his conduct in previous proceedings I could not have any confidence that the rules of evidence would not be broken during the course of any interpretation that took place. Also, on the basis of my assessment of his inability to articulate clearly the questions to be asked of a witness and the answers given by a witness."

(vii) On 9 April 2018 – [2018] NIQB 110 – the High Court gave judgement in certain interlocutory appeals brought by Marek Belkovic and Radko Belkovic. One of the appeals of this appellant was dismissed, while the other was stayed. Noteworthy features are that this appellant was self-representing, while he was permitted to address the court on behalf of his brother (Marek Belkovic) who did not attend.

(viii) On 3 May 2019 in the same case, the High Court made a final order dismissing all of the appeals of the two brothers.

[7] Summarising, the appellant has been litigating, or otherwise involved in proceedings, in various courts in this jurisdiction for a number of years. It would appear that he has been at all material times self-representing. The several sets of proceedings giving rise to the judgment of Humphreys J under appeal to this court represent a new identifiable chapter in a story of ever lengthening dimensions.

This appeal

[8] As occurs so frequently in appeals to this court involving unrepresented litigants, the burden of preparing the bundles has fallen on the shoulders of the respondent. This has resulted in the preparation and presentation of hearing bundles totalling almost 3,000 pages, including a core bundle of just under 500 pages. The cost of this self-evidently expensive exercise has been borne by a publicly funded agency (NIPSO) and, ultimately, the taxpayer. If this appeal were shown to have any merit, the concerns thereby raised would not be dissipated. Alternatively, should it transpire that this appeal has no merit, these concerns will be profound indeed. At this juncture, the court's indebtedness to the professionalism and endeavours of the legal representatives of NIPSO must be recorded.

[9] What is recorded above may uncontroversially be described as something of a paper blizzard. This has been replicated in the appeal/s to this court. As regards the materials assembled by the appellant, the task of distinguishing between those belonging to the appeal and those belonging to the first instance proceedings is an unenviable one.

[10] The appellant's Notice of Appeal is one of the shorter documents in the morass noted above. It was produced in the wake of the time limit for appealing having been extended twice and the final document before this court is evidently the third incarnation. It consists of approximately 1,500 words without divided paragraphs. This court, having applied its mind conscientiously to the task in hand, has identified the following grounds of appeal:

(i) The absence of any reference in the judgment of Humphreys J to the NIPSO "procedural manual."

(ii) The inappropriate provision by NIPSO to the appellant of an incomplete version of this manual.

(iii) The judgment is "one-sided" in consequence.

(iv) The hearing at first instance should have been adjourned on account of (a) the appellant's ill health and (b) the late production of "six large complex matters."

(v) Error of fact on the part of the judge (unparticularised).

(vi) A failure to consider the appellant's evidence and case.

(vii) Improper "manipulation" of the proceedings by "the respondent's representative."

(viii) Taking into account "unrealistic and irrelevant issues."

(ix) A lack of judicial impartiality.

(x) A failure by the judge to read certain documents prepared by the appellant.

(xi) Humphreys J being the "new assigned judge" received the case papers too late to be properly prepared.

While this court cannot discount the possibility that the appellant is attempting to canvas other grounds of appeal, we have been unable to identify same. Furthermore, no enlightenment was provided by the appellant's belated new submissions/bundle or his ensuing presentation to this court (on 25/11/24).

[11] In a stream of electronic communications generated during the case management phase of this appeal, the appellant highlighted certain issues relating to his health. In its last pre-hearing case management order, this court purposefully highlighted that it was not seized of any application to adjourn the hearing based on medical evidence and, in the same order, affirmed the hearing date (2 October 2024) which had been determined by this court's initial case management order dated 17 June 2024. In passing, this court subsequently granted the appellant the indulgence of extended time for the provision of his skeleton argument and excused him from the requirement of preparing hearing bundles. The hearing date of 02/10/24 had to be vacated because of the unexpected inability of all members of the judicial panel to convene. The revised listing on 25/11/24 proceeded as scheduled.

Our conclusions

[12] This court has considered carefully all of the voluminous materials amassed. Having done so, the central question is whether any material error of law in the

judgment of Humphreys J has been established. Against the background outlined above the short, and unhesitating, answer is "No." The judgment of the High Court, as demonstrated by the helpful written submissions of Mr McAteer on behalf of NIPSO, is unimpeachable. The grounds of appeal are meandering, diffuse, lacking in specificity and largely incoherent. The appeals are dismissed accordingly.

[13] As will be readily apparent from all that is written above these proceedings, from beginning to end, have generated a disproportionate and wholly wasteful investment of resource from every quarter - the publicly funded authority NIPSO, the judiciary and court administration. Whether Mr Belkovic will remain at liberty to litigate in this fashion in this jurisdiction remains to be seen, taking into account section 32 of the Judicature (NI) Act 1978 (see Appendix).

Costs

[14] The court adjourned the issue of costs to ensure that the appellant was given an adequate opportunity to make representations, a facility of which he duly availed, in characteristically extensive detail. The application of the general rule that costs follow the event is irresistible in the court's view. We order accordingly.

APPENDIX

Section 32, Judicature (NI) Act 1978

32 Restriction on institution of vexatious actions.

(1) If, on an application made by the Attorney General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior court or tribunal, and whether against the same person or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, order—

(a) that no legal proceedings shall without the leave of the High Court be instituted by him in any court or tribunal;

(b) that any legal proceedings instituted by him in any court or tribunal before the making of the order shall not be continued by him without such leave;

and such leave shall not be given unless the court is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.

(2) The court may in its discretion assign a solicitor or counsel to any person against whom an order is sought under this section and the expenses of any such solicitor or counsel shall be taxed and paid out of the legal aid fund.

(3) A notice of the making of any order under this section shall be published in the Belfast Gazette.