



AN v. The Minister for Health & Children

[2015] IEHC 396 (Ir.)

Country: Ireland

Region: Europe

Year: 2015

Court: High Court of Ireland

Health Topics: Infectious diseases

Human Rights: Right to due process/fair trial

Facts

The appellant was diagnosed as a carrier of hemophilia A as an infant. Since she was a factor VII deficient, she had to get factor replacement therapy to cover any surgical or dental operation. The appellant was treated with a variety of blood products in the course of her childhood and teenage years including a treatment with factor VII in 1986. As a result of that treatment, she contracted hepatitis C but remained unaware till 1993. She brought an application for compensation in accordance with the terms of the non-statutory tribunal scheme after she became aware of her illness. After her case was heard by the statutory Tribunal in 1997, the appellant's was awarded a sum of £408,693 for compensation. Since the appellant incorrectly believed that she has no right of appeal, she accepted the award after understanding that a rejection of the award would lead to a disclosure of her identity.

The rules regarding the procedure and time limits for bringing appeals against any decision of either the statutory or non-statutory tribunal were promulgated after October 23rd, 1998. The appellant was not satisfied with the award and would have brought an appeal if she had known of her right. It is only in 2013 when she consulted her present solicitors that she became aware of her rights.

In contrast to the approach taken by the statutory tribunal where express notice with respect to time limits was given to claimants in the award letter, the non statutory tribunal failed to uphold the notification measures and did not advise clients or their solicitors about the time limits or of a closing date concerning non statutory awards.

The appellant made both written and oral legal submissions to the High Court asking for the allowance of her appeal outside the permitted time.

Decision and Reasoning

The Court held that it should exercise discretion and grant an extension of of time to the appellant so that she may appeal the award of the non-statutory tribunal.

It is unjust for the court to conclude that the appellant failed to satisfy the requirement of an intention to appeal because she had not formed an intention to appeal within the six-month period where the appellant was unaware of her right to appeal as well as prescribed time limit of the appeal.

A provision of a statutory jurisdiction is consistent with the court's view that the time for the bringing of an appeal should be extended where the claimant first becomes aware of the full extent of her statutory rights after the expiration of the time limit.

Although the appellant's application was exceedingly delayed, the Court accepted the explanation provided the appellant as to why there was a long delay.

Decision Excerpts

"To satisfy the requirement that an intention to appeal was formed within the permitted time limit necessarily involves knowledge both of the existence of the right as well as the time within which it is required by law to be exercised." (Para 73)

"As has been recognised in so many judgments since Eire Continental was decided, the discretion of the court

is a free one and is to be exercised upon taking into consideration all of the circumstances of the particular case. Accordingly, having due regard to the findings made upon the evidence, the materials available, and taking all of the circumstances of this case into consideration, I am satisfied that the Court should exercise its discretion by granting an extension of time within which the appellant may appeal the award of the non statutory tribunal and the court will so order.” (Para 80)

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