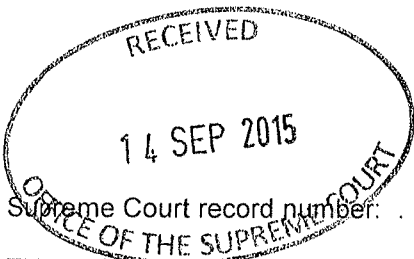


44/2015



SUPREME COURT

Respondents' Notice

(14)

Supreme Court record number: .

Title and record number as per the High Court proceedings:

The High Court 2010 No. 10916P
Michael O'Driscoll a Minor (suing by his mother and next friend, Breda O'Driscoll)
.v.
Michael Hurley & The Health Service Executive

Date of filing: day of September 2015

Name of respondents : Michael Hurley & The Health Service Executive

Respondents; solicitors: ..Hayes Solicitors, Lavery House, Earlsfort Terrace Dublin 2.

Name of appellant: Michael O'Driscoll

Appellant's solicitors: Denis O'Sullivan & Co.

1. Respondents' Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondents' full names: Michael Hurley and The Health Service Executive

The respondent was served with the application for leave to appeal and notice of appeal on date: **6 August 2015**

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent's full name:

The respondent was served with the application for leave to appeal and notice of appeal on date:

The respondent intends:

to oppose the application for an extension of time to apply for leave to appeal

not to oppose the application for an extension of time to apply for leave to appeal

to oppose the application for leave to appeal **X**

not to oppose the application for leave to appeal

to ask the Supreme Court to dismiss the appeal **X**

to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court

Other (please specify)

If the details of the respondents' representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondents' representation are correct and complete on notice of appeal: **X**

Respondents' Representation: **See above**

Solicitor

Name of firm

Email

Address

Telephone no.

Document

Exchange no.

Postcode

Ref.

How would you prefer us to communicate with you?

Document Exchange

E-mail

Post

Other (please specify)

Counsel

Name

Email

Address

Telephone no.

Document

Exchange no.

Postcode

Counsel

Name

Email

Address

Telephone no.

Document

Exchange no.

Postcode

If the Respondent is not legally represented please complete the following

Current postal address

Telephone no.

e-mail address

How would you prefer us to communicate with you?

Document Exchange

E-mail

Post

Other (please specify)

2. Respondents' reasons for opposing extension of time

If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused

N/A

3. Information about the decision that it is sought to appeal

Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:

The Respondents will rely on the entirety of the *ex tempore* High Court judgment of O'Neill J and the written Judgment of the Court of Appeal at the hearing of the application for leave to appeal.

The matters alleged by the Appellant in paragraphs 2 and 3 of the section entitled 'concise statement of facts found in the High Court' constitute the Plaintiff's grounds of appeal to the Court of Appeal which were successfully contested by the Defendant, rejected by the Court of Appeal and continue to be disputed by the Respondents herein.

4. Respondent's reasons for opposing leave to appeal

If leave to be appeal is being contested, set out concisely here the respondent's reasons why:

In the case of an application for leave to appeal to which Article 34.5.3° of the Constitution applies (i.e. where it is sought to appeal from the Court of Appeal):

The Respondents contend that the Judgment in respect of which leave to appeal is sought does not involve a matter of general public importance. Further, it is not, in the interests of justice, necessary that there be an appeal to the Supreme Court.

For the reasons explained in section 5 below, the Court of Appeal did not make any such error of law or of fact to require that, in the interests of justice, there should be an appeal to the Supreme Court. The Court of Appeal, in a detailed and comprehensive Judgment, carefully reviewed the High Court evidence underpinning the *ex tempore* High Court Judgment and upheld the award made by O'Neill J. The allegations of objective bias in respect of Judge Irvine's chairing of a conference lack the requisite merit such that it could be said that it is in the interests of justice to revisit the Court of Appeal's findings on this issue. Likewise, the Appellant's allegations in respect of the cross examination of the expert witness and the fees paid to said expert in separate proceedings lack the necessary substance such as to form the basis of an appeal to the Supreme Court.

It does not appear to be claimed by the Appellant, nor could such a claim be credibly advanced, that the subject matter constitutes a matter of general public importance.

5. Respondent's reasons for opposing appeal if leave to appeal is granted

Please list (as 1, 2, 3 etc in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

With reference to section 5 of the Notice of Appeal, the Appellant has failed to set out the reasons in law why the decision sought to be appealed involves a matter of general public importance and / or why in the interests of justice it is necessary that there be an appeal to the Supreme Court.

In so far as sections 5 and 6 overlap in both the reasons for granting leave to appeal and the grounds of appeal, the Respondents plead as follows:

1. The Court of Appeal correctly identified the legal principles applicable to a plea of objective bias and correctly applied them to the factual context before the Court. The Judgment of the Court of Appeal does not offend against the provisions of Article 6 of the European Convention of Human Rights, the common law or Article 40.3 as alleged in the Notice of appeal.
2. The Respondents deny that the chairing of a conference by Judge Irvine run by the solicitors for the Defendants, and any photographs taken at said event, could reasonably be said to constitute grounds of objective bias. Moreover, and without prejudice to the foregoing, whether it did constitute objective bias (which is denied) is not a matter of general public importance such as to necessitate an appeal to the Supreme Court in accordance with Article 34.5.3 of the Constitution.

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

N/A

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions?

Yes

No**X**

If Yes, please give details below:

.....

make a reference to the Court of Justice of the European Union?

Yes

No **X**

If Yes, please give details below:

.....

Will you request a priority hearing?

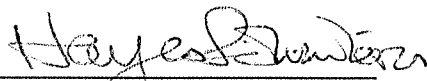
Yes

No **X**

If Yes, please give reasons below:

N/A

Signed: _____



Solicitor for the respondent
Hayes solicitors
Lavery House
Earlsfort Terrace
Dublin 2

Please submit your completed form to:
The Office of the Registrar of the Supreme Court
The Four Courts
Inns Quay
Dublin

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.