JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MISS JUSTICE P WILLIAMS JA
THE HON MRS JUSTICE FOSTER-PUSEY JA

SUPREME COURT CIVIL APPEAL NO COA2021CV00046

BETWEEN	**THE FIREARM LICENSING AUTHORITY**	**APPELLANT**
AND	**ANDREW BOBB**	**RESPONDENT**

Written submissions filed by Lemar Neale instructed by Nea|Lex for the respondent

Written submissions filed by Nicholas Ranger for the appellant

7 June 2024

(Ruling on Costs)

Civil procedure – Costs – Whether there should be any departure from the general rule that costs follow the event – Appellant successful but not acting reasonably in pursuing the appeal – Whether there should be no order as to costs in appeals from a successful claim for administrative orders – Civil Procedure Rules rr 56.15(5) and 64.6

BROOKS P

[1] On 14 May 2021, the Supreme Court of Judicature permitted Mr Andrew Bobb to apply for judicial review of the Firearm Licensing Authority's ('FLA') withdrawal of his firearm licence. The FLA appealed and, on 10 May 2024, this court allowed its appeal. Notwithstanding the FLA's success, the court considered that it had acted unreasonably by pursuing the appeal. The FLA did so, although, after filing its notice of appeal, it had restored the firearm licence to Mr Bobb, thereby granting him the relief that he sought when he applied to the Supreme Court for judicial review of the withdrawal of the licence.

[2] Based on that view, this court ordered the parties to file written submissions on the issue of costs within a stipulated time. Only counsel for Mr Bobb complied with that order. Mr Ranger (who was not the counsel who argued the appeal), filed submissions on behalf of the FLA, four days after the stipulated time. In light of his late entry to the case, the court considered the submissions, despite the lapse.

[3] Mr Neale, on behalf of Mr Bobb, acknowledged that costs are normally awarded to a successful party, but argued that since the FLA acted unreasonably, it should not be awarded costs. Instead, he contended that the costs of the appeal ought to be awarded to Mr Bobb. Learned counsel submitted that Mr Bobb was obliged to resist the appeal. Alternatively, he submitted that there should be no order as to costs.

[4] Mr Ranger submitted that the FLA should have the costs of the appeal, following the general principle that the successful party should have its costs. He submitted that the appeal was not an academic exercise, and the FLA was entitled to pursue it to "gain the guidance of the court on whether its actions fell outside the scope of the Firearms Act".

[5] It must first be said that rule 56.15(5) of the Civil Procedure Rules, 2002 ('CPR'), which deals with costs in judicial review matters, does not apply at the appellate level (see **Private Power Operators Ltd v Industrial Disputes Tribunal and others** [2021] JMCA Civ 18A, at para. [22] and **Robert Ivey v Firearm Licensing Authority** [2021] JMCA App 26, at para. [76]).

[6] It is also noted, as recognised in **Crichton Automotive Limited v The Fair Trading Commission** [2017] JMCA Civ 33 ('**Crichton**'), that costs are in the discretion of the court. P Williams JA, at para. [13] of her judgment in that case, acknowledged the guidance of Lord Lloyd in **Bolton Metropolitan District Council v Secretary of State for the Environment (Practice Note)** [1995] 1 WLR 1176, in which he said:

> "In all questions to do with costs, the fundamental rule is that there are no rules. Costs are always in the discretion of the

Court, and a practice, however widespread and longstanding, must never be allowed to harden into a rule."

[7] Parts 64 and 65 of the CPR (incorporated into the Court of Appeal Rules ('CAR') by rule 1.18 of the CAR) similarly guide the court at this juncture. Rule 64.6(1) states the general rule concerning costs, which is, that the unsuccessful party should pay the costs of the successful party. Rule 64.6(2) of the CPR stipulates that the court may depart from that general rule, while rule 64.6(3) guides that in deciding who should be liable to pay the costs, the court must consider all the circumstances. Rule 64.6(4) of the CPR sets out some of the circumstances that the court must consider. It states:

> "In particular [the court] must have regard to –
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> (a) the conduct of the parties both before and during the proceedings;
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> (b) whether a party has succeeded on particular issues, even if that party has not been successful in the whole of the proceedings;
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> (c) any payment into court or offer to settle made by a party which is drawn to the court's attention (whether or not made in accordance with Parts 35 and 36);
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> (d) **whether it was reasonable for a party –**
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> **(i) to pursue a particular allegation; and/or**
>
> **(ii) to raise a particular issue;**
>
> (e) the manner in which a party has pursued –
>
> (i) that party's case;
>
> (ii) a particular allegation; or
>
> (iii) a particular issue;
>
> (f) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his or her claim; and
>
> (g) whether the claimant gave reasonable notice of intention to issue a claim." (Emphasis supplied)

[8] In this context, it is noted that not only did the FLA pursue the appeal despite returning Mr Bobb's firearm licence to him, but it did not inform the court of that return, until almost at the end of oral submissions during the appeal hearing. The net result was a waste of the court's time and limited resources.

[9] In assessing that whole situation, it must be said that the FLA acted unreasonably. Having re-issued a licence to Mr Bobb, there was nothing to be gained from pursuing the appeal. It is not as if there was a decision against the FLA in the Supreme Court; Mr Bobb had only been granted permission to apply for judicial review. Had the FLA withdrawn its appeal after it had restored Mr Bobb's licence, it would have suffered no prejudice. As was stated in para. [30] of this court's judgment in allowing the FLA's appeal, "it is inconceivable, if this court had ruled in his favour, that Mr Bobb would have pursued an application for judicial review", and even if he had, given the guidance of **Robert Ivey v Firearm Licensing Authority**, he would not have been entitled to succeed.

[10] Mr Ranger's submissions on behalf of the FLA cannot be accepted. Although learned counsel argued that, in pursuing the appeal, the FLA was seeking to have the guidance of this court, it had already received it in **Robert Ivey v Firearm Licensing Authority**. In addition, the judgment in this case was not to guide the FLA's actions but to determine the propriety of Mr Bobb's pursuit of his rights. Neither was Mr Bobb's case so novel that it was of great public interest.

[11] In the circumstances, the FLA acted unreasonably and should not be granted any costs in the appeal.

[12] On that assessment, Mr Neale is correct on one aspect of his submissions. However, his other submissions cannot succeed. Mr Bobb is not entitled to costs. Not only was he the unsuccessful party, but he resisted the appeal despite the guidance given by this court in **Robert Ivey v Firearm Licensing Authority** which was available to the parties before the appeal was heard. To adopt a portion of the judgment of P Williams

JA in **Crichton**, Mr Bobb's resistance was "hopelessly misconceived and had no possible chance of succeeding" (para. [29]).

[13] In **Crichton**, this court awarded a mainly unsuccessful appellant a portion of his costs as recognition for his partial success. Mr Bobb has had no success. An award of costs to him cannot be justified.

[14] In the circumstances, each party ought to bear its costs of the appeal.

P WILLIAMS JA

[15] I have read the draft judgment on costs by my learned brother Brooks P. I agree that each party should bear its costs.

FOSTER-PUSEY JA

[16] I, too, have read in draft the judgment of my learned brother Brooks P and agree.

BROOKS P

ORDER

Each party shall bear its costs of the appeal.