

SUPREME COURT

RECORD NO. S:AP:IE:2025:000082

Between:

Y

RESPONDENT/APPLICANT

-And-

**THE MINISTER FOR FOREIGN AFFAIRS, THE ATTORNEY GENERAL
AND IRELAND**

APPELLANT/RESPONDENT

-And-

THE IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

AMICUS CURIAE

RECORD NO: S:AP:IE:2025000085

Z (SUING BY ■■■ MOTHER AND NEXT FRIEND Y)

RESPONDENT/APPLICANT

-And-

**THE MINISTER FOR FOREIGN AFFAIRS, THE ATTORNEY GENERAL
AND IRELAND**

APPELLANT/RESPONDENT

-And-

THE IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

AMICUS CURIAE

**Outline Legal Submission on behalf of the Irish Human Rights and Equality
Commission**

INTRODUCTION

1. The within submissions, are supplemental to the submissions which the Irish Human Rights and Equality Commission (“**IHREC**”) has filed in respect of both the X and Y families (hereinafter the “**Primary Submissions**”) and relate only to the interpretation and application of s.7(1) of the Irish National and Citizenship act 1956 (“**the 1956 Act**”) in the particular circumstances of the Y case.
2. The role of IHREC as *amicus curiae* in these submissions is to address issues that relate to equality and human rights law. Issues of statutory interpretation would not ordinarily fall into that category but, in this instance, the construction of s.7(1) of the 1956 Act has a direct bearing on the rights of the Respondents that are engaged in these cases, particularly where the State disputes that the Double Construction Rule is engaged in this interpretation due to an asserted lack of engagement with constitutional rights.
3. Therefore, IHREC considers it appropriate that it addresses the interpretation of s.7(1) in that context.
4. It is IHREC’s position that s.7(1) of the 1956 Act, properly construed, and having been interpreted in accordance with the Double Construction Rule, includes the circumstances of Ms Y and her child Z, such that Z qualifies under s.7(1) for citizenship by descent from ■■■ Irish citizen mother.
5. IHREC addresses the issues as follows:
 - (a) the interpretation of s.7(1), as it was discussed and applied in this Court’s judgment in **A, B and C v The Minister for Foreign Affairs**.¹ In particular, the within submissions note the express exclusion of “genetic mother” from the conclusions of the Court,² and submit that the “blood relationship” identified by

¹ **A, B and C v The Minister for Foreign Affairs** [2023] 1 ILRM 335.

² *Per* Murray J., §76, footnote 13.

the Court as a relevant consideration, is present in respect of Ms Y, as genetic mother to Z;

(b) the relevance of the decision in *MR and DR v An t-Ard-Chláraitheoir*³ to the interpretation of “parent”, within the meaning of s.7(1). It is submitted that *MR* does not support the narrow interpretation of s.7 urged upon the Court by the State in circumstances where the case related not only to a different statutory scheme but to a different term, having been concerned with the term “mother” within the Civil Registration Act, 2004 rather than “parent” in the 1956 Act. In this regard, IHREC also notes that *MR* did not involve a constitutional challenge, nor does it purport to be an authority on the issues in the present appeal; and

(c) the engagement and application of the Double Construction Rule, in the interpretation of s.7(1). IHREC submits that as a consideration of s.7(1) engages with the constitutional rights of Y and Z (as addressed in the Primary Submissions) the rule was appropriately and correctly applied in the High Court.

A. SECTION 7 OF THE 1956 ACT

6. The determination of the Trial Judge such that the legislative scheme of s.7(1) of the 1956 Act relates to the biological children of an Irish parent at birth is consistent with the judgment of the Supreme Court in *A, B and C v The Minister for Foreign Affairs*. IHREC agrees that s.7 concerns *jus sanguinis* and considers that this is satisfied by a child being born to an Irish citizen who is their biological parent, such as Y. As Z’s genetic mother, Y is ■ “parent” for the purposes of s.7. This means that Z is entitled to Irish citizenship on this basis.

7. The State disagrees that focus should be on which of Z’s parents satisfies a definition of “mother” rather IHREC suggests that the more appropriate question is, whether Z had an Irish citizen parent at the time of ■ birth. S.7(1) does not require the identification of a child’s “mother”, rather the section is concerned with “parent”.

³ *MR and DR v An t-Ard-Chláraitheoir* [2014] 3 IR 533.

8. It is clear from *A, B and C v The Minister for Foreign Affairs*⁴ that this relates to a biological parent at the time of birth. The Court in that case did not determine whether a genetic mother was a biological mother for the purposes of s.7(1). The decision is not authority for the proposition that the term “parent” within s.7 of the 1956 Act can *only* be understood as referring to a gestational mother and not a genetic mother as is clear from footnote 13, wherein Murray J. specifically states:

“I should stress that the question of whether the reference to ‘parent’ includes the genetic mother is not before the Court. While I refer throughout the judgment to the provision as including the ‘birth mother’ this merely reflects the arguments advanced by the Minister. Those references should not be understood as a finding that the provision is exclusively concerned with the ‘birth mother’ to the exclusion of the genetic mother.”

9. As such, the issue of whether the term “parent” contained within s.7(1) of the 1956 Act can and/or does encompass a genetic mother as a biological parent, remains an issue to be determined. So too does the question of how the provision is to be interpreted in a manner that conforms with the requirements of the Constitution, if that is indeed possible.
10. IHREC submits that it is undoubtedly the case, as a matter of fact, that Y is the biological parent of Z.
11. Emphasis is correctly placed in the State’s submissions on the intention of the Oireachtas at the time of the enactment of the 1956 Act. In 1956, the original provision referred to “mother” and “father” rather than parent. The Act was amended in 2001 changing the language from “mother” and “father” to “parent”. The question to consider therefore is not who is Z’s mother but who is Z’s parent. If one of ■ parents is an Irish citizen, ■ comes within s.7(1).
12. It must be accepted that in 1956, the terms “mother” and “father” referred to a biological mother and father. In circumstances where science did not permit the

⁴ [2023] 1 ILRM 335.

divisible roles of genetic and gestational mother in 1956, it is not possible that consideration was given to the separate roles of genetic and gestational mother such that there could have been a legislative intention to prefer one over the other. This means that it would not have been in contemplation that a genetic mother would not be a child's parent. The role at that time was an indivisible role. That is no longer the nature of the role; it can now be divided between 2 women. Hence it could not have been a legislative intention to exclude a genetic mother given that the possibility of this could not have been contemplated at the time.

13. At the point of enactment in 1956, the only way in which a child could be born was through a mother who was both genetic and gestational. It is respectfully submitted that interpreting the term "parent" in a way that excludes the genetic mother in favour of the gestational mother prefers a legislative intention that could not have been contemplated at the time.
14. In *A, B and C v The Minister for Foreign Affairs*, at §§76-77, Murray J. identified the "*blood relationship between parent and child*" as underlaying the concept of citizenship. The fact of Ms Y's blood relationship with her child is clearly, in light of Murray J.'s observation, a relevant matter in interpreting how the term "parent" is to be understood in the confines of this statutory provision.
15. What the legislature had in mind was clearly citizenship through *jus sanguinis* – a biological connection. The issue was not about the different roles of a genetic or a gestational mother. The issue was the right to citizenship by descent of a biological child of an Irish citizen and the right of that Irish citizen to confer that citizenship by descent on their biological child. The act of distilling that language now into genetic and gestational mothers changes the legislative scheme that has been in place since 1956. It is not a necessary distinction to make where the language in s.7 is "parent" and not "mother".

B. LIMITS TO THE APPLICATION OF MR v AN T-ARD-CHLÁRAITHEOIR

16. The State's submissions take an approach which means that instead of considering the language contained in the section – "parent" – the then Minister concerned himself

with making a choice between two women who could be considered the “mother” within Irish law, and in applying the decision in MR and DR v An t-Ard-Chláraitheoir⁵ determined that a genetic mother is not a parent for the purposes of s.7. This approach fails to recognise that the Registrar in MR was faced with a very different task. That was the requirement to insert one name, from a choice of 2, on the register identifying a child’s mother.

17. MR and DR v An t-Ard-Chláraitheoir⁶ is not an authority for stating that as a matter of Irish law the term, or concept of being a “mother”, can only ever be by reference to the gestational mother.⁷ As the State recognises at §59 of its own submissions in the “Y” proceedings:

“The divisible nature of the female input in the reproductive process may make it necessary to make policy choices as to whether the genetic mother or the gestational mother should be recognised as the mother or parent for certain purposes, as arose in MR.” [Emphasis added].

18. O’Donnell J’s judgment in MR and DR v An t-Ard-Chláraitheoir⁸, confirmed the narrow issue before the Court, at §243 he stated:

“It should be apparent however that this conclusion is dependent upon this essentially narrow focus of this case. It is in my judgment permissible to have a birth registration system registering the birth mother, initially. That is what the 2004 Act does. But that only illustrates the fact that serious constitutional issues must necessarily arise if that position is maintained for all time and for all purposes. From a human point of view it is completely wrong that a system, having failed to regulate in any way the process of assisted reproduction, and which accordingly permits children to be born, nevertheless fails to provide any system which acknowledges the existence of

⁵ [2014] 3 IR 533.

⁶ [2014] 3 IR 533.

⁷ See further the comments by the Authors of *Kelly: The Irish Constitution* who describe statutory interpretation as the “core issue” in the appeal. See Hogan, Whyte, Kenny and Walsh, *Kelly: The Irish Constitution* (2018, 5th ed.), §7.7.80.

⁸ [2014] 3 IR 533.

a genetic mother not merely for the purpose of registration, but also in the realities of life including not just important financial issues such as inheritance and taxation, but also the many important details of family and personal life which the Constitution recognises as vital to the human person. Very different issues would arise in such circumstances. In my view however, on the narrow question of registration on birth raised in this case, the first named respondent is correct that the 2004 Act on true construction requires the registration of the birth mother and in doing so is not unconstitutional...I wish to make it as clear as is possible that this decision is limited to the question of immediate registration of birth: it should not be taken as deciding anything more.” [Emphasis added].

19. Similarly, Murray J. emphasised that the Court’s focus was on a matter of statutory interpretation as opposed to making some broad finding in respect of the understanding of the term or concept of a “mother” which should apply in every context, he said at §§151-152:

“151. The core interpretative issue in this case...is whether the reference to “mother” in the Civil Registration Act 2004 is to be interpreted as referring to the genetic mother to the exclusion of the birth mother...

152...no issue arises as to the constitutionality of any of the statutory provisions, it not being contended that if the true construction means that the term ‘mother’ refers only to the birth mother, that such would be incompatible with the Constitution. The court is left therefore with the pure question of statutory interpretation, even if, as has been argued, it has to be viewed in a constitutional context.” [Emphasis added].

20. Moreover, the case specifically reflects that neither the legislative framework at issue in that case nor the Status of Children Act, 1987 addressed the issues of parenthood arising in surrogacy arrangements. In that case, the Court had to interpret what the term “mother” in its singular form meant.

21. This is not directly analogous with the task with which this Court is now engaged, which involves interpreting the term “parent”, which, on a plain reading of the section, applying the judgment in *A, B and C v Minister for Foreign Affairs*, means a biological parent. In this instance, the Court is not faced with a binary conundrum in the same way that it was in *MR and DR v An t-Ard-Chláraitheoir*.
22. The minority judgment of Clarke J in *MR and DR v An t-Ard-Chláraitheoir* is of assistance in considering this issue:

“497. There is no doubt that the idea that two persons may, in different ways, be regarded as the mother of a child is counter intuitive. But so also is not regarding the person who gives birth to a child as being its mother, and, equally in not so regarding the person who has given the female half of the genetic material which underlies such a child's makeup...

498. I have reached those conclusions on the lack of a constitutional effect on the issues which arise in this case only because I have concluded that the law, in the absence of legislative amendment, regards both a birth mother and a genetic mother as 'mothers' or at least as having some of the legal characteristics of a mother. If I had come to a different conclusion on that point then there might well have been significant constitutional issues. To what extent would it be legitimate, for example, in current scientific conditions, for a definition of 'mother' to potentially deprive a child or children of the status of forming part of a constitutionally protected family including their father? To what extent would it be constitutionally permissible, on the other hand, to deprive a birth mother of any potential recognition as a mother?...They are also issues which, in my view, necessarily would loom large if either the genetic mother or the birth mother were, by definition, in all circumstances, and without any possibility of legal intervention, to be excluded by definition from being a mother for constitutional purposes. However, given the views which I have formed on the current definition of 'mother' (in the absence of legislative intervention), those issues do not seem to me to arise on the facts of this case.

499. For those reasons I have come to the view that the Constitution does not mandate any different approach to the definition of 'mother' than that defined by the common law amended, if it be amended, by constitutionally permissible legislation. It follows that, in my view, in the absence of definition, the term 'mother', when used in Irish law in current scientific circumstances, applies equally to a birth mother and a genetic mother...

510. I fully appreciate that a legal regime where two persons can be regarded as having some of the characteristics of a mother of a child for legal purposes brings with it many complications concerning the very types of matters which were the subject of argument in this case. Issues of constitutional status; issues of citizenship and inheritance; and doubtless others. But those issues arise whatever the answer. Those same issues have the potential to create difficulties if either the position argued for by the R family or that advanced by the State is found to prevail. A child having two persons who have some of the characteristics of a mother may be highly counter-intuitive. But so is a child not being regarded as the offspring of the person who gives birth to them, but so equally is the person who has given such a child half of their genetic material not being regarded as the child's parent... [Emphasis added].

23. In the context of s.7(1), which is based on *jus sanguinis* and does not require the identification of a “mother”, but a “parent”, the Trial Judge was correct to determine that the provision can be read as including the genetic and biological mother of the child as a parent for the purposes of citizenship by descent.

C. **“EITHER” PARENT**

24. Emphasis has also been placed by the State on the inclusion of the word “either” within the provision, although this is not a matter which features to any great extent, if any, in the judgment of the High Court. IHREC does not consider that the inclusion of this word means that the term “parent” within the provision is to necessarily be understood as being binary in choice. Even if that were to be the situation, it is not necessarily the case that it must be that the parents taken into account for the purpose of applying this

section are necessarily always the genetic father and gestational mother. Rather, it could encompass the gestational mother and genetic mother. This interpretation does not do violence to the language of the provision.

25. The purpose of the statutory provision is clearly to ensure that a person who has a biological parent that is an Irish citizen benefits from being conferred with citizenship by descent. Ms Y clearly is Z's biological parent (given her genetic link or blood relationship with her child, Z), and she is also an [REDACTED] citizen.
26. In challenging this finding, the State submits that s.7 envisages only 2 parents. They say that this is reflected in the language "either" used in that section. In reliance on this point, they say that the interpretation adopted by the Trial Judge would result in a child having 3 parents. The Respondents respond that as a matter of fact and law the child has only ever had 2 parents.
27. In 1956, when the legislative scheme was originally enacted the number of parents, beyond 2, was not a consideration as it was not a scientific possibility at that time. It is also of relevance that the legislation was amended in 2001, replacing references to "mother" and "father" to "parent". The requirement for the purposes of citizenship for persons born in the island of Ireland, as provided for in Article 9.2 of the Constitution is that they have at the time of the birth "**at least one parent who is an Irish citizen**".
28. Taking the ordinary literal meaning of "either parent" could mean, as the State contends, that a person seeking citizenship by descent could choose between one of only 2 parents in nominating an Irish citizen parent. In that context the word "either" is used as a determinator. Alternatively, the word "either" can also be used as a conjunction, to indicate that a choice is to be made between more than one option but not necessarily limited to two options e.g. *The parents will send their child, either to school A, school B or school C.* Both uses are possible and, insofar as the State relies on the word "either" to reject the interpretation applied by the Trial Judge, on that basis alone, and on the ordinary interpretation of the word, IHREC submits that there is more than one possibility as to its meaning.⁹

⁹ The interpretation of "either" relied on by the State is consistent with the interpretation adopted by the Court in

29. It is submitted that based on the intention and purpose of the legislative scheme that the aim was that a person seeking Irish citizenship was not required to have more than one parent who was an Irish citizen. A person only needed one such parent. It was not about limiting the number of potential parents who might come within the definition, that neither arose as a consideration at the time nor was it relevant to the purpose of the provision. Citizenship within s.7 is already limited, as recognised by this Court in *A, B and C v Minister for Foreign Affairs*, to a child who has an Irish parent at birth.
30. Further a person can be a parent for one purpose but not for another, as set out above. In that respect a person might well have more than 2 parents at any one time depending on the context. In the context of the 1956 Act itself and in the context of citizenship by descent, it is possible that a person's circumstances could come within both s.7 and s.11 of the Act, such that a child born to an Irish citizen parent has an automatic right to citizenship under s.7 or if born in Ireland, under the Constitution. A child adopted by an Irish adopting parent also has a right to citizenship with effect from the date of the adoption order – if not already a citizen. This latter language reflects the fact that if a child is automatically an Irish citizen from birth they do not need to avail of s.11 as their citizenship is automatic, notwithstanding their subsequent adoption. In that particular legislative scheme, a child could have 4 parents for different purposes – although not at the same time. The point is that, if by extension of the Trial Judge's interpretation of s.7, a child could in law have more than 2 parents, that is not a reason to deny the child citizenship to which they otherwise qualify, being the biological child of an Irish parent at the time of birth, as more than 2 parents is a possibility within the legislative scheme.

D. THE DOUBLE CONSTRUCTION RULE

31. Insofar as it has been argued by the State that the Double Construction Rule is not engaged in interpreting s.7, as it does not concern a constitutional right to citizenship, IHREC disagrees.

DPP v Avadenei [2016] IECA 136; and *Martin McCaughey v Peter McCaughey, IJM Timber Engineering Ltd and by Order McCaughey Homes Ltd* [2021] IEHC 412.

32. The State’s criticism of the Trial Judge’s approach appears to be based on the premise that the constitutional rights of Ms Y and her child, Z, are not engaged by the scenario at the centre of these proceedings. IHREC does not accept this to be the case in respect of either family. At §27 of its submissions, the State submits as follows:

“...the double construction rule has no proper application in the circumstances of these cases, as the interpretation of s.7(1), in accordance with its ordinary and natural meaning, would not infringe any constitutionally protected right of the Respondent Z to citizenship, or of Y to pass citizenship to [REDACTED]. The scheme of the Constitution, and the relevant provisions thereof, when properly understood and applied makes clear that they do not enjoy such rights...”

33. It is respectfully submitted that this position misconstrues the manner in which the High Court approached the application of the Double Construction Rule and serves to disregard the plethora of other rights engaged by the exercise of interpreting and applying s.7(1) of the 1956 Act, which rights are addressed in the Primary Submission.

34. It was not simply, as the State seeks to represent, a right to citizenship on the part of Z or a right to pass on citizenship on the part of Ms Y, which led to the Double Construction Rule being applied and the statutory provision being interpreted in that manner. Instead, it was the groups of other rights enjoyed by Ms Y and by her child, Z, which include in the case of both, their rights to equality, to identity and personhood, their family rights including marital equality, and in the case of Ms Y, her right to privacy in family planning.

35. As is addressed in the **Primary Submissions**, there is a line of authority (for example, ***NHV v Minister for Justice and Equality***¹⁰) which holds that the Constitution does not require that a person be a citizen before they may be said to benefit from constitutional rights that are rooted in human personality. IHREC submits that those rights, enjoyed by Z (as distinct from [REDACTED] parent Y) are engaged in the interpretation and application of s.7 of the 1956 Act, and thus, it was entirely appropriate for the High

¹⁰ [2018] 1 IR 246.

Court to apply the double construction rule. In fact, the Trial Judge was obliged to do so.

36. In his judgment in *Jordan v Minister for Children and Youth Affairs*,¹¹ O’Donnell J. (as he then was) provided a clear and succinct summation of what the Double Construction Rule entails, in that case he said at §48 that the court must:

“...address the effect of the double construction rule and consider if the Constitution requires the interpretation advanced by the petitioner while less likely, should nevertheless be accepted because the more likely interpretation of the words to require a showing of material effect, would be unconstitutional.”

37. Relying upon, *Doyle v An Taoiseach*,¹² the learned authors of *Kelly: The Irish Constitution*, highlight that:

*“The presumption of constitutionality will sometimes require the courts to give an artificial meaning – an open meaning, but one that might not be the meaning a court would initially gravitate towards...if this can be achieved without doing violence to the language of the statute itself.”*¹³

38. In her judgment, the Trial Judge found that the Minister’s refusal of Z’s application for a passport, on the basis that ■ was not an Irish citizen, was unlawful in that it was not a decision that could have been taken in accordance with s.7 of the 1956 Act, if that provision were to be interpreted in a manner that conformed with the requirements of the Constitution. In order to arrive at this conclusion, the Trial Judge applied the Double Construction Rule, holding that:

“...it seems to me that interpreting the word ‘parent’ in a broad manner to include a genetic mother whose status as parent is recognised by the laws of

¹¹ [2015] 4 IR 232.

¹² [1986] ILRM 693.

¹³ Hogan, Whyte, Kenny and Walsh, *Kelly: The Irish Constitution* (2018, 5th ed.), §6.2.265; see also, *Defender Ltd. v HSBC Frane and ors.* [2021] 1 IR 516, §79 (relied upon in *A, B and C v The Minister for Foreign Affairs* [2023] 1 ILRM 335, §91.

her domicile is open and permissible and is the correct interpretation on an application of the double construction rule.”

39. IHREC considers that this was the correct approach for the learned Trial Judge to adopt in her analysis of what the provision provides for. The application of the Double Construction Rule in this case did not lead to the distortion of the language of the provision or the scheme of the 1956 Act (as so described by Murray J. in the particular instance that arose in *A, B and C v The Minister for Foreign Affairs*).¹⁴
40. Applying the Double Construction Rule to the interpretation of “either parent” in a manner that results in a constitutionally sound interpretation, and avoids invalidity, means that s.7 can be read to include Z as the child of an Irish citizen biological parent, at the time of Z’s birth. The interpretation urged by the State, would result in the invalidity of s.7.

CONCLUSION

41. In IHREC’s submission, s.7(1) of the 1956 Act, when properly construed, includes Ms Y within the definition of parent as the biological mother of her ■■■ Z. As such, Z is an Irish citizen and has been since ■■■ birth. Such a construction is necessary to vindicate the constitutional (and ECHR) rights of Y, Z and their family (as is addressed in greater detail in the Primary Submissions).
42. For these reasons, IHREC submits that this Honourable Court ought to uphold the judgment of the High Court insofar as it relates to the construction of s.7(1) as outlined.

Síona Molony BL
Lewis Mooney BL
Nóra Ní Loinsigh BL
Cathy Smith SC

24 November 2025

¹⁴ [2023] 1 ILRM 335, §91.