

ENGLAND AND WALES / JUDGMENT

Anilkumar Patel v Jayaben Patel (Consequential matters)

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Neutral Citation Number: [2025] EWHC 620 (Ch) IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES PROPERTY, TRUSTS AND PROBATE LIST (ChD) Case No: PT-2025-000120 Royal Courts of Justice Rolls Building, Fetter Lane, London, EC4A 1NL Date: 14 March 2025 Before : HHJ PAUL MATTHEWS (sitting as a Judge of the High Court)

- ----- Between : ANILKUMAR PATEL Claimant
- and - JAYABEN PATEL Defendant
- -----
- ----- James Poole (instructed by Rollasons Solicitors LLP) for the Claimant Rosalind Young (instructed by Advocate) for the Defendant Consequential matters dealt with on paper
- ----- This judgment was handed down remotely at 5.30 pm on 14 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. HHJ Paul Matthews Approved Judgment HHJ Paul Matthews :

Introduction

Patel v Patel, PT-2025-000120 1. 2. 3. On 12 March 2025 I handed down my judgment on a claim concerning the funeral arrangements for the late Bhikhubhai Rambhai Patel (“the deceased”), who died on 30 December 2024: see [2025] EWHC 560 (Ch). His will appointed the claimant and the first defendant, his surviving son and daughter respectively, to be executors and trustees of the will, and left the residue of his estate to them equally. They could not agree on the funeral arrangements that should be made for the deceased. After hearing argument from counsel on each side, I decided that the body should be released to both of the claimant and the first defendant jointly, that the body be cremated and the ashes scattered in England, in accordance with Hindu rites, and that the claimant and the first defendant should be jointly responsible for arranging the funeral. I now have to deal with consequential matters. These are costs and permission to appeal. The claimant seeks an order that the first defendant pay the costs of the claim, and of the application made to Rajah J on 6 February 2025 (the judge having ordered that the costs of that application should be costs in the claim). The first defendant seeks permission to appeal. I deal with them in turn. Costs The rules 4. 5. As to costs, the rules are well known. Under

the general law, costs are in the discretion of the court: Senior Courts Act 1981, section 51(1); CPR rule 44.2(1). If the court decides to make an order about costs, the general rule is that the unsuccessful party in the proceedings pays the costs of the successful party: CPR rule 44.2(2)(a). However, the court may make a different order: CPR rule 44.2(2)(b). In deciding whether to make an order, and if so what, the court will have regard to all the circumstances, including “the conduct of all the parties” and any admissible offer to settle the case (not falling under CPR Part 36) which is drawn to the court’s attention: CPR rule 44.2(4). The first question is whether the court should make a costs order. Unfortunately, today, litigation costs a significant amount of money. This was a serious dispute between two personal representatives, holding up the disposal of the body of the deceased. It was proper to bring it to court, and in my judgment it is right to make a costs order. Next, I need to consider which party, for the purposes of the “general rule” in rule 44.2(2)(a), was the successful party overall. In my judgment, this was the claimant. There was one main issue, and the claimant successful on it. And so the general rule would indicate that I should make an order in favour of the applicants. Probate cases 6. But the court may make a different order, having regard to all the circumstances. One circumstance here is that this is a case which was brought because there was a disagreement as to what the deceased’s wishes were in relation to his funeral HHJ Paul Matthews Approved Judgment *Patel v Patel*, PT-2025-000120 arrangements. It is akin to the situation sometimes encountered in probate litigation, where the disagreement is caused by some failure on the part of the deceased to make his or her intentions clear, or where some other matter properly deserves further inquiry. 7. This is explained in the case of *Spiers v English* [1907] P 122. In that case, Sir Gorell Barnes, P, dealing with an application by an unsuccessful plaintiff in a probate action for an order that the costs come out of the estate or alternatively that each side pay its own costs, said (at 123): “In deciding questions of costs one has to go back to the principles which govern cases of this kind. One of these principles is that if a person who makes a will or persons who are interested in the residue have been really the cause of the litigation case is made out for costs to come out of the estate. Another principle is that, if the circumstances lead reasonably to an investigation of the matter, then the costs may be left to be borne by those who have incurred them.” 8. In *Anstey v Mundle* [2016] EWHC 1073 (Ch), it appears that a submission of this kind was made to the deputy judge in deciding what costs order should be made. The judge said: “52. ... I take the view that this was hostile litigation of the normal sort. I do not regard any of the special rules that apply in certain probate cases to be analogous and in particular I do not think that this case is analogous to the cases where the validity of a person's will is called into question by his mode of living or his own conduct.” 9. On the facts of that case, that was undoubtedly so. The next few sentences of his judgment make this clear: “As I indicated in my judgment, I am entirely satisfied that Mr Carty did wish to be buried next to his mother in Jamaica. Whilst I understand Mrs Anstey's initial concern, it is not at all clear how the breakdown in communications occurred. In any event the significant costs in this case are likely to have been borne after Mrs Anstey became aware of the contents of Mr Carty's will.” 10. 11. But that is not this case. The problem here was that the deceased did not provide his wishes in written or other permanent form, and two intelligent and rational people obtained different ideas about what he wanted. This might therefore be thought to be a case where the costs should come out of the estate. On the other hand, it is true that, as I said in my judgment,

even if I had found the deceased's wishes to be in favour of burial in India, I would still have decided in favour of cremation in England. Nevertheless, I consider that the failure to provide wishes was still causative of the dispute. I do not think that the first defendant would have resisted cremation in England if the deceased had clearly indicated by some permanent means that that was what he wanted. Although the deceased was registered blind that does not make it impossible to record wishes in some permanent way. Trust and estate cases HHJ Paul Matthews Approved Judgment Patel v Patel, PT-2025-000120 12. It is also necessary to consider the special trust and estate rules in CPR rule 46.3 and PD 46 para 1. Rule 46.3 relevantly provides: "(1) This rule applies where –

- (a) a person is or has been a party to any proceedings in the capacity of trustee or personal representative ...
- (2) The general rule is that that person is entitled to be paid the costs of those proceedings, insofar as they are not recovered from or paid by any other person, out of the relevant trust fund or estate.
- (3) Where that person is entitled to be paid any of those costs out of the fund or estate, those costs will be assessed on the indemnity basis." 13. Para 1 of PD 46 provides: "1.1 A trustee or personal representative is entitled to an indemnity out of the relevant trust fund or estate for costs properly incurred. Whether costs were properly incurred depends on all the circumstances of the case including whether the trustee or personal representative ('the trustee') –
 - (a) obtained directions from the court before bringing or defending the proceedings;
 - (b) acted in the interests of the fund or estate or in substance for a benefit other than that of the estate, including the trustee's own; and
 - (c) acted in some way unreasonably in bringing or defending, or in the conduct of, the proceedings. 1.2 The trustee is not to be taken to have acted for a benefit other than that of the fund by reason only that the trustee has defended a claim in which relief is sought against the trustee personally." 14. 15. The claimant and the first defendant are both personal representatives to proceedings in that capacity. They were unable to agree, and directions were sought from the court. I do not think that either acted in an interest other than that of the estate, and neither do I think that either acted unreasonably in bringing and defending the claim. Accordingly, I consider that, whatever the order made in the litigation about the costs, ultimately the costs will come out of the estate. This is because, if I order the first defendant to pay the claimant's costs, she will have an indemnity out of the estate for what she pays. If the first defendant had incurred costs of her own, she would also be entitled to those costs out of the estate. If I make no order as to costs, both sides will have their costs out of the estate. For the sake of clarity, therefore, I will order that the costs of both sides come out of the estate, to be assessed on the indemnity basis. Appeals HHJ Paul Matthews Approved Judgment Patel v Patel, PT-2025-000120 16. For the avoidance of any doubt, I make clear that these special rules do not apply to any appeal from a directions

order of this kind. In *Re Londonderry's Settlement*

[1965] Ch. 918, 930, Harman LJ said: "This appeal, as it seems to me, is an irregularity. Trustees seeking the protection of the court are protected by the courts's order and it is not for them to appeal." 17. Thus, in *Re Earl of Radnor's WT* (1890) 45 Ch D 402, 423, Lord Esher MR (with whom Lindley and Bowen LJJ agreed) said: "One of the Appellants was the surviving trustee of the will; he and the other Appellant were perfectly entitled to take the opinion of Mr. Justice Chitty as to what was right to be done; but when they appeal to this Court from him, being absolutely protected as trustees by his decision — I do not say they are wrong in appealing, but they appeal to this Court under the ordinary conditions of Appellants, and they fail in the appeal; therefore this appeal must be dismissed with costs." (See also *Westminster Corporation v Rector and Churchwardens of St George, Hanover Square* [1909] 1 Ch 593, 614-17, and *In re Stuart* [1940] 4 All ER 80.)

Assessment of costs 18. 19. 20. 21. The claimant asks that I assess his costs summarily, and has lodged a costs schedule for this purpose. The first defendant's counsel has made written submissions on the costs claimed. Since the hearing lasted less than one day, I consider that it is appropriate for me summarily to assess claimant's costs: see PD 44, para 9.2. Assessment will be on the indemnity basis, as stated above. The total costs claimed on behalf of the claimant amount to £9,558 for solicitors' fees, £11,625 for counsel's fees, and court fees of £929, together with applicable VAT. The grand total claimed accordingly (before VAT) was £22,112. The indemnity basis means that the court will disallow costs which it finds to have been unreasonably incurred or which are unreasonable in amount: see CPR rule 44.3(1) and PD 44 para 6.1. Disproportionality to the claim is not however a basis for disallowing costs on the indemnity basis: cf rule 44.3(2). The first defendant says that this was a relatively straightforward matter and it was not necessary to have a grade A fee earner working throughout on this case as well as experienced counsel. She also says that the total attendances (5.7 hours on the claimant and 7.7 hours on others) were excessive. Further, she says that the work done documents should not have been done entirely by the grade A fee earner, and it was not necessary for that fee earner to attend the hearing. Finally, she says that the fees for counsel at £11,625 were disproportionate to the claim. I agree with the first defendant that it was not necessary to have a grade A fee earner working throughout on this case as well as experienced counsel, and in particular it should have been possible to delegate much of the work on documents and some of the attendances to more junior staff. I am also surprised at the amount of time taken for the attendances. In addition, it was unnecessary to have that fee earner at the hearing. The solicitors' costs are therefore unreasonable in amount. Looking therefore HHJ Paul Matthews Approved Judgment *Patel v Patel*, PT-2025-000120 simply at the fees for the solicitors, I consider that the sum claimed of £9,558 should be reduced to £6,500, together with any applicable VAT. 22. As for the fees for counsel, since this is an assessment on the indemnity basis, it is not necessary for me to decide whether they were indeed disproportionate to the claim. I do not think that, for the work actually done, they were unreasonably incurred, or unreasonable in amount. Permission to appeal The rules 23. I

turn to the question of permission to appeal. An appeal from my decision requires permission to appeal: CPR rule 52.3(1)(a). Under CPR rule 52.6, in a first appeal (such as this is) the court may not grant permission to appeal unless either there is a real prospect of a successful appeal or there is some other compelling reason why an appeal should be heard. The phrase 'real prospect' does not require a probability of success, but merely means a prospect which is 'not unreal': *Tanfern v Cameron-MacDonald* [2001] 1 WLR 1311, [21], CA; *Re R (A Child)* [2019] EWCA Civ 895, [31]. If the application passes that threshold test, however, the court is not obliged to give permission to appeal; instead it has a discretion to exercise. Litigants in person 24. The first defendant seeks permission to appeal, and has provided a written submission which she has prepared personally, her barrister not being involved in them. In this respect, therefore, she is a litigant in person, and has made the point that her knowledge of the law and legal procedure are very limited. However, the law that the court applies is not different according to whether the parties are represented or not. In general terms, we do not have one set of rules for parties who are legally represented and another set of rules for those who are not: see for example the decision of the Supreme Court in *Barton v Wright Hassall* [2018] 1 WLR 1119. (There are a few rules that apply only to litigants in person, but they are not material here.) Role of judges 25. Secondly, in our system, judges are not investigators. They do not go looking for evidence. Instead, they decide cases on the basis of the material and arguments put before them by the parties. They are in essence referees, rather than detectives. It is no good a party, after the decision has been given, saying that there was other material which could have been and perhaps even should have been considered, but it was not put before the court. A party who wants to rely on relevant material should put it before the court. Appeals against findings of fact 26. Thirdly, many of the claimant's submissions concern my finding of the facts. In *Volpi v Volpi* [2022] 4 WLR 48, [2], Lewison LJ said: *HHJ Paul Matthews Approved Judgment Patel v Patel*, PT-2025-000120 "i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong. ii) The adverb 'plainly' does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached. iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it. iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

- v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable. vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.” Contents of judgments 27. Fourthly, and following on from the last subparagraph of the extract from the judgment of Lewison LJ, judges are not obliged to deal in their judgments with every single point that is argued, or every piece of evidence tendered: see *English v Emery, Reimbold & Strick Ltd* (Practice Note) [2002] 1 WLR 2409, CA, [17]-[19]. Judges deal with the points which matter most. The mere fact that I did not in my judgment deal with every point made in argument does not mean that my decision is flawed, let alone wrong, for that reason. The first defendant’s submissions 28. The first defendant’s written submissions run to 26 paragraphs covering just over three pages. Much of it amounts to an attempt to re-argue the case. But, as Lewison LJ memorably noted in another case, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [114], “The trial is not a dress rehearsal. It is the first and last night of the show.” 29. In paragraph 6, complaint is made that some witnesses were not cross-examined. This was the decision of Rajah J on 6 February 2025. The first defendant was represented HHJ Paul Matthews Approved Judgment *Patel v Patel*, PT-2025-000120 by counsel at that hearing (not the counsel who appeared before me). If she was unhappy with that decision then she should have taken legal advice and (if so advised) sought to challenge it. Certainly, no objection was taken by the first defendant’s counsel on her behalf at the hearing before me. In some paragraphs (for example, 8, 10, 19 and 20) complaint was made about documents which were admitted into evidence. The first defendant was represented by counsel and no objection was made on her behalf. For my part, I cannot see that any of this evidence was inadmissible in law, and so it was a question of what weight to accord it. That was a matter for me as the judge. In some paragraphs, (for example 13 and 25) complaint was made that the proceedings were rushed. There is nothing in this. The deceased died on 30 December
2024. The parties attempted to resolve the position as between themselves, but without success. The claim form was issued on 4 February 2025, directions were given on 6 February 2025 and the matter was listed for hearing on 11 March 2025, just over a month later. The whole process has taken about 2½ months, of which the legal proceeding has occupied just over a month. This was sufficient time for parties to consider the need for and to obtain any further evidence which they wished to put before the court. In some paragraphs (for example 14 to 16), reference was made to the deceased’s medical conditions, including his need for renal dialysis and his being registered as blind. In reaching my decision I was well aware of these facts, and took them into account. In paragraph 17, the first defendant says that she sent a particular document, entitled “Story of India’s historic people, the Kolis”, to the claimant’s solicitor and asked for it to be included in the bundle, but it was not. A copy of this document has since been sent to me by counsel for the claimant, together with a clip of relevant email correspondence. This correspondence shows that his solicitor had

asked the first defendant, “Can you please explain the relevance of the document so that I can consider inclusion in the Bundle.” His position is that he received no reply. An email from the first defendant sent to me today says that she did send a reply to his query but she was having technical difficulties. I am not in a position to resolve the question now whether or not this document was ever received by the solicitor. But in the end it does not matter. I have taken the opportunity to read it, and my conclusion is that it would have made no difference to my decision if I had seen it at the time of the hearing. It contains no discussion that I am able to find of established practices in relation to the disposal of the dead. In paragraph 22 of her written submissions, the first defendant says “I understood the court would provide reasons for the judgement however I have not received them.” I do not understand this. My written judgment contains the reasons for my decision. I assume that the first defendant’s counsel passed this to her. 30. 31. 32. 33. 34. 35. 36.

Conclusion

HHJ Paul Matthews Approved Judgment Patel v Patel, PT-2025-000120 37. In addition to these specific points made above, I have read and re-read the first defendant’s submissions in support of her application for permission to appeal. I am unable to see any real prospect of success on an appeal, and neither can I see any other compelling reason for such an appeal. In the circumstances I must refuse the application for permission. The first defendant can of course make a further application to the Court of Appeal itself, under CPR rule 52.3(3) (but I am far from encouraging her to do so). 9

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