

ENGLAND AND WALES / JUDGMENT

Reeve v Reeve

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Neutral Citation Number: [2015] EWCA Civ 616 IN THE COURT OF APPEAL (CIVIL DIVISION) ON APPEAL FROM THE LEEDS DISTRICT REGISTRY CHANCERY DIVISION (HIS HONOUR JUDGE PURLE QC) Case No. A3/2014/4102 Royal Courts of Justice Strand London, WC2A 2LL Date: Tuesday, 19 May 2015 B e f o r e: LORD JUSTICE LEWISON

- ----- Between: REEVE v REEVE
 - ----- DAR Transcript of the Stenograph Notes of WordWave International Limited A Merrill Communications Company 165 Fleet Street London EC4A 2DY Tel No: 020 7404 1400 Fax No: 020 7404 1424 (Official Shorthand Writers to the Court)
 - ----- Appellant Respondent The Appellant appeared in person The Respondent was not present and was not represented
 - ----- J U D G M E N T LORD JUSTICE LEWISON: 1. This is a renewed application for permission to appeal by Mr William Reeve. The application is brought by him against his parents, Mr Peter Reeve and Mrs Henrietta Reeve, although they are now divorced.
2. The application concerns the fate of the family estate known as the Ledingham Estate. In the course of the financial relief proceedings, the mother and the father, if I can call them that, agreed to sell the estate before 30 September 2013 and to divide the proceeds in a manner which was set out in a consent order. The estate has not yet been sold, although the marketing agent, Savills, applied to the court in September of last year for directions about how to proceed with the sale.
 3. The application for permission to appeal arises out of Mr Reeve's application to the Chancery Division for a stay of the sale of the estate and for pre-action disclosure. He alleges that he is entitled to the estate either under a constructive trust or by virtue of proprietary estoppel.
 4. That application came before His Honour Judge Purle QC on 20 November 2014. The application was opposed both by the father and by the mother.

5. In the skeleton argument submitted on behalf of the mother, counsel submitted: "The application ought to be considered by the Family Division in the context of the existing financial relief proceedings. If the sale of the estate is to be delayed, the Family Division will be best placed to make orders regulating the affairs of the parties during that period of delay."
6. The skeleton argument went on to say that the application was an abuse of process and that Mr William Reeve's claim had no realistic prospect of success.
7. The father also had a skeleton argument prepared by counsel. The submission was made that Mr Reeve was not entitled to make the application because he was bound by the consent order made in the family proceedings. Then it went on to say: "If the court disagrees, then as the application concerns two orders of the Family Division, the Applicant ought to make this application to that court."
8. It seems to me, therefore, that both Mr Reeve's opponents were urging on the court that the correct forum for the application, that is the application both for the stay of the order for sale and also the application for further disclosure, ought to have been made to the Family Division.
9. Judge Purle, having recited some of the history, said in paragraph 7: "All of those orders, as I say, have to be surmounted and it seems to me the only place where they can properly be surmounted, if they can be surmounted at all, is in the Family Division."
10. He then went on to say that there was another reason why the Family Division was a natural forum to look to and that was in connection with the abuse of process argument. He concluded in paragraph 8 of his judgment: "It is, however, really for the Family Court to determine whether its procedure has been abused rather than me."
11. At that point, one would have expected the judge simply to have transferred the application to the Family Division, as he was invited to do by both counsel for the mother and counsel for the father, but instead he went on to refuse the stay and to refuse the pre-action disclosure. The result was that there was no transfer of anything to the Family Division. The judge's order simply recorded that the application was dismissed and made costs orders.
12. There is, in my judgment, a real prospect of success in the argument that having reached the conclusion, as he was invited to do, that the Family Division was the natural place for hearing Mr William Reeve's application, the judge ought to have gone no further.
13. The principal reason for his dismissal of the application for the stay was on the ground of delay, but that point does not appear to me to have been one which was raised in the skeleton arguments advanced before the judge. Since Mr William Reeve is a litigant in person, it is, in my judgment, at least arguable that there was unfairness in the judge relying so heavily on a point which had not been squarely raised before the hearing.

14. So far as the application for pre-action disclosure is concerned, Mr Reeve accepts that it would be better for him to await standard disclosure in the course of any further proceedings which he may bring in order to vindicate his alleged right under the constructive trust or under the doctrine of proprietary estoppel.
15. The upshot is, therefore, that I will grant permission to appeal against the judge's order on the grounds that having decided that the Family Division was the appropriate forum to hear Mr Reeve's application, the judge should not have gone on to decide it himself but should have left it to the Family Division to make the decision. Secondly, that it is arguable that the ground upon which he based his decision, namely that of delay, was not one that was squarely argued before him, thus causing procedural unfairness.
16. I will say that this appeal should occupy the court for half a day and should be heard by two Lord Justices. There is no need, I think, for a family specialist to be amongst them. 17. Mr William Reeve had also made an application to adduce fresh evidence dealing with the question of delay, but since neither the mother nor the father have had the opportunity to make submissions in opposition to that application, I will adjourn that application for consideration by the court which matters the ultimate appeal. SMITH BERNAL WORDWAVE
18. I might also add that this is a case which does need to be heard relatively promptly, so I will order an expedited hearing because if there is to be a stay on the sale of the estate, the sooner the question is decided the better. SMITH BERNAL WORDWAVE

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Prepared on 24 October 2026 · Esheria