

JERSEY / JUDGMENT

Bisson -v- Minister for Infrastructure

[2017] JCA 041 (15 March 2017)

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Court of Appeal 15 March 2017 Before : N. P. Fleming, Q. C., sitting as a Single Judge Between Erin Robyn Bisson Appellant And Minister for Infrastructure Respondent The Appellant appeared on her own behalf. Advocate S. A. Meiklejohn for the Respondent. DECISION AND REASONS

PLEMING JA: 1. By Summons, dated 9 February, 2017, the Appellant applies for the following ancillary orders in her appeal: (i) That the affidavits of her brother (Richard Bisson) filed in separate proceedings against the same Respondent can be used as evidence; and (ii) That Mr Forrest [Inspector of Motor Traffic and Head of Driver and Vehicle Standards] and Mr Le Maistre [Senior Traffic Officer and Deputy Inspector Motor Traffic] be called to be questioned by the court "for clarity in relation to their affidavits". 2. The form of the summons is for the Respondent to show cause why the orders should not be made. The document does not contain a date for the Respondent to attend to show cause, and, apparently, the Respondent was not made aware of the summons until 9 March 2017. However, as the hearing of the appeal is imminent, and I have had the opportunity of considering the Respondent's Answer dated 10 March 2017, I have decided to treat the summons as effective and to decide it on the merits. I will refer to it as an application in this decision. 3. The main reasons for the application are: "In view that the above are in relation to my livelihood it would be wholly unfair and unjust given the nature of the appeal. According to a Freedom of Information release all staff are responsible for their actions - 202-03-135626. My brother has experienced the same problems from the same very department and this department is happy depriving people of a livelihood and seem to get a great deal of satisfaction from doing so." 4. I have been supplied with the Appellant's Appeal Contentions dated 15th February 2017, together with a bundle of supporting documents. In that bundle are three affidavits from Richard Bisson in his own proceedings, dated 2, 16 and 22 November 2016 (all with exhibits) together with his written submissions dated 6 December 2016, together with supporting documents. I have also seen affidavits from Mr Forrest dated 22 September 2016 and 25 October 2016 (together with exhibits). 5. The Appellant's appeal is from the decision of the Royal Court dated 6 December 2016 (Sir Michael Birt, Commissioner, and Jurats). There is also an unconnected decision of the Royal Court (the Deputy Bailiff, sitting alone) dated 3 February 2017, in which it was decided that an appeal as of right can continue against the conditions attached to the Appellant's Public Service Licence - Bisson-v-Minister for Infrastructure

- [2017] JRC 023 . The condition which is the subject of the complaint in those proceedings is Condition 12: "Licence holder to work from recognised taxi-cab company, co-operative or approved booking entity named on the application and shown overleaf and seek permission from DVS before moving to a different company, co-operative or booking entity." This condition is identical to Condition 13 referred to in paragraph 57 of the judgment under appeal, save for the omission of the word "restricted" (because it was a standard condition applying to restricted, rather than controlled, taxi-cabs). 6. The Appellant refers to decision *Bisson-v-Minister for Infrastructure*
- [2017] JRC 023 on the basis that "similar behaviour was covered in the Grant for leave to appeal at 15(d)" in that judgment. Paragraph 15(d) (or 15(iv)) is a reference to the Appellant's complaint in the later appeal challenging Condition 12 - it does not relate to the suspension in August/September 2016. In the undated Grounds of Appeal in these proceedings there is reference to seeking to change "conditions 1 to 14", including Condition 13, but it is difficult to see how this arises from the decision to suspend in August/September 2016. 7. Returning to the decision of the Royal Court, it is to be noted that the subject matter of those proceedings was the decision of the Respondent to suspend the Appellant's PSV licence, originally of indefinite duration but varied on 14th September to a period of 6 weeks from the August date - therefore expiring on 29th September 2016. The appeal focussed on three grounds - (1) the decision to suspend was wrong because the Appellant relied on the contents of the gov.je website, (2) the decision was disproportionate, and (3) the decision was discriminatory (on the basis that the Appellant is a person undergoing a gender transition). 8. In her undated Notice of Appeal, the main ground of appeal appears to be that the suspension was disproportionate, but there are also extensive references to events/documents after the date of the 6th December 2016 judgment of the Royal Court. 9. The Court of Appeal's ability to receive further evidence is set out in Rule 12 of the Court of Appeal (Civil) Rules 1964 : "The Court shall have full discretionary power to receive further evidence on questions of fact, either by oral examination in court, by affidavit, or by deposition taken before the Viscount or on commission: Provided that in the case of an appeal from a judgment after hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds." 10. This is an appeal "from a judgment after hearing of any cause of matter on the merits" and therefore further evidence will not be admitted "except on special grounds". In any event the discretion of the Court of Appeal is not unlimited, and the case-law states that the party seeking to put new evidence before the Court must show that the evidence is relevant and, if admitted, will probably have "an important influence, albeit not a decisive one, on the result of the case" - *Hacon v Godel and Brocken & Fitzpatrick*
- [1989] JLR Note 4b, and *Mayo v Cantrade*

[1998] JLR 173 , at 185. 11. Having read the affidavits of Richard Bisson, although noting that there is repeated reference to the Appellant's circumstances and his view that her treatment has been discriminatory, I do not see how the appeal is advanced by the admission of many pages of what appears to be wholly irrelevant material. Even taking fully into account the fact that neither the Appellant nor Richard Bisson have legal training, and the Appellant is not represented, I cannot see any proper basis for the admission into evidence of this material. This also applies to the Written Submissions of Richard Bisson dated 6th December 2016. I therefore dismiss this aspect of the application. 12. I turn now to the application for Mr Forrest and Mr Le Maistre to be called to be questioned by the court "for clarity in relation to their affidavits". There is no affidavit from Mr Le Maistre . 13. I have read the two affidavits sworn by Mr Forrest, and do not see any lack of clarity, or any need for the court to ask questions. As noted by the Respondent, the Appellant does not amplify her claim that there is any need for further clarity in what is contained in Mr Forrest's two affidavits, nor did the Royal Court question Mr Forrest's credibility. This application is therefore also dismissed in relation to both Mr Forrest and Mr Le Maistre . 14. The Respondent invites the Court to direct that the Appellant also be refused leave to adduce not only the evidence and submission of her brother, but also the following documents produced in the Appellant's bundle for the hearing: (a) correspondence between the Appellant and Driver and Vehicle Standards in January 2017; (b) a witness statement by a former colleague of the Appellant which was produced for the purposes of proceedings in the Employment and Discrimination Tribunal; (c) correspondence between the Appellant and the States of Jersey Police and Jersey Police Complaints Authority regarding complaints made by the Appellant against officers of the States of Jersey Police; (d) a letter from the Social Security Department to the Appellant regarding her social security contributions; (e) the investigation findings for a complaint made by the Appellant regarding the completion of a Disclosure and Barring Service form; (f) further and better particulars produced for the purposes of proceedings in the Employment and Discrimination Tribunal; (g) an Order of Justice by the Appellant and an associated report by the Guernsey Police regarding an alleged incident between the Appellant and another taxi driver; (h) news article regarding an assault on a taxi driver; (i) news article regarding an unlicensed taxi driver in Reading; (j) claim forms submitted to the Jersey Employment and Discrimination Tribunal by the Appellant against several employees of the States Employment Board; (k) an affidavit produced by the Appellant in unconnected Royal Court proceedings; and (l) the findings of the States Complaints Board regarding conditions of the Appellant's PSV Licence which no longer apply. 15. I have some sympathy for the Respondent's submission and the material listed seems to be irrelevant, particularly as most, if not all, post-dates the hearing before the Royal Court. This is an appeal, not an opportunity for the Appellant to put before the Court of Appeal a number of unexplained new documents. 16. However, in my view this is a matter best left to the full Court, although the Appellant should proceed on the basis that her submissions on the appeal will be cut short if they extend beyond the subject matter of the suspension in August/September 2016, and the evidence before the Royal Court. 17. The Respondent's

application for the costs of and incidental to this application is also stood over to the full Court. Authorities Bisson-v-Minister for Infrastructure

[2017] JRC 023 . Court of Appeal (Civil) Rules 1964. Hacon v Godel and Brocken & Fitzpatrick

[1989] JLR Note 4b. Mayo v Cantrade

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