

JERSEY / JUDGMENT

G v A [2000] JRC 36 (22 February 2000)

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JUDGMENT

THE COMMISSIONER: 1. On Tuesday, 22 nd February I heard and granted an application by the Plaintiff for the trial of this action to be heard in camera

- that is in private, without the public or press being present. It seemed to me desirable at the time that my decision in this matter should be made known to the Plaintiff in advance of the trial so that she would know what to expect when the trial itself began. I now give my full reasons for that decision. 2. The application was not opposed by the Defendant. But the making of such an exceptional order does not depend merely on the consent of the parties: I had to be satisfied that it would be right to make such an order. 3. Because of the importance of the matter I asked (i) that the Plaintiff's request for an in camera hearing to be made the subject of a formal application; (ii) that as much of the trial material, including the reports of the experts who are to be called on behalf of the Plaintiff, should be made available to me in advance of the hearing and (iii) that the parties' representatives should appear before me on the formal hearing of the application. 4. As a result I had the opportunity, overnight, of looking at a considerable body of material, for which I am grateful. I also received formal written submissions on behalf of the Plaintiff from Crill Canavan, her Solicitors and Advocates, additional copies of three experts' reports on which particular reliance was placed, and copies of relevant authorities. 5. The three reports were those of: (1) Dr. Adrian Rogers, a General Practitioner of extensive experience. (2) Dr. Carl Clinton, a Consultant in accident and emergency medicine and sports medicine at Jersey General Hospital, with particular interest and experience in the side effects of anabolic androgenic steroid abuse. (3) Mr. Ian Berry, a Consultant Psychologist to the States of Jersey Department of Health and Social Services with 29 years' experience in the practice of psychology. NATURE OF THE ACTION 6. The action itself was a claim by the Plaintiff for damages against the estate of the Defendant who was a Medical Practitioner in general practice in Jersey for many years and who died some time ago. It was common ground that the Plaintiff was a patient of the Defendant's practice for a number of years - on any view from about 1986 until around March 1994, and possibly from an earlier date, though this was in issue. 7. Because many of the relevant facts were in issue at the time and would have to have been determined at the trial had it taken place I shall say no more about them than is necessary for the immediate purposes of the present application, and it is important to emphasise that nothing I do say now should be taken as any indication that I have formed any view, one way or the other,

about any of those issues. It also follows from this that, for the purposes of the in camera application, I had to take the expert medical evidence that was placed before me at face value so far as it had any bearing on the question whether the trial of the action should take place in camera . 8. The nub of the Plaintiff's case was that the Defendant prescribed certain anabolic steroids to her over specified periods (up until December 1993), including a period when she was pregnant, in order to combat weight loss; that in doing so the Defendant was negligent; and that as a result of this treatment the Plaintiff suffered an extensive range of adverse side effects - both physical and mental - some of which may be permanent. She also claimed to have lost her job and to be unable to return to work. 9. Apart from an admission that the Defendant prescribed one of the specified steroids between June 1988 and December 1993, the Defendant's pleaded Answer to the claim put almost every aspect of the Plaintiff's case in issue. In particular it was contended that the treatment prescribed by the Defendant was reasonable in all the circumstances and it was denied that the symptoms of which the Plaintiff complained were caused or contributed to by any treatment prescribed by the Defendant. IN CAMERA HEARINGS 10. It was recognised by those representing the Plaintiff that an order of the kind sought is an exceptional one and that any such application has to be considered with the utmost care. 11. As regards the approach that I had to adopt to the application, the relevant considerations and principles appear to me to be as follows: (1) The power to hear proceedings in camera derives, it seems, not from any statutory enactment but from the inherent jurisdiction of the Royal Court to determine and control its own process. The Royal Court Rules do not contain any specific provision dealing with the matter. (2) Reported cases in the Royal Court concerning such applications are few but they appear to acknowledge that a power to order in camera hearings exists and is to be exercised on principles similar to those applied in English Courts. One such (relatively recent) case is *In re Rosedale (JW) Investments Ltd*

(1995) JLR 123 , where - although the report is unsatisfactory as regards what actually happened in that case - the Court cited with apparent approval a passage from the judgment of Hoffmann J (as he then was) in *In re a Solicitor*

(1987) 131 S. J. 1063 * in which he said this: "The circumstances in which a court may sit in camera were authoritatively stated by the House of Lords in *Scott -v- Scott*

[1913] AC 417 . In summary the public may be excluded only if that is the only way in which justice can be done. The test is a strict one. It cannot, as Lord Haldane said, be dealt with by the judge as "resting on his mere discretion as to what is expedient". "The judge" he said, "must treat the question as one of principle and as turning not on convenience but on necessity". It is certainly not sufficient that both parties would prefer a private hearing." (3) *In Scott -v- Scott*

[1913] AC 417 a nullity suit had been heard in camera but the plaintiff/petitioner had subsequently published copies of a transcript of the proceedings "in defence of her reputation" (as the headnote puts it). As a result, application was made by the Respondent to have the petitioner and her solicitors committed for contempt of court. At first instance

it was held that there had indeed been a contempt of court and this conclusion was upheld by the Court of Appeal. The House of Lords, however, unanimously reversed the Court of Appeal, holding (according to the headnote) that the order to hear the proceedings in camera was made without jurisdiction. The decision rested on the fact that the direction to hold the proceedings in camera had been made - so it seems - solely on the grounds of "public decency"; as the opening sentence of the headnote puts it: "The Probate Divorce and Admiralty Division has no power, either with or without the consent of the parties, to hear a nullity suit or other matter in camera in the interest of public decency". (My emphasis). 12. It is, however, plain from the speeches of the members of the House that each acknowledged that there can be circumstances in which it is proper for a court to direct that all or part of any hearing should take place in camera. Views as to the precise formulation of the relevant circumstances vary somewhat from one speech to another; but in my view the relevant principles, shortly expressed, can be stated as follows: (1) The general principle, beyond doubt, is that all proceedings should take place in public - in open court. (2) The constitutional, legal and practical importance of this principle is such that it should not be displaced except for compelling reasons. (3) Whether to order proceedings in camera is something that must be determined in accordance with principle, and not on the basis of what the judge happens to consider convenient or reasonable. Potential embarrassment on the part of those who have to give evidence is not a sufficient reason, of itself, to justify a hearing in camera. (4) The question (of principle) that has to be asked can be expressed in various ways but was put succinctly by the Lord Chancellor, Viscount Haldane, in *Scott -v- Scott* as follows: "I think that to justify an order for hearing in camera it must be shown that the paramount object of securing that justice is done would really be rendered doubtful of attainment if the order were not made". (p.439). There are several classes of case in which it is well established that in camera hearings are often necessary. But they are no more than illustrations of this wider principle. (5) The test is a strict one and I quote again from Viscount Haldane: "But the burden lies on those seeking to displace [the general rule as to openness] in the particular case to make out that the ordinary rule must as of necessity be superseded by this paramount consideration. The question is by no means one which, consistently with the spirit of our jurisprudence, can be dealt with by the judge as resting in his mere discretion as to what is expedient. The latter must treat it as one of principle, and as turning, not on conscience, but on necessity". (p.438). 13. These principles, derived from case law, appear to me also to be substantially in accord with Article 6 of the European Convention on Human Rights. That Article provides, as a basic principle, that in the determination of his civil rights and obligations everyone is entitled to (amongst other things) a public hearing. It goes on, however, to recognise that there may be exceptional circumstances in which the press and the public should be excluded: "in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice". (Emphasis added). If anything, the terms of the exceptions so expressed go wider

- in their reference to protection of the "private life of the parties"
- than the exception as stated in Scott -v- Scott . THE PRESENT CASE 14. The basis of the application made on behalf of the Plaintiff by her counsel, Miss Martin, was (1) that the physical side-effects suffered by the Plaintiff have (it is said) resulted in her developing dysmorphophobia - a distorted body image of herself - which in turn has led to agoraphobia and social phobia (all of these phobias stemming from her belief that she is a physical freak and that others see her in this way); and (2) if the proceedings were conducted in public (and here I quote from Miss Martin's written submissions): "the Plaintiff's various phobias will increase in their severity, and hence her level of pain, suffering and loss of amenity, will probably significantly increase compared to its current level. Therefore any compensation that the Court might award her for pain, suffering and loss of amenity will be insufficient because it should have increased in direct proportion to her phobias becoming more severe during the course of the public trial and hereafter." 15. Although the application was supported by the three expert reports earlier referred to it is only necessary for me to refer to the psychological report of Mr. Berry. That report confirms - more than sufficiently for present purposes - the possibility that the Plaintiff suffers from phobias of the kind referred to above and that her social/agoraphobia is still significantly debilitating. 16. My attention was drawn in particular to the passage in which Mr. Berry says this: "Some weeks ago her case was reported in the "Jersey Evening Post". It caused her to experience heightened anxiety which was manageable because her name was not mentioned. The consequence of reporting details of her psychological and sexual problems and, at the same time, identifying her would probably be a significant increase in her desire to avoid people and her feelings of vulnerability outside car or house. The experience is bound to be traumatic and will, in my opinion, cause a significant deterioration in her already fragile psychological health". 17. Although Miss Martin put her submission primarily on the ground that, in the absence of an in camera order, the aggravation of the Plaintiff's existing psychological condition that would be likely to result from the trial itself would not be reflected in the damages awarded to her (assuming for this purpose that she were to succeed on liability and causation), it seemed to me that the real concern here went wider than this, in that a trial in public was very likely to have the effect of distorting the very thing that was at issue, together with other matters in the proceedings, namely the Plaintiff's psychological condition and its causes. And if this were to occur it could well have affected proper evaluation of liability and causation as well as damages. 18. For reasons given earlier I do not think it appropriate or necessary for present purposes to go into the evidence any more fully. With the governing principles well in mind I was more than satisfied that the present case is one in which there was a serious risk that justice would not be capable of being done if the trial were conducted in open Court or, to put it another way, that an in camera order is necessary in the interests of justice. Accordingly I granted the application, subject to the following qualifications as I expressed them at the time: "(1) The Court reserves the right to review this direction at any time and to revoke or vary it should circumstances so require. (2) I say nothing at this stage as to publicity or otherwise in relation to the Court's final

judgment or thereafter: that is a separate matter on which I shall hear submissions and rule at a later stage in the proceedings. (3) It is important that the Plaintiff should understand that an order, having been made for the trial to be held in camera , it is not open to her - without the express leave of the Court - to publicise any aspect of the proceedings of her own choosing. The order binds her as much as it does everyone else". Authorities In re Rosedale (JW) Investments, Ltd.

(1995) JLR 123 . Scott-v-Scott

[1913] AC 417 . In re a Solicitor [1987] 131 Sol. Jo. 1963. The European Convention on Human Rights: Article 6. * This citation (aliter S. J. 1063) is to a very brief report of the substantive point in In re a Solicitor , which concerned a potential conflict of interests. It does not include the observations of Hoffmann J relied on in Rosedale or indeed any reference to the application for the court to sit in camera . It must be assumed that the Court in Rosedale had before it a transcript of Hoffmann J's judgment in full. Page Last Updated: 24 Apr 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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