

JERSEY / JUDGMENT

RH v AG [2007] JRC 083 (16 April 2007)

[2007] JRC 083

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judgment

the bailiff: 1. This is a representation by R. H. ("Mr H.") seeking an order for costs against the Attorney General arising out of proceedings which were instituted in December 2005 for the appointment of a curator to administer the property of Mrs M. H., Mr H.'s mother. 2. The history of the matter may, for the purposes of this representation, be stated briefly. On 4th November 2005 a Crown Advocate in the Law Officers' Department wrote to Mr H. informing him that a Mental Incapacity Report had been received in relation to his mother, and stating that it had been suggested that Mr H. should act as her curator. Mr H. was asked to obtain character references and to complete a standard form. All this was done, and in the meantime, the usual inquiries were carried out in the Probate Registry with a view to making a recommendation to the Law Officers' Department as to the appointment of a curator. On 2 nd December 2005, the Assistant Registrar of Probate sent an e-mail to the Solicitor General drawing attention to some complications in that the affairs of the proposed interdict were inter-mingled with those of Mr H. She recommended nonetheless that Mr H. should be appointed as curator. The usual representation was made to the Court on 23rd December 2005 and the inquiry was fixed for 9.45 a.m. on 6th January 2006. 3. By that stage, however, the Solicitor General had decided that the "complications" referred to by the Assistant Registrar of Probate were such that conflicts of duty would arise if Mr H. were to be appointed as curator. Regrettably, no one in the Law Officers' Department notified Mr H. that this conclusion had been reached. On 6th January 2006, at about 9.50 a.m., Mr H. arrived at the Robing Room where the hearing was to take place expecting to be sworn in as his mother's curator. He found, however, that the inquiry had been completed and that Advocate Gollop had been appointed as curator. Mr H. must have been aware as a result of informal discussions with the Probate Registry that the inquiry was to take place on 6th January. Certainly no formal notification had been given to him. 4. Mr H. was understandably displeased and remonstrated with the Crown Advocate. On hearing of this altercation, the Solicitor General wrote a gracious letter of apology, dated the same day, 6th January 2006, which was handed to Mr H. She explained that pressure of work in the Law Officers' Department during the pre-Christmas period had caused the failure to notify him of the intention to recommend the appointment of Advocate Gollop. The Solicitor General advised Mr H. of the steps which he needed to take to challenge the appointment of Mr Gollop. 5. Mr H. sought further advice from Messrs Crill Canavan and a representation was filed on 2 nd February 2006. The Court heard evidence from Mr H. and from his accountant, Mr Gerald O'Brien. Mr H. was able to explain the close knit

nature of his family and to satisfy the Court that the conflicts of interest which had concerned the Solicitor General were more apparent than real. The Court accordingly discharged Mr Gollop from office and appointed Mr H. as curator of his mother. 6. Mr H.'s representation contained a paragraph praying that he be awarded the costs of the representation. He did not, however, seek an order for costs at that stage, and no order was accordingly made. 7. On 23rd March 2006 Mr H. wrote to the Solicitor General seeking advice as to the recovery of monies paid to Crill Canavan for the advice referred to at paragraph 5 above. Mr H. stated "I have run up a bill of about £1,000 because I have (sic) I have had to seek a lot of legal advice about bring (sic) back a representation to Court." Mr H. told me that the account eventually received was in fact in the sum of £567.50p. Mr H. added that he was prepared to put this down to one of life's experiences, but that the whole affair had been time-consuming and stressful. The Solicitor General replied to his letter on 24th March indicating that she could not usefully offer any advice. 8. On 31st May 2006 Mr H. wrote to the Bailiff's Judicial Secretary seeking further advice. On 19th June, the Deputy Judicial Greffier replied setting out the steps which Mr H. needed to take to bring the matter back before the Court. On 7th July, Mr H. wrote again to the Solicitor General stating that he believed that he had a reasonable claim for compensation arising from "the various errors made in dealing with my case". The Solicitor General replied on 4th August explaining that the concerns regarding potential conflicts of interest had needed to be addressed; they had indeed been addressed by the Court on 2 nd February 2006. 9. Between 4th August and the end of the year, Mr H. took further advice from other lawyers and from the Deputy Judicial Greffier. On 15th January 2007, he wrote to the Viscount asking that a further representation be served on the Solicitor General. Mr H. sought an order for costs covering not only the period up to 2 nd February 2006, but also his expenses between 2 nd February 2006 and the date of the hearing, which he quantified as being £4,215, including £100 for court fees in summoning the Solicitor General and Dr Wilson to the hearing on 2 nd February 2006 and £115 disbursed by Advocate Gollop on an advertisement for claims after he had been appointed as curator. 10. The Solicitor General contended that this application came too late. She drew attention to a passage from the Court's judgment in *In the matter of Donoghue*

[2000] JLR 67 where I stated at 72: "Applications for costs arising out of curatorship enquiries should be made timeously which means, other than in exceptional circumstances, at the conclusion of the hearing. The delay in making this application has resulted in the summons being heard by a different judge - the judge who presided over the curatorship enquiry having now retired. The flavour of the original hearing has been lost and I have to approach the matter as best I can, relying upon written materials. Were it not for the fact that this is the first application of this kind to be made, I should have been inclined to accede to the learned Solicitor's submission that the summons should be dismissed on the ground of delay alone." 11. It is true that the flavour of the submissions made in February 2006 when Mr Gollop was discharged as curator and Mr H. was appointed in his place has been almost entirely lost. As it happens, I presided over the Court on 2 nd February 2006, but my recollection is far from perfect; the Solicitor General has been able to rely only on notes which are incomplete. Mr H. explained the delay by stating that he had needed to

seek advice, that he was a layman and that he had not been reminded either by the Court or by the Solicitor General to pursue his application for costs at the appropriate time, and that he had been very busy on his business affairs during part of the period of delay. None of these matters excuses the long delay in pursuing the application for costs which should have been made at the conclusion of the hearing on 2 nd February 2006 or very shortly thereafter. 12. However, there is no doubt that a mistake was made in the Law Officers' Department, and that Mr H. was put to expense as a result of that mistake. If he had been told that the Solicitor General intended to recommend the appointment of Advocate Gollop, Mr H. would have been able to appear on 6th January 2006 and to make the points which he successfully made on 2 nd February. Mr H. clearly feels strongly that he has been wronged and I accept that he has been a victim of an innocent mistake. 13. Doing my best to balance the perceived injustice against the inordinate delay in pursuing this application, I make the following orders: (i) I order the Attorney General to cause to be paid out of public funds to Mr H. the sum of £667.50 made up of the following amounts : (a) The account of Crill Canavan £567.50 (b) Court stamps £100.00 Total: £667.50 The cost of the advertisement placed in the local newspaper by Mr Gollop seems to me not to have been a wasted expense in that it would have been necessary for Mr H. to have taken that action in any event. So far as Mr H.'s costs up to 2 nd February 2006 are concerned, I take the view that they too would largely have been incurred in any event, even if the matter had been argued on 6th January 2006 rather than on 2 nd February. (ii) So far as the costs and expenses incurred by Mr H. after 2 nd February 2006 are concerned, including the costs of this representation, I am minded in large part to disallow them on the ground of the excessive delay in bringing the matter back to Court. On the other hand, it has been necessary for Mr H. to return to the Court in order to obtain payment of the sum set out in paragraph (i) above. I might have allowed a small percentage of his costs, but that would have involved further work on Mr H.'s part in the preparation of a bill of costs and its taxation by the Court officer. I am minded to allow a small fixed sum to acknowledge the fact that it was necessary for Mr H. to bring the matter back to Court and to argue it in order to obtain his entitlement. I invite Mr H. to set out briefly in writing what he thinks the appropriate sum should be, together with reasons, and to deliver that paper to the Judicial Greffier on or before 30th April 2007. The Solicitor General will have ten days in which to respond. I will then make my adjudication on the papers before me. Authorities In the matter of Donoghue

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