

Judgment 2/2005

**Angenent v Pring – Royal Court (Civil action
file 717) – 4 January, 2005**

Personal injuries claim (See also Judgments 65/2004 and 1/2005) – how the Royal Court would have exercised its discretion had it found there was jurisdiction to order an interim payment.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 4th day of January 2005 before Patrick John Talbot Q.C, Lieutenant Bailiff; sitting alone.

JENNIFER ANGENENT

Plaintiff

And

DAVID J PRING

Defendant

WHEREAS on 6th and 7th day of December 2004 the Lieutenant Bailiff considered an application by the Plaintiff for an interim payment and heard thereon Advocates J.P. Greenfield and J. M. Wessels, Counsel for the Plaintiff and Defendant respectively and whereas on 30th day of December 2004 the Lieutenant Bailiff found that the Royal Court had no jurisdiction to make an order for an interim payment and DISMISSED the said application. The Lieutenant Bailiff this day handed down judgment in the terms of the summary attached hereto indicating how discretion would have been exercised in this matter had jurisdiction been found.

S. M. D. ROSS
Her Majesty's Deputy Greffier

Approved Text

No 717

**IN THE ROYAL COURT OF GUERNSEY
ORDINARY COURT**

BETWEEN:

JENNIFER ANGENENT

Plaintiff

- and -

DAVID J PRING

Defendant

J U D G M E N T

of Patrick John Talbot QC, Lieutenant Bailiff

ON ISSUE OF DISCRETION

4 January 2005

Introduction

1. Since in my Judgment dated 30 December 2004 I decided that the Royal Court had no jurisdiction to make an order for interim payment, my decision on the issue of the exercise of any discretion, which would otherwise have been vested in me whether or not to make an order for an interim payment in favour of the Plaintiff, is, therefore, a hypothetical matter. But, as I indicated to Counsel at the end of the oral hearing on 7 December 2004, I think it might be helpful to the parties for me to summarise how I would have exercised my discretion, if I had found that there

was jurisdiction, in case the matter were to be taken to the Court of Appeal of Guernsey and my decision on jurisdiction were there overturned.

2. In carrying out this task I ought to make it clear that I have not engaged in a detailed analysis of the reports of expert medical witnesses retained by the parties, since I have decided that it is not necessary for me to do so. In my judgment, unless I were to find that the Plaintiff had unduly and unreasonably delayed in bringing her application for an interim payment in such a way as to have caused adverse prejudice to the Defendant, the facts of the instant case would cry out for the making of an interim payment.

“Decision” on Discretion

3. In my judgment, although the Plaintiff has been somewhat slow in getting her case before the Court for trial on the issues of causation and quantum of damages, she has not been so unreasonably delaying matters that I would have exercised my discretion against her. Nor, in my judgment, would the Defendant have suffered adverse prejudice if I had made an order against him for an interim payment. If the matter had come before the Court for trial earlier than will be the case, then the Defendant would have been likely, as I see it, to have had to pay a substantial sum by way of damages by now.
4. In effect, the only point relied upon on behalf of the Defendant is the alleged delay of the Plaintiff. The Defendant contends that the Plaintiff has not pursued her claim expeditiously, whereas the Plaintiff contends that she has done so.
5. Whereas it has to be said, in my view, that the Plaintiff, (upon whom the carriage of the action lies,) has taken her time in bringing the matter to Court, and in instructing expert witnesses, the Defendant has not himself taken steps either towards obtaining a trial date or towards obtaining an order from the Court for dismissal of the proceedings for want of prosecution. It is also noteworthy that the Defendant’s Advocate continued to deal with correspondence from the Plaintiff’s Advocate without complaining in very forceful terms about any delay on the part of the Plaintiff until quite late in the day.
6. It seems to me that both parties have “taken their time”, no doubt each of them for what they believed were good reasons. But I am satisfied, on balance, that I would not have excluded the Plaintiff’s claim for an interim payment on the ground of unreasonable delay on her part in

bringing before the Royal Court an application for such a payment. It was, as I see it, proper for her Advocate to try to obtain the agreement of the Defendant's Advocate to a payment by the Defendant of an interim sum, and some parts of the correspondence between Advocates show that her Advocate was trying to achieve some such result. But I consider that after there had been a final refusal of such a course, the Plaintiff got a move on and that she did not unreasonably delay in applying to the Royal Court for an interim payment, which, I repeat, she did by her application dated 5 November 2004.

7. Amongst the factors which I have taken into account in reaching this (hypothetical) decision are the following:

- the Plaintiff's present medical condition, as set out in her affidavit dated 29 November 2004 ("the Plaintiff's affidavit").
- the considerable sum of money which the Plaintiff states in the Plaintiff's affidavit that she has spent in attempting to live her life since the operation on 21 October 1999.
- the severe financial problems of the Plaintiff deposed to by her in the Plaintiff's affidavit.
- the Plaintiff's considerable borrowings, as deposed to by her in the Plaintiff's affidavit.
- the possible need for the Plaintiff to instruct a consultant neurologist and/or a consultant pain management expert between the present time and the date fixed for the trial, which is two weeks commencing on 23 May 2005.

8. If it were acceptable for me to have considered the Plaintiff's needs, I would have found them fully established by the Plaintiff's affidavit. Furthermore, if it were appropriate for me to have considered how the Plaintiff might wish to spend any interim payment, I would readily have concluded that, amongst other things, she might have wished to repay family borrowings as soon as possible. It is not necessary for me to decide in this Judgment whether, under Guernsey law, it is, or is not, appropriate for the Court to take into account how an applicant for an interim payment might wish to spend the payment. English authority was cited to me, which I regarded as quite persuasive, in suggesting that such matters would be irrelevant to the exercise of discretion. But I do not need to consider the point further.

9. In conclusion, if there had been jurisdiction vested in me, as a Judge of the Royal Court, to make an order for interim payment, I would have made an order in favour of the Plaintiff for an interim payment to be made to her by the Defendant of £50,000 within 14 days.

PATRICK JOHN TALBOT QC
LIEUTENANT-BAILIFF

4 January 2005