

IN THE COURT OF APPEAL OF GUERNSEY
CIVIL DIVISION
APPEAL NO: 518

Between:

STEPHEN CHILCOTT

Applicant

And

JANICE DOCKERILL

Respondent

Respondent's Application for Costs Order & Civil Restraining Order

Decision on the Papers

Decision of Clare Montgomery QC, sitting as a Single Judge

Date of Decision: 28 July 2020

1. On 22 December 2017 Lieutenant Bailiff Marshall handed down her judgment in civil matters 2081 and 2089. She refused an application made by the Applicant to be appointed as the executor of his late father's estate on the basis that the application was not maintainable given the existence of an earlier out of court settlement dated 12 August 2016. The Lieutenant Bailiff also granted the Respondent's application to remove a caveat lodged by the Applicant at the Ecclesiastical Court Registry against the estate of Mrs Margaret Chilcott, the Respondent's mother. On 27 April 2018 the Lieutenant Bailiff also ordered the Applicant to pay a significant proportion of the Respondent's costs on the indemnity basis.
2. The Applicant gave notice of appeal against the judgment of Lieutenant Bailiff Marshall on 23 January 2018 (the first appeal). The first appeal was brought as of right. However, this first appeal was then formally abandoned by the Applicant in April 2018. The Applicant then brought proceedings in May 2018 seeking to set aside the out of court settlement dated 12 August 2016 in civil matter 2512.
3. On 15 March 2020 the Applicant applied to revive his appeal, seeking leave to appeal out of time (the renewed appeal). Confronted with the argument that the application was amongst other things an abuse of process given the overlap with civil matter 2512, on 3 July 2020 he once again abandoned his appeal.

4. The Respondent seeks her costs on an indemnity basis in respect of the renewed appeal. She also applies for a civil restraining order.

The Order for costs

5. The Respondent seeks costs on an indemnity basis on the ground that the conduct of the renewed appeal litigation by the Applicant is to be regarded by the court as sufficiently reprehensible to merit a costs sanction in the form of the award of indemnity costs. It is suggested that the case has been pursued "*... as a personal vendetta or in an improper and oppressive manner*". The Respondent points out that this was the conclusion reached by Lieutenant Bailiff Marshall in connection with the costs of the trial in civil matters 2081 and 2089.
6. I am not however able to reach the same conclusion in relation to the renewed appeal. Although I accept that the conduct of the Applicant in the various proceedings he has pursued have caused considerable distress to the Respondent, it is the Applicant's conduct of this renewed appeal proceeding that must be the subject of my focus rather than his conduct more generally. The Respondent has not identified with any specificity conduct in the renewed appeal as opposed to the Applicant's conduct more generally that might fall to be considered.
7. I have considered the Applicant's conduct as it emerges from the consolidated appeal bundle prepared for the renewed appeal. The conduct that is disclosed on the face of the bundle appears ill judged and lacking in legal analysis. However having regard to the fact that the Applicant is a litigant in person, I do not consider that the Applicant's conduct of the renewed appeal, including its ultimate withdrawal, is such that an order for indemnity costs would be appropriate.
8. On the other hand, the Applicant has advanced no good reason as to why he should not pay the costs of the renewed appeal on the standard basis. The ordinary rule is that costs should follow the event. Quite apart from the Applicant's acceptance (in his most recent notice of abandonment) that his application for leave to appeal may be an abuse, it appears to me that the Applicant has not provided any cogent reasons to support his arguments, either that the first appeal was not abandoned or why (if he is wrong in the first contention) the court should have exercised its inherent power to allow the Applicant to reinstate his abandoned appeal. Accordingly, I order him to pay the Respondent's costs on the standard basis.

A civil restraining order?

9. It is submitted on behalf of the Respondent that I should make a limited civil restraint order because the Applicant has made two or more applications that are totally without merit. There appear to me to be two problems with this submission. First as the Respondent acknowledges there has been no court determination that the applications were "totally without merit". I am not in a position to reach a conclusion on this issue without hearing the parties. It would not be appropriate for me to conduct a mini hearing for that purpose in the context of this case.
10. Second, the first appeal was an appeal as of right. Whatever the difficulties may have been in successfully challenging the judgment of the Lieutenant Bailiff in that case, I do not consider it is possible for me to determine that the first appeal was totally without merit. Its abandonment does not it seems to me establish that proposition.
11. I therefore decline to make a civil restraining order.

Clare Montgomery QC

28 July 2020