IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CAERNARFON COUNTY COURT
(His Honour Judge Elystan Morgan)

CCRTI 99/0084/2

Royal Courts of Justice
Thursday, 22nd July 1999

Before:

LORD JUSTICE HENRY
MR. JUSTICE HOLMAN

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GWYNEDD COUNTY COUNCIL

Respondents

-v-

BRIDGET KAREN GRUNSHAW

Appellant

- - - - - - - -

Handed down transcript of
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MRS GRUNSHAW appeared in Person.

MR. HUW ROBERTS Q.C. (instructed by Gwynedd County Council) appeared on behalf of the Respondents.

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APPROVED JUDGMENT

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MR. JUSTICE HOLMAN:

Mrs Grunshaw lives at Bilsby in Lincolnshire. She owns a house at Penrhyndeudraeth in Gwynedd, North Wales. She and her husband intend in due course to renovate that house and to live there. But meantime, the Gwynedd Council

("Gwynedd") consider that the house is unfit for human habitation and should be demolished. On 16th July 1998 an officer of Gwynedd made a demolition order under section 265 of the Housing Act 1985. It was served upon Mrs Grunshaw by recorded delivery to her home in Lincolnshire on 18th July 1998.

Section 269(1) of the Housing Act 1985 provides that "A person aggrieved by a demolition … order may, within 21 days after the date of the service of the order, appeal to the county court." One effect such an appeal is to prevent the order becoming "operative" until the appeal has been determined.

The period of 21 days after the order was served upon Mrs Grunshaw expired immediately before midnight on Saturday 8th August 1998. In the court below it was, accordingly, assumed that Mrs Grunshaw had to have filed an appeal by the end of the Saturday. Before us, Mr Huw Roberts, who appeared on behalf of Gwynedd, very properly drew our attention to the possibility that the principle in the case of Pritam Kaur v. S Russell and Sons Ltd [1973] 1 QB 336 applies to this case. That would extend the time limit to Monday 10th August, being the next day on which the court office was open. However, since personal attendance at the court office was not essential and a notice of appeal could have been sent by post to arrive on the Saturday, or posted through the letterbox of the court on the Saturday, the principle in Pritam Kaur may not have applied and the last date may indeed have been Saturday 8th August: see Swainston v. Hetton Victory Club Ltd [1983] 1 All ER 1179. On the facts as I shall describe them, however, it does not materially affect the present case whether the last day was Saturday 8th or Monday 10th August and so we do not need to consider this particular point.

Mrs Grunshaw wished to appeal. The demolition order was in the form prescribed by The Housing (Prescribed Forms) (No.2) Regulations 1990 (SI 1990 No. 1730) which I will call "the regulations". A prescribed part of the form is the Notes thereto which state, so far as is material:

> "Right of Appeal If you do not agree with this order you may appeal against it to the county court but you must do so within 21 days after the date the order is served on you …
>
> County Court If you decide to appeal you will need to apply to your local county court (you can find the address and telephone number in the telephone directory under "Courts") …"

I stress the words "your local county court."

Mrs Grunshaw took the advice of Wilkin Chapman, a well-known firm of solicitors in Lincolnshire, and they drafted a notice of appeal for her headed "In the Skegness County Court" which is the local county court for the address at which Mrs Grunshaw lives in Bilsby.

On Thursday 6th August a friend of Mrs Grunshaw actually attended at the Skegness County Court on her behalf and tried to file the notice of appeal. The court manager refused to accept it. He telephoned Mrs Grunshaw and told her that under CCR Order 4 r. 9 she had to file her appeal in the Caernarfon County Court. The next day, Friday 7th August, Mrs Grunshaw attended personally at the Skegness County Court and again tried to file her appeal but again the court manager refused to accept it. The court manager's own version of these events is contained in his subsequent letter to Mrs Grunshaw of 15th September 1998 which reads as follows:-

> "My recollection of the situation is that a lady called at the court office on 6 August 1998, on your behalf, and produced the appeal to which you refer. Upon perusing the documentation it became clear that under Order 4 rule 9 of the County Court Rules 1981 the venue for the appeal was the court for the district in which the order, decision or award was made or given.
>
> I telephoned you to notify you of the situation and informed you that the appropriate court in this instance was Caernarfon. You pointed out that the documentation you had stated that an appeal should be filed at your local court, and as you resided at Bilsby, that court was Skegness. I reiterated that under Order 4 rule 9, the appeal must be filed at Caernarfon.
>
> On Friday 7 August 1998 you called at this office to file your appeal. You again pointed out that the form in your possession stated that the appeal could be filed in Skegness, and I again informed you that it must be filed in Caernarfon, and produced to you the relevant Order and Rule in the County Court Practice."

Mrs Grunshaw herself says that after her abortive visit to the Skegness County Court on the Friday she returned home and then went to the local post box to post the notice to the Caernarfon County Court, but by then she had unfortunately missed the last post and therefore it would not have been collected until Saturday 8th August. In the circumstances she thought it would be prudent to fax a copy of the notice of appeal to Caernarfon County Court and she did so on Saturday 8th August.

The notice of appeal was actually issued by the Caernarfon County Court on Tuesday 11th August 1998. In breach of its normal practice the Caernarfon County Court did not date stamp the notice of appeal so as to record the date when it was actually received by, or first seen by, the Caernarfon County Court. But the Issue Manager, Mr Philip Roberts, has said that the normal practice of the Caernarfon County Court is to issue documents on the date upon which they are received. Accordingly the Caernarfon County Court has no reason to suppose that the document was actually received in that court earlier than Tuesday 11th August 1998 and Mrs Grunshaw is unable to prove that it was. A notice of appeal received on Tuesday 11th August was, of course, out of time whether the time expired on the Saturday or the Monday.

On 28th August 1998 Gwynedd applied to the Caernarfon County Court to strike out Mrs Grunshaw's notice of appeal on the grounds that it was out of time. On 16th September 1998 Deputy District Judge Griffiths, sitting at Caernarfon, dismissed that application and went on to give directions for the hearing of the substantive appeal. Gwynedd then appealed to the judge and their appeal was heard by His Honour Judge Elystan Morgan on 3rd November 1998. He allowed the

appeal and in effect, therefore, struck out Mrs Grunshaw's entire appeal against the demolition order. Mrs Grunshaw now appeals to the Court of Appeal with the leave of Judge Elystan Morgan.

In my view the judge was correct in holding, first, that faxing the notice of appeal to the Caernarfon County Court on the Saturday was insufficient. The County Court Rules make detailed provision in specified circumstances for serving documents by fax on the solicitor for the other party, but no provision for filing documents with the court by fax. CCR Order 2 r 4 expressly provides for filing a document "in the court office by delivering it to the proper officer" and rule 5 provides the alternative method of pre-paid post in an envelope addressed to the proper officer. The absence of provision for filing by fax must be deliberate and in my judgment sending a document to the county court by fax does not amount to filing it for the purposes of the County Court Rules.

In my view, the judge was also correct in holding, secondly, that neither the local authority themselves nor the county court itself had any discretion or power to extend the 21 day time limit fixed by statute, when no such power is conferred by the statute. CCR Order 13 r 4 permits a time limit fixed by "these rules or by any judgment, order or direction" to be extended, but cannot apply to a time limit fixed by statute which is, as the judge said, "a rigid and utterly unremitting provision."

In front of the judge, the principle argument was to the effect that since, it was argued, the Notes on the back of the demolition order were wrong and misleading in stating that Mrs Grunshaw should apply to her "local county court", the local authority, whose demolition order it was, were somehow estopped from denying that Mrs Grunshaw had filed her appeal in time. This in turn developed into a further argument as to whether the statutory time limit was "a technicality" or "fundamental", the argument being that there could be an estoppel as to the former but not the latter. The judge decided that the time limit was fundamental and not a technicality and, accordingly, that the doctrine of estoppel by representation could not apply.

It would be unfair to criticise the judge, this being the basis on which the argument before him had turned. But in my judgment the whole argument based on estoppel was misconceived and completely missed the real point in this case. Indeed, since Gwynedd had correctly used the very form and precise words prescribed by Parliament in its statutory instrument, it is little short of bizarre to characterise those words as a "misrepresentation."

The corresponding provision of the Housing Act 1957 specified that an appeal against a demolition order should be "to the county court within the jurisdiction of which the premises" in question were situate, but this was later deleted by amendment. The Law Commission and The Scottish Law Commission in their Report on the consolidation of the Housing

Acts, 1985, Cmnd. 9515 recommended at paragraph 9 on pages 14-15 that "… the question of venue should, in all cases, be left to be dealt with under the County Court Rules made under section 75 of the County Courts Act 1984." Effect was said to be given to that recommendation by the clauses in the Housing Bill which are now sections 267(3) and 269(1) of the Act, viz. by references to appealing to "the county court". It follows, of course, that the Housing Act 1985 itself in fact contains no rule or indication at all as to venue.

The manager of the Skegness County Court relied upon CCR Order 4. Rule 1(1) provides that "The provisions of this Order shall have effect subject to any provision made by any Act or rule (including the rules of this Order) in relation to particular proceedings." Rule 9 provides that "An appeal to a county court from an order, decision or award of any tribunal or person shall be brought in the court for the district in which the order, decision or award was made or given." The manager of the Skegness County Court considered that a demolition order under section 265 of the Housing Act 1985 is "an order" within the meaning of CCR Order 4 r 9.

It is right to say that a similar reference to "any order, decision or award of any tribunal or person" appears also in CCR Order 3 r 6 (which prescribes the form of an appeal to the county court) and the notes to that rule in the County Court Practice 1998 make express reference to section 269 of the Housing Act 1985. In my judgment, however, it is far from self-evident that CCR Order 4 r 9 does indeed extend to a demolition order under section 265 of the Housing Act 1985, or whether the rule, read as a whole, contemplates "orders" which are more judicial or quasi-judicial in character. Further, there is nothing in the prescribed form of demolition order to indicate where precisely, or in the district of what county court, it was made and indeed in this very case a solicitor for Gwynedd, Padrig Eckley, found it necessary to depose that "The demolition order was drafted, completed and sent by an officer of the Housing and Public Protection Department … based at Dolgellau. The respondents would argue that the demolition order was made at Dolgellau. Caernarfon County Court has jurisdiction over Dolgellau. I do believe that the Caernarfon County Court is the proper county court for the purposes of this appeal."

What is absolutely clear is that, on the one hand, there is a provision of the County Court Rules which may apply to appeals under section 269 of the Housing Act 1985 but which does not refer to them in terms and which, by CCR Order 4 r 1, is "subject to any provision made by any Act or rule …. in relation to particular proceedings"; and, on the other hand, there is a statutory instrument, namely the regulations, which applies specifically to appeals under section 269 of the Act and which specifically instructs the owner of the property to apply to his "local county court." Of course, if the regulations only prescribed the "formal parts" of the prescribed form and the Notes had been printed on the back as a result of a purely

administrative or ministerial act, then no legal force could attach to the Notes. But the Notes themselves are part of the prescribed form, prescribed by regulations laid before Parliament. It is at least arguable, and on Friday 7th August 1998 Mrs Grunshaw wished to argue, that the effect of the regulations, being specific to section 269, is to specify that her appeal should be issued in the Skegness County Court notwithstanding the more general provisions of CCR Order 4 r 9.

CCR Order 2 r 4 provides that "In these rules any reference to filing a document is a reference to filing it in the court office by delivering it to the proper officer for entry by him in the records of the court." By CCR Order 1 r 3, "proper officer" means "the district judge or … in relation to any act of a formal or administrative character … the court manager or any other officer of the court acting on his behalf in accordance with directions given by the Lord Chancellor." Clearly, when a court official receives a document and enters it in the records of the court he is, and (since he is not a district judge) necessarily must be, performing an act "of a formal and administrative character." So the obligation on a litigant under CCR Order 2 r 4 is to deliver the document to the proper officer at the court office; and the duty on the proper officer is to enter it in the records of the court. No doubt the court manager or other official has some limited discretion. For example, he can no doubt refuse to accept a document or process which is patently entirely outside the jurisdiction of any county court at all, such as an application for a liquor licence. But he certainly has no discretion to make a judicial determination. In my judgment, and with respect to him, the court manager of the Skegness County Court acted entirely outside such formal or administrative discretion as he may have when he refused to accept Mrs Grunshaw's notice of appeal and refused to enter it in the records of the court. He took upon himself what is in fact the judicial function of determining that venue was governed by CCR Order 4 r 9 rather than by the prescriptive words of the regulations. In my judgment, especially as he well knew that the time limit was about to expire, it was his duty to accept and process the notice of appeal, leaving the question of the appropriate venue to be considered judicially under the provisions of CCR Order 16 r 2 ("Proceedings commenced in wrong court").

Mr Huw Roberts, for Gwynedd, conceded, in my view correctly, that if the court manager at Skegness had indeed accepted and processed the notice of appeal then it would undoubtedly have been in time and valid even if filed in the wrong court. See Faulkner v. Love [1977] 1 QB 937 and Sharma v. Knight [1986] 1 WLR 757 in each of which cases proceedings were commenced in, or application made to, the wrong county court but were nevertheless held to have been made validly within the relevant statutory time limits: see in particular Purchas LJ in Sharma v. Knight at 761E-H where he said:-

> "The jurisdiction of the county court is conferred on the county court under the County Courts Act 1984 and preceding Acts. The wording of the various sections … makes no provision for the Lord Chancellor in any way to limit the basic jurisdiction conferred on the county court by the Acts of Parliament concerned. It deals solely with the definition of the districts and procedural matters for the convenient discharge of the functions of the court. In my judgment it requires an amendment of the statutory authority rather than the provision of rules of procedure,

> under which general rubric the County Court Rules are described, before it can be said that the jurisdiction of any particular county court is in any way limited. Moreover, the provisions to which I have already referred, which allow for the transfer of proceedings from one court to another if started in the wrong court, are inconsistent with any lack of jurisdiction if the wrong court is the origin of the proceedings. In particular, section 75(3)(a) of the County Courts Act 1984 and the equivalent provisions of section 102 of the County Courts Act 1959 would be rendered nugatory if the submission was that there was no jurisdiction if the wrong court was chosen in which to initiate the proceedings."

But Mr Huw Roberts submitted that the consequence of the court manager at Skegness refusing altogether to accept the notice of appeal and to enter it in the records of the court was that in the present case, in contrast to those two cases (and other cases to like effect), there was simply no application at all by Mrs Grunshaw within the time limited by the Act. I cannot accept this argument which would make the fate of a serious application to the county court depend on the manner in which a proper officer chose to deal with an application which he believed should have been made to a different county court.

CCR Order 37 r 5(1) provides that:-

> "Where there has been a failure to comply with any requirement of these rules, the failure shall be treated as an irregularity and shall not nullify the proceedings, but the court may set aside the proceedings wholly or in part or exercise its powers under these rules to allow any such amendments and give any such directions as it thinks fit."

As I have already said, in my judgment the court manager of the Skegness County Court acted entirely outside any discretion which may be vested in him when he refused to accept Mrs Grunshaw's notice of appeal and refused to enter it in the records of his court, which did in fact have jurisdiction to receive it (see Purchas LJ in Sharma v. Knight cited above). He made a judicial determination, which he had no power to make, to the effect that he could not or should not accept the document. In my judgment this resulted in a failure by him to comply with a requirement of the rules, namely the requirement under Order 2 r 4 that he enter it in the records of the court. That failure was an irregularity but does not nullify the proceedings.

Mrs Grunshaw did all that was necessary and required of her to file her appeal in the county court when she handed or attempted to hand her notice of appeal to the proper officer of the Skegness County Court on Friday 7th August 1998. What followed thereafter was an irregularity, not on her part but on the part of the court.

I would hold as a matter of fact (and not of deeming), that Mrs Grunshaw appealed to the county court as required by section 269(1) of the Housing Act 1985 on Friday 7th August 1998, namely within the 21 days permitted to her under that section.

Accordingly, and with relief that it is possible for justice to be done, I would allow the appeal from the decision and order of His Honour Judge Elystan Morgan dated 3rd November 1998 which means, of course, that Mrs Grunshaw's appeal to the county court against the demolition order can now be heard on its merits.

I would like to conclude this judgment by assuring the court manager of the Skegness County Court, if ever he sees this, that although, as I have said, I consider he made an error, I am confident that he acted throughout in a conscientious manner, doing his duty as he understood it to be. Indeed, although refusing to accept her notice of appeal, he clearly tried to be as helpful as possible to Mrs Grunshaw.

Lord Justice Henry:

I agree.

Order: Appeal allowed.