



Neutral Citation Number: [2017] EWCA 2632 Civ
Case No: A2/2015/2421(B); A2/2015/2422(B); A2/2015/2445(B)
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
(HIS HONOUR JUDGE FOSTER, QC)

The Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday, 16 November 2017

Before:

LORD JUSTICE SALES

Between:

DECOULOS

Applicant

- and -

AXEL SPRINGER SCHWEIZ AG & ORS

Respondents

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(Official Shorthand Writers to the Court)

The **Applicant** appeared in person via telephone conference

Mr D Sherbourne (instructed by Farrer & Co) appeared on behalf of the **Respondents**

Judgment

(Approved)

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LORD JUSTICE SALES:

1. This is the oral hearing of a request for a review of the making of an extended civil restraint order in relation to the appellant, Ms Decoulos, in these proceedings. The ECRO was made by Christopher Clarke LJ on 28 February 2017 and extends to 27 February 2019. It followed on from an ECRO made by HHJ Foster QC on 25 November 2017 which had extended through to 24 November 2017.
2. The present application is for me to determine with the benefit of oral submissions whether the order made by Christopher Clarke LJ should be set aside. The listing for this application has been known for some time. The appellant, Ms Decoulos, made an application (I have to say, late in the day) for an adjournment of the application, putting in a certain amount of medical evidence. I determined that application on the papers, making an order on 14 November in which I said:

"1. There has already been a lengthy delay in the hearing of the application on the basis of adjournments sought by the appellant. Fairness and the overriding objective in CPR Part 1 now require that, absent compelling reasons, the substantive application should proceed to a hearing. The evidence in support of the application for an adjournment falls well short of evidence which shows that any reasons exist which are compelling in favour of a further adjournment. I accept the submissions made in writing by Rupert Grey for the respondent. As things presently stand, the just solution is that the substantive application should proceed on 16 November 2017 with the appellant having the opportunity to attend by telephone, should she wish. If she wishes to do that, she must immediately contact the court office for the necessary arrangements to be put in place in good time."

(Quote unchecked)

3. Fortunately, Ms Decoulos has been able to join us by telephone. However, she says that her medical situation is such that she is unable to participate in the hearing of her application for a review of the ECRO that has been made against her, and she asks

again that the hearing of that application should be adjourned. She has referred to further medical advice that she has received dated 15 November 2017. She has also supplemented that with oral representations today as to her state of health and how difficult it would be for her to participate in the hearing today.

4. In considering whether to grant this further application for an adjournment, I have regard to the overriding objective in CPR Part 1. In particular I have regard to the importance of ensuring that applications such as this should be dealt with expeditiously and fairly. The present application is one of no little importance to the respondents, since they wish to have the assurance of the protection of the ECRO in relation to any further involvement in court proceedings at the instance of Ms Decoulos, which they is being undermined by the holding open of the present application with applications for adjournments and so forth.
5. I note in having regard to the present application that Ms Decoulos has already put in extended written representations dated 7 March 2017 in relation to the ECRO made by Christopher Clarke LJ so that the court has the benefit of those submissions on her behalf for the purposes of this application. I also bear in mind that Ms Decoulos has had many months in which to supplement those representations should she have wished to do so.
6. The present, latest medical information which has been emailed to the court by Ms Decoulos is from a doctor in the US, where Ms Decoulos resides, called Nicholas Karamitsios. He says in a letter dated 15 November 2017:

"Ms Elaine Decoulos is under my care for an episode of recurrent acute sigmoid diverticulitis. She has had a prior history of documented sigmoid diverticulitis. She is currently on antibiotics with a planned course of treatment for ten days. Her symptoms are of such severity that it even precludes her from sitting. She will not be able to travel or work in any form over the next week."

(Quote unchecked)

7. Notwithstanding that expression of view, Ms Decoulos has in fact been able to communicate with the court and make submissions, both oral and in writing, in support of her application for an adjournment. I do not consider that the medical evidence from Dr Karamitsios is of the specific and compelling character to which I referred in my previous order so as to justify a further delay in the disposal of the present application. In my view, the overriding objective is strongly in favour of this court proceeding to consider Ms Decoulos's substantive application to have the ECRO set aside in her case, if necessary on the basis of the written submissions which she has already very helpfully made to the court, but obviously supplemented by anything additional that she feels able to or wishes to say in the course of the hearing.

8. Accordingly, the further application for an adjournment is refused, and this court will now proceed to go back into open session and to consider Ms Decoulos's substantive application in relation to the ECRO.

Order: Application refused