Neutral Citation Number: [2020] EWHC 735 (QB)

Case No: QB-2017-0224

IN THE HIGH COURT OF JUSTICE
HIGH COURT APPEAL CENTRE ROYAL COURTS OF JUSTICE
ON APPEAL FROM THE CENTRAL LONDON CIVIL JUSTICE CENTRE
ORDER OF MRS RECORDER JONES DATED 2 AUGUST 2017
COUNTY COURT CASE NUMBER; C40CL180
APPEAL REF: QB/2017/0224

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/03/2020

Before :

The Hon. Mrs Justice Tipples DBE

- -

Between :

CORDELIA GIL	**Claimant/ Appellant**
- and -	
LONDON BOROUGH OF CAMDEN	**Defendant/ Respondent**

- -
- -

Mrs Cordelia Gil in person
Ms Sarah Salmon (instructed by London Borough of Camden) for the Respondent

Hearing date: Tuesday 24 March 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.45am on Friday 27th March 2020.

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THE HONOURABLE MRS JUSTICE TIPPLES

The Hon. Mrs Justice Tipples:

Introduction

1. This is an application by the Appellant, Mrs Cordelia Gil, for permission to appeal and, if permission is granted, for the hearing of her appeal against the order of Mrs Recorder Jones in the Central London County Court on 2 August 2017, whereby the Appellant's appeal to the County Court under s. 204 of the Housing Act 1996 (as amended) was dismissed.

Procedure: Remote hearings protocol

2. The application was listed for hearing at 10.30am on Tuesday 24 March 2020, with a time estimate of 2 hours. The hearing was fixed earlier this year and, on 11 March 2020, the Appellant applied for the hearing to be adjourned on the basis of "incapacity due to an infection in the right middle finger". That application was refused by Foster J on 17 March 2020. One of the points made by Foster J in her ruling was that "the (undated) photographs show, in one picture, a right hand/arm wearing a brace, in another a left hand/arm wearing one".

3. In the light of the Covid-19 pandemic, I endeavoured to give directions for the hearing on 24 March 2020 to take place remotely in accordance with the *Remote Hearings Protocol* published on 20 March 2020. Unfortunately the Appellant, who is acting in person, was unable to participate in a Skype call as she told me her laptop had been stolen, and she said she was unable to afford the cost of a hearing by telephone on her mobile phone. However, the Appellant has no problem communicating, or expressing herself, by email. Indeed, she accepted that "the decision to proceed by way of written submissions is better than by telephone, as it does not introduce additional charges to [her] mobile phone bill".

4. In these circumstances, I directed the Appellant to write down and email to my clerk everything she wished to say in support of her application by 6pm on Tuesday 24 March 2020. I provided this timescale as the Appellant has had ample time to prepare for this hearing, and there was no reason why she could not write down on 24 March 2020 what she had prepared to say at the hearing itself, if the hearing had been possible by physical attendance in a court room.

5. I directed the Respondent, the London Borough of Camden, to respond to any such written submissions by 6pm on Wednesday 25 March 2020, and I gave the Appellant the opportunity to reply by 6pm on Thursday 26 March 2020. I then said that I would provide a written ruling.

6. The Appellant saw this as a further opportunity to ask for an adjournment, which was contained in her email of 24 March 2020 (timed at 12.42). If that request was refused, she then asked for an extension of time to file her written submissions until 31 March 2020. She said this:

> "In the event that the court is minded not to adjourn this hearing to a future date, I will still reluctantly say as follows:
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> > 0. To me the decision to proceed by way of written submissions is better than by telephone, as it does not introduce additional charges to my mobile phone

> bill; however the submission deadline of 4 pm (about 3 hours from now!) does not work for me at all for the following reasons:
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> 1. I am still wearing a brace on my right hand due to my middle finger being affected by paranonychia, and in addition I am using my mobile phone to write you so my output will be slow, difficult and probably full of gramatocal errors.
>
> 2. As previously indicated I was robbed on 12 March 2020, of my computer bag containing my laptop, etc. A copy of the police letter with the crime reference number has been forwarded to the court. All data saved in the hard drive of my stolen laptop is now lost to me as the rogue(s) who stole my computer bag, wiped out all the information stored on my one drive account. Therefore I have to try to recover all documents attached to my e-mails, including the said document sent by the Respondent on 17/01/20, and save on my phone storage in order to read them up, which will take me many hours. As already stated, I was so occupied with my husband's case that I could not read my own case papers. Evidently due to his mental/other health conditions, he cannot assist me on my own case, or can he? No is the answer! In addition I may have to spend many more hours **researching** on cases including the ones quoted by the Respondent.
>
> 3. Following from above, I may draft my further submissions but cannot send them off until I have put them before a qualified solicitor to review and check for any legal errors. Evidently I am the appellant and so must use my best endeavours and every service available to me to ensure my new submissions are legal, relevant and to the point. Due to the current Corona virus pandemic, majority of the CABs are now acting via email, and telephone; and to get a response may take anything from 1-7 days, or more.
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> 4. Accordingly for reasons stated above a more realistic submission deadline for me would be in a week's time, i.e. 31st March, subject to court approval. Thanks for anticipated favourable consideration."

7. This request was opposed by the Respondent.

8. I refused the Appellant's request for an adjournment as set out in my email sent on the afternoon of 24 March 2020:

> "Thank you for Ms Gil's message dated 12:43, which the Court has considered. The Court refuses Ms Gil's further request for an adjournment. The hearing has been fixed for a very long time and a request for an adjournment was refused by Foster J on 17 March 2020. The Court will take account of all the points set out in her email in determining her application and, if there is anything further Ms Gil wishes to add to her submissions, then she must send any further points email to the Judge's clerk … by 6pm today (in accordance with the Order made this morning). Thank you very much."

9. The Appellant did not send in any further representations. Rather, the only document she emailed through was an Order made by District Judge Hayes on 23 March 2020 in the Clerkenwell and Shoreditch County Court in a case where her husband is the defendant.

That case has nothing whatsoever to do with this application and is irrelevant in present circumstances.

10. On 25 March 2020 the Respondent sent the court the following email:

> "In the light of the Appellant not making any further representations relevant to her grounds of appeal, the Respondent relies upon its position in the skeleton argument dated 17 January 2018 (and Respondent's notice, if necessary). For the avoidance of doubt, if permission is refused or, if granted but the appeal fails, the Respondent does not invite the court to deal with the matters in its Respondent's notice".

11. The Respondent is represented by Ms Sarah Salmon of Counsel.

12. The Appellant has not provided any response to the Respondent's email.

13. I now turn to the circumstances which gave rise to the recorder's order.

Factual background

14. By letter dated 25 March 2015, the Respondent made a decision under s. 184 that the Appellant was homeless, eligible for assistance but that she was not in priority need. The Appellant requested a review of that decision and by letter dated 22 April 2016, the Respondent upheld its original decision. On or about 19 May 2016, the Appellant filed an appeal against the s. 202 review decision. The decision was notified to the Appellant on 26 April 2016.

15. There were then various adjournments (which I do not need to set out) and the appeal was eventually listed for hearing on 2 August 2017, so over 15 months' later.

16. As at the date the appeal was due to be heard, 2 August 2017, the Appellant had failed to produce an appeal bundle. The Respondent produced it.

17. On 1 August 2017, the Appellant filed an application notice asking for the appeal to be adjourned to a date not before the end of November 2017. The application was listed on the morning of 2 August 2017. His Honour Judge Luba QC refused the application. That afternoon the appeal was listed for hearing before the recorder on 2 August 2017.

18. I have a typed note of that hearing, which was prepared by Ms Salmon. On the front page of the note Ms Salmon explains: "I was unable to capture everything so these are very much a note". I do not have a transcript and, as I understand the position, the court refused the Appellant's application for a transcript to be prepared at public expense. This was because the court did not consider it necessary for there to be a full transcript of the hearing to determine the Appellant's application for permission to appeal.

19. The Respondent was represented by Counsel at the hearing on 2 August 2017. The Appellant did not attend. The reasons for this are set out in the recorder's decision to proceed in her absence. The note of the hearing, prepared by Ms Salmon, recorded the recorder as having said this:

> "This is the third hearing listed for Mrs Gil's appeal. There is a history of non-compliance with orders by Mrs Gil over a period of time. The third application to adjourn the matter was heard by His Honour Judge Luba QC this morning and it was refused. It is not for me to go behind that determination or make any comment. The judge had all the evidence before him.
>
> The Appellant came out of court, the adjournment having been refused and, notably, the adjournment was not sought on medical grounds but only sought on the length of time the Appellant has failed to secure legal representation. Upon leaving court this morning, the Appellant announced that she was unwell, she was an asthmatic and she called an ambulance. A first aider attended and offered her an unused inhaler which the Appellant refused to accept. She wandered off with no indication whether or not she had seen the paramedics.
>
> I am asked by the Respondent to continue the hearing. The bundle has been produced at the very last minute by the Respondent due to the Appellant's default and I am asked to deal with the application and/or appeal.
>
> I have heard from counsel and I have considered very carefully the position. There is no medical evidence that she was genuinely ill and the circumstances raise suspicion given her conduct in failing to wait for the paramedics or communicate with the court. In the absence of proper medical evidence, I find the Appellant's absence is a deliberate and further attempt to obtain an adjournment and avoid the consequences.
>
> I will hear the matter and I will start with the application to strike out. If that is successful, I do not need to deal with the appeal at all."

20. The recorder then heard the Respondent's application to strike out the appeal. I have Ms Salmon's note of her judgment. The recorder identified that the first issue was that the Appellant's appeal was made out of time, and that she had failed to make an application for permission to appeal out of time. The recorder was referred to s. 204(2A) of the Housing Act 1996 and to *Poorsalely v Wandsworth LBC* [2013] EWHC 3687 (QB), Jay J. The recorder identified that, as the appeal was filed on 19 May 2016 "it was only two days late". However, as the Appellant had not made a formal application to extend the time for appealing, the recorder held that did not have any discretion to extend the time for her to appeal, and accordingly she did not have any jurisdiction to hear the appeal. The Appellant's appeal was therefore dismissed, as the court did not have jurisdiction to hear it.

21. The order made by the recorder provided as follows:

> "UPON HEARING Counsel for the Respondent
>
> AND UPON THE COURT considering that the Appellant has absented herself from the hearing of this Appeal without good cause having attended this morning on her application to adjourn this case which application was refused by HHJ Luba QC
>
> AND UPON READING the Appellant's Notice brought under the Housing Act 1996 s204(1) and marked as filed on 19th March 2016 in respect of a decision dated 22nd April 2016

AND UPON the Appellant having failed to make an application for permission to appeal out of time

AND UPON the Appellant having failed to provide a good reason for lodging her appeal two days late or any good reason for delay in seeking permission out of time

IT IS ORDERED THAT:

1. This Order shall be sent by email to the Appellant … and to the Respondent … simultaneously.

2. The Appeal is dismissed, the Court not having jurisdiction to hear it."

22. It is this order that the Appellant seeks permission to appeal.

The Appellant's Notice

23. The Appellant filed her Appellant's Notice on 15 September 2017 and, at the same time, sought an extension of time for appealing.

24. Her grounds of appeal are:

    a. Ground 1: The decision of the recorder is wrong. The Appellant says that her appellant's notice was submitted on time. This is because on 18 May 2016 she put it in the drop-box mounted inside the Central London County Court's front office on the First Floor, Thomas More Building as advised by counter staff.

    b. Ground 2: The Appellant says that the recorder should not have proceeded in her absence. She says, amongst other things, that she was traumatized by the hearing before HHJ Luba QC earlier in the day and, if she had been present at the hearing before the recorder, she would have explained that she had delivered the Appellant's notice to the court on 18 May 2016, and at the hospital she was "admitted, treated and later discharged. Copies of the Accident and Emergency (A&E) doctor's notes and her GP's letter are attached …".

25. On 21 November 2017 Martin Spencer J granted the Appellant an extension of time to apply for permission to appeal. Having done so, he directed that the appropriate course was for her application for permission to be listed for an oral hearing, and for the appeal to follow should permission be granted. It was that application, over two years later, which was listed before me on Tuesday 24 March 2020.

26. Permission to appeal may be given only where (a) the court considers that the appeal would have a real prospect of success or (b) there is some other compelling reason for the appeal to be heard (CPR Part 52.6).

Relevant law

27. I now turn to the relevant law, which was helpfully set out in Ms Salmon's skeleton argument dated 17 January 2018.

28. Part VII of the Housing Act 1996 (as amended) governs the provision of housing assistance to homeless persons by local housing authorities. An applicant has the right to ask the authority to review certain decisions, including a decision as to what duty (if any) is owed to him: s. 202(1)(b). The procedure on review is governed by the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 (SI 1999/71), made under s.203.

29. Once the authority has concluded their review, they must "notify the applicant of the decision": s. 203(3). In *Dharmaraj v Hounslow LBC* [2011] P.T.S.R. 1523, it was held at [20]–[23] that notification of an authority's review decision under s. 203(3), may be given to an applicant's agent. The appellant's solicitors had made the request for a review and had provided a letter from the appellant authorising the authority to write to the solicitors on matters relating to his application. The authority was entitled to assume that the solicitors were authorised to receive notification of the review decision.

30. An appeal under s. 204 must be brought within 21 days of the applicant being notified of the decision of the internal review.

31. The court may give permission for an appeal to be brought after the end of the period, but only if it is satisfied where permission is sought after that time, that there was a good reason for the applicant's failure to bring the appeal in time and for any delay in applying for permission: s. 204(2A)(b).

32. If an appellant is seeking permission to extend time, that application should be made in the Appellant's Notice and should be supported by a witness statement explaining the good reason for the failure to bring the appeal in time and for any delay since the time limit expired: CPR 52 and PD 52B, para. 3.1-3.3.

33. It is clear that the Court must consider both limbs of the test before granting permission: see *Poorsalely v Wandsworth LBC* [2013] EWHC 3687, Jay J.

Grounds of the appeal

34. The Appellant maintains her appeal was in time, as it was lodged on 18 May 2016. There was no evidence to this effect before the recorder. However, even if this is right, and this point was made to the recorder, it would have made no difference, as the appeal was still one day out of time. The last day for filing the appeal was 17 May 2016.

35. Further, the Respondent submits in more detail that:

    a. During the course of the review process, by email dated 29 July 2015, the Appellant informed the reviewing officer that she was seeking legal representation. By email dated 10 August 2015, she informed him that she had found solicitors willing to take on her case. The Appellant instructed Brent Community Law Centre to act for her in relation to the s.202 review.

b. Communications between the Law Centre and the Respondent led to a "minded to find" letter dated 15 April 2016 being sent to the Law Centre inviting them to make further representations on the review. The Law Centre responded by letter dated 20 April 2016.

c. With her Appellant's Notice to the county court, the Appellant attached at page 36 a copy of the review decision. It is clearly marked as received on 26 April 2016.

d. In line with the case of *Dharmaraj,* the Respondent submits the authority was entitled to assume that the solicitors were authorised to receive notification of the review decision. The Appellant was, therefore, notified of the review decision on 26 April 2016.

e. The Respondent calculates the deadline for the appeal to be have been 17 May 2016.

f. The Appellant's Notice to the county court is marked as filed on 19 May 2016 and the learned Judge had no evidence to the contrary. In any event, on the Appellant's evidence before this Court, which was not available to the county court, the appeal was filed on 18 May 2016. This was one day late.

36. I accept and agree with the Respondent's approach set out in paragraph 35 above and, in particular, agree that, even if the Appellant's appeal was filed with the county court on 18 May 2016, it was one day late and therefore out of time.

37. It is clear that the onus is on an appellant to establish a good reason for the failure to bring the appeal in time and the delay in applying for permission to extend time. In this case the Appellant had not made any application to the county court for permission to appeal out of time nor had she supplied any evidence to show she has a good reason for failing to bring the appeal in time and why there was the delay. Further, the Appellant had been alerted to this particular issue of time before the hearing on 2 August 2017 and failed to do anything about it. In such circumstances, the recorder was correct to decide that she had no jurisdiction to hear the appeal, and to dismiss it. There is certainly no real prospect of arguing that the recorder was wrong.

38. Further, I agree with the Respondent's submission that the recorder's decision to proceed in the Appellant's absence was a case management decision. The appeal court should not interfere with such decisions when the correct principles have been applied. There is nothing in the circumstances of this case to suggest that the Appellant has any real prospect of arguing that the decision to proceed in the Respondent's absence is so plainly wrong that it must be regarded as outside the generous ambit of discretion entrusted to the judge: *Royal & Sun Alliance Insurance plc v T&N Ltd (In Administration)* [2002] EWCA Civ 1964; [2003] P.I.Q.R. P26 at [38]. In any event the evidence now produced by the Appellant shows that she was admitted to the emergency department for a self-reported illness. On examination her blood pressure was 190/110 and everything else was "normal". There were no red flags and no airway problems. There is no diagnosis of any illness from the emergency department. It was the Appellant's decision not to attend the hearing before the recorder on 2 August 2017, and there is nothing to show that the recorder's decision to proceed in her absence was wrong in the circumstances.

Conclusion

39. In these circumstances the Appellant's appeal has no real prospect of success, and there is no other compelling reason for the appeal to be heard. The Appellant's application for permission to appeal is dismissed, and there is no need for me to consider the Respondent's notice.

40. The Respondent has made an application for its costs in relation to this application. I will give the Appellant an opportunity to respond to that application, before making any order in respect of costs.