

In the St. Helena Court of Appeal

Citation: SHCA 4/2021

Civil

In the matter of a ruling on an application for leave to appeal

GEORGE MOYCE

Appellant

(By his Litigation Friends Mr and Mrs Tingler)

and

THE ATTORNEY GENERAL OF ST HELENA

Respondent

Ruling on an application for leave to appeal

Heard on 25th October 2021

Before: HHJ L Drummond

1. This is an application for leave to appeal against the judgment of HHJ Wall. The background is that the Appellant raised a claim against the Respondent seeking damages for negligent medical care and treatment. It is agreed between the parties that the Appellant underwent cataract surgery carried out by Dr Tavcar on 13 December 2017. That involved the removal of a cataract in the Appellant's right eye and the implant of an intraocular lens. The Respondent admits that the wrong lens was implanted into the Appellant's eye. The error was subsequently discovered and corrective surgery carried out. The parties are in dispute about what damages were caused as a result of the admitted negligence. The parties also dispute whether the Respondent was in further breach of duty in relation to the

quality of aftercare received by the Appellant including refusals to medevac him for treatment elsewhere.

2. On 1 October 2021 HHJ Carmel Wall, acting Judge of the St Helena Supreme Court, allowed in part an application for summary judgment by the Appellant. She granted judgment in favour of the Appellant, with damages to be assessed, that the procedure carried out on 13th December 2017 of cataract removal of intraocular lens and implantation was performed by the Respondent in breach of the Respondent's duty of care and caused damage to the Appellant. Summary judgment was refused in respect of the remainder of the claim. Consequently the assessment of damages and the remaining issues between the parties were left to be decided at trial.
3. The Appellant sought leave to appeal against that judgment from the Supreme Court. Judge Wall refused leave for the following reasons: (1) the grounds raised by the Appellant were misconceived; (2) the complaints by the Appellant concerning the form and substance of the Order granting an extension of time to the Respondent to file its defence, had no relevance to the application for summary judgment; (3) the complaints made by the Appellant about questions to be put to the Appellant's expert and service of the Appellant's expert report had no impact on the issues raised in the application for summary judgment; (4) the issues raised by the Appellant were matters of procedure and conduct and did not address the merits of the claim or defence. Judge Wall concluded that the application had no real prospects of success and there was no other compelling reason for the appeal to be heard.
4. The Appellant thereafter applied to the Court of Appeal for leave to appeal against the refusal of summary judgment.

5. An appeal lies in civil cases from the Supreme Court to the Court of Appeal with the leave of the Court of Appeal, if the Court of Appeal considers that leave to appeal ought to be granted (section 7 of the Courts (Appeals and Rules) Ordinance 2017. The application for leave to appeal may be determined without a hearing.
6. The Appellant's litigation friends have written a two page letter (referring to a further attached letter) setting out why leave to appeal should be granted. I have considered those representations in full. However, I have decided that leave to appeal should not be granted. I do so on the grounds that I agree with all the reasons for refusal given by Judge Wall and agree that the appeal is entirely misconceived. On a summary application the question for the court is as identified by Judge Wall in her judgment, at paragraphs 39 to 43 under reference to CPR 24.2. The exercise for the court is to consider the merits of the claim and whether there is a real prospect of the Respondent defending it. The court must take into account not only evidence that has been placed before it, but also evidence which can reasonably be expected to be available at trial, including expert medical evidence from both parties. The court should hesitate to grant summary judgment if there are reasonable grounds for believing that a fuller investigation would affect the evidence available to the judge and the outcome of the case. Where disputed issues depend on a court's assessment of expert evidence, summary judgment will usually be inappropriate.
7. There is, in my view, no prospect of successfully appealing against the refusal of summary judgment in relation to those parts of the claim that remain in dispute. There are genuine disputes between the parties about those aspects of the claim. To resolve those issues, the court will most likely require to consider expert evidence. An application for summary judgment is not a mini

trial and is not the forum to decide potentially complex disputed medical issues. Where there are disputes on fact and the prospect of expert medical evidence to be weighed and considered, that must be left to be determined at trial.

8. The Appellant's litigation friends state in their application for leave to appeal that Judge Wall refused to allow them to read out the whole of their letter in support of the application for summary judgment. I do not have any further information about that. However, I note that Judge Wall records that she has listened to the submission made by the litigation friends and read the witness statement by them in support of the application. She sets out in her judgment the arguments made in the witness statement. I have read the content of the letter in full. It seems to me that the matters set out in the letter all fall within the Appellant's arguments recorded by Judge Wall in her judgment at paragraphs 44 to 71. They are complaints about conduct and procedure and do not address the question which was before the court i.e. the prospects of the Respondent successfully defending the claim. The content of the letter adds nothing further to what has been recorded and addressed by Judge Wall. It cannot therefore, in my view, found the basis for granting leave to appeal.
9. The litigation friends repeat many of the complaints about conduct and procedure in their application for leave to this court, which, for the reasons explained are not relevant. They also state that the evidence is overwhelming and indisputable. However, the court has to make its own assessment of the evidence as a whole, after it has heard all the evidence and the parties' submissions on it. The Respondent disputes the remaining issues and the court will require to resolve these issues at trial, most likely in light of expert evidence. The Appellant will have the same opportunity at trial to present

the claim as the Respondent will have to defend it. The fact that summary judgment has been refused in relation to the disputed issues does not in any way prevent the Appellant from arguing that judgment should be granted in his favour after trial.

10. For these reasons, leave to appeal is refused.