19 May 2010

PRESS SUMMARY

Roberts (Appellant) v Gill & Co Solicitors and others (Respondents) [2010] UKSC 22
On appeal from the Court of Appeal (Civil Division) [2008] EWCA Civ 803

JUSTICES: Lord Hope (Deputy President), Lord Rodger, Lord Walker, Lord Collins, Lord Clarke

BACKGROUND TO THE APPEAL

The Appellant Mark Roberts and his brother John Roberts were beneficiaries of a will made by their grandmother, Mrs. Alice Roberts. A clause in the will provided that if John Roberts paid all the inheritance tax due on Mrs. Roberts' death then a property known as the Lower Hellingtown Farm would pass to him, and another property known as the Coppice would pass to the Appellant. The considerable value of the farm meant that it would be to the advantage of John Roberts if he complied with the clause.

Upon the death of Mrs Roberts on 27 July 1995, John Roberts was granted the right to administer the estate in the place of Mrs Roberts' executors, who had decided not to take up office. In order to obtain his position as administrator, John Roberts paid some of the inheritance tax due on the estate, but not all of it.

In July 1996, John Roberts, as administrator, transferred ownership of Lower Hellingtown Farm to himself as beneficiary and in 1997 the property was sold. The majority of the proceeds of sale were paid to John Roberts, the remainder being used to discharge some of the estate's liabilities. Two firms of solicitors advised John Roberts. The First Respondent, Gill & Co, advised John Roberts on the transfer of the property and the Second Respondent, Whitehead Vizard, advised him on the sale of the farm.

On 30 October 2000, John Roberts was replaced as administrator by the Appellant's solicitor. In a claim brought on 27 November 2002, the Appellant brought proceedings against the First and Second Respondents for negligence, alleging broadly that they had assisted, in breach of the provisions in the will, in the transfer and sale of the property without John Roberts having paid all the inheritance tax due. The claim was, however, framed in such a way as to allege that the duty of care owed by the firms of solicitors was owed to the Appellant personally.

The correct legal position (which was not disputed by any of the parties on appeal), was that a firm of solicitors advising a person administering an estate does not owe a duty of care to the beneficiaries of that estate personally; rather the duty of care is owed *to the estate* of the dead person. Normally the proper person to bring any claim for negligence, therefore, would be the person administering the estate. A beneficiary of a will may bring a claim on behalf of the estate, but only where 'special circumstances' exist.

On 25 August 2006, the Appellant applied to amend his claim so as to continue it both in his own personal capacity and on behalf of the estate. The First and Second Respondents resisted the

application on the grounds (a) that the amendment was barred as being out of time under section 35 of the Limitation Act 1980 ('the Act') and rule 19.5 of the Civil Procedure Rules ('the CPR'), and (b) that there were no 'special circumstances' which entitled the Appellant, as a beneficiary, to continue the claim on behalf of the estate.

The High Court refused the application, holding that there were no special circumstances. The Court of Appeal held by a majority that there were special circumstances but that the amendment was time-barred. The Appellant appealed.

JUDGMENT

The Supreme Court unanimously dismissed the appeal. Lord Collins gave the leading judgment, dismissing the appeal on the basis that the amendment was time-barred. Lords Rodger and Walker agreed with the entirety of Lord Collins' judgment. Lords Hope and Clarke declined to decide the case on the grounds that the amendment was time-barred but nonetheless ruled in favour of the First and Second Respondents on the ground that there were no special circumstances which entitled the Appellant to carry on the claim on behalf of the estate.

REASONS FOR THE JUDGMENT

The main question in relation to ground (a) was whether, in order to be able to carry on his claim, the Appellant would need not only to alter the claim so that he was suing on behalf of the estate, but also to add the administrator as a defendant. If he did have to add the administrator, a further question arose: did he have to add him at the time at which he altered his claim, or could he do so later? **[para 44].**

Rule 19.5 of the CPR stated that a new party could be added after the limitation period only where to do so was 'necessary' for the determination of the original litigation. The addition of the administrator was clearly not necessary for determining the Appellant's personal claim: there was no possible basis for any suggestion that the administrator would be a proper or necessary party **[para 43]**. If the Appellant was able to make the application to change the capacity in which he sued first, that would then enable him to subsequently add the administrator as a party, as it would then be 'necessary' for the determination of the proceedings brought on behalf of the estate for the administrator to be joined **[para 44]**.

The Appellant therefore needed to be able to demonstrate either that the administrator did not need to be added at all, or that he could be added after the Appellant had successfully altered the claim. Neither was possible. The administrator needed to be added at the outset of the proceedings **[paras 63, 71]** and it would be contrary to principle for the court to grant permission to alter the claim first before considering the addition of the administrator **[para 71]**. The appeal would accordingly be dismissed on ground (a) **[paras 77, 86, 95]**.

Although ground (b) did not directly arise for decision given the conclusion on ground (a), there were no 'special circumstances' that would entitle the Appellant to carry on a claim on behalf of the estate. The judge had a wide latitude in evaluating whether there were special circumstances, had taken all the relevant circumstances into account, and had conducted the enquiry in a way with which an appellate court should not have interfered **[para 76]**.

Lords Hope and Clarke, in the minority on ground (a), disagreed that the rule that the administrator must be joined was quite as absolute as Lord Collins suggested **[paras 79, 115].** The rule could be departed from if it was necessary to avoid injustice **[paras 84, 116]**. While on the facts of the case it was difficult to justify a departure from the rule **[para 84]**, Lords Hope and Clarke both preferred to decide the case on the basis that there were no special circumstances **[paras 78, 114].**

NOTE
This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: