Online Case 25
Seals and Seals

v

Williams

[2015] 4 Costs LO 423

Neutral Citation Number: [2015] EWHC 1829 (Ch)
High Court of Justice, Chancery Division
15 May 2015

Before:
Norris J (Vice-Chancellor of the County Palatine)

Headnote

Where parties ask for a judicial expression of provisional views on particular hypotheses or upon the judge's overall view of the case so far, it is part of the judicial function to accede to the request. Accordingly, it was appropriate to make an order in agreed terms for an Early Neutral Evaluation so as to afford the judge an opportunity to make non-binding recommendations as to the outcome and to state short reasons for those recommendations without in any sense attempting a provisional judgment. Such a step was authorised under CPR 3.1(m) "to take any other step or make any other order for the purpose of managing the case and furthering the overriding objective".

Cases Cited

None.

Judgment

1. **Norris J:** Robert Seals and Andrew Seals commenced Inheritance Act proceedings against the estate of their late father, Arnold Seals. The sole executrix and beneficiary of the estate of the late Arnold Seals is Mrs Williams.

2. There has already been one round of litigation, before David Richards J, concerning entries on the title of the property which comprised the bulk of the Estate. It is clear that those proceedings and the subsequent Inheritance Act claim generated a great deal of acrimony and that the positions of the parties are in danger of becoming entrenched. An attempt at mediation has largely stalled because of differing perceptions of the issues in dispute and of the strength of the respective arguments.

3. In this context, it is highly commendable that the legal representatives for the parties have proposed as a way forward, and the court has been invited to undertake, an Early Neutral Evaluation of the case. The advantage of such a process over mediation itself is that a judge will evaluate the respective parties' cases in a direct way and may well provide an authoritative (albeit provisional) view of the legal issues at the heart of the case and an experienced evaluation of the strength of the evidence available to deploy in addressing those legal issues. The process is particularly useful where the parties have very differing views of the prospect of success and perhaps an inadequate understanding of the risks of litigation itself.

4. The FDR process is familiar in the Family Courts. Although the process [is] endorsed in the Chancery Modernisation Review as a valuable tool (see paras 5.23 to 5.30) and features in the Guides both of the Commercial Court (see para G.2.1–G.2.5 of the Commercial Court Guide) and the Technology and Construction Court (see para 7.5 of the TCC Guide) its precise foundation is unclear.

5. The FPR provide an answer in the context of family proceedings. CPR 3.1(m) provides an answer in the context of civil proceedings, since it authorises the court to "take any other step or make any other order for the purpose of managing the case and furthering the overriding objective".

6. Of course, the Rules themselves could not supply any jurisdiction otherwise lacking. However, it seems to me plain that the expression of provisional views – with a view to assisting the parties – reduces the

areas of dispute and the general scope of the argument, and is an inherent part of the judicial function both in civil litigation and in criminal proceedings.

7. The expression of provisional views in the course of a hearing is not dependent in any way on the consent of the parties. It is simply part of the judge's inherent jurisdiction to control proceedings before him or her. The expression of views about the ultimate outcome of a case at a hearing specially convened for that purpose is slightly different. In my judgment, if the parties ask a judge to express provisional views on particular hypotheses or upon the judge's overall impression of the case so far, then it is part of the judicial function for the judge to accede to doing so – though plainly the judge is not bound to do so whenever the parties request.

8. In the instant case, the parties accept that if there is Early Neutral Evaluation by a High Court judge, in the course of the Inheritance Act proceedings and related issues, then that would be part of the judge's judicial function in enabling the parties to resolve the dispute and in discharge of the obligation to abide by the overriding objective.

9. The proposed directions have been carefully crafted so as to afford the settlement judge the opportunity to make non-binding recommendations as to the outcome and to state short reasons for that recommendation without in any sense attempting a provisional judgment. Indeed, the settlement judge will not be further involved in the proceedings at all. The directions also provide that, in the light of the recommendations, the parties may agree a consent order.

10. What will bind them is their consent to the making of an order – not the outcome of the early neutral evaluation process itself. Both in the Birmingham District Registry and in this District Registry such neutral evaluations are being adopted and the move is warmly to be welcomed. I make an order in the form agreed.

Serena Gowling (instructed by Rural Law Practice) appeared for the claimants.

Christopher McNall (instructed by Nigel Davis Solicitors) appeared for the defendants.

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