Neutral Citation Number: [2016] EWCOP 39

Case No: 95908524

COURT OF PROTECTION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 August 2016

Before:

SIR JAMES MUNBY PRESIDENT OF THE COURT OF PROTECTION

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In the matter of A (A Patient)
In the matter of applications by and against Desmond Maurice Fitzgerald
(No 2)

- -
- -

Mr Desmond Maurice Fitzgerald in person
Mr Charles Howard QC and Ms Charlotte Hartley (instructed by Hughes Fowler Carruthers) for Ms Frances Mary Theresa Hughes and Hughes Fowler Carruthers
Mr Ian Clarke QC (instructed by Hughmans) for A's deputy C

Hearing dates: 15-16, 22 March 2016

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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.

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SIR JAMES MUNBY PRESIDENT OF THE COURT OF PROTECTION

This judgment was delivered in private. The judge has given leave for the judgment to be published on condition that neither A nor C is to be named. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Sir James Munby, President of the Court of Protection :

1. I handed down my judgment in this matter on 10 August 2016: *Re A (A Patient), Re applications by and against Desmond Maurice Fitzgerald* [2016] EWCOP 38. The judgment had previously been sent to the parties in draft on 6 August 2016. As I recorded (para 71), I then received various emails from Mr Fitzgerald, who acts in person, raising a number of matters. As I went on to make clear, except in relation to one point, which I was careful to identify, none of his observations called for any correction to the judgment or any additions to the text. For the sake of completeness, however, I set out each of his observations, with my response, in a footnote to the relevant part of the judgment.

2. I went on (para 72):

> "I invite the parties now to make such submissions as they wish in relation to whether or not the judgment as I have handed it down in private should be released for publication. My preliminary view, subject to considering the parties' submissions, is that, in accordance with usual practice, the judgment should be released for publication."

3. After I had handed the judgment down on 10 August 2016 I received a further email from Mr Fitzgerald dated 11 August 2016 (17:21). He also copied me into various emails he had sent to the Court of Appeal, dated 10 August 2016 (10:42) and 11 August 2016 (12:16, 13:02). His email to me dated 11 August 2016 contained this passage:

> "I am now forwarding the original email of 24 March from Hughmans Solicitors purportedly copying me in on communication with yourself. You will note that the email address to which this email is supposedly sent is incorrect and can never have been received by you.
>
> I would be grateful for an explanation as to why this email is actioned in Judgement four months after non-receipt."

My response, in an email dated 11 August 2016 (19:25), read in material part as follows:

> "My email address changed earlier this year. The address shown on the email of 24 March 2016 was correct at that time. The email was, as I have already made clear, received by me at the time. There is nothing in the point you seek to make.
>
> I have handed down my judgment. The matter is accordingly out of my hands. If you have any queries or concerns they must be raised with the Court of Appeal; not with me. There are only three matters with which I remain involved:

> 1 Finalisation of the outstanding orders.
>
> 2 The observations, if any, which you wish to make as to whether my judgment should or should not be published.
>
> 3 Any application for permission you wish to make in accordance with the ECRO.
>
> I do not propose to respond to correspondence from you on any other matter."

4. Nothing daunted, Mr Fitzgerald responded by an email dated 12 August 2016 (11:42):

> "I will be questioning your account that your email address was The President@judiciary.hmcts.gsi.gov.uk on 24 March. This email address was tested at the time and found to be non-existent.
>
> There remains the question of why your Order of 24 March lodged with the Court of Appeal states that there will be no further costs orders made in this case, and you have nevertheless made a further costs order.
>
> In addition, you require me to submit my COP9 Application to you for the rescension of your Orders of 22 & 24 March as they are now voided by [C]'s failure to apply for standard costs assessment within the required three month time-limit "in compliance with your ECRO". It is your duty to a litigant-in-person to clarify what additional material is required in supplement to an ordinary COP9 Application to "comply with your ECRO". Please do so.
>
> I believe a full public review of your conduct is now necessary."

5. Two observations are in order.

6. First, I have never said that my email address on 24 March 2016 was, as Mr Fitzgerald asserts, The President@judiciary.hmcts.gsi.gov.uk – it was not then and never has been. The complete absence of any merit in Mr Fitzgerald's contention is, in fact, patent on the face of his email dated 12 August 2016: the email chain attached to it includes the email dated 24 March 2016, showing an email address for me which (a) is *not* the address asserted by Mr Fitzgerald and (b) was, at the time, my correct email address. I repeat what I said in my earlier judgment (para 68, footnote 12).

7. Secondly, Mr Fitzgerald is wrong to assert that I am under the duty to him which he asserts. He is, in my judgment, wrong for two reasons: (1) it is the obligation of someone who chooses to act as a litigant in person to acquaint himself with and to comply with the procedure and any relevant rules; and (2) it is not the function of a judge to give advice to a litigant, whether or not acting in person.

8. I turn to deal in turn with the three matters referred to in my email to Mr Fitzgerald dated 11 August 2016.

9. Finalisation of outstanding orders: Despite continuing bluster by Mr Fitzgerald (see, in addition to those I have already referred to, emails to me from Mr Fitzgerald dated 12 August 2016, 15:59, and 16 August 2016, 11:32, and emails from him to the Court of Appeal dated 16 August 2016, 11:40, and 17 August 2016, 11:33, 11:37, which he copied to me) the position is very simple. It was dealt with in my previous judgment. There is nothing in Mr Fitzgerald's complaint that he was not aware of the email exchanges on and following 24 March 2016 (see para 68, footnote 12). Nor is there anything in his assertion that one of the orders I made on 24 March 2016 precluded me making further orders following the handing down of judgment (see para 28, footnote 8, para 70).

10. On 16 August 2016 I received confirmation from Hughmans that they had issued, on 12 August 2016, the application for an interim charging order which they had foreshadowed in their email dated 8 August 2016 (see para 71).

11. I have accordingly today made orders in the terms referred to in my previous judgment (para 70).

12. Publication of the judgment: In response to what I had said in my previous judgment (para 72), Hughmans made the following submissions as set out in an email dated 10 August 2016 (09:52):

> "We consider the Judgment should be made public for two reasons:
>
> 1. It provides an explanation of the COP litigation, which Mr Fitzgerald has touched upon in submissions to the Chancery Division on previous occasions and may raise again. If so, we would like to be able to rely on the judgment.
>
> 2. It contains important observations about the application of the costs jurisdiction in the COP that will be of interest to the profession as a whole."

The next day (11 August 2016) an email from Ms Hartley endorsed what had been said by Hughmans and invited the court to publish the judgment.

13. Mr Fitzgerald's response, in an email dated 12 August 2016 (15:59), was as follows:

> "The issue is no longer whether your Judgement in this case should be published. The issue is one of a public inquiry into your conduct of a case in which the Patient has been deprived of liberty for 61 continuous years and has never at any time during those 61 continuous years been permitted to make submissions in her own name and on her own behalf to the courts."

He elaborated the last point in a further email dated 16 August 2016 (11:32):

> "I will also be petitioning the Secretary of State for Justice to order a public inquiry into your handling of my aunt's case on grounds to be forwarded to you in due course."

In an email dated 16 August 2016 (11:40) sent to the Court of Appeal and copied to me, Mr Fitzgerald added:

> "I can confirm that I will be petitioning the Secretary of State for Justice to order a public inquiry into the President's handling of this case. I believe this to be merited by very substantial issues of law which the President has chosen to ignore during proceedings. I believe these issues of law will merit consideration by the Supreme Court as well as by the Court of Appeal."

I record what Mr Fitzgerald has said. I do not comment; that is a matter for others.

14. I propose to authorise publication both of my earlier judgment and of this judgment, in each case subject to a rubric in appropriate terms prohibiting the naming of either A or C. This would accord with the current practice in the Court of Protection; it is supported by both C and by Ms Hughes and Hughes Fowler Carruthers; it is not, as I read his effusions, opposed by Mr Fitzgerald. In all the circumstances it is, in my judgment, the right and proper course to adopt.

15. <u>Application for permission</u>: Mr Fitzgerald has still not, so far as I am aware, made any application in proper form for permission in accordance with the civil restraint order I made on 22 March 2016 (see my earlier judgment, para 29, footnote 9). Mr Fitzgerald has continued to set out, in an email to me dated 16 August 2016 (11:32) and in an email to the Court of Appeal and copied to me dated 17 August 2016 (11:33), reasons why, he asserts, I should reconsider my judgment and "rescind [it] in its entirety." At this stage, I propose only to say this: (1) there is, as yet, so far as I am aware, no application in proper form before the court; and (2) nothing Mr Fitzgerald has put forward in any of his emails shows even the beginnings of any basis for either reconsidering, let alone rescinding, any part of my judgment.