



Neutral Citation Number: [2016] EWHC 2961 (Fam)

Case No: ZC15D00078

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21 November 2016

**Before :**

**SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION**

-----  
**Between :**

**CATHERINE AKESTER**

**Applicant**

**- and -**

**DESMOND MAURICE ALLAN FITZGERALD**

**Respondent**

-----  
No hearing: matter dealt with on paper  
-----

**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.

.....  
**SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION**

**Sir James Munby, President of the Family Division :**

1. I have before me an application, dated 7 November 2016 and issued the same day in the Family Division of the High Court of Justice, by Desmond Maurice Fitzgerald (Mr Fitzgerald). In fact, the application relates to two matters, neither of which is proceeding in the High Court:
  - i) An order dated 3 October 2016 made by Her Honour Judge Wright, sitting in the Family Court at the Central Family Court, in the course of financial remedy proceedings (ZC15D00078) brought against Mr Fitzgerald by his wife, Catherine Akester.
  - ii) Orders dated 22 and 24 March 2016 made by me, as President of the Court of Protection, in the Court of Protection in proceedings (95908524), to which Mr Fitzgerald was a party, relating to Mr Fitzgerald's aunt A, a patient whose affairs are under the control of the Court of Protection.
2. I have recently given two judgments in the Court of Protection, the first on 10 August 2016 and the second on 18 August 2016, which explain why I made the orders dated 22 and 24 March 2016 and which are essential reading if the application now before me is to be properly understood: *In the matter of A (A Patient); In the matter of applications by and against Desmond Maurice Fitzgerald* [2016] EWCOP 38, and *In the matter of A (A Patient); In the matter of applications by and against Desmond Maurice Fitzgerald (No 2)* [2016] EWCOP 39. I understand that those judgments are currently under challenge by Mr Fitzgerald in the Court of Appeal.
3. For the reasons explained in the first judgment, paras 27(iii), 64 and 65, on 22 March 2016 I made an extended civil restraint order (the ECRO) restraining Mr Fitzgerald from issuing claims or making applications in any court “concerning any matter involving or relating to or touching upon or leading to the proceedings in which this order is made or the subject matter of or any application or proposed draft application therein.” As I set out in that judgment, I expressly excluded from the ambit of the ECRO the proceedings in the Family Court between Mr Fitzgerald and his wife. I explained why (para 65):

“These were proceedings brought *against* Mr Fitzgerald and of which I knew very little. It would not have been right for me, sitting in the Court of Protection, to prevent him participating in this litigation as he might think fit. *If* he abuses that liberty, no doubt an appropriate application can be made elsewhere.”
4. By emails dated 8 September 2016 and 12 September 2016 Mr Fitzgerald made application to me for orders for “the revocation” of orders I had made in the Court of Protection on 16 March 2016 (two orders), 22 March 2016 and 24 March 2016. On 29 September 2016, as President of the Court of Protection, I made an order which in material part read as follows:

“IT APPEARING that”

  - (5) each of the applications referred to in (3) and (4) above [that is, the applications summarised above] is an application

within the scope of the ECRO and accordingly an application which cannot be made unless the court has first given permission;

(6) no such permission has been sought or given

IT IS ACCORDINGLY ORDERED by Sir James Munby, President of the Court of Protection, that each of the applications referred to in (3) and (4) above is hereby struck out and dismissed.”

5. Undaunted, Mr Fitzgerald has now made the application in the Family Division which is currently before me.
6. The application identifies the order which Mr Fitzgerald is asking me to make as follows:

“The President of the Family Division and Court of Protection to stay execution of Paras 1 & 2 of the Order of HHJ Wright of 3 October 2016 pending: a) The President of his own motion directing a hearing in his court of Re: AVA (COP No: 95908524) [Fam Div Ref: FD13P90056] at which he revokes on reconsideration his Orders given in this case on 22 & 24 March 2016 and refers solicitor Frances Hughes of Hughes Fowler Carruthers to the Attorney General for committal for contempt of court under Court of Protection Rule 14; b) quashing of the order by the Administrative Court in Judicial Review.”

7. In answer to the usual question in paragraph 4 of the application notice, “Are there any reasons why this application should not be dealt with on paper by a judge?”, Mr Fitzgerald has ticked the ‘No’ box. In the circumstances I am content to deal with the matter on paper. In answer to the question in paragraph 8 of the application notice, Mr Fitzgerald states that the application needs to be heard by a specific judge, namely “President of Family Division.”
8. In answer to the question in paragraph 10 of the application notice, Mr Fitzgerald states that he will be relying on the evidence set out in the box below. In the circumstances I need to set it out in full:

“1./ By his Orders of 22 & 24 March 2016 given in Re: AVA (COP No: 95908524) the President of Family Division has awarded Applicant Camilla Adeane her costs in the Court of Protection to be assessed on the standard basis with security totalling £96,000 pending assessment. Camilla Adeane has failed to apply to the Costs Court for standard assessment of her costs, and neither Respondent Desmond Fitzgerald nor the Patient’s estate have any liability to her for any costs arising from the Court of Protection proceedings. Camilla Adeane is no longer entitled to hold security against standard costs assessment in the Costs Court, and justice requires that the

President of Family Division direct a hearing to revoke his Orders of 22 & 24 March granting her such security.

2./ In Affidavit evidence of 16 December 2015 solicitor Frances Hughes asserted that she had given all medical records in her possession to both the independent psychiatric expert appointed by Order of the President of Family Division and to Respondent Desmond Fitzgerald. By her Letter of Instruction on 10 June 2014 to the independent expert, personally authorised by the President, Frances Hughes asserts that she is in possession of the Patient's medical affidavits for her committal in person and estate by the Court of Protection in July 1959. It is a matter of record in the President's court that the Patient's 1959 medical affidavits, which are central to any assessment of her capacity and best interests, were never given by Frances Hughes to either the independent expert or the Respondent. Justice requires the President to refer Frances Hughes to the Attorney General for falsification of her Affidavit of 16 December 2015 under Court of Protection Rule 14 at hearing in open court.

3./ The interests of justice require the President of Family Division to stay execution of Paras 1 & 2 of the Order of HHJ Wright given in Central London Family Court for reasons pertinent to both Family Division and to the President's own credibility. These are: -

i) Allegations of dishonesty attach to the solicitor directed to conduct the conveyance of the Respondent's home and freehold property. These have been brought to the attention of HHJ Wright and a hearing has been requested in HHJ Wright's court at which these issues can be addressed. Until the solicitor concerned is formally cleared of any dishonest connected with the transaction or her own evidence leading up to it, HHJ Wright abuses her court's own process by directing that a solicitor alleged to have engaged in dishonesty in these proceedings conduct the conveyance and sale of the Respondent's home without any reference to the Respondent, and extending even so far as to threaten the Respondent with imprisonment if he attempts to obtain information which transparent and just proceeding demands he be given.

ii) Transcript of District Judge Edward Cross's comments given immediately following his Judgement against the Respondent of 25<sup>th</sup> January 2016 show that the President of Family Division was to be given ill-founded information concerning the Respondent's conduct in the year 2002 which was anticipated to have considerable impact on the President conduct of hearings and Judgement in Re: AVA (COP No: 95908524) listed for hearing in the President's court on 15<sup>th</sup> &

16<sup>th</sup> March. The outcome of these hearings and resultant Judgement by the President of 10<sup>th</sup> August 2016 leave little doubt that the President was influenced against the Respondent by inappropriate consideration of these ill-founded alleged facts.

4./ In consequence it may reasonably be said that if the President were now not to consider the application or refuse stay or refuse listing of the necessary hearing in Re: AVA (COP No: 95908524) in his court, the reputation of Central London Family Court, the President himself, and of Family Division generally for the impartial dispensation of justice would suffer considerable damage.”

9. The application was accompanied by the following email from Mr Fitzgerald, sent to me on 7 November 2016:

“Please find attached issued Application within ZC15D00078 Akester v Fitzgerald by which you are invited to direct a hearing of your own motion in Re: AVA (COP No: 95908524) [FD13P90056] to revoke on reconsideration your Orders of 22 & 24 March 2016 in this later case.

... Failure to list a hearing of your own motion as requested would strongly suggest that you are not fit to be President of the Court of Protection.”

10. On 11 November 2016 Mr Fitzgerald sent me the following email:

“Following Hughmans Solicitors’ defective Notice of Commencement of 10 November, which has given rise to allegations of attempted fraud, you must now revoke your Orders of 22 & 24 March in this case and the resultant Charging Orders on my jointly owned marital property by Order of Your Own Motion.

Please issue the required Order of Your Own Motion before the end of next week.”

11. I decline to make the orders sought by Mr Fitzgerald. I dismiss his applications. They are misconceived and totally without merit. His attempt to ventilate these matters by application in the Family Division is an abuse of process.

12. Mr Fitzgerald’s applications have six limbs. The first relates to the orders dated 22 and 24 March 2016, which he seeks to have revoked. This is a matter which I initially dealt with in my first judgment, footnote 9, and more recently by the order I made on 29 September 2016. As I have twice made clear to Mr Fitzgerald, this is an application, properly to be made in the Court of Protection, for which, as required by the ECRO, he first needs to obtain permission. He has never sought permission, and cannot evade this requirement, as seemingly he seeks to do, either by attempting to make a spurious link with the proceedings in the Family Court or by making an

application in the High Court. If he is dissatisfied with the order of the Family Court, he can seek permission to appeal. So far as I am aware he has not done so.

13. The second limb of the application relates to Mr Fitzgerald's desire to see Frances Hughes committed for contempt of court. This is a matter which was canvassed extensively before me on a previous occasion and which is dealt with in some detail in my first judgment, where I said this, paragraph 40:

“Mr Fitzgerald's application is, in all its aspects, misconceived, devoid of factual merit, in major part legally groundless and totally without merit. His allegations against Ms Hughes are scurrilous, fatuous and should never have been made. His application for her committal is a farrago of nonsense.”

I refused Mr Fitzgerald permission to bring a further application for the committal of Ms Hughes, pursuant to rule 14, as being totally without merit (see paragraph 24). This further application is equally devoid of merit. Moreover, it relates to the issue of A's capacity, a matter I determined in a judgment delivered on 20 January 2015 which, as I pointed out in my judgment of 10 August 2016 (see footnote 2) has never been challenged by Mr Fitzgerald. Moreover, as is obvious if one looks at how Mr Fitzgerald puts his case in the application notice, there is no factual, logical or legal nexus between the alleged contempt and the proceedings in the Family Court. So even if there was any substance in Mr Fitzgerald's complaint against Ms Hughes (which there is not), I fail to see how it could possibly justify the stay of Judge Wright's order which Mr Fitzgerald seeks.

14. The third limb of the application seeks a stay of Judge Wright's order “pending” the “quashing of the order by the Administrative Court in Judicial Review.” This otherwise un-particularised proposition is devoid of merit. In the first place, Mr Fitzgerald's remedy, if he has one, is to seek to appeal Judge Wright's order, not to seek relief in the Administrative Court. Secondly, if the order is to be stayed pending the outcome of proceedings in the Administrative Court, the application for a stay should be made to the Administrative Court, in the judicial review proceedings, and not to the Family Division or in the proceedings in which Judge Wright made the order.
15. The fourth limb of the application, relating to the alleged dishonesty of the solicitor appointed by Judge Wright to undertake the conveyancing, is wholly un-particularised. Mr Fitzgerald's remedy, if there is any substance in what he asserts, is to seek a stay from Judge Wright and, if she refuses, to seek to appeal.
16. The fifth limb of the application, relating to a judgment given in the Family Court by District Judge Cross on 25 January 2016 which is said to show that I was given un-particularised “ill-founded information” about Mr Fitzgerald's conduct in 2002, wholly fails to explain how or why this impacted either on the hearings before me or on my judgment, just as it wholly fails to explain how this can justify the relief being claimed by Mr Fitzgerald in his present application.
17. The sixth limb of the application, relating to the alleged attempted fraud by another firm of solicitors is wholly un-particularised. Moreover, it is an application, properly

to be made in the Court of Protection, for which, as required by the ECRO, Mr Fitzgerald first needs to obtain permission, which he has never sought.

18. It will not have escaped notice that Mr Fitzgerald is making allegations of the utmost seriousness – contempt, dishonesty and attempted fraud – against three different solicitors. These allegations, largely un-particularised and, so far as the material Mr Fitzgerald has chosen to put before me allows me to judge, entirely devoid of merit, are scurrilous. Their pursuit in the manner in which Mr Fitzgerald has chosen to proceed is the plainest possible abuse of process.
19. Mr Fitzgerald’s applications are devoid of merit. It is for others to judge whether my decision, as Mr Fitzgerald would have it, shows my unfitness for office or impacts adversely upon the reputation of either the Central Family Court or the Family Division. I shall continue to do my duty whatever insults Mr Fitzgerald may continue to throw at me.