

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/11/2017

Before :

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
(SIR BRIAN LEVESON)
MRS JUSTICE WHIPPLE D.B.E.
HIS HONOUR JUDGE LUCRAFT Q.C.
(CHIEF CORONER FOR ENGLAND AND WALES)

Between :

SIMON MUELLER	<u>Claimant</u>
- and -	
HER MAJESTY'S AREA CORONER FOR MANCHESTER WEST	<u>Defendant</u>

Hugo Keith Q.C. for the Claimant
Alison Hewitt for the Defendant

Hearing date: 22 November

Judgment Approved

Sir Brian Leveson P :

1. This application is brought by Mr Simon Mueller pursuant to s. 13 of the Coroners Act 1988 ("the Act"). With the consent of the Solicitor General, he seeks an order quashing the inquest conducted by Her Majesty's Area Coroner for Manchester West into the death of his wife, Ms Nicole Christine Putney. Mr Mueller also requests that the court order a fresh investigation into Ms Putney's death on the basis that it would be in the interests of justice for the court to do so due to a procedural irregularity or otherwise.

The Facts

2. In the early hours of 29 May 2015, Ms Nicole Christine Putney, born 4 October 1982, committed suicide in the Novotel Hotel, Worsley Brow, Worsley, Salford.
3. It is clear that Ms Putney had a complicated and difficult personal life. Her relationship with her husband (whom she had known for a considerable period but only married in January 2015) had broken down, and she was also battling serious

mental health problems as she had since her teenage years. Furthermore, whilst clearly being an intelligent and talented young woman (being a fully qualified veterinary surgeon), she had also encountered setbacks during her employment which had lowered her self-esteem.

4. Notwithstanding her marriage in January 2015, between November 2014 and May 2015, Ms Putney made a number of threats upon and attempts to take her own life. In March 2015, she was diagnosed with mixed anxiety depressive disorder complicated by suicidal ideas and borderline personality traits. She was treated as an inpatient at the Nightingale Hospital, London, for the period 10 March 2015 until 27 April 2015 and thereafter received outpatient care in the form of psychiatric appointments and individual therapy at the hospital.
5. It is important to underline that Mr Mueller and Ms Putney clearly cared deeply for each other, although their relationship was characterised by upheaval (not the least involving moving from the United States to France). They had made a number of attempts to make their marriage work notwithstanding the persistent nature of Ms Putney's ill health. Unfortunately, however, it is clear that Ms Putney's mental health issues were exacerbated by the stress caused to her by the instability in her relationship with Mr Mueller, although during the course of treatment she became more able to accept that her mood states and ways of relating to him were having a detrimental effect.
6. Whilst attending a conference in Manchester on 28 May 2015, Ms Putney found herself in an extremely low state. She contacted her counsellor, Dr. Werner Kierski, by text, expressing her distress and disappointment in Mr Mueller. Dr Kierski engaged with Ms Putney, and attempted to instil self-awareness with the aim of her being able to manage her stress better; the two agreed that she would take a tranquiliser and that he would call her in the morning. Dr Kierski also contacted Mr Mueller to ask whether someone could check on Ms Putney as he was concerned about the fact that she had mentioned suicide.
7. Because of his concern, Mr Mueller contacted Ms Putney's parents (in America) by e-mail; they subsequently contacted the hotel. Tragically, however, by the time assistance could get to Ms Putney, she had already hanged herself.
8. An inquest into Ms Putney' death was opened on 3 June 2015, and adjourned. Thereafter, and (pursuant to Rule 23 of the Coroner's (Inquests) Rules 2013 referred to as "the Rules") perfectly appropriately, by e-mail dated 19 August 2015, the Coroner's Officer wrote to Mr Mueller in these terms:

"I enclose the witness list and the statements of witnesses who will give evidence at the Inquest as requested by way of advanced disclosure. ...

The Area Coroner ... is seeking your consent upon receipt of the advanced disclosure to deal with Nicole's inquest by way of a documentary hearing reaching the conclusion that Nicole Christine Putney's death was due to suicide.

I would be grateful if you could confirm as soon as possible if you would be satisfied for the Area Coroner to deal with Nicole's inquest in this manner."

9. On 2 September, the same officer sought confirmation that Mr Mueller and Ms Putney' parents had received the documentation that would be referred to at the Inquest and asked whether the family accepted "the Verdict/Conclusion of Suicide" in order that the inquest could be based on "papers rather than witness attendance". On the following day, Mr Mueller did confirm that he and the family had received the documentation, accepted the Verdict/Conclusion and, furthermore, that "the inquest may be dealt with based on papers".
10. The statements included a detailed account from Mr Mueller outlining the very significant psychiatric and psychological problems from which his wife had suffered over many years and two statements from the Nightingale Hospital (being a 15 page medical report from her consultant psychiatrist and a report from Dr Kierski both of whom were based there). In addition, of critical importance to this application, there was a statement from Det. Insp. Koran Sellars, of the Greater Manchester Police, who had been the night duty inspector on 29 May 2015. She had attended the hotel after being alerted to Ms. Putney's death. In her statement, Det. Insp. Sellars recounted how she found a notepad with writing on the floor next to the bed in Ms Putney' hotel room. As to this note, she recorded in her statement:

"The first part of the note offered apologies to friends and family. After this part of the note there was a line drawn and the second part of the note appeared to be for a u/k [unknown] female, who from what was written appeared to [sic] involved in an affair with the writers [sic] husband. The note stated that 'he would leave her to' [sic] and the note made references to divorce proceedings. The note referred to 'FUCK THE DIVORCE LAWYERS.'" [The capital letters appear in the statement.]

11. The statement exhibited the manuscript note. In summary, the first part of the note was written in the first person singular. In it, Ms Putney described how she had taken risks, made herself an alien, isolated herself and run away from her profession. She accused Mr Mueller of abandoning and betraying her but nevertheless described her continuing love for him. She went on to set out her loneliness, her tiredness and her pain. She ended this part of the note with the words:

"I'm tired of faking it for the world and dealing with the shame when I'm too tired to keep my mask on. I'm tired of doctors and therapists. I'm the only one to save myself and I've decided not to. I'm very sorry to my friends – the few I have – and family. But I was never present in anyone's life very consistently. I hope that helps it be less painful when I'm gone. It should."

12. There is then a horizontal line and underneath this line, there is written the following:

“Fight it. Think of all the pain he’s caused you since reality landed in Sept. Silence and stone cold, cannot be trusted with other women – you can feel it – self-important, lacks confidence in other areas (sex), he will leave you for ambition anyhow. Leave him behind. Fuck the divorce lawyer, schedule a moving co.”

13. The resumed inquest took place on 8 September 2015. The Coroner confirmed his rulings in relation to certain procedural matters and, following the consent that Mr Mueller had given, proceeded to deal with the inquest by summarising the important evidence that had been placed before him. In the course of this recitation of the evidence, the Coroner referred to the note and read out verbatim that part of Det. Insp. Sellar’s statement that purported to summarise its contents: he did not read out the precise terms of the note. He then concluded his summary of the evidence and reached his findings. A verdict of Suicide was recorded.
14. In the days following the inquest a number of articles were published to the effect that Ms Putney had hanged herself believing that Mr Mueller had been having an affair. It is this summary of the evidence which forms the subject matter of this application although the conclusion is not challenged.

The Application

15. Mr Mueller makes it clear that any allegation that he was having or had had an affair is and was wholly unjustified and completely wrong. He criticises the way in which Det. Insp. Sellars summarised the note which Mr Hugo Keith Q.C. on his behalf argues constituted a total misreading of what it conveyed. He argues that the only appropriate meaning of the note was not that it was addressed to an unknown female, but, rather, was a note that Ms Putney had written to herself, collecting arguments why she should simply move back to the United States. In particular, he contends that the words read by DI Sellars to say “leave you to” actually read “leave you for ambition”.
16. Mr Keith argues that the summary by the police officer was inadmissible conjecture and that the Coroner, by admitting this conjecture into the evidence, had caused Mr Mueller a serious injustice which was exacerbated by the public reporting of the evidence. That was aggravated by the way in which the press reporting went further than the officer’s conclusions and, in at least one publication, suggested that the affair had caused Ms Putney’s suicide. There was never the slightest suggestion of that.
17. Mr Keith makes the further point that it was not explained to Mr Mueller that he could challenge the contents of any of the statements or identify any part of the evidence with which he took issue so that the Coroner could decide whether he could continue with a ‘read-out’ inquest omitting the challenged evidence or, alternatively, invite Mr Mueller to attend and challenge it in person. Mr Mueller did not understand that he had such a right and, as a result, Mr Keith contends that there was an irregularity in the proceedings.
18. When Mr Mueller took up his complaint with the Coroner, the response correctly described the Coroner as *functus officio* so that it was not open to correct what had

been said or otherwise ameliorate the position. The Coroner (who does not oppose this application but has attended by Ms Alison Hewitt to assist the court if guidance is to be given) accepts that the interpretation of the note was wrong and unfair to Mr Mueller.

19. The court has considered both the note and Det. Insp. Sellar's interpretation of the note and I have no doubt whatsoever that the note does not bear the meaning that Det. Insp. Sellar sought to give it. Whatever other criticisms she might have been making of him, there is no basis for concluding that Ms Putney was complaining (let alone asserting) that her husband was having or may have had an affair: it is clear that the second part of the note was, indeed, addressed by Ms Putney to herself.
20. Further, I recognise the concern, if not anguish, that the subsequent newspaper coverage and the consequent misunderstanding of friends and others must have caused to Mr Mueller, himself seeking to come to terms with the death of his wife. That said, I do not ascribe to the police officer (and Mr Mueller does not suggest that I should) an ill or improper motive: she simply misread the note and misunderstood what it was trying to convey. Indeed, the typographical and grammatical errors in her statement only serve to underline that the interpretation of the note by Det. Insp. Sellars was prepared in something of a hurry.

Discussion

21. It is common ground that s. 13 of the Act provides that the court may quash any inquisition, determination or finding made at an inquest if satisfied (among other things) that a coroner has held an inquest that, "(whether by reason of ... irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or otherwise) it is necessary or desirable in the interests of justice that a new investigation should be held": see s. 13(1)(b). The issues to be considered, therefore, are whether by reason of "irregularity" (as Mr Keith contends) or "otherwise", it is necessary or desirable for there to be a fresh investigation. Irregularity or some other problem is the precondition for considering necessity (or desirability) but the two questions are separate.
22. There is little guidance on the concept of irregularity of proceedings for the purposes of coronial law although some assistance can be derived from *R v Divine ex parte Wilson* [1930] 2 KB 29 which considered the position under the analogous provision of s. 6 Coroners Act 1887. It was put by Talbot J (at 37) in these terms:

"The court is not to attend to mere formalities, nor to criticise minutely the summing up, or the nature of the evidence or of the procedure. But if the inquest has been so conducted, or the circumstances attending it are such that there is a real risk that justice has not been done, a real impairment of the security which the right procedure provides that justice is done and is seen to be done, the court ought not to allow the inquisition to stand".
23. Two examples of irregularity have been identified in decisions of this court. The first concerns the (very different) situation when a properly interested person is able to give relevant evidence but has been excluded from proceedings: see *R. (on the*

application of Dowler) v HM Coroner for North London [2009] EWHC 3300 (Admin). The second, however, concerns failure by the coroner to comply with the Rules: see *Howlett v HM Coroner for Devon* [2006] EWHC 2570 (Admin).

24. To consider that possibility, it is necessary to set out Rule 23 of the Rules which is in these terms:

“(1) Written evidence as to who the deceased was and how, when and where the deceased came by his or her death is not admissible unless the coroner is satisfied that—

(a) it is not possible for the maker of the written evidence to give evidence at the inquest hearing at all, or within a reasonable time;

(b) there is a good and sufficient reason why the maker of the written evidence should not attend the inquest hearing;

(c) there is a good and sufficient reason to believe that the maker of the written evidence will not attend the inquest hearing; or

(d) the written evidence (including evidence in admission form) is unlikely to be disputed.

(2) Before admitting such written evidence the coroner must announce at the inquest hearing—

(a) what the nature of the written evidence to be admitted is;

(b) the full name of the maker of the written evidence to be admitted in evidence;

(c) that any interested person may object to the admission of any such written evidence; and

(d) that any interested person is entitled to see a copy of any written evidence if he or she so wishes.

(3) A coroner must admit as evidence at an inquest hearing any document made by a deceased person if the coroner is of the opinion that the contents of the document are relevant to the purposes of the inquest.

(4) A coroner may direct that all or parts only of any written evidence submitted under this rule may be read aloud at the inquest hearing.”

25. Given that the verdict was very likely to be (as was the fact) unchallenged, the Coroner was perfectly properly anxious to avoid the very stressful attendance of Mr Mueller (and Ms Putney’s parents) at the inquest if it was possible to do so. He, therefore, invited their agreement to this procedure. He did not, however, make the

point that an interested person could object to the admission of any written evidence (and announcing that fact at the inquest had no value if Mr Mueller was not present). In my judgment, he should have done so. I accept, however, that it is entirely fair to observe that Mr Mueller had the opportunity to read the statements (including the police officer's opinion as to the meaning of the note) and could himself have objected, particularly as he had also seen the note itself. Mr Keith rejects any implicit criticism of Mr Mueller who, unrepresented, was grieving for his wife and we also see force in this point.

26. It is now clear that the Coroner did not read the note verbatim at the inquest at all. It is unarguable that the content of the note clearly written contemporaneously with the suicide was relevant to the purposes of the inquest and, if that be so, it was mandatory that it be admitted as evidence. If the Coroner had read out the note, it may have been appreciated that the officer's summary did not properly reflect its contents.
27. That said, it is important to underline that, for my part, I would not accept that the evidence of the officer as to the note (although wrong) was necessarily inadmissible as opinion and conjecture and would have been inadmissible even if accurate. The strict laws of evidence applicable to criminal trials do not bite on coronial inquisitions and both hearsay and opinion evidence may well have their place in appropriate circumstances. Fairness, however, is, of course, critical and I would be prepared to conclude that the combination of the failure to advise Mr Mueller of his right to object and the failure to read the note do bring the jurisdiction of s. 13 of the Act into play.
28. Whether the errors that I have identified are irregularities or otherwise justify as necessary or desirable in the interests of justice that a new investigation should be held is, however, another matter. There is not the slightest challenge to the verdict and neither is there any challenge to any of the evidence that was adduced at the inquest save only for the interpretation of the note. To use the analysis in *ex parte Wilson*, for Ms Putney, there is no real risk that justice has not been done; the Coroner correctly identified her, and accurately recorded when, where and how she died and as such successfully achieved justice in her name. Furthermore, where there is no new evidence, if the result of any new inquest would be the same, then it is not "necessary" within the meaning of these "critical words" to hold a new inquest: see Jervis on Coroners (13th edn) [19-19] and the recent cases therein cited of *R (Sutovic) v North London Coroner* [2006] EWHC 1095 (Admin) DC; *Duggan v North London Coroner* [2010] EWHC 1263 (Admin); and *Jones v South London Coroner* [2010] EWHC 931 (Admin).
29. It must be clear that I am not suggesting that Mr Mueller is not and was not entitled to be aggrieved. I repeat that there is nothing in the note or any of the other evidence to suggest that Mr Mueller has ever had an affair or was ever unfaithful to his wife. These facts are of critical importance. In the circumstances, however, having regard to what is necessary or desirable, I would not quash the inquest or order that a fresh investigation be held. Justice for Mr Mueller has, however, been achieved, by the unequivocal endorsement of his position which I hope will, in this public judgment, serve to repair the damage that has been done by the error made by Det. Insp. Sellar, repeated at the inquest and so widely published. On any showing, this judgment sets the record straight and I trust that the press will reflect that fact in the reporting of this judgment.

Concluding Observations

30. It would not be appropriate to leave this case without providing some guidance for the future. Thus, it is to be welcomed that, in the circumstances of this clear case, the coroner engaged with the family to seek to deal with this inquest without the need for the attendance of the family or witnesses. When appropriate, such an approach can entirely properly lessen the impact of an inquest on the family of the deceased. In those circumstances, however, it is particularly important to consider with care what is to be read into the record of the inquest.
31. Where, as in this case, a coroner sets out with an intention of dealing with the inquest by reading the statements, it is equally important to explain to all concerned, in advance, exactly what that will mean. The coroner should indicate which statements and documents are likely to be read or summarised at the public hearing, and which parts (if any) of the statements or documents are not to be read. Statements of witnesses often include relevant and non-relevant matters and may refer to documents. In cases involving suicide it is particularly important to indicate to all concerned whether any note has been found, what it says and whether any other evidence is connected to the note that may shed light on the contents of the note. The family should be alerted to the contents of any statement or document that may cause them concern. Equally where a coroner does not intend to include part of a statement or document, and the family wish it to be included, then subject to relevance, the coroner should have regard to their wishes.

Mrs Justice Whipple :

32. I agree.

Judge Lucraft Q.C.

33. I also agree.