

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

HUGH JORDAN

v.

SENIOR CORONER

Before: Girvan LJ, McLaughlin J and Stephens J

GIRVAN LJ

[1] This matter came before the court by way of an appeal from Mr Justice Hart. In the proceedings before the lower court the appellant contended after considerable length and a reference to a number of detailed matters that the Senior Coroner had demonstrated partiality and bias when contrasting his treatment of the appellant with his treatment of the PSNI in circumstances where the PSNI's interests are in direct conflict with the proposal of the applicant.

[2] In a lengthy and detailed judgment Mr Justice Hart rejected the individual allegations of partiality and apparent bias alleged by the appellant and rejected the case that those matters taken in the round establish partiality and apparent bias.

[3] The appeal was opened yesterday by Mr McDonald QC who sought to argue that Mr Justice Hart was in error in reaching the conclusions which he did. In the course of the argument this court raised the question whether having regard to the background to the inquest and in the light of all the circumstances quite apart from the allegations of apparent bias which were strongly refuted by the Senior Coroner and rejected by the trial judge it would be in the best interests of the conduct of the inquest for a differently constituted coroner to hear the inquest. That question was raised not as an indication that the court had formed any adverse view to the Senior Coroner's conduct for it had not but rather to see how best this inquest should be brought to a conclusion. This inquest has taken an extremely long time to reach this point and has been dogged by procedural wrangling, frequent judicial review applications and hearings in the House of Lords and

Strasbourg all of which have contributed to the length and complexity of the inquest.

[4] The current state of coronial law is extremely unsatisfactory. It is developing by means of piecemeal incremental case law. It is marked by an absence of clearly drafted and easily enforceable procedural rules. Its complexity, confusion and inadequacies make the function of a coroner extremely difficult and is called on to apply case law which does not always speak with one voice or consistently. One must sympathise with any coroner called on to deal with a contentious inquest of this nature which has become by its nature and background extremely adversarial. The problems are compounded by the fact that the Police Service which would normally be expected to assist a coroner in non contentious cases is itself a party which stands accused of wrong doing. It is not apparent that entirely satisfactory arrangements exist to enable the PSNI to dispassionately perform its functions of assisting the coroner when it has its own interests to further and protect. If nothing else, it is clear from this matter that Northern Ireland coronial law and practice requires a focused and clear review to ensure the avoidance of the procedural difficulties that have arisen in this inquest. What is also clear is that the proliferation of satellite litigation is extremely unsatisfactory and diverts attention from the main issues to be decided and contributes to delay.

[5] This morning Mr O'Donoghue QC on behalf of the Senior Coroner, on the instructions of the Senior Coroner, informed the court that in all the circumstances the Senior Coroner wished to stand down in the inquest having considered the matter with the benefit of advice and having considered the points raised by the court. Mr O'Donoghue said that the Senior Coroner would agree to vacating the order for costs in the court below but he argued that as the matter was now academic there should be no order for the costs in relation to the appeal. The appellant is legally aided.

[6] Mr McDonald QC strenuously argued for an order that the Senior Coroner should pay the appellant's costs of the appeal. He handed into court an amended Order 53 statement which in the alternative to the case of apparent bias claimed that the Senior Coroner should be discharged because of the number of legal and procedural errors made by him in the course of the inquest and as listed in the Order 53 amended statement.

[7] We have concluded that there should be no order for costs. Mr McDonald accepted that the issues were academic as the Senior Coroner was standing down. This court has made no decision on the points which were raised by Mr McDonald yesterday on the issues of bias and we have not heard argument on the remaining issues that are alleged. The onus clearly lies on an appellant on the issues and the appellant is faced with a compelling judgment of first instance which is assumed to be correct until it is shown otherwise. The alternative case now raised in the Order 53 statement as

amended was not a case put to the court below. It raises a quite different set of legal questions and a different legal basis of challenge. It is not a case alleging bias or apparent bias but rather procedural and legal errors of such a nature as to command the appointment of a fresh coroner.

[8] Since the questions in the appeal are now academic we see no benefit in reaching a conclusion whether those new allegations, which were not made in the court below, are made out or if made out would justify an order discharging the senior coroner. The matters are by no means clear cut or as obvious as Mr McDonald contends. We note that in relation to the judicial reviews previously before the court the appellant did not rely on the errors which were relied on in those applications as demanding the removal of the Senior Coroner.

[9] Accordingly, we make no order for costs of the appeal which in the circumstances is dismissed. The only order we make is as indicated by Mr Donoghue to alter the order for costs in the court below which presumably will be no order as to costs between the parties and the appellant is legally aided so he is entitled to have his costs above and below taxed under legal aid legislation.