Neutral Citation no. (2000) 2111

Ref: KERE3255

Judgment: approved by the Court for handing down
(subject to editorial corrections)

Delivered: 06/09/00

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (CROWN SIDE)

IN THE MATTER OF AN APPLICATION BY MARGARET STOKES FOR JUDICIAL REVIEW

KERR J

Introduction

The applicant is the widow and personal representative of John Stokes, deceased. By this application she challenges decisions of the Coroner for Greater Belfast, Mr John Leckey, taken in relation to the conduct of the inquest into the death of her husband.

Background

Mr Stokes was a member of the travelling community. He lived with the applicant and their children at the Windy Gap site, Monagh By-Pass, Belfast. On 2 November 1997 the applicant left their caravan at about 6pm. Her husband was then the only person present in the caravan. Mrs Stokes returned an hour later. All appeared normal. She and her husband watched television together until about 10pm. Mr Stokes was then suddenly unwell. He began to shake. When he attempted to stand,

he fell backwards on to the floor. Mrs Stokes summoned help and she and her husband and other relatives travelled to Royal Victoria Hospital by car. On arrival there Mr Stokes was taken by stretcher to the resuscitation ward. While he was in the ward Mr Stokes became violent. Police were tasked to the scene. They attempted to calm Mr Stokes but did not succeed. Ultimately they had to handcuff Mr Stokes in order to restrain him.

Dr O'Hare was on duty in the hospital that evening and he came to the ward where Mr Stokes had been restrained. He was told by Mr Stokes that he had taken eighty Co-proxamol tablets at approximately 8.15 pm. The doctor checked Mr Stokes' pulse, respiratory rate and pupils. He then informed him that it might be necessary to pump out his stomach. Mr Stokes objected vehemently to this. Dr O'Hare then consulted a senior registrar, Dr Paul Curran, by telephone. He was advised by Dr Curran that if the patient was *compos mentis* and had no psychiatric history and refused treatment, there was nothing he could do. Dr Curran also instructed him that, in the event that the patient refused treatment, he was to be advised that there could be problems after a few days if he did not receive the antidote to the paracetemol content of the Co-proxamol.

After this telephone conversation, Dr O'Hare was informed by Mrs Stokes that her husband had no psychiatric history. The doctor then returned to speak again to Mr Stokes who was still being restrained by police officers. He informed Mr Stokes that it would not be necessary to pump his stomach but that he would have to take a drug with the antidote to paracetemol. He told Mr Stokes that if he failed to take this he

could suffer liver failure within a couple of days. At first Mr Stokes agreed to have the treatment and then he changed his mind and refused all treatment. Dr O'Hare then discharged him.

As the deceased left the hospital, his legs appeared to buckle and he was lowered to the ground by police officers. He again became violent and aggressive. Mrs Stokes tried to persuade him to have the treatment but he refused. Because he continued to be aggressive, Mr Stokes was arrested by one of the police officers at the scene, he was handcuffed once more and taken to a police landrover and conveyed to Grosvenor Road police station. He was carried to a cell and while his clothing was being removed it was noticed that he did not have a pulse. Paramedics and a doctor began resuscitative measures and the cardiac ambulance was summoned. As a result of the cardiopulmonary resuscitation he received, Mr Stokes' heartbeat was restored. He was conveyed to Royal Victoria Hospital but died at approximately 12.30 pm on 3 November 1997.

An autopsy on the body of the deceased was carried out and the cause of death was established as poisoning by dextropropoxyphene and paracetemol which are the active constituents of Co-proxamol. Analysis of blood samples from the deceased and his stomach contents revealed high levels of both constituents. Ante mortem samples disclosed much lower levels. The police officer who investigated the death of the deceased was unable to account for this.

On 11 October 1999 an inquest began before Mr Leckey. The applicant's legal representatives had been informed that it was proposed to admit the statements of

Dr O'Hare and a Fusilier Lannigan under rule 17 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 and that these witnesses would not be required to attend, therefore. Fusilier Lannigan was a regimental medical assistant and had attended Mr Stokes in the cell at Grosvenor Road police station at the request of the police. He had carried out cardio-pulmonary resuscitation on Mr Stokes. He was on duty in Bosnia at the time that the inquest was due to take place and, according to the coroner, this was the reason that he had decided to admit the Fusilier's evidence under rule 17.

In the course of the first day of the inquest, counsel for the next of kin was in discussion with counsel for the Royal Ulster Constabulary about the production of certain documents. These were produced on the morning of 12 October, the second day of the inquest. They numbered over one thousand. Counsel then applied to the coroner for an adjournment. That was refused at first. An application for leave to apply for judicial review was then launched in which the applicant sought orders of certiorari to quash the decision of the coroner to refuse to adjourn the inquest and the decision to admit the evidence of Fusilier Lannigan and Dr O'Hare under rule 17. After the application for leave to apply for judicial review was made, the coroner acceded to the application to adjourn.

Following the adjournment of the inquest, the coroner discovered that Fusilier Lannigan would be back in the United Kingdom and available to give evidence on the date that he proposed to resume the inquest. He decided, therefore, that he would call that witness to give oral testimony. The coroner was also informed by

solicitors acting on behalf of the Medicap Protection Society that Dr O'Hare was unlikely to be in Northern Ireland in the foreseeable future. The coroner therefore confirmed his decision to admit Dr O'Hare's evidence under rule 17.

The challenge to the coroner's decisions in relation to the refusal of an adjournment and the admission of Fusilier Lannigan's evidence under rule 17 are now no longer relevant. The application for judicial review now relates solely to the coroner's decision not to have Dr O'Hare attend to give oral evidence and to admit his evidence under rule 17.

The judicial review application

As amended, the Order 53 statement seeks an order of certiorari "quashing the decision of the coroner to admit the statement of Dr O'Hare … without inquiring into the availability of [that] witness to give oral evidence at the inquest". The following declarations were also sought:-

> "1. A declaration that the decision of the coroner that Dr O'Hare [was] not a necessary witness was unlawful
>
> 2. A declaration that the decision of the coroner that the attendance of Dr O'Hare as a witness is unnecessary within rule 17(1) was unlawful
>
> 3. A declaration that the decision of the coroner to admit in evidence the statement of Dr O'Hare was unlawful"

The grounds on which these orders were sought were that the coroner's conclusion that the attendance of Dr O'Hare was unnecessary within the meaning of rule 17(1) was *Wednesbury* unreasonable; that the conclusion was arrived at without taking into account all relevant matters, in particular, the possibility that Dr O'Hare

might be both willing and able to give evidence; that the coroner erred in concluding that the circumstance that Dr O'Hare was overseas justified the admission of the statement *per se* and finally, that the coroner had failed to exercise his discretion under rule 17(1).

The evidence

In his first affidavit, Mr Eamann McMenamin, a partner in the firm of solicitors acting on behalf of the applicant, stated that the coroner had been asked by counsel for the next of kin whether he had checked on the availability of Dr O'Hare and had replied that he had not done so but that he was satisfied that his attendance was unnecessary. In his first affidavit, Mr Leckey dealt with his decision not to call Dr O'Hare in the following paragraphs :-

> "6. I had been informed in advance of 11 October 1999 that Dr O'Hare would not be available to give evidence at the inquest because he was working in Australia. On being informed of the non-availability of Dr O'Hare and on reviewing the statements which he had made to the police during the investigation into the death of John Stokes, I decided it was not necessary for Dr O'Hare to attend the inquest as a witness. Dr O'Hare was the doctor on duty when John Stokes was brought to the Accident and Emergency Department of the Royal Victoria Hospital on 2 November 1997. … In making the decision that it was not necessary for Dr O'Hare to attend the inquest to give evidence, I took account of the fact that other witnesses would be present to give evidence about the events in the Accident and Emergency Department of the Royal Victoria Hospital when John Stokes came to the hospital on 2 November 1997. The following members of the nursing staff - Bernadette Toal, Patricia Spratt, Mary Lavery and Grainne Hamill - were available to give evidence … These witnesses have already given evidence to the inquest … Mr Curran, the senior registrar, who was consulted by

> Dr O'Hare as to the course of action to be taken in the light of the refusal of medical advice by Mr Stokes, was available to give evidence to the inquest … A security officer, Stephen McLaughlin, who was present in the Accident and Emergency Department when Mr Stokes was offered medical treatment, was available to give evidence to the inquest … The policemen who were present in the Accident and Emergency Department when attempts were being made to persuade Mr Stokes to accept treatment were also available to give evidence to the inquest … Another witness who was available to give evidence to the inquest was Dr John P Alexander, consultant anaesthetist, whom I had asked to prepare a medical report on the circumstances surrounding the death of Mr Stokes …
>
> 7. In the light of the evidence of the above-mentioned witnesses who were available for the inquest and in the light of the non-availability of Dr O'Hare I decided that Dr O'Hare was not a necessary witness."

Mr McMenamin joined issue with the coroner's decision in a second affidavit; he also disputed the account that the coroner had given of the reasons for that decision. He suggested that Dr O'Hare was the only doctor who had treated the deceased while he was conscious and was the only doctor, therefore, who could give evidence about his condition during consciousness. He was the doctor who took the decision to discontinue treatment and was responsible for the timing of that decision. He also pointed out that the coroner had indicated in a list of witnesses which had been furnished before the inquest that Dr O'Hare was included among those witnesses that he intended to call to give evidence.

As to the nursing and other staff who had either given evidence or were scheduled to give evidence, Mr McMenamin asserted that most of these did not witness

Mr Stokes receive treatment and those who did were not privy to the decision to withdraw treatment from him. This decision had been made by Dr O'Hare alone.

In relation to the evidence which Dr Curran proposed to give to the inquest, Mr McMenamin drew attention to the fact that Dr Curran had recorded that Dr O'Hare had told him that the patient was "fully alert and without psychotic features". Dr Curran had also been informed by Dr O'Hare that Mr Stokes had reported ingesting twenty four Co-proxamol tablets whereas Dr O'Hare had stated that he had been told by Mr Stokes that he had taken eighty. Dr Curran appeared to accept that the initial signs of poisoning by Co-proxamol were caused by dextropropoxyphene. Symptoms of dextropropoxyphene poisoning include nausea, vomiting, generalised and focal fits and cardiovascular collapse. He was not told by Dr O'Hare that Mr Stokes had suffered any of these symptoms but it was clear from other evidence that at least some of these symptoms had been present and must have been observed by Dr O'Hare. Constable Babb's evidence suggested that Mr Stokes had suffered some form of seizure and appeared to be unconscious when he was lifted on to the bed at the request of a doctor (presumably Dr O'Hare). Reserve Constable Porter also noted that the deceased had suffered "some form of seizure". He said that he was amazed when Dr O'Hare pronounced that Mr Stokes was of sound mind because he certainly did not appear to him to be so. Constable Porter was present when Mrs Stokes told Dr O'Hare that she would sign any necessary consent forms to allow her husband to be treated.

Mr McMenamin suggested that, on the basis of this evidence, Dr O'Hare was uniquely placed to testify as to the deceased's condition and refusal of treatment. He

alone could give evidence about the circumstances in which the decision was made that Mr Stokes should not receive further treatment. He was clearly a necessary witness, therefore.

After Mr McMenamin's second affidavit was filed, the coroner swore and filed a further affidavit. In this affidavit he did not dispute the contents of either of Mr McMenamin's affidavits. He explained, however, that he had informed Carson & McDowell, the firm of solicitors whom he believed were acting on behalf of Dr O'Hare on the instructions of the Medical Protection Society, about the arrangements for the inquest. On 17 August 1999, he received a telephone call from a solicitor in that firm informing him that Dr O'Hare would not be available to give evidence because he was working in Australia.

Subsequently on 22 November 1999, the solicitors wrote to the coroner in the following terms:-

> "I have been contacted today (18 November 1999) by Dr O'Hare. Dr O'Hare informs me that his mother had a visit by the RUC during the course of this week requesting details of his whereabouts. Dr O'Hare resides in Sydney and I have his address and telephone number. He is working as a doctor in Australia and has no intention of returning to the UK in the immediate future. His current post terminates in January 2001 following which time he may be back in the UK, although there is no guarantee that he will not pursue other opportunities either in Australia or elsewhere. …"

Rule 17

In its current form rule 17 provides :-

> "(1) A document may be admitted in evidence at an inquest if the coroner considers that the attendance as a

> witness by the maker of the document is unnecessary and the document is produced from a source considered reliable by the coroner.
>
> (2) If such a document is admitted in evidence at an inquest the inquest may, at the discretion of the coroner, be adjourned to enable the maker of the document to give oral evidence if the coroner or any properly interested person reasonably so desires.
>
> (3) Such a document shall be marked by the coroner in accordance with these rules with the additional words: 'received pursuant to rule 17'. "

It is interesting to compare this wording with that employed in the original rule which was as follows :-

> "(1) The report of a post-mortem examination carried out at the request of the coroner may be admitted in evidence at an inquest if the coroner considers that the attendance as a witness of the medical practitioner who made the report is unnecessary.
>
> (2) Any other documentary evidence as to how the deceased came by his death shall not be admissible at an inquest unless the coroner is satisfied that there is good and sufficient reason why the maker of the document should not attend the inquest.
>
> (3) If such report or document is admitted in evidence at an inquest, the inquest shall be adjourned to enable the maker of the report or the document to give oral evidence if the coroner or any properly interested person so desires."

Thus, while a coroner could only admit a statement (other than the report of a post-mortem examination) under the old rule if he was satisfied that there was a good and sufficient reason that the maker of the statement should not attend the inquest, under the new rule he may admit the statement if he considers that it is not necessary

that the maker of the statement attend the inquest. It should also be noted that what the coroner requires to be satisfied of under the new rule is that it is not necessary that the maker of the document *attend the inquest*. He does not require to be persuaded that the maker of the statement is *not a necessary witness*.

The difference between these two is perhaps best illustrated by reference to the old rule. By that rule, a pathologist was not required to give evidence if the coroner considered that this was not necessary. But there would be few inquests where the pathologist's evidence would not be necessary since one of the principal functions of an inquest is to discover how the deceased came by his death.

The arguments of the parties

For the applicant, counsel argued that it had plainly been the original intention of the coroner to have Dr O'Hare attend to give evidence. He had included his name in the list of witnesses that he had proposed to call and had informed solicitors whom, he believed, were acting on behalf of the doctor, about the arrangements for the inquest. But, according to the averments in his first affidavit, the coroner clearly allowed extraneous issues to influence his later judgment whether Dr O'Hare was a necessary witness. He took into account statements made by other witnesses whose evidence was patently insufficient to deal with points which only Dr O'Hare could cover. The coroner had wrongly supposed that Dr Curran could deal with the reasons for withdrawing treatment from Mr Stokes when, on analysis, it was evident that there was a critical conflict between Dr Curran and Dr O'Hare both on the question of the number

of tablets ingested and on the condition of the deceased while he was in the resuscitation room of the Royal Victoria Hospital.

It was submitted that the coroner had wrongly allowed these factors to weigh with him in deciding that it was not necessary that the doctor give evidence. Particular reference was made by counsel for the applicant to paragraph 7 of the coroner's first affidavit where he stated that, in light of the evidence of the other witnesses, he had decided that Dr O'Hare was "not a necessary witness". The later attempt by the coroner to retrieve the situation by suggesting (in his second affidavit) that the only reason that he decided that it was not necessary that Dr O'Hare attend the inquest was that he was not available should be treated sceptically, counsel suggested.

The applicant submitted that the coroner's decision was deficient on two bases. First, instead of asking himself the question, "Is it necessary for Dr O'Hare to attend?", he posed the wrong question *viz* "Is Dr O'Hare a necessary witness?". Secondly, the coroner wrongly decided that the other evidence available rendered Dr O'Hare's attendance unnecessary.

For the coroner, counsel accepted that the coroner had to make a preliminary decision as to whether a witness was necessary. He then had to address the question whether his attendance was necessary. Counsel argued that the coroner had always believed that Dr O'Hare was a necessary witness but concluded, correctly, that his attendance was not necessary when he discovered that he was not available. In making a determination on the latter issue, it was open to the coroner to have regard to other evidence available to the inquest.

Conclusions

It is troubling that Dr O'Hare should not be available to give evidence at the inquest into the death of the deceased. It appears to me that there are several issues on which his evidence would be valuable in ascertaining how the deceased died. It is not necessary for me to embark on a review of the jurisprudence in this jurisdiction and in England and Wales on the scope of the inquiry permitted so as to explore the issue of how the deceased came to die because I accept that the coroner did - at least initially - consider that Dr O'Hare was a necessary witness.

The first issue which calls for resolution is whether the coroner remained of the view that the doctor was a necessary witness, as opposed to being a witness whose attendance was necessary. The averments in paragraph 7 of his first affidavit would certainly appear to suggest that he had changed his opinion on this issue because he says without qualification that he had decided that the doctor was not a necessary witness. On reflection, however, and in light of the coroner's unequivocal statement in his second affidavit, I have concluded that it has not been established that the coroner changed his view as to whether Dr O'Hare was a necessary witness.

It is perhaps unfortunate that the coroner did not deal directly with the error of the first affidavit when he came to swear his second affidavit. This is particularly so because the assertion of Mr McMenamin that the coroner had told counsel for the next of kin that he had not checked the availability of Dr O'Hare was not disputed in the

coroner's second affidavit. The failure to challenge this averment does not rest easily with his subsequent claim that the only factor which influenced his decision was the non-availability of Dr O'Hare. As against this, the coroner does set out the correct test in the opening words of paragraph 6 of his first affidavit, when he said, " … [o]n being informed of the non-availability of Dr O'Hare and on reviewing the statements which he had made to the police … I decided that it was not necessary for Dr O'Hare to attend the inquest as a witness." On balance, therefore, I am prepared to accept that the statement in paragraph 7 of the first affidavit was made inadvertently.

The next matters to be considered are whether the coroner was wrong to have taken into account the evidence from other witnesses, and whether he reached a conclusion on that evidence which is insupportable. Three issues should be clarified at the outset. Firstly, despite his averment in his second affidavit that his only reason for concluding that the attendance of Dr O'Hare was not necessary was his non-availability, I am satisfied that the coroner also had regard to the evidence of the other witnesses in relation to that question. Otherwise, the rehearsal of the coroner's consideration of the evidence in paragraph 6 of his first affidavit is wholly irrelevant and would not have been included. Secondly, since it has not been established that the coroner had decided that Dr O'Hare was not a necessary witness, I must approach the evidence on this point on the basis that his consideration of the other evidence available to the inquest was in the context of deciding whether it was necessary that Dr O'Hare should attend to give evidence. Finally, it appears to me that it is beyond dispute (and, indeed, counsel for the applicant did not seek to dispute it) that, in deciding whether it was necessary that

Dr O'Hare should attend to give evidence, it was open to the coroner to have taken into account that he was unavailable and that he (the coroner) did not have the power to compel his attendance.

Dealing with the first of the matters adumbrated above, (whether the coroner should have taken the other evidence into account), I am of the opinion that the coroner was not only entitled to have regard to that evidence, but that he would have been at fault if he had ignored it. In deciding whether it is necessary that a particular witness (whose evidence is necessary for the proper exploration of the various issues that arise on an inquest) should be required to attend, it is obviously important to ascertain what other evidence is available. The importance of the issue increases when it is known that the witness whose attendance is in question is not available at the time that it is proposed to hold the inquest. I am satisfied that the coroner was right to have regard to that evidence.

On the second matter, (whether the coroner's conclusion on the significance of the evidence is insupportable), one must first determine the purpose for which the consideration of the evidence was undertaken. The applicant's argument that the coroner was wholly wrong in the conclusion that he reached on that evidence proceeded on the implicit premise that the coroner had assessed the other evidence on its capacity to substitute for Dr O'Hare's oral testimony. I am satisfied that this was not the basis on which the coroner evaluated the evidence of the other witnesses. For the reasons that I have given, I am satisfied that the coroner believed - at least at the beginning of his consideration of the need for Dr O'Hare's evidence - that he was a

witness who should attend the inquest. He is unlikely to have reached that view if he considered that the doctor's evidence was completely replicated in the testimony that he was due to hear from other witnesses.

It appears to me that the coroner must have approached the evidence of the other witnesses on the basis that Dr O'Hare was unlikely to be available in the foreseeable future and that it was therefore relevant to look at the other evidence to see whether it was worthwhile proceeding with the inquest at all. Knowing that he had the opportunity to introduce the doctor's evidence under rule 17, the coroner was entitled to conclude that, when one considered the other evidence, it was both possible and proper that the inquest should proceed and, to that extent, it was not necessary that Dr O'Hare attend as a witness. Such a conclusion is unimpeachable, in my opinion. The coroner has not articulated his reasoning in this way. Indeed, it may have been impossible for him to do so since he had disavowed having been influenced by any factor other than the doctor's non-availability. It appears to me, however, that, confronted by the knowledge that the doctor would not be available, there was only one possible course open to him. Having looked at the other evidence and mindful of his powers under rule 17, he was bound to have proceeded with the inquest. Even if I had been satisfied that the coroner had not approached the matter in this - what I consider to be the only correct - way, I would nevertheless have exercised my discretion to refuse the relief sought because I am entirely content that the decision to proceed with the inquest was the proper one.

Having carefully considered all the issues in the case, and, notwithstanding my sense of disquiet about the fact that Dr O'Hare will not be available to deal with matters which I think ought, in ideal circumstances, to have been explored with him at the inquest, I have concluded that none of the grounds of challenge to the coroner's decision has been made out and the application for judicial review must therefore be dismissed.

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JUDGMENT

OF

KERR J
