Judicial Communications Office

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COURT FINDS NO CULPABLE DELAY BY CORONERS

Summary of Judgment

The Court of Appeal today concluded that there was no culpable delay on the part of the Senior Coroner, Mr John Leckey, or the Coroner, Mr Brian Sherrard, in their conduct of the inquest into the death of Pearse Jordan in the period between 2001 and 2012.

Teresa Jordan ("the appellant") has taken over from her husband Hugh Jordan carriage of the judicial review proceedings relating to matters arising out of the inquest into the death of their son Pearse Jordan who was shot and fatally wounded by a member of the RUC on the Falls Road, Belfast on 25 November 1992. The Court of Appeal is hearing a number of appeals in respect of the inquest. Today's judgment was concerned solely with the question of whether Mr Justice Stephens (as he then was) erred in concluding that the Coroners in the period from 4 May 2001 to 24 September 2012 were not guilty of culpable delay[1].

Lord Justice Deeny, delivering the judgment of the Court of Appeal, firstly dealt with the question of whether the issue of delay was academic. Counsel for the Coroners argued that, even if the Court found there had been culpable delay, it would not be able to award damages to the applicant. Counsel for the appellant however argued that she would be entitled to damages and if this application was successful it could impact on other proceedings for damages against the Chief Constable for delay. Lord Justice Deeny held that the issue of past delay was not academic and should be considered against the background of the unusual history of the case, in particular the two differently constituted Courts of Appeal dealing with the one appeal.

The appellant argued that the Coroner, as well as the PSNI, failed to ensure the prompt hearing of an Article 2 compliant investigation into the death of her son between 4 May 2001 and 24 September 2012. It was further argued that the delay was a breach of the Coroner's duty under Rule 3 of the Coroners (Practice and Procedure) (NI) Rules 1963 ("the 1963 Rules") which require an inquest to "be held as soon as is practicable after the Coroner has been notified of the death". Lord Justice Deeny commented that short periods of delay may be viewed as inevitable or justified in some instances, but there was a period of some 11 years in this case before the inquest was heard. He noted that Stephens J dealt with the issue of delay at paragraphs [341] – [359] of his judgment. He said the judge at first instance relied on a judgment of Hart J in 2009[2] "as binding on him as if it were res judicata without expressly committing himself to the application of that maxim" (Hart J attributed the delay to deficiencies in the 1963 Rules and the actions of the PSNI but not to the Senior Coroner who was seized of the matter from 2001 to 2009).

[1] See *Jordan's Applications* [2014] NIQB 11

[2] *In re Jordan* [2009] NIQB 76

The doctrine of res judicata states that a matter that has been adjudicated by a competent court may not be pursued further by the same parties before another court. Counsel for the appellant argued that whilst Stephens J may have considered himself bound by the judgement of Hart J, the Court of Appeal is not so bound. Lord Justice Deeny considered this to be a fallacious argument. He said the Court of Appeal could only quash the decision of Stephens J if it is in error. If it was a lawful exercise of the doctrine of res judicata by the judge at first instance it must stand and the Court of Appeal is as bound, as Stephens J was, by the judgment of Hart J on this mixed issue of law and fact.

Counsel for the appellant argued that the decision of Hart J on the issue of delay had not been the subject of a previous appeal as the Senior Coroner had stood down from the inquest in advance of it proceeding. Lord Justice Deeny said the issue in this case is one of delay: "If courts duplicate the work done by previous courts they are not available for that period of time to deal with other cases. There is therefore an inherent contribution to delay if the principle of res judicata is not followed". The Court found on authority that it had a role in the public law field. He noted, however, that the appellant did not have a hearing of its challenged on appeal to the conclusions of Hart J on the issue of delay, and that his judgment was focused on the matter of the appearance of bias:

> "In those circumstances we have concluded … that we should not base our decision on [Hart J's] judgment but should consider the issue of delay on the part of the Coroner ourselves. His findings, made when the first period of alleged delay was proximate in time remain nevertheless a relevant consideration to be taken into account."

The Court of Appeal then considered the different periods of alleged delay:

- 4 May 2001 to 5 September 2007 – The Court was satisfied that there was no culpable delay on the part of the Senior Coroner and considered this matter had been fully dealt with in the judgment of Hart J. Lord Justice Deeny said the prolonged nature of this case was partly due to the fact that the law in this area has in part evolved from the decisions relating to this particular inquest and it would be wrong to condemn the Senior Coroner acting in good faith struggling to cope with that difficult gestation period. He further noted that there was a heavy burden of inquests to be discharged by the Coroners throughout this period and that this inquest was just one of many, albeit more prominent than most.
- 5 September 2007 to October 2009 – This was the period between the holding of a preliminary hearing by the Senior Coroner after the House of Lords' decision in this case and his decision to stand down from conducting the inquest himself. The Court of Appeal, again, was satisfied that there was no culpable delay on the part of the Senior Coroner between those dates and adopted the conclusions of Hart J.
- October 2009 to October 2011 – This was the period after the Coroner Mr Sherrard (as he then was) took over responsibility for the inquest. He was criticised by the appellant for the time it took to prepare a PII protocol and then to adjourn the inquest to have searches of the Stevens' database carried out. The Court of Appeal considered these were understandable decisions which the Coroner made and well within the exercise of his own discretion.
- October 2011 to 24 September 2012 – This was the period leading up to the hearing of the inquest by Mr Sherrard. He had adjourned the inquest on 23 September 2011

because of late disclosure of the fact that two police officers involved in the death of Pearse Jordan had been investigated as part of the Stalker/Sampson Inquiry and had made false statements to CID investigators in the course of those investigations. The Court of Appeal found the decision to adjourn the matter legitimate in the circumstances. It noted that there were also two judicial review applications in the period up to the inquest being heard (applications for anonymity by police officers and the handling of the Stalker/Sampson reports).

Conclusion

The Court of Appeal concluded that there was no culpable delay on the part of the Senior Coroner or the Coroner in the conduct of the inquest into the death of Pearse Jordan.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (www.judiciary-ni.gov.uk).

ENDS

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