CO/3134/2008

Neutral Citation Number: [2009] EWHC 271 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 21st January 2009

B e f o r e:

MR JUSTICE COLLINS

Between:
THE QUEEN ON THE APPLICATION OF JONES

Claimant

v

NOTTINGHAM CITY COUNCIL

Defendant

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(Official Shorthand Writers to the Court)

Mr A Suterwala (instructed by Bhatia Best Solicitors) appeared on behalf of the **Claimant**
Miss C Van Overdijk (instructed by Nottingham City Council Legal Services) appeared on behalf of the **Defendant**

J U D G M E N T
(As approved by the Court)

1. MR JUSTICE COLLINS: I will just give a short judgment because it is an important point of principle for the court.

2. The claimant in this case sought judicial review of the alleged failure of Nottingham City Council to provide her with the appropriate support under the National Assistance Act of 1948. It is not necessary for me to go into detail; suffice it to say, that an application was made initially for an interim order requiring the council to provide her with accommodation because she was sleeping rough and had now here to go. That order was made by Mr Justice Griffith Williams on 27th March. As part of that order he required that there should be an undertaking to file and serve, by noon on Monday 31st March, a claim in the Administrative Court. That the claimant did.

3. There is an issue between the parties whether that in reality was necessary because it is said that the council had complied with any duty that it may have had under the relevant legislation. That is a matter that would have been in issue had the proceedings continued.

4. However, it was accepted, once the claim had been lodged, that the claim was no longer necessary because the council had indeed done all that the claimant could expect it to have done. Accordingly, the matter was disposed of by way of a consent order. In fact, the consent was reached in mid August 2008, but the order itself was not issued until 12th September. It provided for the discharge of the interim order made by Mr Justice Griffith Williams and for a withdrawal of the claim for judicial review. It also provided that the matter of costs in this matter be dealt with by written submissions to be sought by both parties to the court within 14 days. The parties complied with that and the question of costs was considered by Sir George Newman in accordance with the consent order on the papers. He decided that there should be no order for costs.

5. The claimant was dissatisfied with that and sought to appeal against it to the Court of Appeal. She was faced with a decision by a Deputy Master. It was said in a conversation with someone in the Civil Appeals Office that it was not appropriate for the matter to be dealt with by the Court of Appeal; and that it should be referred back to the Administrative Court for an oral hearing. That information was conveyed on 27th November. In accordance with that advice or decision. (I put it that way because there is, as far as I am aware, no written decision from the Court of Appeal, but only simply what the official informed the claimant's solicitors: I have no reason to believe that that advice was not given but as I say I have seen no written decision to that effect.) This application was made to the Administrative Court.

6. The question that arises is whether the court in the circumstances has jurisdiction. I am satisfied that it does not. The rules by 23.7, provide that:

> "The court may deal with an application without a hearing if the parties [among other things] agree that the court should dispose of the application without a hearing."

7. Furthermore, Rule 54 which deals with the administrative court provides by 54.18 that:

> "The court may decide the claim for judicial review without a hearing where all the parties agree."

8. It is true that this was a withdrawal rather than a decision on the claim, nonetheless, as it seems to me, the combination of those rules is consistent with the approach to be taken; namely that a court may make a decision, or make any order, without a hearing, certainly where the parties agree that that is an appropriate course.

9. The Court of Appeal, as the notes to 23.8 make clear, has said that there are advantages that may flow from the court being able to deal with an application on the papers rather than at a hearing. It can save costs, and may enable expeditious dealing with matters, if applications are able to be dealt with on the papers whether by consent or by direction of the court in individual circumstances. It is frequently the practice of the court to deal with costs on the papers. If there is a claim if permission is refused, it is commonplace for the court to make an order for costs based on the Mount Cook principles but to direct that the claimant, in respect of whom permission has been refused, has the right to apply in writing and to make submissions against the award of costs or the amount. Of course, in those circumstances, the defendant will be able to put in any counter argument.

10. Equally, a withdrawal order will frequently contain a consent to costs being dealt with on the papers. The order that results is nonetheless a final order, and as it seems to me, it is clear that the appropriate route if there is dissatisfaction with such an order is an appeal to the Court of Appeal.

11. It is not without significance that rule 54.12 specifically deals with an oral renewal where there has been a paper decision, but it is limited to a refusal of permission or the grant of permission subject to conditions or on certain grounds only. 54.12.3 provides that:

> "The claimant may not appeal but may request the decision to be reconsidered in a hearing."

12. That, in my view, is entirely consistent with the recognition that without such a provisions there would be right of appeal because, generally speaking, there is no right to go back to the court to seek a reconsideration save where for example there has been a procedural defect of some sort or another or where there has been an ex parte order made and so the relevant party has not had a chance to make any representations.

13. Short of that, where the party has been able to make representations, and a fortiori where there has been a consent, it seems to me that there is clearly a final order. Mr Suterwala has very properly drawn to my attention a decision of the Court of Appeal decided very recently on 21st January. That was a case where the court had entertained an appeal against the costs order which had been made based upon written submissions. While it is not clear from the report whether the question of jurisdiction was raised, and it certainly looks as if it was not, the court clearly had no qualms about accepting that it had jurisdiction; and so that was the appropriate route to appeal an order for costs made following written representations.

14. The ability to direct the question of costs, or indeed any question be dealt with in writing is useful. It saves time, it saves costs and there is no detriment generally to the parties in such an order being made. If it is made by consent, there can be no argument. If it is directed by the court, it is no doubt open to a party to apply for oral argument if, for example, a point of principle arises and the court, if such an application is made, before it reaches any decision, will no doubt consider it. Such an application, I would expect to be exceedingly rare, but I recognise the possibility.

15. Subject to that, if the court decides the matter on papers that is, as I say, a final order and any appeal lies to the Court of Appeal, of course on the principles applicable to appeals against costs orders. There is no power in this court to reconsider the decision made in such circumstances. It follows that I have no jurisdiction to decide this matter. I have not considered the merits. All I say is that since the claimant, very properly, made an application to the Court of Appeal but was wrongly informed that the court did not have jurisdiction, and so referred the matter back to this court, it must be open to the claimant to renew that application to the Court of Appeal. She should not be penalised for the delay which has resulted from matters which are not her fault. No doubt, in all the circumstances, and having regard to what is now known of the attitude of the defendant, those advising the claimant will carefully consider whether it is, in the circumstances, appropriate to seek to pursue the application, but that is a matter entirely for them.

16. MR SUTERWALA: Grateful.