



Neutral Citation Number: [2024] EWHC 889 (Ch)

Case No: BL-2021-MAN-000033

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Date: 15 April 2024

Before:

The Honourable Mr Justice Richard Smith

Between :

(1) Ben Leeson
(2) William Leeson

Claimants

- and -

Donald McPherson

Defendant

**Lesley Anderson KC, Tom Gosling and Arianna Barnes (instructed by Glaisyers ETL) for
the Claimant**

Hearing date: 15th April 2024

APPROVED RULING

Mr Justice Richard Smith
(11:55am)

Monday, 15 April 2024

Ruling by **MR JUSTICE RICHARD SMITH**

1. Today marks the start of the trial in the action brought by Mr Ben Leeson and Mr William Leeson against the defendant, Mr Donald McPherson. Mr Ben Leeson is the adult son of Paula Leeson who sadly died on 6 June 2017 while on holiday with her husband, the defendant. William Leeson is Paula's father. Although various heads of relief are claimed, it is fair to say that the central allegation in the case is that Mr McPherson unlawfully killed Paula Leeson, an allegation which Mr McPherson has strongly denied.
2. On Friday last week, 12 April 2024, Mr McPherson informed the court through an email to my clerk in the following terms: "I will not be in attendance from 15 April 2024 and I will not have any representation either". As his message foreshadowed, Mr McPherson has not attended court today, and it would appear that he remains out of the jurisdiction, having left the country in 2021, apparently living and working in different countries in the South Pacific.
3. The first issue that arises during the course of this trial is whether it should proceed at all in Mr McPherson's absence. The Civil Procedure Rules, at CPR, Part 39.3, provide that the court may proceed with a trial in the absence of a party but, most relevantly to Mr McPherson, if a defendant does not attend, the court may strike out his defence or counterclaim or both of them. The claimants do not seek the strike-out of the defendant's defence or some other form of summary disposal of the case, but they seek its determination on the merits and on the evidence.
4. In deciding whether to proceed in the circumstances of this case, I have had regard to the overriding objective and to the Court of Appeal decision in *Williams and Another v Hinton and Another* [2011] EWCA Civil 1123 which held in relevant part that:-

"It is, of course, of the first importance that a party is afforded a fair opportunity to present its case to the judge. It is also, however, of great importance that judges, as a matter of case management,

act robustly to bring cases to a conclusion. In the present context, CPR39.3 furnishes a safeguard in the event of mishap.”

5. As to the circumstances of this case, I should say at the outset that there has been no suggestion from the defendant that the trial should be adjourned, let alone any application to that end, even though Mr McPherson has not hesitated in the past to make such applications as he considers appropriate. I should say that prior to the pre-trial review held in March before me, the defendant did write to the court in the following terms on 29 February 2024:-

"I have a pre-trial hearing set for 19 March 2024. And a trial if required set for 16 April. At present I do not live in the jurisdiction and it could be difficult for me to return on or about these dates. Please can you grant me permission to attend these and any other hearings relating to this case via a videolink. I may have representation, however, just in case I can't arrange this, the videolink will be my best option".

6. In response to that email, my clerk wrote to Mr Leeson at my direction in the following terms on 4 March 2024:-

"The Court confirmed in the notices of hearing dated 16 October 2023 that both the pre-trial review and the trial have been listed as attended hearings. If the Defendant will not be represented at those hearings, he must attend in person. The Defendant should also be aware that, if he or his representative do not attend the trial, the Court may proceed with the trial in his absence and his defence may be struck out (CPR, Part 39.3(1))".

7. The Court therefore made clear then that the trial was an attended hearing and its expectation that Mr McPherson had to attend the trial in person, either by himself or through his representative.
8. At the pre-trial review on 19 March 2024, which I oversaw, Mr McPherson was represented by Mr Phillis of counsel who confirmed that the defendant had a passport and that he intended to travel to the United Kingdom to attend the trial. Indeed, I was referred in the Claimants' supplementary

skeleton argument to other correspondence between the parties from March and April 2024 in which Mr McPherson also confirmed that he would attend trial.

9. In light of the fact that the defendant was well aware since at least October 2023 of the date of the trial and that it was an in-person hearing, the statement by defendant's counsel at the pre-trial review of the defendant's intention to attend, the recent further statements to the same end to the claimant's solicitors, the absence of any application for an adjournment, and there being no hint from Mr McPherson in his most recent communications with the court from 10 and 12 April 2024 of any difficulty in attending trial, I am perfectly satisfied that there was no impediment to him doing so.
10. I should add that both those April communications to the court, and his email to the court of 29 February 2024, and the representations from counsel at the pre-trial review did indicate issues in obtaining legal representation for the trial and associated funding difficulties. So, in the same email to the court of 12 April 2024, Mr McPherson wrote in the following terms:-

"I have exhausted every option to me to obtain representation. However, due to the reasons mentioned in my previous email, this has now become impossible to achieve. From the last meeting at the PTR I had firm plans to be represented. However, this has now fallen through. I mean no disrespect to the court or to Glaisyers, however, please be assured that I have made every genuine effort to find representation from 15 April to 13 May 2024".
11. As to his representation, Mr McPherson has again known since at least October 2023 that the trial would be proceeding today. He has therefore had ample time to make arrangements for his representation at trial. Moreover, in my view, his explanation as to what steps have, in fact, been taken to secure representation, and how those are to be funded, have been couched in the vaguest of terms. Finally, the suggested reason for his difficulties are said to emanate from the asset freezing injunction obtained against him in these proceedings. However, that injunction expressly allows expenditure to be made out of the affected assets on account of legal representation.

12. In any event, even setting aside all of those matters, there is no reason why the trial cannot proceed with the defendant acting in person nor does Mr McPherson seek to suggest otherwise. Indeed, as the court explained in its e-mail to Mr McPherson from 11 April 2024, again sent at my direction:-
- “The court cannot give legal advice to Mr McPherson or help him to arrange legal representation, but it can assure him that he will have the fair opportunity at trial to present his case and to meet the case advanced by the Claimants. Mr McPherson will have that opportunity whether he is legally represented or represents himself at trial as a litigant in person.”
13. The court is satisfied that Mr McPherson would be perfectly able to represent himself at trial were he minded to do so. Indeed, despite acting in person since 2023 he has actively engaged with the court in his own right since then, albeit remotely, he has made a number of applications in furtherance of his position in the proceedings, he has shown considerable insight into and an understanding of the substantive issues and the evidence, and it is clear that he has his own strong views as to their significance or otherwise. In all the circumstances I have described, I am satisfied that Mr McPherson has made a deliberate choice not to attend the trial.
14. Finally, there are very compelling reasons why the trial should proceed today. It seems to me that there is little or no prospect of the defendant attending at some later date. These proceedings have been ongoing for some three years and the issues in the case as to Paula Leeson's estate and trusts over do require determination. Considering the overriding objective, as applied in the circumstances I have described, as well as the principles indicated in *Williams v Hinton*, I am therefore satisfied that the trial should proceed in Mr McPherson's absence, and I so determine.