Neutral Citation Number: [2019] EWHC 2835 (QB)

IN THE HIGH COURT OF JUSTICE
HIGH COURT APPEAL CENTRE ROYAL COURTS OF JUSTICE
ON APPEAL FROM THE CENTRAL LONDON CIVIL JUSTICE CENTRE
ORDER OF HHJ HELLMAN DATED 26 APRIL 2019
COUNTY COURT CASE NUMBER: F40CL015
APPEAL REF: QA-2019-000124

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/10/2019

Before :

THE HONOURABLE MR JUSTICE STEWART

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Between:

Bibi Emambee	**Claimant and Appellant**
- and -	
London Borough of Islington	**Defendant and Respondent**

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- -

Reza Choudhury (instructed by **Adel Jibs & Co Solicitors**) for the **Appellant**
Jane Hodgson (instructed by **Legal Services Islington Council**) for the **Respondent**

Hearing date: 23 October 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice Stewart:

Introduction

1. This is an appeal against an order of Judge Hellman sitting in the Central London County Court. On 26 April 2019 he made an order refusing the Appellant's application for permission to bring an appeal out of time pursuant to section 204(2A) of the Housing Act 1996 and therefore dismissing her appeal. On 31 July 2019 I granted permission to appeal Judge Hellman's decision.

2. The background facts as set out in the Appellant's skeleton argument are that she is now aged 37 and has three young children. On 28 June 2018 she completed a Homeless Application form having been served by her aunt with notice to leave her aunt's house at 55 Charteris Road, Finsbury Park, London N4 3AA. On the day she completed her application form she was provided with temporary accommodation at 813 Great Cambridge Road Enfield EN1 4BU ("the property"). On 4 July 2018 the Respondent sent a section 184 decision accepting a full housing duty.

3. On 28 November 2018 the Appellant travelled to Mauritius. Her father had suffered a stroke and she went out to see him. She did not notify the Respondent as she left quickly in order to see her father.

4. The Respondent visited the property on 28 November 2018 and 6 December 2018. The Respondent concluded that the Appellant was not residing at the property, although some of the Appellant's personal belongings were there. On both occasions a note was left asking the Appellant to contact the Respondent, but they received no response. On 6 December 2018 the Respondent terminated the Appellant's temporary accommodation under section 193(6). The Appellant returned to the UK on 7 December 2018 and, by a letter drafted with assistance and dated 10 December 2018, she applied to review the Respondent's decision. In this letter she nominated her aunt's address as the address to which to send correspondence. On 14 December 2018 the Respondent received the letter and wrote to the Appellant at the aunt's address, acknowledging her request for a review and inviting her to provide further evidence within 7 days. The Appellant did so, sending copies of boarding passes and passports to show she was in Mauritius between 18 November 2018 and 7 December 2018.

5. On 21 December 2018 the Respondent made its review decision upholding the decision to discharge its housing duty. The decision letter was sent by second class post to the aunt's address on 21 December 2018. The aunt had gone away for Christmas on 20 December 2018 and returned on 8 January 2019. When the aunt returned she notified the Appellant of the decision and, with her aunt's help she sought legal advice. An appointment was booked on 15 January 2019 with her current legal advisers. An appeal was drafted with short grounds on that day. The Appellant's Notice was marked as filed by the court on 18 January 2019. Directions were given by a judge, resulting in the hearing before Judge Hellman to determine the application for extension of time.

Appeals to the County Court under the Housing Act 1996

6. Section 204 of the Housing Act 1996 provides:

> "(1) If an Appellant who has requested a review under section 202 –
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> (a) is dissatisfied with the decision on the review…
>
> he may appeal to the County Court on any point of law arising from the decision or, as the case may be, the original decision.
>
> (2) An appeal must be brought within 21 days of his being notified of the decision or, as the case may be, of the date on which he should have been notified of a decision on review.
>
> (2A) The court may give permission for an appeal to be brought after the end of the period allowed by subsection (2), but only if it is satisfied –
>
> (a) where permission is sought before the end of that period, that there is a good reason for the Applicant to be unable to bring the appeal in time; or
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> (b) Where permission is sought after that time, that there was a good reason for the Applicant's failure to bring the appeal in time and for any delay in applying for permission."

Judge Hellman's decision

7. The key paragraphs of Judge Hellman's decision are:

> "6. There are two questions for me to decide: first, was the appeal brought within 21 days of Ms Emambee being notified of the decision, and second, if not, was there a good reason for her failure to bring the appeal in time. In my judgment section 204(2) does not place a burden on either party to establish whether the appeal must be brought or has been brought within 21 days. The statute is neutral as to the burden of proof. The court must consider the evidence and make a decision.
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> 7. As the Appellant's notice was filed on 18 January, an appeal will have been brought in time if Ms Emambee received notification of the local authority's decision on or after 28 December 2018.

> 8. … Mr Choudhury submits, in relation to whether the Appellant's notice was filed in time, first, that the notification date was the date of actual receipt by Ms Emambee, that is 8 January 2019 and, alternatively, that the court cannot be satisfied that the decision letter was delivered within 2-3 working days, as it was delivered during the Christmas period which is a very busy time for the Post Office. In those circumstances, it is submitted the court should proceed on the basis that it was delivered later and, hence, the Appellants' notice was filed in time.
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> 9. I am satisfied that the notification date was the date of delivery of the letter to the premises notified by Ms Emambee. This is by analogy with the concept of service. However, notification is a less technical concept; it is an ordinary English word, and so delivery was the actual date of delivery, and not a deemed date of delivery. If I adopt Mr Choudhury's submission that notification meant that the date of actual receipt, that would introduce a very substantial degree of uncertainty as to the notification date into the section, which I am satisfied was not the legislative intent.
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> 10. There is no evidence as to the date of notification, other than that it must have been between 22 December 2018, the date after the letter was posted, and 8 January 2019, the date when the letter was brought to Ms Emambee's attention. Two to three days was merely a target and it is the experience of the court that targets are not always attained. I take account of the fact that Christmas was a busy time of year for the Post Office, and that it is plausible that that target was not met on this occasion. However, it is a condition of bringing an appeal under section 204 that the appeal must be brought within 21 days of notification, that is to say I must be satisfied that the appeal was brought within that period. It is not enough that I am not satisfied that it was not brought within that period. This is an important distinction, and one that leads me to conclude that the requirements of section 204(2) are not requirements I am satisfied have been met. I am not satisfied that the appeal was brought within 21 days of notification."

8. Judge Hellman then went on to consider whether there was good reason for the failure to bring the appeal in time. He referred to the decision of Dove J in the *Mayor and Burgesses of the London Borough of Tower Hamlets* v *Al Ahmed* [2019] EWHC 749 (QB). He considered the fact that Ms Emambee suffers from dyslexia. This fact was agreed. However the judge took into account (i) at [17], the local authority's decision letter which said that despite her dyslexia the Appellant was well versed in contacting the authority, (ii) at [20], the fact that the Appellant had been able to receive assistance from her family, (iii) at [20] that she had filed two witness statements in the appeal but did not explain why she took no action until 15 January 2019 and (iv) at [20] that her solicitors, once she had consulted them, could have sent the application notice by special delivery so that it would have been received the next day by the court i.e on 16

January 2019, instead of 18 January 2019. I shall return to these paragraphs in some more detail later in this judgment.

9. Judge Hellman concluded:

> "21. In the circumstances, I am not satisfied, on the evidence before me, that her dyslexia was a good reason for the late filing of the Appellant's notice.
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> 22. Mr Choudhury makes an alternative submission that Ms Emambee acted within 21 days of actual receipt of the letter. However, she would have received the letter sooner had she given the Council updated contact details, for example her new address and/or a telephone number. In my judgment, this is not a good reason for the late filing of the Appellant's notice either.
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> 23. It is common ground that the appeal is properly arguable, and I am satisfied that it would have had a real prospect of success. However, I have found that Ms Emambee did not file the Appellant's notice within the statutory 21 day period, and she did not have a good reason for not doing so. On that basis, the appeal is dismissed…"

Ground One

10. The first ground of appeal is that the judge erred in that (1) he was wrong to hold that the appeal was not brought within 21 days, and (2) he failed to give reasons why the appeal was not brought in time.

11. The facts as found by the judge were that the appeal was not brought within 21 days of the Appellant being "notified of the decision" under Section 204(2). There were two limbs to his reasoning, namely:

a) notification of the decision meant the date of delivery to the aunt's address, rather than the date of actual receipt.

b) he was not satisfied that the appeal was brought within 21 days of notification, given that it was posted on 21 December 2018.

12. As regards (a), Mr Choudhury confirmed, as appeared from the Grounds of Appeal, that there was no challenge to the Judge's finding.

13. As regards (b), the decision letter was dated 21 December 2018, a Friday. That would leave as potential dates of delivery Saturday 22 December 2018, Monday 24 December 2018 and Thursday 27 December 2018 – before the cut-off date of 28 December 2018. The submission of the Appellant is that, given the judge's remarks in his judgment at [10], he ought to have been satisfied that the letter was delivered on or after 28 December 2018 in view of the busy period. I do not accept this. It may have been delivered after 27 December 2018, it may not. The judge was entitled to make the finding he did. There is no inconsistency in his reasoning, as the Appellant submitted.

14. Finally the Appellant says there was no adequate reason why the judge was not satisfied that the Appellant's notice was not brought within the 21 day period. I disagree. His judgment at [9]–[10] gives perfectly adequate reasons for coming to his conclusion.

Grounds 2 and 3

15. Ground 2 is that the Judge erred in the exercise of his discretion in that he failed to consider relevant matters when deciding there was no good reason to bring the appeal out of time under section 204(2A). Ground 3 is that the Judge failed to give any or adequate reason for reaching the conclusion that there was no good reason for filing the Appellant's Notice out of time.

16. In *Al Ahmed* Dove J set the scene for "good reason" for failure to bring a claim in time in this way:

> "11. A number of important points need to be taken into account when approaching the exercise of discretion under section 204(2A)(b) and considering whether in a case where permission to appeal is sought after the 21 day limit there is "good reason" for the failure to bring the claim in time. The first point is that the merits of the substance of the appeal are no part of the consideration of this question. This was made clear by Tugendhat J in Short v Birmingham City Council [2005] EWHC 2112; [2005] HLR6 at paragraph 26. Secondly, as concluded by Sir Thomas Morison in Barrett v The Mayor and Burgesses of the London Borough of Southwark [2008] EWHC 1568, the phrase good reason "is a phrase in common parlance, which in my judgment, does not need elaboration." (See paragraph 4 of the judgment).
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> "12. As was also observed in the Barrett case, and endorsed by Jay J in the case of Poorsalehy v London Borough of Wandsworth [2013] EWHC 3687, there is no general principle in cases of this kind which fixes a party with the procedural errors of his or her representative, nor is there a general principle which enables a litigant to shelter behind the mistakes of their legal advisers. As Jay J was astute to observe, in particular in paragraph 28 of his judgment, the approach to be taken to the responsibility of a litigant and his advisers must always depend upon the particular facts and the available evidence in any given case. In short, there are no bright lines in deciding whether or not there is a good reason for the delay in bringing an appeal of this kind. All of the factual circumstances have to be carefully examined and scrutinised …""

17. The Appellant submits that the Judge rigidly followed "the recent dicta" in *Al Ahmed* in deciding that the Appellant failed to demonstrate good reason. It is said that he should have distinguished *Al Ahmed* on the facts in that the Appellant suffers from dyslexia and could not or was unable to complete the Appellant's Notice, the Grounds and pay a fee, without legal intervention. It is said she did not waste time in seeking legal help from being aware of the review decision on 8 January 2019 to her

appointment on 15 January 2019. Had these matters been factored into account, the Appellant submits that the Judge should have arrived at a different conclusion on the question of good reason.

18. Before considering these submissions I will cite further paragraphs from *Al Ahmed*. These were clearly part of the Judge's consideration:

> "14…It is clear, therefore, that the fact that a party is not professionally represented could only play a very limited, if any, part in the assessment of whether or not there was good reason for a departure from the time limit in bringing the appeal in cases of this sort…
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> 15. In my judgment the starting point for analysing whether or not in this case there was "good reason" for the Respondent's delay is an understanding of what is required in order for an appeal to be brought before the Court. It is common ground between the parties that the requirements of the CPR are that what is required is an Appellant's Notice accompanied by the appropriate fee or application for fee remission together with Grounds of Appeal. In my judgment there is force in the submission made by Mr Baumohl that these requirements are not especially sophisticated or taxing…. I am unable to accept the contention that it is necessary for a lawyer to be instructed before adequate grounds of appeal, sufficient to bring the appeal before the Court, can be drafted…"

19. Judge Hellman considered the basis upon which the Appellant's case was put. Important matters in his judgment are:

i) He took into account at [16] the Appellant's witness statement which said at paragraph 6 "I am slow in learning and taking instructions. I rely on my friends and family in dealing with matters that affect me due to my health issue."

ii) He noted that it was common ground that the Appellant is dyslexic. He made reference to the review decision letter which addressed the issue of her dyslexia at paragraphs 14–16, in particular at paragraph 14 which said "I am satisfied that the evidence on file shows that despite your dyslexia, you are well versed in contacting this Authority." Then, referring to the fact that the Public Sector Equality Duty had been fully considered throughout the decision, paragraph 16 of the decision letter said that reasonable adjustments did not have to be made in the case "as you have demonstrated your ability to seek assistance from family when needed and failed to request this assistance either from your aunt or from the Authority, in clarification of your Occupancy Agreement."

iii) He referred to the fact that the Appellant had been receiving assistance from her family and gave examples of the Appellant receiving the discharge of duty letter from the local authority on 6 December 2018 and submitting a request for review promptly thereafter on 10 December 2018.

iv) Finally at [20] the Judge noted:

> "…Ms Emambee has filed two witness statements in this appeal, but in neither does she explain why she took no action until 15 January 2019. Moreover, her solicitors, once she had consulted them, could have sent the application notice by special delivery, in relation to which the Post Office guarantees next day delivery. This was an option which would have been unaffected by Ms Emambee's dyslexia."

20. The request for review document was signed on 10 December 2018 by the Appellant. The first page is handwritten and, in giving objections to the decision reached and additional information, it refers to an attachment. The attachment comprises two typed pages which refer to the Appellant's dyslexia; these are reasonably well-constructed arguments objecting to the decision reached and providing additional information. Before the Judge was a witness statement of Lisa Newman dated 11 February 2019. Ms Newman is the Principal Appeals and Complaints Officer in the Islington Housing Aid Centre. She was the person who carried out the review of the 6 December 2018 decision. Apart from providing a detailed history of the Appellant's contact with the Respondents from 2014 onwards, she refers to her letter of 14 December 2018 asking for any further evidence to support the review. She points out the Appellant provided copies of tickets, boarding passes and passports subsequent to that letter to show that she had travelled with her baby daughter to Mauritius on 18 November 2018 and returned to the UK on 7 December 2018.

21. The Appellant submits that the Judge failed to have proper regard to the Appellant's circumstances and in particular her dyslexia. If one reads the judgment and the evidence it is clear that he had full regard to it, but came to the conclusion that in the circumstances of this case it was not a good reason. This he was entitled to do. Indeed, on analysis, I believe he was bound so to conclude. Dyslexia could not have been a reason for delay until 8 January 2019 when the Appellant first received the decision letter; nor could it have been a reason for delay after 15 January when the Appellant consulted solicitors. As to the period between 8 January and 15 January, the Judge rightly said: "Ms Emambee has filed two witness statements in this appeal, but in neither does she explain why she took no action until 15 January 2019." The only reference to this period is in her statement of 6 February 2019 where she said: "On receipt of the Authority's decision letter on the 8 January 2019, with my Aunt's assistance I sort (sic) legal assistance and an appointment was booked for me to see a solicitor who assisted me to file my application on 15 January 2019." If anything, that paragraph tends to suggest that the aunt was around to assist in this period. The specific ground of appeal therefore that "he failed to consider relevant matters" cannot be sustained.

22. On ground 3 it is again said, similarly to ground 1, that the Judge failed to give any adequate reasons for reaching the conclusion that the Appellant had not demonstrated good reason for bringing the appeal out of time. Alternatively it is said that no tribunal faced with these facts would have refused an extension of time. I reject both these submissions. It is clear that in the judgment at [16]-20] he considered the circumstances of the case. Most, if not all, of these were facts which were not in dispute, though apparently the point in [20] that the solicitors could have used special delivery was the Judge's own addition and not a submission by counsel. At [21] The Judge considered

all the circumstances and clearly used them to make his decision. There is no proper basis for submitting that the Judge did not give adequate reasons for his decision in this regard.

23. Indeed, even had the judge not given adequate reasons, Mr Choudhury accepted that this would not assist in the appeal as I would have to consider the matter afresh and, for the reasons already given, there was no evidence supporting the potential relevance of the dyslexia in causing the delay, or any part of the delay.

24. As for the point that the appeal was properly arguable and that the Judge was satisfied it had a real prospect of success, as Dove J said in *Al Ahmed* at [11], referring to the case of *Short*: "The merits of the substance of the appeal are no part of the consideration of this question", i.e. the question of whether there is good reason.

25. Therefore grounds 2 and 3 must also be rejected.

Summary

26. For those reasons the appeal is dismissed.