

COURT OF APPEAL

4th September, 1990

126.

Before: The Deputy Bailiff, Single Judge

Between:

A

Appellant

And:

S

Respondent

Application by the Respondent:

- (1) under Rule 16 of the Court of Appeal (Civil) (Jersey) Rules, 1964, as amended, for an extension of time until the 31st October, 1990, within which to file the respondent's case;
- (2) for an order, adjourning until the January, 1991, Sitting of the Court, the hearing of the appeal and cross appeal; and
- (3) for such other orders, including costs orders, as the Court feels just.

Advocate W.J. Bailhache for the Respondent.
Advocate J.A. Clyde-Smith for the Appellant.

JUDGMENT

DEPUTY BAILIFF: Because both counsel have been so reasonable and conciliatory it is unnecessary for me to say very much.

I had been prepared to recite the whole sorry background to this application because it seemed directly relevant to my decision, but it is not now necessary to do so.

Nor is it necessary for me to comment on the law to be applied, since there is no dispute between counsel that this is a case where the Court can properly exercise its discretion to grant an extension of time and an adjournment.

It is clear that there has been a very long, indeed excessive delay since a defective notice of appeal was first served by the appellant partitioner in July, 1988, and the failure of the appellant respondent to file his notice of appeal in his separate appeal at about the same time.

Thereafter the appellant petitioner, who should have filed her appellant's case by the 10th March, 1989, did not do so, as Mr. Clyde-Smith, has conceded until the 19th July, 1989, a period in excess of four additional months. However, all delays to that date were cured by the consent orders of the 10th July, 1990, which, inter alia, ordered that the respondent's case be filed on or before the 26th August, 1990.

It appears to me that prior to the 11th July, 1990, there had been faults on both sides and that I should not seek to apportion blame. What I am concerned with here is the delay from the 26th August, 1990, to the 31st October, 1990, applied for by the respondent, a period of just over nine weeks.

Mr. Clyde-Smith has conceded that this is an unhappy situation.

Although his client cannot believe that the respondent did not know the true situation, I accept, in default of other evidence, the contents of his affidavit. Therefore I agree with Mr. Clyde-Smith that in those circumstances, the respondent has suffered "severe inequity" and I am satisfied that in those circumstances I can review a consent order.

Mr. Clyde-Smith accepted that the respondent had just cause to change counsel and that it is extremely difficult for Mr. Bailhache to take over and be ready in time, and I agree with both those opinions.

Mr. Clyde-Smith also conceded that because the Court will be here dealing with money matters the appellant/petitioner can be compensated for any loss that she may be found to have suffered. And that therefore deals with the question of prejudice.

I am satisfied that the application is well founded. I therefore make an order under Rule 16(1) of the Court of Appeal (Civil) (Jersey) Rules, 1964, as amended, for an extension of time until the 31st October, 1990, within which to file the respondent's case; secondly, an order adjourning until the January, 1991, sitting of the Court, the hearing of the appeal and cross appeal; and thirdly, I make an order that costs will be costs in the cause.

No authorities.

