The Court of Appeal for Bermuda

CIVIL APPEAL No 15 of 2013

Between:

GORDON R WOOLRIDGE JR.

Applicant

-v-

BERMUDA HOSPITALS BOARD &

DR. COUNCIL MILLER

Respondents

Before: **Baker, President**
Bell, JA
Bernard, JA

Appearances: Applicant in Person
Mr Allan Doughty, BeesMont Law Ltd, for the 1st Respondent
Mr Kai Musson, Cox Hallet Wilkinson, for the 2nd Respondent

Date of Hearing & Decision: **18 June 2015**

DECISION

Baker P

1. This is an application by Mr Wooldridge to extend the time for lodging a Notice of Appeal. It is a sad and unhappy story because in May/June 2011, Mr Wooldridge suffered a very nasty injury to his right foot and he claims damages for negligent treatment and battery against the Bermuda Hospital Board, the First Respondent, and Dr Miller, the Second Respondent.

2. He commenced proceedings., but did not get a move on. The First Respondent, in written submissions, had this to say "since their inception, these proceedings have been marred by Mr Wooldridge's flagrant disregard of the rules of court and the orders of the Supreme Court of Bermuda despite the leniency that was shown to Mr Woolridge on several occasions by Hellman J." Mr Woolridge consistently failed to meet his obligation in bringing his matter forward which resulted in a peremptory order be put in place against him on 18 July 2013. Thereafter Mr Woolridge initially failed to meet his disclosure obligations and more fundamentally failed to file his expert evidence. On two occasions thereafter counsel and the defendant sought to enforce that order and on two separate occasions thereafter, Hellman J extended the deadline of the final order with a strike out in the event of failure to comply. On 29 October 2013 the final deadline fell and Mr Woolridge did not comply with the order to provide expert evidence nor did he seek leave to file affidavit evidence explaining why he still had failed to file his expert evidence.

3. Now this court has not been into any detail into the run up in these proceedings to the final peremptory order that was put in place on 18 July 2013.

4. In our judgment it is unnecessary to form any view about the extent, if at all, to which Mr Woolridge disregarded the rules and orders in the run up period. It is sufficient for the purposes of this appeal that the time came when he was required to file a medical expert's report in support of his claim. And despite being given more than ample opportunity by the judge to do so, he failed. And in consequence the action was brought to an end by the strike out on the 29 October 2013.

5. Mr Woolridge filed a Notice of Appeal on the 8 November 2013, but unfortunately he overlooked the fact that this was an interlocutory and not a final appeal and in those circumstances that he required leave to appeal.

6. The notice that he did file contained a number of grounds.

7. The first ground is that the judge erred in failing to take matters into account which he ought to have done in particular, that he erred in his decision to give such a stringent time limit on the production of the expert report and that the he had used all best endeavours to obtain from his medical expert overseas, especially in circumstances of which the judge was notified that the same expert was dealing with an immensely busy medical practice and her ailing father.

8. And as far as that is concerned it seems to us that there was ample opportunity for Mr Woolridge that if there were problems beyond his control to go back to the court, explain where the problems lay and how he intended to overcome them, if necessary by obtaining an expert report from someone else.

9. The second ground of appeal is that the judge was wrong to dismiss the action of the basis of lack of a medical report when the negligence aspect was only part of the claim. The claim also contained an allegation of battery. But the fact is that the court made an order, the court made it on a unless basis and the appellant failed to comply with it.

10. There are other grounds claiming that the judge erred that do not seem to us to be borne out including that the judge misdirected himself generally in dismissing the claim.

11. It is sufficient to say on the basis on those grounds of appeal and what we know of the claim that Mr Woolridge faced an uphill struggle even if he was able to pursue the appeal without leave which of course he is not.

12. In fact what happened after this was that Mr Woolridge made no communication whatsoever with the Registry until the week of the 18 May this year, that is some 18 months later when he received a communication from the

Registry pointing out that he needed to file a notice because the appeal required leave as it was an interlocutory appeal.

13. What had happened in the meantime, and this is not in dispute, is that there had been communication from the Registry to Mr Woolridge's office but he personally never saw any of the communications. He says that the office manager who would have received these communications has since had his services dispensed with. But that does not provide an answer to why nothing was done by Mr Woolridge if he hadn't heard anything from the Registry. Why he did not communicate with them and ask what happened to his appeal?

14. There is also the further point. As a lawyer he should have known that the rules require him to apply for leave as this was an interlocutory appeal. He did precisely nothing to inquire what had happened. He simply let time run.

15. In his affidavit in support of this application he says that the doctor who he had instructed had fallen ill and had a family crisis and could not produce the required medical report by the given date and he takes the point about part of the claim being in battery as opposed to negligence. He says counsel who was instructed in his case, Mr Perinchief, who had been member of his chambers, changed employment and went to be a consultant in the Attorney General's Chambers. And that in the circumstances he could only deal with his case as a litigant in person. He didn't have time to deal with it because he had a very busy practice and he simply couldn't afford any other counsel.

16. There seems to be some doubt that Mr Perinchief's departure was at such a time that it had any real bearing on this case but, be that as it may, that's only one small part of the events that occurred and in truth Mr Woolridge did nothing to pursue his claim.

17. In deciding whether or not to exercise the discretion that we undoubtedly have there are a number of factors that we have to take into consideration.

18. The first is the very extensive delay between the time when he should have lodged an appropriate Notice of Appeal and application for leave and the time that he did so. Had Mr Woolridge taken steps promptly after the strike out order to go back to the court with the appropriate medical report there is a real prospect he might had been allowed to have his case proceed on terms of payment of costs thrown away or something of a similar nature. But far too much water has flown under the bridge for that to be a consideration today. So the first point is very considerable delay.

19. The second point is the prospects for success for the appeal. In our judgment they can only be described as slim in the extreme. We have seen the grounds advanced and they do not seem to us to have much if any *prima facie* merit.

20. We note that even today Mr Woolridge has not been able to say that he has now got an expert medical report that supports his claim. When asked he says he cannot afford it, in truth the position seems to us to be that he knew this was an expense that would be money thrown down the drain unless he obtained permission to advance his appeal out of time.

21. The third point that the court has to consider is prejudice to the other parties. It is of note that the negligence and battery took place in May/June 2011 that is some four years ago, the period of limitation therefore has now passed and it would in our judgment be of significant prejudice to the Respondents if the action were resurrected at this stage.

22. One of the desirable factors in litigation is that there should be finality so that the parties should know where they stand after final orders of the kind that were made in this case, have been made. It is a hardship in our judgement for negligence and battery claims to be outstanding against professional men years after the event. They are entitled to finality as indeed is the Bermuda Hospital Board.

23. We should add we have considerable sympathy for Mr Woolridge and the problems that he has with his right foot, but applying the law we are quite unable to see a way in which we can resurrect his proceedings. The application is accordingly dismissed.

Cost

24. Cost will follow the event the respondents will have their costs.

Signed

Baker, P

Signed

Bell, JA

Signed

Bernard, JA