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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

B

Friday, 10 July 2009

BEFORE:

MR JUSTICE BURTON

C

BETWEEN:

DR ROGER STEPHENSON
- and -
DEVON PRIMARY CARE TRUST

Claimant

Defendant

D

E

MR JAMES LEONARD appeared on behalf of the CLAIMANT

MS SAIMA HANIF appeared on behalf of the DEFENDANT

F

PROCEEDINGS

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A MR JUSTICE BURTON: Let me deal first with Stephenson. Mr Leonard, Ms Hanif has an application to strike you out, which I suppose technically ought to be taken first.

MR LEONARD: I suppose so but when she produced her skeleton argument she did not refer to that.

B MR JUSTICE BURTON: Yes, Ms Hanif, if a barrister was hauled up before the Bar Council and accused of misconduct, say running a case which was utterly hopeless and was suspended for eight weeks from practising, and the appeal which he launched took eight weeks to come on, and he was then told it was completely pointless for him to proceed with the appeal because his suspension had run out, what would you be saying? I have never heard such nonsense as a suggestion that this is an academic appeal. The whole thing, from what I can see, is one of the worst wastes of, in this case, professional money that I have seen. C While I am dealing with the other case I would like you to have an opportunity of thinking whether there is not a different route that can be taken in this case. We cannot now save the money which has been thrown at it but maybe at least some kind of salvaging of (inaudible) can be preserved.

MS HANIF: (Inaudible)

D MR JUSTICE BURTON: Thank you.

(Another case was interposed at this point)

MR LEONARD: My Lord, the position is that the parties have agreed Item 7 that this court can vary the terms of the second decision.

E MR JUSTICE BURTON: Yes. There were three, so I think you mean the third decision.

MR LEONARD: The third one.

F MR JUSTICE BURTON: The first one was that you would withdraw. The second one was that your appeal should be allowed. The third one was that your appeal should be dismissed.

MR LEONARD: Yes. We are finding along the way that we did not really think it was justifiable on the papers as they stood but I will not go into that.

MR JUSTICE BURTON: Yes.

G MR LEONARD: The form of words that we would seek to have substituted in its entirety in paragraph 4 is this: "The Panel have decided to substitute the 23 January 2009 decision with the following decision:

H The respondent has withdrawn its reply to this appeal pursuant to rule 38(2)(b). The Panel has considered the documents provided by Dr Stephenson and the appeal against the contingent removal of 18 September 2008 is allowed."

MR JUSTICE BURTON: Yes.

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MR LEONARD: That seems to us to fit entirely with the chronology of events in an appropriate form.

MR JUSTICE BURTON: Yes. What is the argument about costs?

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MR LEONARD: I had an earlier draft, but it is not ready yet. We would like the costs obviously.

MR JUSTICE BURTON: Yes, on what basis?

MR LEONARD: On the basis- -

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MR JUSTICE BURTON: No, on standard or on indemnity?

MR LEONARD: We only have a figure for standard. Ordinarily we might have done otherwise but the schedule has been prepared on the basis that because it is a direct access rather than solicitors' costs I have actually been paid in advance for my attendance on an agreed contract basis.

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MR JUSTICE BURTON: Yes. Is there a difference between standard and indemnity?

MR LEONARD: Not on the basis of the contract that I have signed with my lay client and I would not want to suggest otherwise.

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MR JUSTICE BURTON: No. Recovering your costs would in fact recover all your costs on the standard basis?

MR LEONARD: Indeed, of these proceedings. There is no costs provision for the FHSA.

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MR JUSTICE BURTON: No, of course. But the cost of these proceedings, if I order standard costs, would in fact be the same as if I ordered indemnity costs?

MR LEONARD: Indeed, on the basis of the way I am contracted with my lay client.

MR JUSTICE BURTON: Very good.

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MR LEONARD: I have a figure which is agreed by the other side subject to liability, as it were.

MR JUSTICE BURTON: Yes.

MR LEONARD: The application is made on the basis that we have won.

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MR JUSTICE BURTON: You are pushing at an open door. I was only asking you whether you were asking for indemnity costs.

MR LEONARD: No.

A MR JUSTICE BURTON: Why on earth should they not have their costs?

MS HANIF: My Lord, I am instructed to oppose. I put it as simply as that. Those are my instructions.

B MR JUSTICE BURTON: You are instructed to oppose. As you can see from the fact I have the benefit of both sides' enormously lengthy – and I am not critical of that, I am just indicating how much money has been spent on this case. In addition, there was the respondent's bundle which I did not read, but I have read everything else. On the basis of the enormous amount of money and costs that have been thrown at this case, I had read the case and I formed a very strong view indeed about it. I would have been prepared to consider an indemnity costs application but that is not made. What is the figure?

C MR LEONARD: My Lord, the figure is £8,508.75, including value added tax.

D MR JUSTICE BURTON: Yes. I take the view that this was a complete mess from beginning to end. There must be something behind it all which I do not want to inquire into. The fact there were three different orders, the completely wrong decision that there had been a withdrawal when there was not, the extraordinary decision to conclude without having considered the facts at all, certainly if they had not properly, that your appeal was unjustified and yet it would be allowed, and then the third decision, by the same people who had allowed the appeal, to dismiss the appeal. All against a background in which your client was making the same noises as have in fact resulted in the agreement today. It could not be a clearer case for the ordering of costs.

E MR LEONARD: My Lord, thank you. We are disappointed because a lot has gone into this, as you will be aware, and the fact that even the costs order today is still being resisted.

MR JUSTICE BURTON: Yes, extraordinary.

F MR LEONARD: It suggests to me that there are people instructing my learned friend who simply do not have any insight whatsoever into the way in which this has come about, and particularly leading the FHSA into a blind alley on there being no residual issues to appeal against and allowing them to make the order that they did. It seems to us extraordinary.

G MR JUSTICE BURTON: And a waste of costs by this body which has much more important things to do. If your costs are £8,000 I am sure their costs were at least double that.

MR LEONARD: They were not, but they were certainly more, I am (inaudible)

H MR JUSTICE BURTON: Thank you very much. I am grateful at least, albeit at the eleventh hour, good sense has seen to a sensible result.

A MR LEONARD: My Lord, just to say for the record, you mentioned a withdrawal, of course you meant a withdrawal that the FHSA thought that Dr Stephenson was (inaudible) he plainly was not.

MR JUSTICE BURTON: No, absolutely.

MR LEONARD: There have been so many different - -

B MR JUSTICE BURTON: It was not a rule 9 withdrawal at all. It could have been (inaudible) That was the first wrong decision. The second wrong decision was the appeal being allowed but apparently unjustified. The third was the appeal being dismissed; extraordinary.

MR LEONARD: Yes.

C MR JUSTICE BURTON: There it is. Thank you very much. Will you produce an order for the associate?

MR LEONARD: Yes. I just have to do a little typing.

MR JUSTICE BURTON: How are you going to deal with it? By 2.30 pm?

D MR LEONARD: By 2.30 pm, yes. I will have it back at court by 2.30 pm.

MR JUSTICE BURTON: Thank you very much. That will include the order for costs assessed in the sum that you mentioned of £8,000-odd?

MR LEONARD: Thank you.

E MR JUSTICE BURTON: Thank you.

(Hearing concluded)

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