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R v Coroner for the Southern District of Greater London; ex parte Driscoll

Queen's Bench Division (Crown Office List)

159 JP 45, CO/2609/93, (Transcript:John Larking)

HEARING-DATES: 22 October 1993

22 October 1993

COUNSEL:

T Owen for the Applicant; J Cooper for the Respondent

PANEL: Kennedy LJ, Pill J

JUDGMENTBY-1: KENNEDY LJ

JUDGMENT-1:

KENNEDY LJ: This is an application for judicial review of the decision of Her Majesty's Coroner for Greater London (Southern District), who on 6 September 1993 gave notice of his conclusion that in relation to an inquest concerning the death of Peter Swan, Valerie and Pamela Driscoll, who are sisters of the deceased, are not properly interested persons within the terms of the Coroner's rr 1984, r 20. That is a rule which enables a coroner to decide who is entitled to examine any witnesses at an inquest. It reads as follows:

"(1) Without prejudice to any enactment with regard to the examination of witnesses at an inquest, any person who satisfies the coroner that he is within paragraph (2) shall be entitled to examine any witness at an inquest either in person or by counsel or solicitor:

Provided that

(a) the chief officer of police, unless interested otherwise than in that capacity, shall only be entitled to examine a witness by counsel or solicitor;

(b) the coroner shall disallow any question which in his opinion is not relevant or is otherwise not a proper question.

(2) Each of the following persons shall have the rights conferred by paragraph (1):

(a) a parent, child, spouse and any personal representative of the deceased;

(b) any beneficiary under a policy of insurance issued on the life of the deceased;

(c) the insurer who issued such a policy of insurance;

(d) any person whose act or omission or that of his agent or servant may in the opinion of the coroner have caused, or contributed to, the death of the deceased;

(e) any person appointed by a trade union to which the deceased at the time of his death belonged, if the death of the deceased may have been caused by an injury received in the course of his employment or by industrial disease;

(f) an inspector appointed by, or representative of, an enforcing authority, or any person appointed by a government department to attend the inquest;

(g) chief officer of police;

(h) any other person who, in the opinion of the coroner, is a properly interested person."

It will be seen at once that under r 20(2)(a), a limited number of close relatives have a right to examine the witness, but sisters are not in that class. So if they are to be heard they must rely on para 2(h). It is the contention of the applicants that in the particular circumstances of this case no reasonable coroner, on the information which was available to this coroner could properly have come to any conclusion other than that they should have the rights conferred by r 20(1). The task which Mr Owen for the applicants has undertaken is an onerous one because, as is clear from the wording of r 20(2)(h) it is the opinion of the coroner which is in issue, but if, as Mr Owen contends, the coroner had regard to irrelevant matters in arriving at his opinion, it may be that his conclusion ought not to stand.

The history is an unfortunate one. On 23 June 1992 the deceased was at a flat in south London with his wife Jenny. His behaviour there was such that the police considered it necessary to surround the premises and eventually he was shot dead by a police officer. Two days later an inquest was opened by the coroner Mr Rose, who a year later passed on the matter to the present respondent. In July 1992 solicitors acting for Pamela Driscoll wrote to Mr Rose telling him for whom they acted and that they had legal aid to instruct an independent pathologist. On 9 June 1992 the coroner Mr Rose replied indicating that if the solicitors would like the pathologist called he would need a copy of the pathologist's report.

Several months went by. Then on 16 November 1992 the solicitors wrote again, this time to the coroner's officer, reminding him whom they represented and inquiring if a date for the inquest had been fixed. On 15 December 1992 they wrote again in these terms:

"As you know we are instructed by Pamela Driscoll, the sister of the deceased.

We would like to inform you that our client will be represented at the forthcoming inquest by Counsel who is Mr Emmerson of 11 Doughty Street....."

The letter went on to give details of counsel's availability. On 7 January 1939 the solicitors spoke to the coroner on the telephone at his request. He was concerned about the volume of evidence and canvassed the idea of sending statements to the solicitors so that they could indicate which witnesses they

would like to cross-examine. The solicitor made a careful file note of the conversation and there was no suggestion that her client would not be allowed to cross-examine.

On 8 January 1993 the coroner wrote to the solicitors referring to the telephone conversation and enclosing copies of the statements of witnesses he intended to call to give evidence. He sought the views of the solicitors as to which witnesses need not be called, and the letter contains this paragraph on which Mr Owen places some reliance:

"You will of course bear in mind that the purpose of the Enquiry is to establish who, when, where and how the deceased came by his death and although it is clear from Valerie Driscoll that she feels that her intervention may have prevented this death, by the same token others may consider that it may have precipitated an additional death or placed her in danger. Whilst she has every right to express her view at the Inquest, insofar as the verdict is concerned all that the Jury will have to consider is whether this killing was lawful, unlawful or whether they arrive at an Open Verdict having heard all the evidence before them and having been directed as to the law."

Valerie Driscoll had given a ten-page statement to the police on 26 June 1992 which asserted that she had always kept in contact with the deceased, who had married his wife Jenny in 1991. Valerie said that she had spoken to Jenny on the phone and had tried to speak to her brother on the evening when he died. She and her husband had gone round and joined the police officers, including armed police officers, surrounding the flat. She heard a megaphone being used, then she heard shots being fired and later she learned from Jenny that her brother was dead. She then spoke to her sister Pamela who told her that the deceased had been staying with her for the past four weeks.

On 14 January 1993 the solicitors acknowledged receipt of statements and continued:

"As you are aware, the family will be represented at the Inquest by Counsel, Mr Ben Emmerson. The Witness Statements will be forwarded to Mr Emmerson for him to consider."

The solicitors have been criticised for saying that they represented the family because they never represented the widow, but read in context the letter clearly refers back to their letter of 15 December 1992 in which they made their position clear.

More correspondence followed, which I can omit, and on 8 June 1993 the inquest was resumed. Mr Emmerson was there and put on the representation chit that he represented "Family". The widow was not represented and it is clear from his affidavit that Mr Rose knew that Mr Emmerson was not representing her.

As the decision with which we are concerned is not a decision of Mr Rose, but of Dr Dolman it is unnecessary to explore further what happened on 8 June 1993. Suffice to say that the inquest was again adjourned and that Mr Rose decided to withdraw and pass the matter to the Deputy Coroner Dr Dolman, which he did on 11 June 1993 when he wrote to Dr Dolman a letter which contains this passage:

".....there are matters which have arisen which make it inappropriate for me to hear this Inquest and I have decided to disqualify myself from hearing it. A dispute arose between Counsel for Mrs Driscoll (who I believe described himself

as Counsel for the family) and me which is in effect a personal dispute in that it involves my personal dealings with his instructing solicitor who is now not with the firm or apparently contactable. As a consequence it could well be perceived that I was biased in relation to a submission that that Counsel sought to make and that I had made up my mind in advance of a possible submission which he reserved the right to make in the course of a hearing.

It would not be right for me to go into the rights and wrongs of that matter since you may in due course have to deal with it."

The letter goes on to explain that other representatives had complained about the Coroner's disclosure of statements.

On 24 June 1993 Mr Rose wrote to the solicitors explaining what he had done and apologising for any inconvenience. His letter ends:

"The need for justice not only to be done but to be seen to be done must take precedence above all other matters and Dr Dolman has kindly consented to undertake full responsibility for this Inquest in respect of which he will no doubt fix a mutually convenient date for all the parties and witnesses involved."

On 30 June 1993 Dr Dolman wrote to the solicitors to acknowledge a letter dated 18 June 1993. He said he was studying the statements and considering which witnesses to call, and concluded:

".....nowhere in your letter do you say whom you represent. I would be glad if you would let me know which party to the inquest you represent."

I doubt if that was a necessary enquiry. Dr Dolman must have known the answer from the file and in particular from Mr Rose's letter of 11 June 1993. However, on 8 July 1993 the solicitors replied enclosing a statement they had accidentally omitted from their earlier letter, and continuing:

"We are instructed on behalf of the deceased's sisters, Pamela and Valerie Driscoll. As they are close relatives of the deceased, we have occasionally, I believe, referred to ourselves as acting on behalf of "the family". I trust that there is no objection to the use of this term."

On 19 July 1993 Dr Dolman replied saying:

"Thank you for informing me whom you represent. Referring to them as "family" was indeed misleading. They do not come within the groups described as interested parties within Coroner's Rule 20. If you would like to write to me, explaining why you think I should consider them interested parties, I would be glad to consider the matter afresh."

The use of the word misleading was offensive and inappropriate. There was no evidence anyone intended to mislead and no one had been misled. Furthermore, as Mr Owen points out, the wording of the reference to r 20 is a little odd in that it fails fully to reflect what the rule sets out.

On 23 August 1993 the solicitors wrote to put their case in relation to r 20, and, as Mr Owen concedes, they took some bad points, such as res judicata and reliance on r 20(2)(a), but they did also take more persuasive points such as the history of constant contact over twelve months, including an appearance by

counsel at the adjourned inquest, without it ever being suggested that the sisters were not interested persons. They invited the Coroner's attention to Home Office Circular No. 53 of 1980, para 8 of which reads:

"The definition in Rule 16(2)(a) [now rule 20(2)(a)] is not intended to inhibit coroners, in appropriate circumstances, from using their discretion under Rule 16(2)(h) [now rule 20(2)(h)] to grant right of appearance to other members of the family such as stepchildren or grandchildren."

The solicitors also set out something of the deceased's family background, suggesting that the two sisters they represented were his closest living blood relatives, and they concluded:

".....it should be remembered that immediately after telephoning the police on the day of his death, he telephoned his sister. Valerie Driscoll was very close to the scene when he was shot, and was indeed trying to get through to speak to him in the hope that he would lay down his gun. She heard the fatal shots fired. We should also mention that [for] several weeks prior to his death Peter Swan had been living with his other sister, Pamela. In conclusion, we would submit that Pamela and Valerie Driscoll were the only real family that Peter Swan had at the time of his death, and as such they ought to be accorded the status of interested parties."

On 27 August 1993 Dr Dolman replied discounting decisions taken by Mr Rose, pointing out that sisters are not defined in r 20(2)(a) and also pointing out that the Home Office's advisory circular antedated the 1984 Rules. He concluded that the assertion as to family relationships merited further investigation and said that he would make his own inquiries before forming an opinion.

In para 6 of his affidavit of 28 September 1993 Dr Dolman sets out the inquiries he made. That paragraph reads:

".....I learnt from Mrs Swan that there was a great deal of conflict between herself and the applicants, amounting to what might be described as a family feud. I understood from her that the sisters had no interest in Peter Swan, her late husband. Indeed they had taken no interest in Peter Swan in all the years she had known them and had not even visited him when he was in hospital two years ago. The only member of the family to whom her husband had been close was Janet, a sister, who had taken her own life in 1991. I formed the view from the statement made by Pamela Driscoll at the time of Peter Swan's death that her interest in the inquest was not in what actually happened but in the hypothetical question of what might have happened had her sister, Valerie Driscoll, spoken to Peter Swan at the time. I felt that she wanted to be an interested person not to throw light on the events themselves but to criticise the actions and procedure of the police."

It is not clear from that paragraph whether Dr Dolman saw Mrs Swan personally, and we sought Mr Cooper's assistance about that but he was unable to help. It seems more likely that Dr Dolman was simply told by the Coroner's Officer what she would say because she did not actually make a written statement until 21 September 1993, but nevertheless the coroner considered her perception of the relationship between the deceased and his sisters as "crucial". I use the word advisedly because Dr Dolman uses it in his second affidavit of 20 October 1993 which begins:

"I make this further affidavit to underline the crucial fact that my

inquiries in late August 1993 had indicated clearly that Pamela Driscoll the applicant, and Valerie Driscoll, the deceased Peter Swan's sisters, had taken no interest in their brother Peter Swan in the months and years leading up to his death and that Mrs Jennifer Swan, the deceased's widow intended to be present at the inquest."

In his second affidavit Dr Dolman says that the contents of Mrs Swans' statement confirm what he had already learned the previous month, before he made his decision, so I turn to it. The first half of the statement deals with her own position, and it continues:

"I have been informed that Pamela and Valerie stated that they were very close to Peter. That is simply not true. I can say that throughout the time that I lived with Peter and later as his wife Valerie or Pamela hardly every contacted Peter, either in person, by telephone or letter. As far as I recollect they didn't even send him birthday cards.

In 1991, Peter was in hospital for two weeks. He received no visits from any member of his family whilst in hospital. It is the week after he came out of hospital that his sister Janet committed suicide. It affected Peter greatly as he had always been close to her. Even at that time he received no support from Pamela or Valerie. It is nonsense for them to suggest that they were close to him."

Clearly there is an issue as the extent to which the sisters maintained contact with their brother during the years before his death, hardly the sort of issue one would presume to resolve on paper, but the widow's statement does not seem to me to cast doubt on what Valerie Driscoll has said about what happened during the last weeks of the deceased's life, namely that he was living with his sister Pamela, and that Valerie was at the scene with the police officers when he died.

Returning to para 6 of Dr Dolman's first affidavit, I cannot say whether the statement made by Pamela Driscoll at the time of her brother's death justified the coroner in forming the view which he expressed because I have not seen that statement, nor for that matter has Mr Owen or those instructing him. But, whatever that lady's interest the coroner was no doubt well aware of his powers under r 20(1)(b) to disallow any question which in his opinion is not relevant or is otherwise not a proper question.

On 6 September 1993 Dr Dolman gave his decision in relation to the sisters:

"They do not have one of the relationships specified in rule 20(2)(a) and do not have an interest identical or even closely comparable with those of the persons identified in the other sub-paragraphs of rule 20. Acting as a reasonable Coroner in the light of all the inquiries I have made I do not consider them to have an interest under subsection (2)(h)."

The words used are lifted from the judgment of Pill J in R v Her Majesty's Coroner for Portsmouth ex parte John Keane 153 JP 658, a decision to which I will return.

The coroner was asked by the solicitors to reconsider his decision in the light of counsel's advice and he did so but adhered to his decision, so these proceedings were commenced.

Mr Owen concedes that there is no definition of "a properly interested person" to be found in the Coroner's Act 1988 or in the 1984 Rules, but he contends that a coroner who is considering how to exercise his discretion under r 20(2)(h) will naturally look first at the object of the inquest and then at the categories of persons referred to by the Rules to assist him to decide when he ought to regard the individual applicant as a properly interested person.

The object of the inquest is set out in r 36 which states that:

"(1) The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely

(a) who the deceased was;

(b) how, when and where the deceased came by his death;

(c) the particulars for the time being required by the Registration Acts to be registered concerning the death.

(2) Neither the coroner nor the jury shall express any opinion on any other matters."

In the instant case the only live issue seems to be how the deceased came by his death, and the coroner would no doubt have in mind r 42 which provides that:

"No verdict shall be framed in such a way as to appear to determine any question of

(a) criminal liability on the part of a named person; or

(b) civil liability."

Nevertheless it seems reasonable to conclude that close blood relations of a deceased who were in contact with him immediately before he died would have a genuine and proper interest in participating in the process of ascertaining how he died.

I turn therefore to the Rules themselves to see if there is anything which suggests otherwise or indicates that such persons ought not to be permitted to examine witnesses. Clearly, unlike a parent or a spouse, they are not given an express right to participate, but, as Mr Owen points out, they can participate in the investigative process in other ways. As a relative they can object to a pathologist (see r 6(1)(c)). If they tell the coroner they wish to attend or be represented at the post mortem examination they must be told when and where it is to take place (see r 7). Similarly any "near relative" whose name and address is known to the coroner must be told when and where the inquest is to take place (see r 19). All of that, submits Mr Owen, should lead a coroner readily to conclude that in any given case a near relative has a proper interest for the purposes of r 20(2)(h). Mr Owen invited our attention to the Report of the Brodrick Committee, and he submits that in the present case, particularly in the light of the history since the solicitors became involved, it was irrational for a coroner to conclude that the sisters were not properly interested persons. It might have been different if there was compelling evidence of a frivolous or vexatious interest, but that is not even suggested.

Mr Owen also submitted that the coroner should have allowed the sisters to

participate so as to put the other point of view from that likely to be advanced by representatives of the police. I find that less persuasive because the coroner is conducting an inquest, which as its name suggests is not adversarial, but it is a public inquiry and there is a public interest in not shutting out anyone who would seem to have a proper interest.

In the Keane case this Court upheld a coroner's decision not to allow the representative of a deceased's brother to examine witnesses. At Page 661F Pill J said:

"The applicant did not have one of the relationships specified in r.20(2)(a), which are "parent, child, spouse and any personal representative", and he did not have an "interest" identical or even closely comparable with those of the persons identified in the other sub-paragraphs of r.20. While a person may be a "properly interested person" under sub-para.(h) without having one of the other interests, the coroner cannot, in my judgment, be said to have been wrong in law in forming the opinion he did in the circumstances of the case."

Mr Owen, in my view rightly, invites our attention particularly to the last few words which relate the decision to the facts of that case. In that case there was not, as here, a significant history of contact before death between the sisters and the deceased, and of after death legal representatives of the sisters participating in the inquiry for a year without any doubt being cast on their clients' right to be heard.

In para 8 of his first affidavit Dr Dolman has helpfully set out how he came to the conclusion that is now being challenged. He says:

"I was aware that the deceased's widow was to be present at the inquest and might be represented as an interested person under Rule 20(2)(a). I knew of the serious conflict between the widow, Mrs Swan, and Pamela and Valerie Driscoll. They were not on speaking terms. I had learnt that the applicant Pamela Driscoll and her sister Valerie had not been close to Peter Swan the deceased despite what had been suggested to me. Peter Swan's close family relationship had been with his other sister Janet. I took into account the apparent motive for the applicant and her sister's request to be interested parties and be represented at the inquest. I was assisted on this point by reading the judgment in R v Poplar Coroner Ex Parte Thomas (Doris) TLR December 23rd 1992. I also read the judgment in R v H.M. Coroner for Portsmouth Ex Parte John Keane Vol.153 JPR658. Bearing all the evidence in mind I concluded that Pamela and Valerie Driscoll were not properly interested persons for the purpose of the inquest."

In my judgment that reveals that the route by which the coroner arrived at his decision was so seriously flawed that the decision itself ought not to be allowed to stand. In the first place the coroner was in no position to form a judgment in relation to the relationship which had existed between the deceased and his sisters prior to the deceased's death, and which now existed between those same sisters and the widow. He merely had before him information which at certain points appeared to conflict. In that context I note that in his second decision letter of 11 September 1993 the coroner refers to information confidential to himself, but there is no suggestion in the affidavits which he has placed before this Court of any information going beyond that set out in the widow's statement of 21 September 1993. Clearly the coroner did form a judgment and then had considerable regard to it. Indeed, as he himself says, he regarded it as crucial, but because such a judgment was premature it was an irrelevant

consideration. Next the coroner had regard to the apparent motive of the sisters to be interested parties and to be represented at the inquest. I assume that to be a reference back to the earlier para in his affidavit in which he speaks of his interpretation of the statement made by Pamela Driscoll at the time of the deceased's death. As I have said, we have not seen that statement, which if it contains anything of real significance is a little surprising, but in any event it could not assist the coroner as to Valerie's motive. Finally the coroner says that he was assisted by reading the Times report of the Court of Appeal judgment in R v Poplar Coroner ex parte ex parte Doris Thomas 23 December 1992 which neither side has suggested to us has any relevance.

Of course this Court will be very slow to interfere with a coroner's expression of opinion as to who is a properly interested person, for the purposes of r 20(2)(h), but when it is apparent that in forming that opinion a coroner has taken irrelevant matters into account and so has reached a conclusion at which no reasonable coroner properly instructing himself could have arrived, then his decision cannot stand. In my judgment that is the position in this case. I would quash the decision, but I would not make the declaration sought. In my judgment it must be for the coroner in the light of this judgment to form his opinion afresh.

In the course of the hearing we explored with counsel whether it is possible to define in general terms who for the purposes of r 20(2)(h) should be regarded as "a properly interested person". I doubt if such a definition is possible, because circumstances will vary so much and, as Mr Cooper pointed out, "properly interested person" are ordinary English words to which the coroner must be allowed to give an ordinary meaning (see R v East Sussex Coroner ex parte Healy [1989] 1 All ER 30, [1988] 1 WLR 1194). I doubt if, as Mr Owen tentatively suggested, it helps to define interest for the purposes of r 20(2)(h) by looking at what constitutes locus standi for the purposes of judicial review. Indeed casting an eye over the earlier part of r 20(2) shows that it lists many as having a right to be heard who in any given case may have no interest in exercising that right, so in forming his opinion for the purposes of r 20(2)(h) the coroner has simply got to look at the rule as a whole and at the circumstances of the instant case. For my Pt I think that he may be assisted by Mr Owen's submission in reply that a properly interested person must establish more than idle curiosity. The mere fact of being a witness will rarely be enough. What must be shown is that the person has a genuine desire to participate more than by the mere giving of relevant evidence in the determination of how, when and where the deceased came by his death. He or she may well have a view he wants to put to the witnesses, but there is no harm in that. Properly controlled it should assist the inquisitorial function. Because the function is inquisitorial I doubt if the Coroner when forming an opinion for the purposes of r 20(2)(h) in the case of a near relative of the deceased is likely to be much assisted by whether other members of the family propose to exercise their rights pursuant to r 20(2)(a), and in many cases, despite Mr Owen's reservations, I believe that it should be possible for the Coroner to form an opinion before the day of the hearing. It will certainly assist relatives and representatives if he is able to do so. As was pointed out in the Brodrick report, if the Coroner forms the opinion that the person seeking to be heard is a properly interested person his discretion is at an end. That person must then be afforded the rights set out in r 20(1).

JUDGMENTBY-2: PILL LJ

JUDGMENT-2:

PILL LJ: I agree. I add a few words only on the question of the meaning of the expression "properly interested person" in r 20(2)(h) on which subject the submissions before this Court have been fuller than those in earlier cases. The word "interested" should not be given a narrow or technical meaning. It is not confined to a proprietary right or a financial interest in the estate of the deceased. It can cover a variety of concerns about or resulting from the circumstances in which the death occurred. The word "interested" is not used in the rule to describe or identify the persons in the categories in r 2 (a) to (g) but it may be said that they can each have an interest in the sense contemplated. It arises in the case of a parent, child and spouse, out of the nature and closeness of the personal relationship to the deceased in each category. The personal representative has a legal duty in relation to the estate of the deceased. Beneficiaries under insurance policies and insurers may have a financial interest in the circumstances of the death. Someone who may have caused or contributed to the death has an obvious concern. Though of differing natures, the concerns of the deceased's trade union, the chief officer of police and the Government are readily understood, though the breadth of the wording in paragraph (f) is perhaps surprising. Of course there will be cases in which persons in some of those categories do not in fact have an interest in matters relevant under r 36 in the particular case. However, all those persons are capable of having an interest in the sense in which, in my judgment, the word is then used in the additional category, category (h), included at the end of the rule. Categories (a) to (g) do provide a guide to the types of interest envisaged in paragraph (h).

It remains to consider the significance to be attached to the word "properly" in paragraph (h). In the context it imports not only the notion that the interest must be reasonable and substantial, and not trivial or contrived, but in my judgment also the notion that the Coroner may need to be satisfied that the concern of the person seeking to intervene is one genuinely directed to the scope of an inquest as defined in r 36.

It must be accepted that r 20(2)(h) does permit and require the Coroner to form an opinion as to whether a person is properly interested. In the case of close relations I would not expect coroners normally to adopt a restrictive approach. However, there are likely to be circumstances in which a coroner can properly form an opinion that even a close relative is not a properly interested person within the meaning of r 20(2)(b).

I agree with the order proposed by my Lord and with his commentary upon the facts of this case.

DISPOSITION:

Judgment accordingly

SOLICITORS:

Wainwright & Cummmins; M Smith, Solicitor to the London Borough of Croydon