



Neutral Citation Number: [2020] EWHC 1760 (Admin)

Case No: CO20412019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/07/2020

Before :

MRS JUSTICE CUTTS DBE

Between :

CHARLES CONSTABLE

Claimant

- and -

THE CROWN PROSECUTION SERVICE

Defendant

The Claimant appeared as a litigant in person
The Defendant was not represented

Hearing dates: 18 June 2020

Approved Judgment

Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be listed on 3rd July 2020 at 10:00.

Mrs Justice Cutts DBE :

1. This is a renewed application for permission to challenge the decision of the Crown Prosecution Service (CPS) not to prosecute Constance Atkins and Brian Oxley for offences of fraud and Jane Oxley for an offence of conspiracy to defraud. The applicant contends that this decision was perverse to the extent that no reasonable prosecutor could have reached it.
2. There is also an application of an extension of time within which to renew the application for judicial review. The applicant submits that he is out of time because he has suffered ill health and stress as a result of these proceedings and that, as a litigant in person, he did not know the correct procedure.
3. I do not accept that there are good grounds for an extension of time. I have nonetheless considered the merits of the application.

The facts

4. Constance Atkins (previously Oxley) is the mother of Brian Oxley and Jane Oxley is Brian's wife. Although I have seen no evidence to this effect, the applicant submits that Jane Oxley is a legal professional specialising in probate and family law. Constance Atkins met Reginald Atkins (deceased) on 13th January 2002 when Reginald was 79 years of age. Mr Atkins was the applicant's uncle. Originally the applicant was an executor and beneficiary of Mr Atkins' will and estate. This position was subsequently changed by Mr Atkins removing the applicant as executor and then beneficiary. This has led to the present proceedings.
5. In April 2002 Mr Atkins asked the applicant if he would become the executor of his will. A will dated 23rd April 2002 confirmed the applicant as executor and beneficiary of 50% of Mr Atkins' estate which consisted mostly of a house at 37 Stone Close, Worthing. The will also gave Constance Oxley the right to live at the property until her death.
6. In a will signed and dated by Mr Atkins on 16th September 2002, the claimant was removed as executor and Brian Oxley appointed in his place. At this time the applicant was still a 50% beneficiary. Constance Oxley was named as beneficiary of the other 50% in consideration of a payment of £70,000 which was to be paid from the sale of her home.
7. On 17th September 2002 Mr Atkins underwent an operation and was diagnosed with cancer. On 18th September 2002 Mr Atkins instructed his solicitor in writing to "remove C Constable from my will and make clear that Rose [Mrs Oxley] would have the same rights as me at 37 Stone Close."
8. On 19th September 2002 Mr Atkins signed a will removing the applicant's share of his estate. He transferred the property into the joint names of himself and Mrs Oxley. This transfer was made by deed of gift. No payment was made.
9. The applicant states that Constance and Brian Oxley had secured his uncle's estate in 249 days. On 17th October 2002 Constance Oxley and Mr Atkins married.

10. On 30th April 2008 a codicil was added to Mr Atkins' Will changing the 30 day survivorship clause. The applicant was given a share of 25% of the property, his brother 25% and Brian Oxley 50%.
11. On 20th November 2008 Mr Atkins' will was changed for the final time removing the applicant and his brother as beneficiaries. This left Brian Oxley the absolute gift of residue by means of the 30 day survivorship clause.
12. Mr Atkins died on 31st July 2009. He was cremated on 17th August 2009.
13. On 20th August 2009 Brian Oxley and Constance Atkins signed an HMRC form. The applicant contends that they failed to declare Mr Atkins' share in 37 Stone Close and failed to declare his personal possessions. It is this document which forms the subject matter of the alleged fraud offences against Brian Oxley and Constance Atkins.
14. The applicant alleges that Constance Atkins, Brian Oxley and Jane Oxley conspired to fraudulently secure Mr Atkins' estate by any means whatsoever shortly after first meeting him in 2002, at a time when, he submits, they were fully aware that he was aged 79, very lonely and particularly vulnerable due to his serious ill health. He further alleges that the "suspects" also conspired to subsequently falsely declare his estate to probate so as to maximise their own financial benefit by defrauding the State. He submits that Mrs Oxley had been extensively employed as a legal professional for many years specialising in family law and probate. Both she and her husband gained experience of property conveyancing while developing an extensive chain of properties.

History of court proceedings

15. On 19th August 2009 the applicant entered a caveat at the District Probate Registry in Brighton preventing a grant of probate being issued. He claimed his interest arose from the fact that the will entered into in November 2008 was as a result of undue influence and/or lack of testamentary capacity. This meant that the applicant would be entitled either as his nephew under the laws of intestacy or under one of the previous wills to a proportion of the property where he was a beneficiary.
16. It was argued in pleadings by solicitors representing Constance Atkins and Brian Oxley that the marriage between Constance and Mr Atkins would have revoked all previous wills in any event. If the will was successfully challenged there would be an intestacy. On intestacy the whole estate would pass to Constance Atkins.
17. The applicant refused to withdraw the caveat. The caveat ceased to have effect on order of the court when the applicant failed to issue a claim within 28 days. His application for a rehearing of the order was dismissed on 13th April 2011. He was ordered to pay costs in the sum of £17,300 within 14 days.
18. On 8th April 2011 the applicant issued proceedings before the Chancery Division of the High Court for aggravated and exemplary damages. The Particulars of Claim alleged that Constance Atkins and Brian Oxley conspired to defraud the estate of Mr Atkins between 13th January 2002 and 20th November 2008. On 21st July 2011, on the application of the respondents, the claim was dismissed and the applicant was ordered to pay costs in the sum of £8,626.20.

19. The applicant made complaint of the same allegations to the Metropolitan Police who referred the case to the Sussex Police. After an investigation in 2009-10 it was determined that no criminal offence had been committed. The applicant submits that the complexities of the crime were not understood by the police.
20. On or around the 22nd February 2018 District Judge Henderson agreed at the request of the applicant to issue three summonses before Wimbledon Magistrates Court to commence a private prosecution against Constance Atkins, Brian Oxley and Jane Oxley.

The involvement of the CPS

21. The applicant brought the case to the attention of the CPS in February 2018 and by email on 29th March 2018 formally requested it to take over the prosecution on his behalf.
22. Applying the CPS guidance in respect of private prosecutions, on 17th December 2018 the case was reviewed by Simon Arloff, a Senior Crown Prosecutor from CPS London. He concluded that there was insufficient evidence to provide a realistic chance of conviction. This conclusion was endorsed by Mr Venkatasami, Deputy Chief Crown Prosecutor. Mr Arloff gave reasons for his decision which in summary were:
 - i) That there was no independent evidence of a conspiracy between the proposed defendants.
 - ii) There was no independent evidence to show that Mrs Atkins exerted undue influence over Mr Atkins that induced him to marry her or change his will. There was no independent evidence to show that either of the other two proposed defendants had exerted any undue influence in relation to the wills.
 - iii) Although the value of 37 Stone Close was omitted from the form IHT/205 when it was submitted, there was no independent evidence that either Mrs Atkins or Mr Oxley had any dishonest intention thereby. The legal test for dishonesty, as opposed to mistake, was not met.
 - iv) The property was listed on the form, albeit the value was missing, and so was not totally concealed from probate as alleged. Mr Oxley also wrote to the Brighton District Probate Registry in February 2011 to clarify that a mistake had been made on the form.
 - v) As the estate passed from Mr Atkins to his wife she was not required to pay inheritance tax and so there was no loss to HMRC at the time. As Mrs Atkins gifted 37 Stone Close to the Oxleys over seven years ago they are not required to pay inheritance tax. There was not and never will be a loss to HMRC.
23. In accordance with the CPS policy on the handling of private prosecutions Mr Arloff's decision was passed to the Special Crime and Counter Terrorism Division to quality assure that there had been compliance with the policy. On 28th December 2018 Simon Ringrose, the Unit Head from Special Crime and subsequently Bethan David, deputy Head of Division, were satisfied that the decision that there was insufficient

evidence to prosecute any of the offences was correct and complied with the policy on private prosecutions. The case was discontinued on 15th January 2019. Mr Ringrose determined that this decision fell within the Victims Right of Review Scheme.

24. On 25th February 2019 a Local Resolution Review took place at the request of the applicant. This was conducted by Christian Meikle, a Senior District Crown Prosecutor, who reviewed the decision to take over and discontinue the criminal charges against the three proposed defendants. Mr Meikle wrote to the applicant explaining that he agreed that there was no realistic prospect of conviction and that the decision to take over and bring the case to an end was the correct one. He noted that the evidence in the case presented consisted of the applicant's witness statement and some documentary exhibits. His reasons in summary were:
- i) There was no evidence of criminality in Mrs Atkins relationship with Mr Atkins.
 - ii) There was no evidence that the changes to Mr Atkins' will did not reflect his genuine wishes.
 - iii) There was no evidence of coercion or unlawful pressure being applied to Mr Atkins. There was no evidence that he lacked capacity or did anything that he did not wish to.
 - iv) Although Mrs Atkins actions by first attempting to sell the property and then transferring it to her next of kin after Mr Atkins' death may seem callous, she was of advancing years and parents frequently take action to prevent those surviving them paying inheritance tax. It was not illegal.
 - v) The value of the property was omitted from the IHT205 form. However, on sale of the property the value would be communicated to HMRC when solicitors submitted the stamp duty land tax return. Omitting the value on the form would not hide it from HMRC. The inheritance tax limit in any event would not have been reached unless Mrs Atkins had considerable further assets.
 - vi) There was no evidence of any criminality in Mr Atkins' decision to replace the applicant as executor.
 - vii) The withholding of the severance document does not of itself show an intent to defraud the Revenue in the future. It would be unlikely to achieve that aim.
 - viii) There was no loss to the Exchequer in the actions of the proposed defendants.
 - ix) There was no evidence that Jane Oxley advised the other two proposed defendants. Even if she did, there was no evidence that she did not do so legitimately.
25. The applicant requested a final independent Victim's Right of Review which was conducted by Cara Pickering, a specialist prosecutor from the Appeals and Review Unit of the CPS. She concluded that the earlier decision to take over and discontinue

the private prosecution was the correct one. This was communicated to the applicant in a letter dated 17th April 2019. In summary her reasons were as follows:

- i) The applicant's claim that Mrs Atkins and Brian Oxley, in completing form IHT/205, knowingly conspired to mislead the Probate Registry even as to the existence of the property is unsupported on the evidence. The address of the property was included on the form.
- ii) There is no evidence that Mr Oxley knew of the Declaration of Severance at the time he signed the form or when it was sent to Mrs Atkins.
- iii) The applicant alleged that the fraud was perpetrated to ensure that HMRC would be unaware of the asset in the event of the death of Mrs Atkins. However, they did not investigate after they were made aware of the Declaration and have confirmed that the actions of the proposed defendants have not led to a loss to the Exchequer.
- iv) Given the threshold for inheritance tax no such tax would have been payable on the property in any event. There is no evidence that, on Mrs Atkins' death, Mr Oxley would be above the threshold.
- v) There were omissions of the value of the property in form IHT/205. However, the property was named on the form. The prosecution would, unlikely, be able to show to the required standard that the omission was dishonest rather than a mistake.
- vi) There was no obvious gain or loss to be made by the alleged fraud.
- vii) All that the applicant alleged against the proposed defendants in relation to motive is speculation and cannot be proved.
- viii) There is no evidence that the proposed defendants acted dishonestly either together or individually. Mr Atkins received advice from a solicitor on each occasion he made a will. He was entitled to do as he wished with his estate.
- ix) There is no evidence against Jane Oxley to show that she is a legal professional or that begins to suggest that she was involved fraudulently with the other proposed defendants to secure the estate of Mr Atkins and falsely declare the value of it to probate.

Grounds for judicial review

26. In his written submissions the applicant argues that the decision by the CPS is perverse such that it could not have been reached by any reasonable prosecutor. He relies principally on what he sees as the strength of the evidence in this regard. In summary his submissions include the following:

- i) In her reasons Cara Pickering materially misinterpreted the evidence.
- ii) The prosecution has failed to address a substantial amount of evidence.

- iii) Ms Pickering failed to properly appreciate the role of Mr Oxley and his fiduciary duties when he filled in form IHT/2015.
 - iv) The CPS have failed to understand the complexity of the proposed defendants' deception.
 - v) The CPS has misunderstood the law, particularly that relating to dishonesty as set out in *Royal Brunei Airlines v Tan [1995] 2 AC 378*.
 - vi) The CPS failed to appreciate that the police had misunderstood the law and facts when they investigated the matter.
 - vii) Although the evidence in this case is circumstantial there are many precedents of criminal convictions being obtained on such evidence. The question of dishonesty should be left to a properly directed jury.
27. In renewing his application before me the applicant highlighted two aspects of his submissions to support his contention that the decision of the CPS was perverse.
28. The first pertained to the reasoning of Ms Pickering that the omission of the value on the form IHT/205 could have been a mistake. The evidence clearly pointed towards dishonesty. Mr Atkins' 50% as tenant in common was not declared, the property was not declared as passing by survivorship to the spouse and the initial 50% share that was obtained as a gift less than seven years earlier was not declared. The prosecutor failed to acknowledge that Brian Oxley only amended his declaration after the applicant refused an offer of money to withdraw the probate caveat and far later than provided for in the form. Any reasonable and honest person would conclude that the declaration was dishonest. The CPS decision that dishonesty could not be proved to the required standard is thus perverse.
29. The second concerned the point about no immediate loss to the Exchequer. The CPS had failed in this regard to understand that current guidelines state that HMRC do not investigate estates declared as under the IHT threshold that are passing to a spouse. The applicant submitted that the evidence taken as a whole would lead any reasonable person to conclude that there was a cunning plan to conceal the fact that property which they had not paid for was owned outright by the surviving spouse who intended to pass it on to her son who was also the executor.
30. The applicant informed me that he has submitted a new application to the Justices seeking three additional summonses in the names of the executor, his solicitor and counsel who were involved in this matter for the offence of conspiring to pervert the course of justice and accusing the solicitor and barrister of aiding an offender when obtaining court orders on behalf of the executor in the Holborn Probate Court. I am informed that the District Judge is awaiting the result of this application before making a final decision in this regard. If granted permission to judicially review the applicant proposes to apply to adjourn any hearing pending the prosecution of these individuals. This concerns the decision of another court and future intent by the applicant. The information has played no part in my decision on the present application.

Response to the applicant's submissions

31. In written submissions the respondent refutes the contention that the decision by the CPS not to prosecute in this case was perverse or one at which no reasonable prosecutor could have arrived.
32. The respondent points out that the Chancery Division of the High Court have ruled against the applicant and the police investigations have revealed no criminal offences. The material and lengthy representations supplied by the applicant has been reviewed independently by at least four lawyers from the CPS, all of whom came to the same conclusion that the evidential stage of the Full Code Test is not met. There are many strands to the applicant's argument but the respondent restricted its submissions to the evidence needed to support a prosecution for the criminal offences alleged in the summonses. As dishonesty could not be proved the other elements of the offences did not fall to be considered.
33. The decisions not to prosecute were correct and reasonable based on the material provided.

The law

34. There is a well-established principle that the Administrative Court will only rarely intervene in a prosecutorial decision.
35. As Laws LJ said in *R (Birmingham and others) v Director of SFO* [2007] QB 727 at [63]:

“There is much authority to the effect that the jurisdiction to conduct a judicial review of a public authority's decision to launch or not to launch a prosecution, though it undoubtedly exists, is to be exercised sparingly...Where the decision is not to prosecute...there will have been expert assessments of weight and balance which are so conspicuously within the professional judgment of the statutory decision maker that there will very rarely be legal space for a reviewing court to interfere.”

Discussion and conclusion

36. I have carefully considered the applicant's written and oral submissions in this case. I am however unpersuaded that there is any arguable foundation for the proposition that the decision of the CPS not to prosecute was perverse or one which no reasonable prosecutor could reach. Indeed I find the application totally without merit.
37. As set out in *Birmingham* it is extremely difficult to prove such a proposition. The applicant in my view does not come close to doing so. As the respondent points out at least four lawyers within the CPS have independently considered whether the proposed defendants should be prosecuted for the offences alleged by the applicant. On each occasion the correct test was applied. There has been no misunderstanding of the law nor of the facts. Each prosecutor, for the reasons given, has concluded that the prospects of a successful criminal prosecution are not such as to justify the continuation of one. That is manifestly a conclusion that, on the evidence in this case and for the reasons given, each prosecutor was entitled to reach. Earlier decisions,

including by a Chancery Judge, were consistent with that view. This is not arguably one of those rare cases where there is legal space for a court to interfere. The applications for an extension of time and for permission for judicial review are accordingly refused.

Costs

38. There is an application by the respondent for costs in the sum of £1,507.20 for the preparation of the Respondent's Notice. The applicant has submitted that he should not be required to pay costs as he is a man of limited means and "technically bankrupt". He is still paying the costs from the order of Sir Wynn Williams when he refused this application on paper. These are not, in my view, adequate reasons for not making an order for costs. The applicant chose, when his initial application for permission was refused, to bring these proceedings. The respondent has been put to expense as a result. I therefore make an order for costs in the sum of £1,507.20 against the applicant.