

Dr. C.W. Thompson

Appellant

v.

The Administrator General for Jamaica
(Administrator for Estate Carol
Morrison, deceased)

Respondent

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE
13TH MAY 1991

Present at the hearing:-

LORD KEITH OF KINKEL
LORD GRIFFITHS
LORD ACKNER
LORD OLIVER OF AYLMEYTON
SIR EDWARD EVELEIGH

[Delivered by Lord Griffiths]

This is an appeal from the order of the Court of Appeal of Jamaica dated 5th April 1990 dismissing an appeal from the order of Orr J. refusing to set aside an *ex parte* order by Ellis J. renewing a writ of summons filed by the plaintiff/respondent.

Carol Morrison died in the University Hospital of the West Indies on 23rd November 1986. The University Hospital is a public authority within the meaning of the Public Authorities Protection Act: see *Mildred Millen v. The University Hospital of the West Indies Board of Management* S.C.C.A. 43/1984 (unreported) and accordingly the limitation period for any action alleging negligence against the hospital is twelve months.

A writ was issued by the respondent claiming damages on behalf of the estate and dependants of Carol Morrison, alleging that her death was caused by negligent medical treatment by the servants or agents of the hospital, including two named doctors. The hospital was named as the first defendant, Dr. Ramprasad the second defendant, and Dr. C.W. Thompson, the appellant, the third defendant. The writ was issued on 23rd November 1987, the last day of the limitation period.

The respondent encountered difficulty in serving the two doctors and the respondent's solicitors therefore took out an *ex parte* summons to renew the writ for a period of six months from 23rd November 1988 and for an order for substituted service on the two doctors. The summons was supported by an affidavit sworn by a partner in the firm of attorneys-at-law acting on behalf of the respondent, in which he deposed:-

"That I am informed by Mr. Beresford Richards, Process Server, and do verily believe that to date despite extensive efforts made by him he has been unable to see the Second Defendant, Dr. Ramprasad or the Third Defendant, Dr. C.W. Thompson, and I attach hereto a copy of letter dated the 23rd day of September 1988 from the same Beresford Richards to my firm outlining the efforts to serve these Defendants and I label this letter 'JSM 1' for identity."

The material parts of the letter from the process server read:-

"Re the above suit, I return you Writs of Summons for Doctors Ramprasad and Thompson not served.

I went to the University Hospital where I made extensive enquiries.

I received information that Dr. Ramprasad left that Hospital and was working at the Kingston Public Hospital and there was a Dr. Thompson there who used to work on Ward 9 but it was not known if that Dr. is still working at that Hospital.

I went to Ward 9 which is a Maternity Ward and spoke to a Matron and a Sister there. They both informed me that there are Four (4) Doctors on that Ward but a Dr. Thompson is not known of.

I spoke to the Matron and Sister at different times.

I then went to the Kingston Public Hospital where I made extensive and discreet enquiries.

I received information that a Dr. Ram Pasargh who was an Indian, used to work at that Hospital but he ceased working there between January - February of this year and has since migrated and his whereabouts is not now known.

The Doctors could not be located for service to be effected."

The summons was heard by Ellis J. on 7th November 1988 and he made orders for renewal of the writ for six months from 23rd November 1988 and an order for substituted service by service on the hospital administrator or assistant hospital administrator of the University Hospital.

Pursuant to the order for substituted service the writ was served on the hospital administrator on 23rd November 1988 and received by the appellant on that date. The appellant entered a conditional appearance, and on 4th January 1989 issued a summons to set aside the order of Ellis J. for renewal of the writ on the ground that the order deprived her of the benefit of the one year limitation period applicable to her as a servant of the hospital. On 22nd June 1989 Orr J. dismissed the appellant's application. The appellant then appealed to the Court of Appeal who dismissed her appeal.

In renewing the writ for six months Ellis J. exercised the power contained in section 30 of the Judicature (Civil Procedure Code) Law which provides:-

"30. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to the Court or a Judge, for leave to renew the writ; and the Court or Judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ. ... and a writ of summons so renewed shall remain in force, and be available to prevent the operation of any Law whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the filing of the original writ of summons."

The Court of Appeal reviewed the now familiar English authorities dealing with renewal of a writ in circumstances which may affect the running of a limitation period. It was submitted on behalf of the appellant that the Court of Appeal had misapprehended the effect of these decisions and had concluded that it was unnecessary to consider whether there was any good reason to renew the writ, unless the case was one in which the application for an extension was made at a time when the writ had ceased to be valid and the relevant period of limitation had expired.

Their Lordships do not so read the judgment of Campbell J.A. with which the other Justices of Appeal agreed. Campbell J.A. recited the terms of section 30 of the Judicature (Civil Procedure Code) Law in his judgment and expressly referred to the evidence before Ellis J. which supported the respondent's submission that reasonable efforts had been made to serve the appellant with the writ. He also cited the following

passage from the judgment of Lord Goddard in *Battersby and Others v. Anglo American Oil Company Limited and Others* [1945] 1 K.B. 23:-

"... 'and in any case it should only be granted where the court is satisfied that good reasons appear to excuse the delay in service, as, indeed, is laid down in the order.' (Order 8 r 1) (emphasis mine)."

These abstracts taken together with the judgment as a whole satisfy their Lordships that the Court of Appeal was, as their Lordships would expect, fully seized of the terms of section 30 and well aware that a judge must be satisfied that reasonable efforts have been made to serve the defendant, or that some other good reason exists, before ordering the renewal of a writ, regardless of any question of limitation.

The Court of Appeal clearly regarded the evidence before Ellis J. as sufficient to justify the extension of the writ on the ground that reasonable efforts had been made to serve the appellant which had so far proved unsuccessful. The appellant's counsel criticised the evidence and suggested that further and more effective efforts should have been made before the judge would have been justified in ordering an extension of the writ. But this was essentially a matter for the exercise of the judge's discretion and it would be wrong for an appellate court to interfere merely because they might on the facts have come to a different decision. There was no attempt to challenge the evidence of the process server when the matter came before Orr J. on the *inter partes* hearing and their Lordships are satisfied that no grounds exist which would justify them in interfering with the exercise of the judge's discretion, particularly when it has already been upheld by the Court of Appeal.

In argument, though not in the grounds of appeal, it was suggested that it was inconsistent to make an order for substituted service and an order for extension of the writ because substituted service could have been effected in the time remaining to run for service of the original writ. But when the summons was issued asking for both forms of relief it would not necessarily be known on what date it would be heard and the nearer to the date of the expiry of the writ the more reasonable it is to make both orders. In fact the orders were made some two weeks before the expiry of the original writ and in the circumstances it was a reasonable precaution to grant both forms of relief.

For these reasons their Lordships will humbly advise Her Majesty that this appeal should be dismissed.