

General Form of Judgment or Order

In the County Court at
Kingston-upon-hull

Claim Number A56YJ628

Date 22 December 2016



MRS JESSIE CORDERY (WIDOW AND ADMINISTRATRIX OF THE ESTATE OF MR ANDRE	1 st Claimant Ref CL.32852.1.CL
DONCASTER & BASSETLAW HOSPITALS NHS FOUNDATION TRUST	1 st Defendant Ref NHSLA16019

Appeal Reference No. 9 of 2016

In the Matter of an Appeal from a Decision of District Judge Baddeley made on 16 February 2016 (typed on 25 February 2016)

The Claimant is the Appellant
The Defendant is the Respondent

Before His Honour Judge Robinson sitting at The Sheffield Appeals Centre, The Law Courts, 50 West Bar, Sheffield S3 8PH on 13 December 2016

Upon considering the Appellant's Notice and the subsequent skeleton argument

IT IS ORDERED THAT

1. The Appellant has permission to appeal the order whereby the application for an interim payment on account of costs pursuant to CPR 44.2(8) was refused and the Claimant was ordered to pay the costs of the application.
2. No further documents need be filed.
3. The Bundle filed in support of the Application for permission to appeal may stand as the Appeal Bundle. It must be served on the Respondent if not already done.
4. The parties must comply with the directions contained within Section 6 of Practice Direction 52B in so far as they are relevant to this Appeal.
5. The Appellants must file, within 21 days of the service of this order, a full appeal bundle, which must contain the documents set out in PD 52B para 6.4(1) and may contain any relevant documents specified in PD 52B para 6.4(2). In particular, the bundle must include a transcript of the hearing before the

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Produced by: K Wildsmith
CJR065C

Judge/judgment of the Judge. The appeal bundle must be paginated and indexed, and must contain only those documents which are relevant to the appeal.

6. The appeal will be heard at Sheffield before The Designated Civil Judge on Friday 17 March 2017 at 11:00 at Sheffield County Court, The Law Courts, 50 West Bar, Sheffield, S3 8PH with a time estimate of 3 hours.
7. Any supplemental skeleton arguments shall be filed and served by no later than 3 days before the hearing date.
8. There is a stay of execution on the order pending the determination of the appeal.

This order was made without a hearing. Attention is drawn to CPR 3.3(5) which permits a party affected by this order to apply to have it set aside, varied or stayed. This does not include the granting of permission itself, which is governed by Rule 52.9. The Court specifies that the period within which such application must be made is not later than 7 days after this order is served.

Judges Notes/Comments

1. I appreciate that I have not had the benefit of hearing submissions to the contrary, and the observations set out below must be taken to be subject to receipt of such submissions.
2. Subject to the above caveat, it seems to me that this appeal is bound to succeed. If the parties agree I will dispose of the appeal by way of consent order which may be lodged without payment of fee – to save the expense of appearances.
3. I have read the transcript of the telephone hearing. It seems to me that the District Judge was completely misled by the Advocate for the Defendant.
4. The Defence advocate directed the attention of the Judge to chapter 5 of the 2015 edition of Cook on Costs.
5. That chapter deals with interim payments on account of costs **by the client to his own solicitor**. It has no relevance to a claim for an interim payment on account of costs by the paying party to the receiving party. That issue is dealt with at chapter 25 of Cook.
6. The Judge was directed to a passage from Cook (2015) at page 85, paragraph 5.24 in these terms:
“... there is no scope to seek an interim payment of costs until a detailed assessment hearing is requested (via and interim costs certificate). ...” and
“...If you do not get an order as discussed here, you will have to wait until you have requested a detailed assessment hearing before being able to apply for an interim costs certificate.”
7. Those passages persuaded the Judge to conclude that the court had no jurisdiction “to entertain an application for payment on account of costs until [CPR] 47.16 kicks in, once you’ve lodged your request for detailed assessment”.
8. Those observations apply only to payment by the **client to his own solicitor**.
9. Chapter 25 of Cook (2015) is entitled “payment on account of costs”. It is to this chapter that the Judge should have been directed. The commentary is unchanged in the 2016 and 2017 editions. I leave it to the parties to read it themselves. To my mind it makes it clear that when dealing with applications for interim payments on account of costs **between the paying party and the receiving party** it is clear that, following

the rule change, rule 44.2(8) provides that a court **will** order the paying party to pay a reasonable sum on account unless there is good reason not to.

10. By consent order dated 14 October 2015: “The Defendant do pay the claimant’s reasonable costs ... to be subject to detailed assessment if not agreed”. That brings Rule 44.2(8) squarely into play.
11. Thus, unless I have fundamentally misunderstood something, this appeal is bound to succeed. If it proceeds to a hearing, and this analysis ultimately prevails, I shall be asking why the Judge’s attention was drawn to an irrelevant chapter in Cook and why his attention was not drawn to Chapter 25.
12. If my analysis turns out to be wrong, then I shall rule accordingly.