

Case No: GLC/118/03

Neutral Citation Number: [2005] EWHC 3284 (Ch)
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Monday, 16 May 2005

Before :

MR JUSTICE LADDIE

Between :

IRENE PARRY

Claimant

- and -

MR AND MRS PARRY

Defendant

MISS I PARRY appeared in person
MR A HEYLIN (instructed by Alther & Ball) appeared on behalf of the Respondent

Hearing date: 16 May 2005

Approved Judgment

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MR JUSTICE LADDIE

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[Corrected 18/2/06 without access to the original documents or court file.]

Mr Justice Laddie :

1. I have before me today an appeal by Mrs Irene Parry against a bankruptcy order made by District Judge Jackson in Wigan on 1 April 2003. That bankruptcy order was based upon a statutory demand, under section 268(1)(a) of the Insolvency Act 1986, which had been presented on 30 October 2002. I will come back to the contents of that statutory demand in a moment.
2. The origin of the debts, which were the subject of the statutory demand, is a boundary dispute between neighbours; Mrs Irene Parry on one side and Mr and Mrs Preston on the other. That had generated proceedings commenced in the Liverpool County Court in 1996. Judgment was given in favour of Mr and Mrs Preston on 24 November 1999. An order for costs was made in favour of Mr and Mrs Preston. There was a detailed assessment which is dated 17 July 2001. On that assessment the Cost Judge determined that Mrs Parry had to pay the Prestons £14,863.75 by way of costs.
3. It appears that, at the original hearing of the boundary dispute, Mr and Mrs Preston were in receipt of legal aid. Mrs Parry had been in receipt of legal aid under a certificate but that certificate expired, or was withdrawn, in March of 1998, a year and a half before the trial and judgment in the action.
4. Subsequent to the Prestons' success in the proceedings, the question arose as to the extent to which the Prestons would have to reimburse the legal aid fund in respect of costs which had been paid for by the fund. The details of the negotiations between the parties is irrelevant for this purpose, suffice to say that the Prestons have had to repay all the sums paid out by the legal aid fund in support of them in the boundary dispute litigation. It follows that the costs incurred in advancing their case in the boundary dispute have been borne in their entirety by Mr and Mrs Preston.
5. The bankruptcy order was made on 1 April 2003. From that order Mrs Parry appealed. Before me she has challenged, in particular, the order for costs made on the detailed assessment of 17 July 2001. However, I think it is worth mentioning that the order for costs, although it represents the single largest debt, is not the only debt referred to in the statutory demand. Indeed the statutory demand relies upon the following; an order for damages dated 24 November 1999 in the sum of £300, half of surveyors' fees also dated 24 November 1999 and the cost of tree removal, also based upon an order of 24 November 1999, in the sum of £165. The surveyors' fees were £161.56. There was also a costs order made against Mrs Parry on 15 April 2000 in the sum of £694.04 and an order for costs in relation to an unsuccessful application to the Court of Appeal dated 1 November 2000 in the sum of £3,792.85. There is a further costs order made on 4 February 2001 in the sum of £252.92, and another costs order dated 7 January 2002 in the sum of £323.13, a further costs order on 13 May 2002 in the sum of £193.88, and a final order for costs in the sum of £163.06 made on 8 October 2002.

6. Thus, even if one ignores the order for costs on the detailed assessment, the other debts covered by the statutory demand exceed £5,000. Nevertheless, Mrs Parry advances two major arguments against the bankruptcy order. First she says that Mr and Mrs Preston should not be entitled to seek costs against her because they have benefited from both having legal aid and then the increased value of their property which followed from their success in the action. This is entirely misconceived. The increase in value of their property resulted from the fact that the boundary dispute no longer hung like a cloud over the title to their property. Whether or not their property has gone up in value is quite irrelevant when assessing whether or not they were entitled to recover costs against Mrs Parry for having conducted unsuccessful litigation against them.
7. Second, the issue of the legal aid received by the Prestons is also irrelevant. Although it is undoubtedly true that, for a time, the Prestons' legal costs were being met by legal aid, that is no longer the case, and the legal aid has been repaid in full. For all purposes therefore, in this litigation it can be taken that Mr and Mrs Preston have had to fund their own lawyer's costs for their dispute with Mrs Parry.
8. The other point taken by Mrs Parry is that the detailed assessment flowing from the order for costs in the Prestons' favour on 24 November 1999 must be at fault because she was in receipt of legal aid until March 1998 and some of the costs encompassed within the detailed assessment must be taken to have been incurred in respect of the period before March 1998; that is to say the period during which she was in receipt of legal aid. As she says, if she was protected by a legal aid certificate, it would not be appropriate for the Prestons to recover costs in respect of any such period when a legal aid certificate was in place.
9. The problem I have with this argument is that if there was indeed any basis for saying that the assessment included costs from the period during which Mrs Parry was protected by a legal aid certificate, the correct course to follow would be to appeal the assessment. There has been no such appeal, or if there has been it clearly has not been successful. It follows that the order for costs made as a result of the assessment stands and it is not appropriate for me, at this stage, to go behind it and to enquire whether or not, as Mrs Parry infers must be the case, it included costs in respect of the period before March 1988. The fact is that there are a significant number of financial orders against Mrs Parry. They add up in total to just under £20,000. They are the subject of the statutory demand. They fully justified the making of a bankruptcy order. I can see no basis whatsoever for setting aside that order and I will dismiss this appeal.
10. I will make an order that the costs both here and in relation to the hearing on 2 July should be paid by Mrs Parry. A detailed assessment of costs is ordered.