THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

GRENADA

GDAHCVAP2014/0036

BETWEEN

PETER THOMAS

Appellant

and

[1] DESIREEN DOUGLAS
[2] ANTHONY DOUGLAS
[3] ANGELA DOUGLAS

Respondents

Before:

The Hon. Dame Janice M Pereira, DBE	Chief Justice
The Hon. Mr. Davidson Kelvin Baptiste	Justice of Appeal
The Hon. Mr. Paul Webster	Justice of Appeal [Ag]

On written submissions:

Mrs. Sabrita Khan-Ramdhani of Ramdhani & Associates
for the Appellant
Mr. Deloni Edwards of the Law Office of George E. D. Clyne
for the Respondents

2016: February 15.

Interlocutory appeal – Appeal against exercise of judicial discretion – Circumstances in which Court of Appeal will interfere with exercise of trial judge's discretion – Whether learned trial judge erred in exercise of her discretion by granting injunctions against appellants – No reasons for judge's decision, or transcript or notes of proceedings in the

court below contained in record of appeal – Appellant's failure to request written reasons before or after filing appeal – Consequence of failure to do so – Non-compliance with requirements of rule 62.10 of the Civil Procedure Rules 2000 – Challenge to form of affidavit – Non-compliance with requirement of Civil Procedure Rules 30. 2(c) – Non-disclosure.

This appeal concerns a dispute between family members living in the same house at Vineyard Windsor Forest, St. David's, Grenada ("the Property"). The relationship between the appellant and respondents is such that allegations and counter allegations of violence and threats of violence have been exchanged between them, leading to domestic violence proceedings in the magistrate's court as well as other proceedings dealing with the partitioning of the Property in the High Court. The application in the High Court was made on 3rd September 2014 and served on the appellant on 11th September 2014. The respondents allege that on the same day of service the appellant turned off the water supply to the Property and his use of threatening words increased. On 29th September 2014, the respondents filed an application for injunctive relief against the appellant. The application was heard on a full inter partes basis on 22nd October 2014. The learned judge, having considered all the evidence before her and being satisfied that there were serious issues to be tried, issued a mandatory injunction ordering the appellant to restore and reconnect all water supplies to the Property and a restraining injunction ordering him not to interfere with the supply of water to the Property and not to commit any acts of violence against the respondents or their children. The learned judge also issued an injunction against the respondents restraining them from committing any acts of violence against the appellant. The appellant, being dissatisfied with the judge's order, has appealed on a number of grounds. There are no written reasons for the judge's order and no evidence that the appellant requested such before or after filing the appeal.

Held: dismissing the appeal and awarding costs of the appeal to the respondents in the sum of $1500.00, that:

1. Where a judge does not give reasons for his or her decision, the reasons should be requested. If no reasons are forthcoming following the request, the appellant should provide other material such as a transcript or an affidavit of what transpired in the court below. If the appellant cannot, with due diligence and reasonable efforts, provide other material, and the Court of Appeal cannot glean the reasons from the documents in the record, the appeal may be allowed without further consideration. However, if the reasons are not requested, and the appellant does not take any other step to put material before the Court of Appeal that the Court can use to assess how

the judge exercised his or her discretion, the appeal may be dismissed. In the case at bar, the record of appeal does not contain the reasons for the judge's decision nor a transcript or note of the proceedings in the court below. Further, there is no evidence of a request having been made of the judge for her reasons by the appellant. The appellant did not comply with the requirement of rule 62.10 of the **Civil Procedure Rules 2000**

Verbin Bowen et al v The Attorney-General et al ANUHCVAP2013/0016 (delivered 4th November 2013, unreported) followed.

2. The balance of convenience favoured the grant of the injunctions and there is no reason to conclude that the learned trial judge did not consider all the evidence that was before her or, in the absence of reasons, that she was influenced by irrelevant matters. There is therefore no reason why this Court should interfere with the trial judge's decision.

Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188 followed.

3. The duty of full and frank disclose arises when an applicant is seeking interim relief on an ex parte basis. In this case, there was no non-disclosure as the respondents' application was filed and heard as an inter partes application.

The Attorney General of Grenada v Grand Anse Riviera Limited GDAHCV2013/0045 and 0240 (delivered 6th June 2013, unreported) distinguished.

JUDGMENT

[1] **WEBSTER JA [AG.]** This appeal concerns a dispute between family members living in the same house at Vineyard Windsor Forest, St David's, Grenada ("the Property"). On 22nd October 2014, the learned judge issued a mandatory injunction ordering the appellant to restore and reconnect all water supplies to the Property and a restraining injunction ordering him not to interfere with the supply of water to the Property and not to commit any acts of violence against the respondents or their children. The learned judge also issued an injunction against

the respondents restraining them from committing any acts of violence against the appellant. The background leading to the grant of the injunctions is set out below.

Background

[2] The appellant, Peter Thomas, and the 1st respondent, Desireen Douglas, were involved in a long term relationship. The relationship produced one child who is now five years old. The 2nd and 3rd respondents are the parents of Desireen.

[3] The relationship between the appellant and the respondents has deteriorated to the point where allegations and counter allegations of violence and threats of violence have been exchanged between them. The respondents' case before the judge is that in 2010 the appellant physically assaulted the 1st respondent's sister, Deslyn Douglas, and on 9th July 2014, he accosted the 2nd respondent in the house on the Property and threatened the lives of the other members of the household with a cutlass.

[4] The appellant denies the 2010 allegation completely and says that the incident in July 2014 was initiated by the 2nd respondent and that he was only defending himself. He denies threatening anyone with a cutlass.

[5] The Property is registered in the names of the appellant and the 1st respondent. On 3rd September 2014, the respondents applied to the High Court to partition the Property and served the application on the appellant on 11th September 2014. The respondents allege that on the same day the appellant turned off the supply of water to the Property and that his use of threatening language increased. The appellant admits that he placed padlocks on two pipes on the Property but says that this was prior to 11th September 2014 and that the locking of the two pipes did not affect the supply of water to the Property. He also admits that he removed a

pipe taking water to the kitchen of the house on the Property but says that he did so because the pipe was leaking. He removed the padlocks and replaced the kitchen pipe after the judge issued the injunction order.

[6] The appellant's evidence also brought to the court's attention that the parties were involved in domestic violence proceedings in the Magistrates Court involving substantially the same facts that led to the filing of the application for the injunction in the High Court. The evidence, which is not disputed, is that on 18th August 2014, the magistrate issued an ex parte restraining order against the appellant. The order was returnable on 8th September 2014. On 8th September 2014, the matter was adjourned to 31st October 2014 and on that date it was further adjourned to 7th November 2014 to allow the magistrate to review the order made by the judge on 22nd October 2014.

[7] The respondents' application to the High Court for injunctive relief was filed on 29th September 2014 and served on the appellant on 13th October 2014. The appellant filed evidence opposing the application. The application was heard on a full inter partes basis on 22nd October 2014, when the judge issued the injunctions referred to in the opening paragraph of this judgment. The appellant appealed against the judge's order. There are no written reasons for the judge's order and no evidence that the appellant requested written reasons before or after filing the appeal. This is a significant omission that I will deal with below.[1]

The Appeal

[1] See paras. 15 – 20 below.

[8] The notice of appeal lists nine grounds of appeal. The issues in the appeal are contained in the grounds of appeal. The grounds of appeal are summarised as follows:

(a) Grounds (i) to (iii) – The judge erred in law by granting the injunctions against the appellant.

(b) Ground (iv) – The judge erred in law by not considering the principles in **American Cyanamid Co v Ethicon Ltd.**[2]

(c) Grounds (v) and (vi) – On an application for equitable relief the respondents breached their duty of full and frank disclosure by not disclosing the domestic violence proceedings.

(d) Ground (vii) - The affidavit of the 1st respondent in support of the application does not comply with the requirements of the **Civil Procedure Rules 2000** ("CPR").

(e) Grounds (viii) and (ix) – The judge took into consideration irrelevant and unsubstantiated statements in the affidavit of the 1st respondent and failed to consider contradictions in the said affidavit with statements in the affidavits of the 2nd and 3rd respondents filed in the domestic violence proceedings.

I will deal with the grounds though not in the order set out above.

Challenges to the respondents' evidence – Grounds (vii), (viii) and (ix)

[2] [1975] 1 All ER 504.

[9] The application for the injunctions was filed by all three respondents. However, the affidavit in support of the application was made by the 1st respondent only. The appellant submitted that the affidavit is defective in that it does not comply with the requirement in CPR 30.2(c),that, the name, address and occupation of each applicant be included in the affidavit. However, this is not what CPR 30.2(c) requires. The rule states that the name, address and occupation of each deponent is to be included. There is no requirement to include details of each applicant.

[10] The appellant also submits that the 1st respondent does not say in the affidavit that it is made on behalf of the other respondents. Since the application is made by all the respondents it would have been better if the 1st respondent had so stated in the affidavit. But this is not a defect that goes to the admissibility of the evidence in the affidavit and it is obvious that the judge admitted and considered the affidavit.

[11] Finally, the appellant complains that the affidavit contains vague and unsubstantiated allegations of threats of violence by him and inconsistencies with the evidence filed by the respondents in the domestic violence proceedings. These are matters that go to the weight of the evidence that was before the learned judge. She was not required to make findings of fact or credibility. All that she needed to do was to satisfy herself that there was sufficient evidence of serious issues to be tried when the case goes to trial. By granting the injunctions the judge must have been satisfied that there was evidence of serious issues to be tried and there is no reason to interfere with the exercise of her discretion on this issue.

[12] The grounds of appeal relating to the form of the affidavit and the quality of the respondents' evidence are without merit and fail.

Non-disclosure of the domestic violence proceedings - Grounds (v) and (vi)

[13] The thrust of grounds (v) and (vi) of the notice of appeal is that the respondents applied for equitable relief and by not disclosing the domestic violence proceedings they did not come to court with clean hands and they were not acting in good faith. Counsel for the appellant relied on the case of **The Attorney General of Grenada v Grand Anse Riviera Limited**[3] to support this unusual proposition. However, this reliance is misplaced. The **Grand Anse** case involves cross applications for injunctions by the Attorney General and the defendant regarding the use and occupation of a parcel of land at Grand Anse, Grenada. Details of the two applications are not relevant to this judgment. What is important is that while the parties were in discussions over the use of the property, the Attorney General filed a claim against the defendant seeking possession of the property and the removal of the defendant from the property. The Attorney General also sought interim relief by filing an ex parte application for a mandatory injunction ordering the immediate removal of the defendant from the property. The ex parte application did not include correspondence between the parties dealing with the on-going negotiations. The judge made two findings regarding the conduct of the Attorney General that are relevant to this appeal. Firstly, that the filing of the claim while negotiations were on-going was not made in good faith, and secondly, that the Attorney General breached his duty of full and frank disclosure on an ex parte application by not disclosing the correspondence dealing with the on-going negotiations. What the appellant has done in the case at bar is to conflate the two findings by the judge in the **Grand Anse** case to say that the case supports his position that the respondents' failure to disclose the domestic

[3]GDAHCV2013/0045 and GDAHCV2013/0240 (delivered 6th June 2013, unreported).

violence proceedings means that they approached the High Court with unclean hands. The **Grand Anse** case does not support this proposition and the case is irrelevant on an inter partes application for interim relief where there is no duty of full and frank disclosure.

[14] The duty to disclose arises when an applicant is seeking interim relief on an ex parte basis which means that the application will not be served on the respondent, he will not participate in the application, and the judge is being asked to make orders against a party who is not before the court and without knowing his side of the dispute. This is what happened in the **Grand Anse** case and in all ex parte applications. In the case at bar the respondents' application was filed as an inter partes application on 29th September 2014 and was served on the appellant on the 13th October 2014. The appellant filed evidence opposing the application on 17th October 2014. His evidence includes the documents filed in the domestic violence proceedings. He was present and represented by counsel at the hearing of the application on 22nd October 2014. The respondents were not obliged to include the domestic violence proceedings in their application and in any event the evidence of the proceedings was before the judge when she was considering the application on 22nd October 2014.

[15] There was no non-disclosure by the respondents and this ground of appeal also fails.

American Cyanamid principles – ground (iv)

[16] The appellant has invited this court in ground (iv) of the notice of appeal to consider the effect of the judge's failure to deal with the principles for granting interim injunctions in the **American Cyanamid** case. The difficulty with accepting this invitation is that the record of appeal does not contain the reasons for the judge's decision nor a transcript or note of the proceedings in the court below as is expressly required by CPR 62.10. The result is that, we do not know if the judge considered these principles, and if she did, how she dealt with them. This puts the Court in a difficult position to review her decision and how she exercised her discretion. This is why this Court has in previous decisions deprecated the failure of judges to give reasons for their decisions.[4] However, in this case, it is not the judge's failure to give reasons for her decision that is in issue, but the appellant's failure to request the reasons, leaving this court in a position where we have to make a determination on the limited material that is before us.

[17] The court's general approach to dealing with appeals when there are no reasons for the decision was considered in **Verbin Bowen et al v The Attorney General et al** [5] where Mitchell, JA, sitting as a single judge of the Court, set out very helpful guidance. I can do no better than to repeat what he said –

> "[10] This Court takes note of the usual practice of the judges of our region on giving an oral decision on an application heard in Chambers to express their reasons orally, and to direct the order to be prepared by counsel for the claimant so it can be settled by the judge and signed by the Registrar. A judge in such a case would only put her reasons in writing when so requested. A High Court judge has no practical way of knowing that an interlocutory appeal has been filed against her order, and that written reasons for her order will be needed by the Court of

[4] See the comments of Gordon JA in Ipoc International Growth Fund Limited v LV Finance Group Limited et al BVIHCVAP2003/0020 and 2004/0001 at para. 12 and in Amazing Global Technologies Limited v Prudential Trustee Company Limited SKBHCVAP2008/0008 at paras. 8 – 10.

[5] ANUHCVAP2013/0016 (delivered 4th November 2013, unreported) – This decision was discharged by consent order dated 22nd January 2014 but the legal principles still provide useful guidance.

Appeal, unless someone brings notice of the need for her reasons to her attention.

[11] If a judge neglects or for any reason fails to provide her reasons for her order, and the reasons cannot otherwise be determined, the judge's order is thereby vitiated and the appeal may be automatically allowed, as explained by Rawlins CJ in his judgment in **Jada Construction Caribbean Limited v The Landing Limited.** Alternatively, where a judge fails to give reasons for her decision, the Court of Appeal may, in a suitable case, exercise its own discretion, as explained by George-Creque JA in the case of **Saint Lucia Motor & General Insurance Co. Ltd. v Peterson Modeste.** Such considerations do not arise here as there is no reason to believe that the trial judge has failed to give reasons for her decision.

[12] In this case, there is no evidence of any request having been made of the judge for her reasons. There is not, for example, exhibited to an affidavit any letter from the appellants to the Registrar of the High Court indicating an intention to file an appeal and requesting of the judge a written note of her reasons for her order. There is no suggestion that the judge in this case failed to respond to a request for her written reasons. Nor is there any suggestion that the appellant sought any transcript of the proceedings, or a copy of the judge's notes. This Court is left to assume that Mr. Bowen never requested any of the judge's reasons, a transcript, or the judge's notes.

[13] While there is no express mention in CPR 62.10(1) of such a requirement, this Court has repeatedly pointed out that it is not acceptable for an appellant to challenge a judge's exercise of a discretion without placing before the Court of Appeal in the appeal bundle any of (i) the judge's written reasons or, (ii) in the absence of such written reasons, a transcript of the hearing, or, (iii) in the absence of a transcript, a copy of the judge's notes; or, (iv) in the last resort, an affidavit of what transpired in the court below. Only then is there such compliance with CPR 62.10(1) that an appeal court can properly engage in the exercise of assessing whether the court below acted properly in exercising its discretion.

[14] In conclusion, it is inherent in CPR 62.10(1) that an appeal bundle in an interlocutory appeal must include one of the documents listed above for the Court of Appeal to be able to determine the judge's reasons for her decision. The grounds for interference, or the lack thereof, should

> become evident on a perusal of the record of appeal. The reason for interference is not otherwise capable of being discerned by the Court of Appeal. No submissions of counsel can make up for any defect in this respect in the record.
>
> [15] In the circumstances, there is no basis for this Court to interfere with the judge's exercise of her discretion to refuse the application for an interim order of mandamus. The appeal is dismissed. In the circumstances I will not make any order as to costs."

[18] I agree with and adopt the guidance from the learned judge. In short, where a judge does not give reasons for his or her decision the reasons should be requested. If no reasons are forthcoming following the request, the appellant should provide other material such as a transcript or an affidavit of what transpired in the court below. If the appellant cannot, with due diligence and reasonable efforts, provide other material, and the Court of Appeal cannot glean the reasons from the documents in the record, the appeal may be allowed without further consideration.

[19] If the reasons are not requested, and the appellant does not take any other step to put material before the Court of Appeal that the Court can use to assess how the judge exercised the discretion, the appeal may be dismissed.

[20] In this case, there is no evidence that the appellant took any steps to comply with the requirements of CPR 62.10 with the result that, there is no material that this Court can use to assess whether the judge considered and applied the principles in **American Cyanamid**, and this ground of appeal also fails.

[21] I would add that this is a case where the learned judge was faced with a volatile situation involving threats of personal violence. She made an order that was eminently sensible for keeping the peace and which did not result in prejudice or

inconvenience to the appellant. A person cannot complain of prejudice or inconvenience because he is restrained from committing acts of violence. In fact the judge's order went so far as to restrain the respondents from committing any acts of violence against the appellant even though the appellant had not applied for an injunction. The only potential prejudice to the appellant is that, on his case, he may be required to pay for water consumed on the Property by other persons. If this happens he can apply to recover those losses under the undertaking in damages given to the court by the respondents. The balance of convenience clearly favours the grant and continuation of the injunctions in the judge's order.

The judge's decision – grounds (i) to (iii)

[22] It is settled law in the Eastern Caribbean that this Court will not interfere with the exercise of a trial judge's discretion unless the judge erred in principle or in his or her approach by taking into account or being influenced by irrelevant factors and considerations, or failing to take account of or giving too little weight to relevant factors, and that as a result of the error or the degree of the error in principle, the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.[6] There is no reason to conclude, as suggested by the appellant, that the judge did not consider all the evidence that was before her or, in the absence of reasons, that she was influenced by irrelevant matters. The judge exercised her discretion and granted the injunctions on the basis of the material before her and there is no reason why this court should interfere with her decision.

Order

[6] Per Chief Justice Sir Vincent Floissac in Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188.

[23] I would declare and order as follows:

(a) The appeal is dismissed.

(b) Costs of the appeal of $1,500.00 to the respondents.

Paul Webster
Justice of Appeal [Ag.]

I concur.

Dame Janice M. Pereira, DBE
Chief Justice

I concur.

Davidson Kelvin Baptiste
Justice of Appeal