



Neutral Citation Number: [2006] EWHC 2718 (Admin)

Case No: CO/4004/2006

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

Application Pursuant to s13(1)(b) Coroners Act 1988

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 November 2006

Before :

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
and
MR JUSTICE RODERICK EVANS

Between :

Kerry Sparrow	<u>Claimant</u>
-and-	
HM Coroner for District of East Somerset	<u>Defendant</u>
-and-	
(1)Jennifer Chubb	<u>Interested</u>
(2)The Chief Constable of Avon and Somerset	<u>Parties</u>
Constabulary	

M Westgate for the Claimant
T Nesbitt for the First Interested Party

Hearing dates: 17 October 2006

Approved Judgment

LORD PHILLIPS, CJ :

This is the judgment of the court

Introduction

1. This is an application under section 13 of the Coroners Act 1988 ('the Act') for an order quashing the inquisition in respect of the death of His Honour Judge Andrew Vyvyan Chubb taken before the defendant, Her Majesty's Coroner for the District of East Somerset, at Wells on 12 December 2001 and directing that a fresh Inquest be held in respect of Judge Chubb's death, before a different Coroner. The Attorney General consented to the making of this application by his *fiat* dated 2 April 2006.

2. Section 13 of the Act provides as follows:

“Order to hold inquest.

(1) This section applies where, on an application by or under the authority of the Attorney-General, the High Court is satisfied as respects a coroner ("the coroner concerned") either:

(a) that he refuses or neglects to hold an inquest which ought to be held; or

(b) where an inquest has been held by him, that (whether by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or evidence or otherwise) it is necessary or desirable in the interests of justice that another inquest should be held.

(2) The High Court may:

(a) order an inquest or, as the case may be, another inquest to be held into the death either:

(i) by the coroner concerned; or

(ii) by the coroner for another district in the same administrative area;

(b) order the coroner concerned to pay such costs of and incidental to the application as to the court may appear just; and

(c) where an inquest has been held, quash the inquisition on that inquest.

(3) In relation to an inquest held under subsection (2)(a)(ii) above, the coroner by whom it is held shall be treated for the purposes of this Act as if he were the coroner for the district of the coroner concerned.”

The claimant contends that it is desirable that a fresh inquest be held because (i) the previous inquiry was insufficient and (ii) new evidence has been discovered which bears on the cause of death.

3. Judge Chubb was aged 58 at the time of his death, which occurred on 27 July, 2001. He had been married to Jennifer Chubb, the first interested party ('Mrs Chubb'), for 34 years. They had three grown-up children. He was a circuit judge of the Western Circuit, assigned to Portsmouth Crown Court. During the week he stayed at a flat in Portsmouth. At week-ends he usually went to the home that he shared with his wife at Westvale, near Chard in West Somerset. For some two years he had, at Portsmouth, carried on an intimate relationship with the claimant. Mrs Chubb learnt of this relationship at the beginning of July 2001.
4. On the evening of 27 July 2001 Judge Chubb returned to Westvale and told his wife that he wanted a divorce. Very soon after this the garage at the Chubb's home at Westvale burnt down. Judge Chubb's body, badly burned, was discovered in the debris. The Coroner found that his death had been caused by 'burning'. So far as the manner in which Judge Chubb's death was brought about, the Coroner considered three possibilities: unlawful killing, suicide and accident. He concluded that on balance of probability Judge Chubb's death was due to accident.

Mrs Chubb's account of her husband's death

5. Mrs Chubb gave a description of her husband's death in a written statement to the police made on 29 July 2001 which has not significantly altered since then. Her husband arrived home at about 1930 and went upstairs to change into his gardening clothes. He came down to the kitchen and announced to his wife that he thought that they should get divorced. He then went out into the garden. A little later Mrs Chubb noticed that the small mower and the strimmer had been placed outside the garage. She went out, could not see her husband in the garden and saw that the doors of the garage were closed, which was unusual if someone was inside. Nonetheless, when she opened the doors she saw her husband at the back of the garage, apparently giving attention to the Honda sit-on mower, which had recently come back from the repairers. Her husband came out of the garage and she told him that they needed to discuss matters. She then went back into the house and made herself some supper and poured a glass of wine. She was just beginning this meal, when there was a massive explosion and she saw, through the window, the garage engulfed in flames. She rushed out, dialling 999 on a mobile phone and shouting for help from neighbours, who came on the scene. The fire brigade arrived and extinguished the blaze. The body of her husband was then discovered in the debris of the burnt-out garage.

The police investigation

6. There was no ready explanation for the fire that destroyed the Chubbs' garage. The fact that Judge Chubb's death coincided with a period of matrimonial stress raised the possibilities that his wife might have been responsible for his death and the fire, or that he might have committed suicide. A police investigation was carried out into the cause of the fire and of Judge Chubb's death. The results of this investigation were placed before the Coroner.

7. The claimant was dissatisfied with the Coroner's verdict and with the police investigation, whose inadequacies she considered accounted, at least in part, for the verdict. She made a complaint, which the Avon and Somerset Constabulary treated as an official complaint against the officer in charge of the investigation. He had retired from the force and declined to assist in the further investigation carried out in response to the claimant's complaint. On 15 October 2003, the Police Complaints Authority wrote to the claimant, acknowledging the following weaknesses in the first investigation:

“These were namely, a uniformed officer taking Mrs Chubb's statement, key witnesses not being traced and interviewed, 999 tapes not being analysed, further expert advice about the lawnmower, failure to seek advice from a Home Office pathologist, clothing and footwear of Mrs Chubb not being examined, a log of actions not being maintained and a failure by the forensic scientist to make a more systematic examination of the scene.”

8. We propose to consider these shortcomings in the context of the issues that arose at the inquest and of the Coroner's verdict. Very shortly before the hearing we were provided with a substantial volume of additional evidence that had just been made available to the parties. Much of this consisted of witness statements taken in the course of a further investigation carried out by the Avon and Somerset Constabulary which led to the arrest on 29 May 2002 and subsequent lengthy interviews of Mrs Chubb, on suspicion that she had murdered her husband and committed perjury at the inquest. In November 2002 the Crown Prosecution Service decided not to pursue these charges. Some of this evidence underlines the shortcomings of the first police investigation and is relied upon by the claimant as fresh evidence which justifies the relief that she seeks.

The cause of death

9. A Coroner's Post Mortem was carried out by Dr C J Fisher, a Consultant Histopathologist at Yeovil District Hospital. She recorded that the body was badly burnt. In particular “the lateral and lower portions of both lungs are burnt, black and are protruding through defects in the chest wall”. She concluded that the cause of death was ‘burning’. In a letter to the Coroner dated 6 December 2001 she stated that it was not possible to look for signs of soot inhalation and that the body was so badly burned that there was no blood to analyse. She commented that the body was too badly burnt to make a thorough post-mortem examination.
10. Mr Heath, a Home Office pathologist, consulted by the claimant in the course of the second investigation, criticised Dr Fisher's Report. He suggested that there was enough air passage and blood remaining to make possible further assessments of the mechanism and therefore the cause of death. In the absence of such evidence there was no justification for excluding the possibility that Judge Chubb might have died before his body was subjected to the fire. A second Home Office pathologist, Dr H White, consulted by the police, provided an opinion to the same effect.

The cause of the fire

11. The Coroner needed to grapple with two questions in relation to the fire that destroyed the garage: what caused the fire to break out and why, if fire did break out, did Judge Chubb not escape from the garage? Eye-witness evidence of Mrs Chubb and of neighbours was of hearing a loud explosion and then seeing smoke and flames emanating from the garage.
12. The Coroner heard two expert witnesses in relation to the cause of the fire. Station Officer Andy Quinlan, a Qualified Fire Investigator of the Somerset Fire Brigade, produced a Fire Investigation Report, which concluded:

“It is known that the ride on mower had been away for a number of weeks to have maintenance work carried out. The key to the ignition system of the ride on mower was found in the mower but whether it was in the on position was unknown. It had also been a very hot day.

If Mr Chubb had been “tinkering” with the mower, there is a possibility that any fumes within the shed, or any fumes emitted from any open petrol can or from the tank of either of the mowers may have come into contact with an electrical source of ignition within the electrics of the mower, causing an explosion. Any autopsy results may prove or disprove this theory.

It is also known that Mr Chubb may at certain times have carried a box of matches to light garden fires etc. He may also have struck a match which could have come into contact with flammable vapours causing the “whoosh” described by Mrs Chubb.”

Mr Quinlan gave oral evidence that accorded with this Report. In essence he considered that something had ignited a relatively small amount of petrol vapour, which had caused the explosion that Mrs Chubb and others had described. Had there been a greater quantity of vapour the explosion would probably have destroyed the garage.

13. Mr Robert Bell, a Home Office forensic scientist from Chepstow inspected the scene of the fire on 28 July and reported that an attempt to start the mower might have resulted in the accidental ignition of petrol, though there was no evidence directly to support this scenario. When he came to give oral evidence at the inquest, Mr Bell expanded on his report to deal with the oral evidence that he had heard:

“Mr Bell: Right may I step back because I at the time there was no suggestion to me that there had been an explosion.

Mr Hayden: Right

Mr Bell: There was no evidence within the fragments of the material that I saw that there had been an explosion. The

descriptions that I have heard today are not what I would call an explosion but probably the ignition of a significant amount of petrol vapour causing a fire ball rather than one which is causing a pressure front fast enough to do any significant damage. In other words it's a very low velocity fire front.

Mr Hayden: We are in the same territory here aren't we as we were with Mr Quinlan it's it's the level of intensity then that you are talking about is it

Mr Bell: Well its probably the actual percentage composition of the ignited mixture. In round figures petrol will burn in air once it gets above about 5 per cent so long as it doesn't exceed round about 12% in ball park figures and that means that somewhere in there the velocity rate of the flame front will be quite fast and you can get a petrol explosion with no subsequent fire which could have destroyed the entire shed very easily. What we have in this case from the descriptions is a fire developing very fast which suggests there was very much more likely to be a small amount of vapour from a liquid source which actually develops the fire quickly by heating up the liquid and driving more vapour into the flame."

14. The Coroner's understanding of the expert evidence was that there was little between Mr Quinlan and Mr Bell, save whether it was correct to describe the initial ignition of petrol vapour as an 'explosion'. He accepted Mr Bell's conclusion that there was no reason to conclude that the cause of this was other than accidental.
15. The second police investigation involved a much more thorough search for eye-witnesses of the fire. This produced significant evidence from two new witnesses, Mr Scott and Mrs Burt. Each spoke of seeing smoke rising from the garage significantly before hearing a loud bang, or a loud noise like shattering glass.
16. Additional expert evidence has also been obtained in relation to the cause of the fire and of the explosion. Dr Foster, of Burgoyne's, consulting scientists and engineers, was consulted by the claimant. In ignorance of the additional witnesses of fact referred to above, he nonetheless questioned the theory, accepted by the Coroner, that the explosion initiated the fire. He suggested that the fire started first and that the asbestos roof subsequently exploded. He accepted that spilt petrol might have provided the combustible material, but questioned whether, if he had spilt petrol, Judge Chubb would then have accidentally ignited it. He also questioned why, if a fire broke out, Judge Chubb had not managed to make his escape.
17. Mr Halliday of the Metropolitan Laboratory of the Forensic Science Service considered the implications of Mr Scott's evidence. He did so having regard to an inspection that he carried out on a Honda mower of similar type to the one that was in the garage. He concluded that a spark might have been caused if the lights of the mower had been switched on. This led him to conclude that it would have been possible for a fire to have been initiated by the switching on of the mower lights if a modest quantity of inflammable petrol vapour had been present. Alternatively a fire could have been started by the use of a naked flame, in which case there was no need

to postulate the presence of petrol vapour. The subsequent explosions could have been attributable to the bursting of petrol cans that the evidence indicated were present in the garage.

Evidence supporting the possibility of suicide

18. There was some evidence before the Coroner that bore on the possibility that Judge Chubb might have taken his own life. Paul Cregan, a Temporary Assistant Divisional Officer at Yeovil Fire station made a statement in which he said “I was told by Station Officer Cross that he had learned from the Police that the occupants of the property had had an argument with the male person threatening to commit suicide”. The Coroner put this to Mrs Chubb and she replied that it was “complete rubbish”.
19. The Coroner also had before him a statement from Mr Kimber, a court usher at Portsmouth Combined Courts Centre, that Judge Chubb had been missing at 1420 on 26 July and that another usher told him that the judge had been on the roof, where there is a recreational area, during the lunch hour. He then met the judge on his way down from there. The Coroner also had before him a statement from the claimant. This included the following passage:

“About 3-4pm that day I had a call from Andrew from Winchester Crown Court, I believe. He sounded fine, but told me that he went ‘missing’ – I asked what he meant and he said, ‘The Court Clerk had to come and find me. I suppose I was thinking of harming myself’. I was annoyed, because we’ve discussed suicide in past about two friends in chambers of Andrews had killed themselves. He thought this was awful for the people left behind to pick up the pieces. Andrew said, ‘He would never break my heart. It was just a moments thought’. He said he just didn’t want to go home. He said he was alright, he had to deal with it. It concerned me so much, I made Andrew promise me he was alright and I didn’t have to worry about him. He promised me he was alright. However in the back of my mind I was still concerned.”

20. The Coroner asked the claimant about this when she gave oral evidence:

“Coroner: Right did he actually use that expression did he use the expression harming himself

Ms Sparrow: Yes it was very it was quick its difficult to explain it wasn’t like a serious statement

Coroner: Right so you treated it with a pinch of salt

Ms Sparrow: No I think I took it seriously but yes I suppose I did but I still was concerned because as you would when you feel for someone

Coroner: And this incident on the roof is the incident I have read about in the Usher’s statement where he has gone up on

the roof on a lunchtime and I was terribly anxious about it to begin with until I read its actually a recreational area where they have got tables and chairs and people can sit out, other people would have been up there at the same time.”

21. When he came to make his findings, the Coroner dealt very shortly with the possibility of suicide:

“Mr Hayden addressed all of the possible verdicts that might be open to me. With regard to Unlawful Killing of which the suggestion has been there so I think I must deal with it as well. Mr Hayden pointed out that the test here was one of being satisfied beyond reasonable doubt. I am satisfied that having sat here all day and listened to the evidence all day, there is not a shred of evidence that would support such a finding so I reject that. With regard to suicide which would have been a possible finding I think I have heard a consistent story from all of the witnesses the statements that I have read or evidence that I have heard and I am satisfied that that’s not appropriate in this particular case and that leaves me with two possible verdicts which have been put to me of Accident and Open. With regard to the Open verdict it is a verdict that sits on its own for consideration and an Open verdict is I think better called by its full name and its full name is that the evidence does not further or fully disclose the means whereby the cause of death arose. I am satisfied that I have heard evidence that does further or fully disclose the means whereby the cause of death arose.”

22. The second Police Investigation brought to light a substantial amount of additional evidence of relevance to the possibility that Judge Chubb might have taken his own life:

- i) Mrs Miller, a clerk at the court, gave evidence that suggested that he appeared depressed on 26 July;
- ii) Ms Arthur, a court usher, spoke of Judge Chubb’s visit to the roof on 26 July. He “looked as though he had things on his mind”. Her statement also suggested that this was the first occasion on which he had visited the roof.
- iii) Elizabeth Kallaway, a neighbour of the Chubbs, stated that on the night of Judge Chubb’s death Mrs Chubb was insistent that her husband had committed suicide. He had said “I’ve got two options. I can leave the country and go to Australia or I can kill myself” and she had said “So I told him to go to the shed and think about it”.
- iv) Two other neighbours stated that Mrs Chubb had said that her husband had committed suicide.
- v) Mr Freeston, a general practitioner and a friend of the Chubbs, was telephoned and informed of the tragedy by a mutual friend and drove up to Westvale. Mrs Chubb was emphatic that her husband had committed suicide. He

accompanied her the next morning, when she went to look at her husband's body. She said: "Yes, I can see what's happened now. He's obviously tipped the petrol all around, laid down on the hay bale and set fire to himself".

- vi) Two other witnesses spoke of being told by Mrs Chubb by telephone that her husband had committed suicide.
 - vii) Mrs Chubb had tried to telephone the Police by dialling 999 on her mobile phone. She thought that she had not succeeded, but in fact she had got through and a transcript was made of comment picked up thereafter. These included comments by Mrs Chubb to those around her that her husband had committed suicide.
23. Mrs Chubb was asked by the Police about some of this evidence in the course of her interviews. She accepted that initially she had assumed that her husband had committed suicide, but said that very quickly she began to have other thoughts.

Discussion

24. It is common ground that the initial Police investigation had shortcomings. The chance may well have been lost of demonstrating, by a more thorough pathological examination, whether or not Judge Chubb was still living when the fire broke out. Equally the chance may have been lost of demonstrating, by an examination of Mrs Chubb's clothing, whether or not she had had any contact with petrol. Insofar as this evidence might have assisted in dispelling suspicions that she was responsible for her husband's death, Mrs Chubb may well be the principal victim of these shortcomings in the inquiry. However, the fact that, as a result of insufficiency of inquiry, relevant evidence may have been lost is not, of itself, justification for ordering a fresh inquest. The interests of justice will not render it necessary or desirable for a fresh inquest to be held in such circumstances unless there is a reasonable prospect that it will, in one way or another, remedy the inadequacies of the previous inquest. In the present case, insofar as potentially relevant evidence has been lost, no purpose would be served by ordering a fresh inquest.
25. The same is not true of the fresh evidence which has come to light since the inquest. The Coroner, after considering the evidence adduced before him, observed that there was not a shred of evidence to support a verdict of unlawful killing. It is right that we should say that nothing that has come to light lends positive support to the suggestion that Judge Chubb was unlawfully killed. What the fresh evidence does do is to render it more difficult to explain Judge Chubb's death as being an accident and to lend support to the possibility that he may have taken his own life.
26. So long as the evidence suggested that the conflagration that destroyed the garage was initiated by an explosion of flammable petrol vapour, an accident was a likely hypothesis. The existence of flammable vapour is always likely to be a matter of chance. Mr Bell explained in his evidence that there will only be a flammable mixture if the percentage of petroleum in the mix falls between about 5% and 12%. Once, however, the explosive mix is present, it only needs a spark to result in an explosion. If, however, the fire began before the explosion, it becomes much more difficult to postulate the accidental combination of combustible material and a source of ignition.

27. Furthermore, if the conflagration began with a significant explosion, it is easier to envisage that this might have laid Judge Chubb low, so that he could not escape from the garage. If, however, the start of the conflagration was an accidental fire, it is less easy to envisage how this might have immobilised him.
28. We turn to the possibility of suicide. On the evidence before him, the Coroner dismissed the possibility that the stresses of Judge Chubb's matrimonial difficulties might have made him contemplate taking his own life. There is now quite a body of evidence that suggests that the Coroner may have been wrong about this. The Claimant did not discount the telephone conversation that she had with Judge Chubb on the day of his death in which he had told her of his having 'gone missing' and having contemplated harming himself, which she understood as a reference to suicide. This tallies with evidence of the court staff of Judge Chubb's visit to the roof of the court, with a demeanour that concerned them. Nor can one discount the reaction of Mrs Chubb, which the evidence suggests persisted to the day after her husband's death, that her husband had committed suicide.
29. In these circumstances, and putting the matter at its lowest, there can be no certainty that if a fresh inquest is held, the Coroner will be persuaded that the most probable explanation for Judge Chubb's death is accident. Mrs Chubb has adopted a neutral stance to the application for a fresh inquest. Her attitude has been that if the court considers that this might serve a useful purpose, she would not resist it. The Defendant and the Chief Constable have adopted a similar stance.
30. It may be asked what purpose will be served by a fresh inquest into this tragic death, if the result is likely to do no more than raise the possibility, or even the probability, that Judge Chubb may have taken his own life. We are sensible of the distress that such a result will be likely to cause to Mrs Chubb and her children, and possibly also to the claimant, and of the distress that will in any event be caused to many if the cause of Judge Chubb's death is re-opened. None the less, we have concluded that it would be contrary to the interests of justice to leave undisturbed, in a case which has been the subject of wide public interest, a verdict which is based on only part of the relevant evidence and which the balance of the relevant evidence suggests may be open to doubt.
31. For these reasons, we have decided to quash the inquisition conducted by Coroner Tony Williams and to direct that a fresh inquest be held before a different Coroner.