

**THE HIGH COURT
JUDICIAL REVIEW**

2007 134 JR

BETWEEN

FIONA BYRNE

APPLICANT

AND

DR. KIERAN GERAGHTY

THE CORONER OF THE COUNTY OF DUBLIN

RESPONDENT

JUDGMENT of Mr. Justice Hedigan delivered on the 28th day of April, 2010

1. By order of Peart J. dated the 12th day of February, 2009 the applicant was granted leave to apply for judicial review of a decision of the respondent on the following grounds:

- (i) An order of *certiorari* quashing the respondent's determination that the applicant's husband died by misadventure ;
- (ii) A declaration that the Coroners Act 1962, as it applied to the facts in question, is in contravention of the European Convention on Human Rights.

Factual Background

2. The applicant is the widow of Paul Byrne, aged 37, who died on November 9th, 2005. Mr. Byrne had been hospitalised one month before his death due to a blood clot and was taking medication for this and several painkillers. On the afternoon of November 9th, Mr. Byrne complained of chest pains and dizziness. An ambulance was contacted on the advice of a local doctor, however Mr. Byrne lost consciousness before its arrival. The ambulance arrived some 40 minutes late, and after initial resuscitation attempts brought Mr. Byrne to Tallaght hospital, where he was pronounced dead a short time after.

3. A preliminary examination of the body was performed on the 10th of November and a full post-mortem was performed on the 11th of November by Dr Flavin, the pathologist. A provisional report was compiled by Dr Flavin on the 30th of December, 2005. This report concluded that death was due to acute left ventricular failure, secondary to coronary insufficiency, secondary to organising thrombus in the left anterior descending coronary artery. This was a preliminary report pending a toxicology report. The final report, upon which the coroner relied in his inquest, noted cannabis use as a secondary or contributory cause of death. The toxicology test recorded THC levels in the blood in excess of 750ng/ml and noted that "this result is interpreted as significant. Cannabis use is associated with acute cardiovascular events and fatalities...". Below this comment the pathologist cited three studies, the most recent being 2005, wherein a

4. The inquest was held on the 15th of August, 2006. The applicant was present at the inquest, and in the company of the deceased's father, Frances Byrne. The inquest concluded that the death was due to misadventure, citing the above coronary issues and cannabis use as the primary and secondary causes respectively. The applicant disputes the finding of death by misadventure and further objects to reliance on the pathologist's finding that cannabis usage precipitated the death of Mr. Byrne. The applicant further claimed that due attention was not paid to her wishes at the inquest nor were other causes of death adequately considered.

The Applicant's Submissions

5. The applicant first submits that the respondent failed to adequately address the applicant's concerns, as the deceased's wife, and further that the respondent failed to ask the applicant if she wished certain enquiries to be made. The applicant claims that she was not consulted as to whether she wished further enquiries to be made as to what role the delayed arrival of the ambulance played in Mr. Byrne's death. Moreover, the applicant had expressed concerns that her husband's premature death from coronary complications could have been indicative of a genetic condition. In this regard, the applicant claims that it is imperative that the order sought be granted as the existence of a genetic predisposition to coronary diseases would affect the applicant and her children.

6. The applicant contends that the inquest was performed at "whirlwind" speeds and, moreover, in language that was incomprehensible. This, it is argued, effectively excluded the applicant from having a meaningful participation in the inquest above and beyond her deposition.

7. The final submission on behalf of the applicant concerns the finding that cannabis was a contributory cause of death. The applicant submits that her husband used cannabis for its pain relieving effects but his usage could, in no way, have constituted chronic or excessive intake. The applicant submits that the reliance of the respondent upon medical literature suggesting cannabis as a contributory factor in fatal heart conditions is outmoded and contrary to the preponderance of views. The applicant exhibited case studies which oppose the stance taken by the respondent. Furthermore, the applicant submitted that no assessment of the competing viewpoint was undertaken. The applicant proposed that in his determination of this issue, submissions should have been accepted on the competing viewpoints and a thorough explanation of how this decision was arrived at should have been presented. In the absence of a spectrum of opinions, the applicant submits that the respondent did not have before him relevant material upon which to make a decision. In the alternative, the applicant submitted that the finding of the coroner, with regard to the materials at his disposal, was so irrational as to fly in the face of reason.

The Respondent's Submissions

8. The respondents' primary contentions are as follows. In the first instance, the respondent denied that there were any procedural

shortcomings at the inquest itself. The respondent claims that he was under the impression that the applicant's father in law shared the same interests as the applicant, and, therefore, his refusal of the offer of an adjournment to further investigate the delayed ambulance was believed to also represent the applicant's wishes. The respondent submits that he had no reason to suspect that the applicant's wishes differed from Mr. Byrne's. The applicant's father in law seemed to act as family spokesman and the appellant, present at all times at the inquest, made no objection to this.

9. The respondent then addressed the contention that a verdict of death by misadventure was not sustainable on the facts, nor was the finding of cannabis as a catalyst in the death viable in the circumstances. The respondent directed the court to the relevant test adumbrated in *O'Keefe*, namely, that in order to be quashed, the decision taken must be irrational on the basis of material before the respondent or, alternatively, that the respondent had no information before him with which to come to such a decision. The respondent referred to the pathologist's report in support of his conclusion, wherein Dr. Flavin noted as significant the elevated levels of cannabinoids in the deceased's urine. Attention was also drawn to the supporting literature suggesting the correlation between cannabis usage and myocardial infarction. This, it was submitted, refutes the claim that no evidence existed upon which to arrive at the decision and illustrates a perfectly rational decision. The respondent also notes that while dissatisfaction was expressed at the inquest with this viewpoint, no evidence supporting a conflicting viewpoint was presented, nor any expert view disclosed.

10. The respondent also rejected the applicant's claim that due consideration was not given to her wishes. Firstly, as to the alleged failure to explore the culpability of the delayed ambulance, the respondent referred the court to his conversation with the applicant and her father-in-law. In this conversation, the respondent, replying to Frances Byrne's complaint as regards the ambulance, offered to adjourn the inquest so that relevant evidence and witnesses could be gathered. However, Mr. Byrne refused this offer and the respondent understood that the applicant did not object to this as no objection was raised. Secondly, the respondent accepts that the father in law as spokesman expressed disapproval of the pathologist's findings concerning cannabis as a contributory cause of death, however the respondent insists that he clarified that he was merely summarising the pathologist's findings. Furthermore, the respondent submits that at all times the applicant understood what was going on.

DECISION OF THE COURT

11. I have read the affidavits and exhibits therein, and in particular the verdict and the medical reports on which same was based. The coroner had before him the pathologist's reports from his initial examination and his final report. The preliminary report noted the coronary ailments which ultimately resulted in the death of Mr. Byrne. The subsequent toxicology analysis revealed THC levels in the urine between 751 and 1000ng/ml. The final report of the pathologist, dated June 12th 2006, concludes that Mr. Byrne died as a result of organising thrombus in the left anterior descending coronary artery due to acute left ventricular failure and coronary insufficiency. The report further finds cannabis use and steatohepatitis as contributory factors.

12. I shall first deal with the reasonableness of the decision. The above report was essentially the evidence before the coroner. No contrary evidence appeared before the coroner, nor was any application made to obtain same. The findings of the pathologist's report were based on a detailed invasive post-mortem and toxicology report and I would find this to be wholly within the parameters of relevant evidence upon which one could premise a decision. The applicant argues that the respondent, in his verdict, did not seek further evidence on the basis that he was ambivalent as to the role of cannabis as a precipitant of myocardial infarction. It is unreasonable to expect all contrary views to be accounted for in the coroner's inquest. If an application were to be made, there may be a heightened expectation that such a path be explored. Perhaps even if no application were to be made, the coroner could, in his competence, seek differing viewpoints. This is, however, a matter within the discretion of the coroner.

13. The relevant standard, as per *O'Keefe*, is that there must exist some irrationality in how the decision was reached, a lacuna between the facts before the decision maker and the resulting conclusion. It is not within the competence of the Court to examine the substantive findings in the decision, but rather how the decision was made. The scope of judicial review proceedings concerning coronial inquests and the 1962 Coroner's Act is set out in the Supreme Court decision of *Farrell v. Attorney General* [1998] 1 I.R. 203. In this decision, Keane J., referring to s. 24, notes that the Act accords great discretion to the coroner. In noting the coroner's refusal to hold a new inquest, at the behest of the deceased's wife, the learned judge noted that the exercise of this power "was not intended to be conditional on the assent or dissent of any other person, no matter how closely and understandably they were concerned with the proceedings at the inquest". In the absence of compelling new evidence, no such power could exist. Clearly, the opinion of the coroner is to be treated with deference.

14. The coroner had before him a detailed report based on a first hand examination of the pathologist and supported with toxicology results. There was also sufficient material before the respondent to make an informed and reasonable decision. The coroner, in arriving at a verdict that death was caused by misadventure, must be satisfied that this is demonstrable on the balance of probabilities. Such a verdict, although broad in scope, suggests that the cause of death herein arose as an unintended consequence of an otherwise innocuous activity. I believe that given the preceding state of affairs, this was not an unreasonable decision.

15. The applicant also submitted that the respondent failed to adequately facilitate an investigation into the role of the delayed ambulance as a cause of Mr. Byrne's death. The respondent denies this, believing the refusal of his offer to adjourn the inquest by Frances Byrne to be representative of her wishes. I cannot see any impropriety in this decision. The applicant attended the inquest with her father in law and was present when Mr. Byrne refused the adjournment. Further to this point, one must be cognizant that the inquest is merely an inquisitorial process and must not encroach upon establishing civil or criminal liability.

Conclusion

16. In light of the foregoing, the court is satisfied that the applicant is not entitled to the reliefs sought. The respondent arrived at his decision on the basis of reliable and detailed evidence and has acted in the interests of the applicant at all times. There was no improper exercise of discretion, nor has any procedural irregularity been demonstrated, therefore I would refuse the application.