

AMBROSE v. REGISTRAR OF SUPREME COURT

SUPREME COURT (Kneller, C.J.): November 1st, 1995

Legal Aid and Assistance—refusal of legal assistance—duty to give reasons—by Legal Aid and Assistance Rules, r.16, court to give reasons for refusal—facilitates appeal and reduces likelihood of insubstantial appeals

Legal Aid and Assistance—qualification for legal assistance—“ordinarily resident”—applicant with residence permit may be “ordinarily resident” in Gibraltar even though residence status not permanent—legislature to consider whether phrase needs statutory definition

The appellant sought legal assistance in matrimonial proceedings against her husband.

The appellant, a British national living and working in Gibraltar, petitioned for divorce and sought a maintenance order for both herself and her young child and a non-molestation order, alleging that her husband had used violence against her, refused to provide her with financial support and denied her access to a business and its proceeds which they jointly owned and controlled. She initially sought legal assistance in respect of these proceedings both in the magistrates' court and the Supreme Court. Her application was refused by the Registrar, who gave no reasons for his decision, but she did not appeal against the refusal. It appeared that she had a valid residence permit, although no work permit, and had not resided in Gibraltar long enough to be entitled to welfare benefits. Following a violent incident in which her husband broke into her temporary accommodation in Spain and attacked her, the appellant applied for an emergency legal assistance certificate. This application was also refused by the Registrar on the ground that she was not “ordinarily resident” in Gibraltar, as required by r.6(2) of the Legal Aid and Assistance Rules.

The appellant then made another application, this time in respect of proceedings in the Supreme Court only. The Registrar refused her application again on the same ground, explaining that her residence permit was not a permanent one and could be revoked at any time; from the above incident it appeared that she in fact lived in Spain; and if she obtained a divorce, she might have no means of support and become a burden on the public purse, which was contrary to the conditions of her residence permit.

On appeal, the appellant submitted that (a) the Registrar had been wrong not to give reasons for his original decision, since it prevented her from

knowing whether she had valid grounds of appeal and in any case, by r.16 of the Legal Aid and Assistance Rules, he was bound to provide reasons; and (b) she was entitled to legal assistance because she had no funds and was “ordinarily resident” in Gibraltar within the meaning of r.6(2) of the Rules, and it was irrelevant that her residence permit was not permanent.

Held, allowing the appeal:

(1) The Registrar had a duty under r.16 of the Rules to provide reasons for his decision; this allowed the appellant to know why she had been refused a certificate and whether it was appropriate to appeal and, secondly, if the Registrar’s grounds of refusal were correct, the appellant would be less likely to appeal, thus saving time and costs (page 143, lines 5–12).

(2) The appellant deserved a legal assistance certificate, since she lacked the means to pursue her action and although her status in Gibraltar was not that of a permanent resident, she was clearly “ordinarily resident” here. That phrase could be given no exhaustive definition, but its meaning had to be determined as a matter of fact, in the light of the natural interpretation of the words of the Ordinance; it was for the legislature to decide whether it was necessary statutorily to define the phrase to prevent the possibility of the court’s being inundated by a flood of unmeritorious claims. However, although the appellant did not live here permanently, it could not be said that her permit was any more likely to be revoked than if she had permanent permission to stay in Gibraltar. For these reasons, she would be granted a legal assistance certificate with retrospective effect (page 145, lines 9–37).

Case cited:

(1) *Hawkins v. Registrar of Supreme Ct.*, Supreme Ct., Legal Assistance Appeal No. 42 of 1992, November 7th, 1994, unreported, distinguished.

Legislation construed:

Legal Aid and Assistance Rules, r.6(2):

“Legal assistance under Part II of the Ordinance shall be available only to persons otherwise qualified therefor under the said Part II and who—

(a) are ordinarily resident in Gibraltar”

r.16: “(1) If the Registrar refuses an application for a certificate he shall notify the applicant, stating that the application has been refused on one or more of the following grounds

. . . .

(3) Any applicant considering himself aggrieved by the decision of the Registrar as to his entitlement to receive legal assistance . . . may within fourteen days of receipt of the decision appeal in writing to the Chief Justice.”

The parties did not appear and were not represented.

KNELLER, C.J.: Mrs. Theresa Elizabeth Ambrose of 122 Rosia Plaza, Gibraltar applied to the Registrar of the Supreme Court for a legal assistance certificate on November 29th, 1994. She completed a form with details required under Parts I and IV of the Legal Aid and Assistance Ordinance. These revealed that she wished to take proceedings against her husband, Mr. Gary Thomas Ambrose, by whom she had had a daughter, Dominique, who was now three years old and living with her in an apartment the rent of which was £450 per month. She and Mr. Ambrose ran “Raffles,” a restaurant in Scud Hill, Gibraltar, but on or about November 8th, 1994, he barred her from it and she thereafter had no financial resources. 5 10

She needed legal aid to brief a lawyer to launch proceedings in the magistrates’ court for judicial separation, maintenance and access and for proceedings in the Supreme Court for divorce, a non-molestation order and ancillary matters. She had care and control of Dominique and Mr. Ambrose paid £50 per week for their daughter’s maintenance, but not a penny in wages or for her maintenance. She alleged that he had assaulted her and that there were frequent disputes over access to Dominique. 15

The Registrar referred Mrs. Ambrose to counsel who was not selected by Mrs. Ambrose to represent her and, after interviewing Mrs. Ambrose, he was satisfied she had *prima facie* grounds for taking matrimonial proceedings in the magistrates’ court and the Supreme Court. Her intended counsel informed the Registrar in a letter dated February 15th, 1995 that Mr. and Mrs. Ambrose were English and had lived and worked in Gibraltar for about five years, but neither was a registered Gibraltarian, so Mrs. Ambrose was not entitled to social assistance here. 20 25

Mr. Ambrose had paid Mrs. Ambrose some maintenance in November and December 1994 (which seems to contradict Mrs. Ambrose’s assertion that he paid her nothing after he threw her out) and in February 1995 he had offered £30 per week for Dominique’s maintenance (the child was at a nursery school in Gibraltar). Mrs. Ambrose could no longer afford the rent for the apartment and she and the child were being accommodated by friends. Her family in England were supporting her because she had no capital or income. 30 35

The Principal Immigration Officer had issued Mrs. Ambrose with a permit of residence under the Immigration Control Ordinance on January 19th, 1994, which would expire on January 19th, 1999. It records her nationality as British and goes on to state that she is permitted to reside in Gibraltar as “BF015925108813666408” (whatever that may mean) for those five years. Mrs. Ambrose’s solicitor says that that permitted her to work in Gibraltar during those five years. Mrs. Ambrose also has a Gibraltar civilian registration card stating she is a British citizen and it is adorned with her photograph. She did not produce and has not produced a work permit, so I presume she did not and does not have one. 40 45

On March 29th, 1995, the learned Registrar refused to grant Mrs. Ambrose a legal assistance certificate and told her so, adding that she could appeal in writing to the Chief Justice within 14 days of receiving the letters setting out all this. Mrs. Ambrose did not appeal.

5 By r.16 of the Legal Aid and Assistance Rules, the Registrar is required to set out the ground or grounds for refusing to grant a certificate. An applicant cannot sensibly or seriously exercise his right of appeal to the Chief Justice if he does not know why the certificate was refused. Besides, if the grounds are correct, the applicant will probably not appeal, thus avoiding delay and expense. The possible grounds for refusing a certificate will be found in Part II of the Ordinance (especially ss. 11, 12, 13, 14) and the Schedule to it and rr. 6(2), 15 and, most clearly, 16 of the Rules.

10 Mrs. Ambrose changed her solicitor and the second one helped her complete another application for a legal assistance certificate, which is dated March 29th, 1995. Her address was then 609 Wellington Court, Devil's Tower Road, Gibraltar and she applied for a legal assistance certificate to take proceedings by petition only in the Supreme Court.

15 The facts of her case included these. Mr. Ambrose admitted to having an affair with another woman and the Ambrose marriage broke down. Mr. Ambrose refused to maintain Mrs. Ambrose. There was a history of his violent assaults upon her, which had been reported to the police. Mrs. Ambrose was refused access to the restaurant premises and accounts, even though she is a director of the company that owns it. She claims to be a joint owner of the business.

20 The magistrates' court made an order that Mr. Ambrose should pay Mrs. Ambrose £30 a week for the maintenance of their daughter but by the end of March this year he was a month in arrears. Now she wished to apply for a divorce, a non-molestation injunction, an order for the custody, care and control of Dominique, maintenance for the child and herself, enforcement of the magistrates' court's order for maintenance for the child and a lump sum order. Mrs. Ambrose had no money to hire a lawyer for this litigation.

25 This second application was refused by the Registrar on March 29th, 1995. No reason was given and Mrs. Ambrose appealed. On April 18th, 1995, her second solicitor asked for reasons in order to help Mrs. Ambrose in her appeal to the Chief Justice. He wondered if the certificate had been refused because Mrs. Ambrose was a director of the company that owned "Raffles."

30 The day before, Mrs. Ambrose's solicitor continued, Mr. Ambrose had broken into Mrs. Ambrose's accommodation in Spain with a sledgehammer, assaulted Mrs. Ambrose and taken away little Dominique, whose whereabouts were unknown. Mrs. Ambrose was admitted to a Spanish hospital that night but her injuries were unspecified at the time of the solicitor's letter to the Registrar. He asked for an emergency legal assistance certificate, which the Registrar could grant even though Mrs.

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Ambrose had appealed and on April 21st, 1995, her solicitor was told that Mrs. Ambrose had been refused a certificate because she did not qualify for it under r. 6(2).

Mrs. Ambrose's solicitor added that Mr. Ambrose had left the matrimonial home, 225 Rosia Plaza, for 13C Parliament Lane, Gibraltar, where he lived with a *de facto* wife, Ms. Pilar Ford, and her daughter, but by October 19th, 1995, they had moved to 12/14 South Barrack Ramp.

Mrs. Ambrose had been responsible for the bookkeeping of Coastland Ltd., which operated the restaurant, while Mr. Ambrose organized the staff, menus and bank accounts. When Mrs. Ambrose "formed an association with another man" in October 1994, Mr. Ambrose was outraged. He abused Mrs. Ambrose and refused to pay the rent, electricity and other costs of Mrs. Ambrose and Dominique. He changed the restaurant licence into his own name and transferred its bank accounts to another bank. Mrs. Ambrose did not know which one it was. She could not obtain supplementary benefit because Coastland Ltd. had not purchased Social Insurance stamps for her.

Mrs. Ambrose's solicitor returned to her appeal on April 26th, 1995 and submitted that Mrs. Ambrose was and is ordinarily resident in Gibraltar and had been so since 1989. She had held the valid permit of residence and a Gibraltar civilian registration card for six years, and her current ones are valid until 1999.

On April 28th, 1995, the Registrar told Mrs. Ambrose's solicitor to read my judgment in *Hawker v. Supreme Ct. Registrar* (1) and distinguish the facts in it from those in Mrs. Ambrose's appeal. He did so in these ways. Mrs. Hawker was found to be ordinarily resident in some senses of the word but not lawfully resident. Mrs. Hawker had a civilian registration card but not a permit of residence. Mrs. Ambrose had both, valid now until January 19th, 1999. Mrs. Hawker could not qualify for lawful residence on account of her husband's status, since he was English, in prison in Spain after conviction for drug offences and unlikely to be granted a permit of residence by the Gibraltarian authorities when he was released. Mr. Ambrose lives in Gibraltar and has a valid residence permit, so he is lawfully resident here.

The Registrar was unmoved. He held that although valid until January 19th, 1999, Mrs. Ambrose's permit of residence could be revoked and her circumstances did not conform to the spirit of the ruling in *Hawker*, whereas a certificate of permanent residence would. He also pointed out that from the letters of Mrs. Ambrose's solicitor, it would seem that Mrs. Ambrose lives in Spain, so she could not be said to be "resident," "ordinarily resident" or "permanently resident" in Gibraltar. Furthermore, the Registrar explained, her residence permit might be cancelled if she obtained a divorce from Mr. Ambrose, since she might then become a burden on the Gibraltar public purse, thus breaching one of the conditions for the award of a residence permit.

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5 Mrs Ambrose, according to her solicitor, now temporarily lives at 39 Wilcherley Crescent, Barnet, Hertfordshire in England. She was diagnosed in early September as suffering from a malignant disease and she was sent for urgent medical treatment to a London hospital. Her treatment is succeeding well and she may soon be back in Gibraltar, presumably at 609 Wellington Court, Devil's Tower Road. Dominique has been found and recovered by Mrs. Ambrose with the help of her solicitors, so she is with Mrs Ambrose in Barnet.

10 Mrs. Ambrose's circumstances merit a legal assistance certificate. Her paramour, if he still is so, is obviously unable or unchivalrous enough to pay for a lawyer to act for her or else he would have done so by now. She lacks the means to pay for one. She has this second five-year permit of residence and Gibraltar civilian registration card. It is, I think, significant that the Gibraltar government sponsored her for treatment in England. A certificate of permanent residence is liable to be revoked just as a permit of residence is. The phrase that is used for qualifying for a legal assistance certificate is "ordinarily resident," which must be different from "permanently resident," as the words make plain.

15 There is unfortunately no definition of "ordinarily resident" and it may be time for one to be added to the Ordinance if the legislature approves, especially so if this judgment "opens the floodgates" to similar applications for legal assistance by impecunious spouses. Mrs. Ambrose will not be a burden on the public purse if she secures by order of the Supreme Court sufficient maintenance for herself and her child, but she should be advised to consider the Acting Registrar's fears that she might be a burden on the public purse and her permit of residence might be cancelled. It would not be in Mr. Ambrose's interests to refuse to pay the maintenance for his daughter together with the arrears, and depending on the evidence in the hearing of the petition, to pay reasonable maintenance for Mrs. Ambrose, or else she might have to return to England with Dominique.

20 I shall not rehearse the law I set out in *Hawker*, save to repeat that "ordinarily resident" is a matter of fact, to be determined within the natural meaning of the words in the Ordinance. I hold that the facts in Mrs. Ambrose's application are different from those in Mrs. Hawker's and her appeal is allowed. She should have a legal assistance certificate dated March 29th, 1995. There will be no order for costs.

Appeal allowed.