13 November 2020

PRESS SUMMARY

R (on the application of Maughan) (Appellant) v Her Majesty's Senior Coroner for Oxfordshire (Respondent) [2020] UKSC 46
On appeal from [2019] EWCA Civ 809

JUSTICES: Lord Reed (President), Lord Kerr, Lord Wilson, Lord Carnwath, Lady Arden

This appeal concerns the standard of proof, or degree of conclusivity, required for the determination of the result of an inquest into a death where the question is whether the deceased committed suicide. The result of an inquest may be given in a single short form conclusion (using simply the word suicide) and/or in a brief narrative statement ("a narrative conclusion"). The judgments on this appeal consider whether the degree of conclusivity is the same in both cases, and whether it is proof on the balance of probabilities (the civil standard) or beyond reasonable doubt (the criminal standard). Longer, more judgemental narrative conclusions are relatively new and result from the transformation in accordance with jurisprudence of the European Court of Human Right of many inquests from the traditional inquiry into a suspicious death into an investigation designed to elicit the facts about what happened, and to identify lessons for the future.

The appeal arises out of the death on 11 July 2016 of the appellant's brother, James Maughan, at HMP Bullingdon. At the inquest, the Senior Coroner for Oxfordshire ("**the Senior Coroner**") decided that the jury could not safely reach a short form conclusion of suicide. This was because the jury could not be sure beyond reasonable doubt that James Maughan had intended to kill himself. The Senior Coroner put questions to the jury and asked them to make a narrative statement of the circumstances of James Maughan's death on a balance of probabilities. The jury answered the questions put to them by saying that he had a history of mental health issues and that on a balance of probabilities he intended fatally to hang himself and that increased vigilance would not have prevented his death.

The appellant began judicial review proceedings to establish that the jury's conclusion was unlawful. He argued that the Senior Coroner was wrong to instruct the jury to apply the civil standard of proof when considering whether James Maughan had committed suicide. The Divisional Court dismissed the appellant's application, holding that the standard of proof for short form and narrative conclusions of suicide was the civil standard. The Court of Appeal upheld the Divisional Court's judgment, and went on to hold that the criminal standard applied to unlawful killing. The appellant appealed to the Supreme Court. The Supreme Court permitted the Chief Coroner of England and Wales and INQUEST to intervene.

JUDGMENT

By a majority the Supreme Court dismisses the appeal, and holds that the standard of proof for all short form conclusions at an inquest is the balance of probabilities. Lady Arden gives the first judgment, with which Lord Wilson agrees. Lord Carnwath agrees with Lady Arden and gives a concurring judgment. Lord Kerr gives a dissenting judgment, with which Lord Reed agrees.

REASONS FOR THE JUDGMENT

Lady Arden explains that neither the Coroners and Justice Act 2009 ("**the Act**") nor the European Convention on Human Rights requires any particular standard of proof for conclusions at an inquest **[2,12]**. There was case law to the effect that conclusions of suicide and unlawful killing should be reached on the criminal standard **[60, 70].** A coroner's inquest is not, however, a criminal proceeding **[2].** The Coroners (Inquests) Rules 2013 ("**the Rules**") contain a form which must be used to record the result of an inquest **[15]**. Note (iii) to this form explains that the standard of proof for short form conclusions of suicide and unlawful killing is the criminal standard and that for other conclusions the civil standard applies **[16]**. Adopting Wilson LJ's reasoning in *R (LG) v Independent Appeal Panel for Tom Hood School* [2010] EWCA Civ 142; [2010] PTSR 1462 Lady Arden holds that the Rules could prescribe standard of proof. The issue is whether the effect of Note (iii) is to require a particular standard.

The Ministry of Justice ("the **MoJ**") consulted on the Rules in draft **[24]**. The MoJ's response document explained that case law had established the standard of proof and the Rules could not change the law **[26-27]**. Lady Arden holds that that response is relevant to interpreting Note (iii) and shows that Parliament did not intend to change or codify the law as it understood it to be **[42]**. A footnote can lay down a new legal rule (***Hunt v R M Douglas (Roofing)*** [1990] 1 AC 398) but the circumstances of that case were very different **[43].** The contrary result in this case would contravene the drafting conventions on which our unwritten constitution depends **[44].** On its true interpretation, Note (iii) did not take away the power of the courts to develop the common law **[56]**.

Lady Arden concludes that, consistently with legal principle, the civil standard of proof applies to short form conclusions of suicide **[68]**. The previous case law is not binding on the Supreme Court and does not identify a good reason against applying the civil standard **[70]**. To apply different standards of proof for short form and narrative conclusions leads to an internally inconsistent system of fact-finding **[71]**. If a criminal standard of proof is required, suicide is likely to be under-recorded **[73-74]**. Societal attitudes to suicide have changed and the role of inquests has developed to be concerned with the investigation of deaths, not criminal justice **[75-81]**. Also, certain Commonwealth jurisdictions have aligned the standard of proof applicable in inquests with the standard applicable in civil proceedings **[82]**.

Lady Arden holds that the civil standard of proof also applies to determinations of unlawful killing **[93],[96]**. There is then consistency between the determinations made at an inquest **[96]**.

In his concurring judgment, Lord Carnwath considers that the Act does not indicate that the civil standard of proof cannot apply a conclusion of suicide **[100]**. In his view, Note (iii) does not have that effect. The public consultation materials confirm that position **[107]**.

Lord Kerr in his dissenting judgment holds that the criminal standard of proof applies to short form conclusions of suicide and unlawful killing **[143]**. There is no inconsistency caused by a short form and narrative conclusion having different standards of proof **[116]**. There is nothing untoward in putting suicide and unlawful killing in a special category of verdicts that require proof to the criminal standard **[139]**. Note (iii) to the form did not attempt to change the law, but confirmed what the existing law was. As a result, the common law rule became a statutory rule **[125]**. It can only cease to have effect if Parliament enacts a statutory provision to amend or abolish it **[126]**. The Rules unquestionably established a statutory basis for the application of the criminal standard of proof for short form conclusions of suicide and unlawful killing **[132].** Lord Reed agrees with Lord Kerr.

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:
http://supremecourt.uk/decided-cases/index.html