

1972
Mar. 23

[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

ANTIS
LEONTIADES
v.
LIA A.
LEONTIADES

ANTIS LEONTIADES,
Appellant (Respondent),
v.
LIA A. LEONTIADES (NOW WIFE OF CHAR. GEORGHIOU),
Respondent (Applicant).

(Application in Civil Appeal No. 5054).

Civil Procedure—Appeal—Notice of appeal—Amendment—Application for leave to amend—On the ground that the record was not available at the time of the filing of the notice of appeal—Discretion of the Court of Appeal—Amendment sought not introducing new grounds but merely specifying more precisely the grounds on which the appeal shall be argued—Application granted—Civil Procedure Rules, Order 35, rule 4.

Notice of appeal—Amendment—Discretion of the Court of Appeal—See supra.

The facts sufficiently appear in the ruling of the Court granting this application for leave to amend the notice of appeal.

Cases referred to :

Papadopoulou v. Polycarpou (1968) 1 C.L.R. 352 at pp. 359–360 ;
S.O.R.E.L. Ltd. v. Servos (1968) 1 C.L.R. 123 at p. 126 ;
Theodorou and Others v. Demetriou and Others (1971) 1 C.L.R. 389.

Application.

Application for leave to amend the grounds of appeal in a notice of appeal against the order of the District Court of Nicosia (Santamas, Ag. D. J.) given on the 28th February, 1972, (Appl. No. 57/67 under the Guardianship of Infants and Prodigals Law, Cap. 277) whereby leave was granted to the respondent (applicant) to take the child Kyriaki (Kakia) A. Leontiadou to Australia for a period not exceeding one year.

R. Constantinides, for the appellant.

C. Adamides, for the respondent.

Cur. adv. vult.

The following ruling was delivered by :—

HADJIANASTASSIOU, J. : The appellant in this application of March 14, 1972, applied under the provisions of Order 35, Rule 4, to amend the notice of appeal. The judgment of the learned trial Judge appealed from was delivered on February 28, 1972, and the notice of appeal was filed on February 29, within the appropriate period prescribed by Rule 2, and is in these terms :—

- “(a) Irregularities in the proceedings ;
- (b) The order made is against the law and/or the principles applicable to such matters ;
- (c) The findings of fact are wrong ;
- (d) Further and better grounds will be furnished as soon as the order and the minutes are ready.”

In support of the application an affidavit was sworn by the father of the infant that because the record of the trial Court was not ready, the grounds of the appeal had to be amended and properly reasoned. The appellant applied to the District Court for an injunction staying the execution of the order of the Court until the determination of the appeal because by the said order of the Court the mother of the infant was allowed to proceed to Australia and remain there together with the infant and her new husband for the period of one year. On March 7, 1972, an order was made by consent of the parties that the infant should remain in the custody of her grandmother, Mrs. Iro Christofidou, pending the result of the appeal.

Counsel for the appellant, relying on the principles formulated in the case of *Papadopoulou v. Polycarpou* (1968) 1 C.L.R. 352 ; *S.O.R.E.L. Ltd. v. Nicos Servos* (1968) 1 C.L.R. 123 ; and *Theodorou and Others v. Demetriou and Others* (1971) 1 C.L.R. 389, has contended that this Court should exercise its discretion and grant an order in favour of the appellant for the amendment of the notice of appeal. Counsel for the respondent has not raised any objection.

There is no doubt that under Rule 4 of Order 35 of the Civil Procedure Rules, the notice “ shall also state all the grounds of appeal and set forth fully the reasons relied upon for the grounds stated. But any notice of appeal may be amended at any time as the Court of Appeal may think fit.”

That the Appellate Court has a discretion in these matters for granting leave for the amendment of the notice of appeal has been repeatedly said in a number of cases. In *Poly-*

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carpou's case (supra) Vassiliades, P., said at pp. 359–360 :—

“ According to the rule on which the application for amendment is based, the notice of appeal may be amended at any time as the Court of Appeal may think fit. Generally speaking, amendment of the notice at such late stage, tends to disturb the proceedings and to embarrass the other side. They should be discouraged ; and should be very sparingly allowed. In the present case, we take the view that the amendment sought is not an attempt to introduce a new ground, but merely to specify more precisely the ground on which the appeal shall be argued on behalf of the appellant. We, therefore, grant leave for the amendment of the notice, as proposed in the application, subject to the reservation that the other side shall be afforded, if necessary, a full opportunity of preparing their answer ; and, subject to the payment of costs resulting from the application, which will be decided at the end of the appeal.”

In *Servos* case Josephides, J. said at p. 126 :—

“ These are the amended grounds of appeal now produced in Court, and Mr. Triantafyllides begs leave to amend his notice of appeal accordingly. Mr. Cle-rides, for the respondent, who has received prior notice of this application, does not object to the amendment sought. It should be observed, however, that, under the provisions of Order 35, Rule 4, a notice of appeal may not be amended without the leave of this Court.

We should also add that applications for the amendment of the grounds of appeal should normally be filed with the Registry of this Court well in advance and before the appeal is fixed for hearing, and notice served on the respondent. In the circumstances of this case, leave to amend the notice of appeal, as applied for, is granted.”

Having considered the amended grounds of appeal, and as we are of the view that the appellant is not attempting to introduce new grounds, but merely to specify more precisely the grounds on which the appeal shall be argued on behalf of the appellant, and after addressing ourselves to these authoritative pronouncements, we have decided to grant leave to amend the notice of appeal as proposed by counsel for the appellant.

Regarding the question of costs, we think that this is a proper case to award the respondent his costs. Order accordingly.

*Application granted ; order
for costs as above.*