

IN THE SUPREME COURT

BETWEEN:

SHELBOURNE COUNTY COUNCIL

Appellant

-AND-

FOSTER

Respondent

**SKELETON ARGUMENT ON BEHALF OF THE APPELLANT
GROUND (i)**

The ground of appeal

1. The trial judge erred in applying *Coxall v Goodyear Great Britain Ltd* [2002] EWCA Civ 1010 and concluding that the Council had breached its duty to Ms Foster by failing to dismiss her: statements of principle in other cases rightly indicate that an employer cannot be in breach of duty for failing to dismiss an employee who wanted to continue working despite medical advice.

Submissions

2. It was established in *Withers v Perry Chain Co Ltd* [1961] 1 WLR 1314 that an employer has no legal duty to prevent an adult employee from doing work which she is willing to do. This principle was confirmed in respect of psychiatric illness cases by Hale LJ in *Hatton v Sutherland* [2002] EWCA Civ 76.
 - (i) This principle should be applied to the instant case, where the Appellant chose to continue with her employment in full knowledge of the risks to her health.
 - (ii) In *Coxall v Goodyear Great Britain Ltd* [2002] EWCA Civ 1010, Simon Brown LJ distinguished his decision from the established line of authority on its particular facts. His decision should not be applied to the facts of the instant case.
3. Where there is a foreseeable risk of occupational stress induced psychiatric illness to an employee, the law requires the employer to take reasonable measures to mitigate that risk to avoid breaching its duty of care in respect of the employee (*Hatton v Sutherland* and confirmed in the appeal arising from that case: *Barber v Somerset County Council* [2004] UKHL 13; [2004] 1 WLR).

- (i) The Appellant took reasonable steps to assist the Respondent and is not therefore in breach of its duty to her (*Vahidi v Fairstead House School Trust Ltd* [2005] EWCA Civ 765).

Beatrice Riley, 21 March 2010