[2019] EWCA Civ 1598
Case No: B5/2019/0636

IN THE COURT OF APPEAL (CIVIL DIVISION)

The Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday, 30 July 2019

Before:

LORD JUSTICE BEAN
LORD JUSTICE HENDERSON

Between:

YORKSHIRE WATER SERVICES LIMITED & ANOR

Appellants

- and -

ALEXANDER IVAN MUZICZKA

Respondent

Transcript of Epiq Europe Ltd, Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400 Email: civil@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr J Crossley appeared on behalf of the **Appellants**

The **Respondent** did not appear and was not represented

Judgment

(As Approved)

LORD JUSTICE BEAN:

1. This litigation concerns a road called Storrs Bridge Lane, Sheffield. Yorkshire Water, the first claimants in this case, own a water treatment works there. Mr Alexander Ivan Muziczka, the defendant and respondent, is in occupation, rightly or wrongly, of a property there called Claremont house. In 2017 Yorkshire Water and Bovis Homes Limited, who own premises there which were once a factory, issued proceedings alleging that Mr Muziczka was blocking Storrs Bridge Lane. In those proceedings they sought an injunction prohibiting him from doing so. Mr Muziczka served a defence and counterclaim for damages for, among many other things, failure to repair the road.

2. On 22 March 2018 District Judge Baddeley struck out the counterclaim. Yorkshire Waters' claim proceeded to trial. That took place before HHJ Sarah Richardson on 5, 6 and 7 June 2018. She heard oral evidence from the defendant among others. She reserved judgment. A draft reserved judgment was sent to the parties on 20 June and handed down in open court on 5 July 2018. At that hearing Judge Richardson made an order endorsed with a penal notice, which after the preliminary recitals continued as follows:

> "Upon the court finding in its judgment amongst other matters that: (1) on or about 15 March 2017 the defendant substantially interfered with the first claimant's right of way over the road shown coloured yellow on the attached plan ('the road') by placing or arranging for rubbish to be placed on the road so as to form a blockade of the same; (2) on or about 22 July 2017 the defendant erected a barrier on the road with the intention of blockading the entire width of the road save for a pedestrian access; (3) he defendant has made repeated threats and statements of intention to obstruct the first claimant's use of the road (these are threats which the defendant believes he is entitled to make, and there is a very real and imminent risk that the defendant will follow them through); (4) the defendant is capable of extreme acts and intemperate behaviour; (5) the defendant reacts badly to anything that he perceives to be a challenge to what he perceives to be his authority, and in the light of the court's findings, the entirety of which are set out in the judgment handed down on 20 June 2018, the court has of its own motion made an interim injunction order to prevent the defendant from substantially interfering with the first claimant's right of way over the road between the receipt by the defendant of the approved judgment and the hearing on 5 July 2018, it is ordered by the court set in motion that until 4 pm on 5 July the defendant is prohibited, whether acting by himself or through or with or encouraging others, from interfering with the first claimant's right of way over the road including but not limited to (a) placing any item on the road, (b) standing in the road so as to prevent a vehicle from passing along the road, (c) informing any employee, servant, agent or visitor of the first claimant that they are not or will not be allowed to use the road for the purposes of

> obtaining access to an egress from the first claimant's land, which is accessed from the road and which contains amongst other matters a water treatment plant known as the Loxley Valley Water Treatment Works, provided that nothing in this order shall prevent the defendant from exercising such rights of way that he has over the road by virtue of his occupation of the property known as Claremont House or otherwise."

3. That injunction was made permanent. The defendant applied for permission to appeal against it to the High Court. The application was refused by Martin Spencer J on the papers on 8 November 2018 and subsequently at an oral hearing in Leeds on a renewed application by Dingemans J on 5 March 2019. Meanwhile, two further hearings have taken place in the county court. On 29 October 2018 HHJ Graham Robinson, sitting at Sheffield at a hearing at which Yorkshire Water and Bovis were represented by counsel and the defendant appeared in person, made an extended civil restraint order following the dismissal by Judge Robinson of applications by Mr Muziczka heard on 23 October 2018, the dismissal forming part of a judgment on 29 October 2019 in which every part of Mr Muziczka's applications was dismissed and declared to be totally without merit. The extended civil restraint order prohibited Mr Muziczka from issuing any new proceedings essentially concerning Storrs Bridge Lane, Sheffield in any county court in England and Wales without first obtaining permission. I need not go into further details of that order.

4. On November 2018 HHJ Richardson considered an application by Mr Muziczka for permission to appeal against the order of District Judge Baddeley striking out the counter claim. That application was refused by Judge Richardson. It follows that, as matters now stand, neither the grant of the injunction nor the striking out of the counterclaim can be argued on appeal, since this court (indeed, any court) must work on the assumption that the injunction is valid and binding on the defendant.

5. The defendant has not complied with the terms of the injunction. Yorkshire Water issued an application for committal of Mr Muziczka for what they said were a number of contempts of court consisting of breaches of the injunction. The hearing of the contempt application took place before HHJ Robinson after an adjournment of the previous hearing on 12 February 2019. The judge had evidence before him from the claimant's side of breaches. The hearing was attended by the defendant in person. Judgment was given orally on 12 February 2019. The judge found three allegations of contempt proved. Allegation (1) was that on 14 December 2018 the defendant had informed Yorkshire Water that its access over and along the road would be restricted. That finding refers to an email from Mr Muziczka to the solicitor acting for Yorkshire Water., Mr Goldthorpe. I shall return to that a little later. Allegations (3) was that on 19 December 2018 the defendant prevented a vehicle travelling over and along Storrs Bridge Lane. This was an incident carefully summarised by the judge in his judgment. He found at paragraph 67 that he was satisfied so that he was sure that the defendant stood in the road and impeded the progress along the road of a tanker being delivered by a Mr Hodgson. The judge found that he was satisfied so that he was sure that the

defendant's motive had nothing to do with any works of maintenance. The judge was told about a barrier, but the barrier was such that its purpose was to protect people on the pavement, not upon the road, so that had nothing to do with the defendant's activities. The judge found that, but for the presence of the defendant in the road, the tanker could have crossed the barrier and a parked car without any danger to the defendant. The judge found that while the defendant was standing in front of the tanker, the tanker could not safely proceed down the road. The judge states correctly that the words of the injunctions are clear. Paragraph (b) of the injunction explicitly prohibits the defendant from standing in the road so as to prevent a vehicle from passing along the road. By standing in front of the in the tanker, the judge found the defendant had brought about the consequence that the tanker was prevented from passing along the road, albeit only temporarily. The breach had been proved beyond reasonable doubt.

6. The fact that the defendant would attempt to block the road had been heralded in the e-mail of 14 December, to which I now return. This was sent by the defendant at 8.56 am on 14 December. It runs to two and a half pages. It is thoroughly abusive and accuses the recipient personally of being a criminal, of lying and cheating and so forth. Some of the abuse is directed against Yorkshire Water as a whole. As to what the defendant intended to do, it includes for example the following:

> "I cannot undertake the work without a safety barrier, so unfortunately there is no option than to restrict your access till you agree what your legal obligations are and agree to fix and maintain the road … You will be receiving a phone call from your staff members tomorrow when their access will be restricted until YW stops substantially interfering in my right of way. You have till 4 pm to provide an appropriate response. You will have to personally attend Storrs Bridge Lane before access is unrestricted to agree the measures to repair and maintain the road moving forward. I would book a train for first thing tomorrow. I will not discuss the issue or even speak with anyone else except you in person on the road."

7. The letter continued with a great deal more abuse. The last matter which the judge found proved as a contempt was the fifth allegation. That was a similar one to the first one and relates to a further email sent on 8 January, again to Mr Goldthorpe, on similar lines though somewhat briefer to the first.

8. We are in no doubt whatever that the judge's finding of contempt having been committed by the tanker incident on 19 December 2018 was correct and should be upheld. We have had more difficulty with the two emails to Mr Goldthorpe. The terms of the judge's order were that the defendant was prohibited from "informing any employee, servant, agent or visitor of the first claimant that they are not or will not be allowed to use the road for the purposes of obtaining access to and egress from the first claimant's land". The question is whether we are satisfied beyond reasonable doubt that

this applies to a letter from the defendant to the lawyer conducting the case on behalf of the first claimant telling the lawyer that he, the defendant, intends in effect to commit contempt by preventing vehicles from passing along the road. We are not satisfied that these emails or either of them on a proper construction of the judge's order constitute contempt of court. They constitute abusive correspondence informing the recipient of the letter that the defendant intends to commit contempt, but they are not contempts in themselves. We therefore set aside the findings of contempt in respect of the emails.

9. We turn to the question of penalty. Judge Robinson in his decision of 19 March 2019 placed the greatest emphasis quite rightly on the tanker incident. He said as to that:

> "The harm attaching to the action of preventing the tanker is much greater [than the sending of the two emails]. The tanker was prevented from proceeding along the road for 28 minutes. Employees of YW were diverted from their normal tasks and duties. They had to attend the scene to try to end the impasse. If I had to categorise this breach by reference to the guideline relating to breach of a criminal behaviour order, I would place this breach in category B2."

10. He said in relation to all three findings of contempt that there was no excuse for any of the breaches and that they were breaches of an order which clearly specified prohibited actions. He went on to say this:

> "The aggravating feature of the breaches is that there are three findings of contempt. A possible mitigating feature is that the defendant appears to have convinced himself that he is justified in what he is doing even though he is quite wrong about that. In seeking to determine matters of mitigation personal to the defendant, I have identified the following. I treat him as a man of good character. This is the first occasion that the court has had to deal with breaches of the order by the defendant. There is no suggestion that there have been any more breaches of the order. I cannot of course take account of matters which the defendant might have told me himself because he has chosen to absent himself from the hearing."

11. I add that the defendant has done so again today.

12. After noting that the defendant did not admit the contempt, which would have been a mitigating factor, the judge continued at paragraph 42:

> "I consider the cumulative effect of the three findings of contempt of court to be such that it is not appropriate to make no order nor to impose a fine. In my judgment the custody threshold is passed in this case. To the extent that this may be inconsistent with the decision in the case of *Roberts*, the fact is that the range of remedies available in the criminal courts are different to those available in the county court and, further, that an important function of the committal process is to seek to secure further compliance with the relevant injunction order. Taking into account the matters identified, I conclude that the appropriate order is a committal order for a total period of 90 days. That is made up as follows. For the finding of contempt involving the tanker lorry, 90 days; for each of the finding of contempt arising out of the sending of the emails, 28 days concurrent to each other and concurrent to the 90 days. The committal orders will be suspended for a period of two years on terms that there are no breaches of the injunction order made this day to replace that which was made in July 2018."

13. The judge went on quite rightly to inform the defendant of his right to appeal to this court. The defendant did not in fact do so in respect of the judgment of Judge Robinson from which we have been quoting, finding the contents proved, but for the avoidance of doubt we have treated the appeal as being both against the liability findings and the penalty.

14. As we have said, we have set aside the liability findings in respect of the two emails. Nevertheless, we consider that the penalty of a committal order for 90 days suspended for two years was amply justified for the tanker lorry incident alone. It is an incident made more serious, not as the judge found by the sending of the emails which constituted contempts but in my view by the sending of the prior email, that is, the one of 14 December 2018 proclaiming in abusive terms exactly what it was that the defendant intended to do to defy the order of the court; and that behaviour itself comes against the background of the matters set out in detail in the judgment of Judge Richardson handed down on 20 June 2018 and summarized in the recitals to the injunction order itself of 5 July 2018, namely (a)the defendant has made threats and statements of intention to obstruct the first claimant's use of the road(these are threats which the defendant believes that he is entitled to make, and there is a very real and imminent risk that the defendant will follow them through; (b) the defendant is capable of extreme acts and intemperate behaviour; (c) the defendant reacts badly to anything that he perceives to be a challenge to what he perceives to be his authority.

15. Against that background, the tanker incident in my judgment plainly crossed the custody threshold. No complaint can sensibly be made of the 90-day sentence. The judge exercised his discretion to suspend it, and it is not suggested that we should do otherwise. But I would dismiss the appeal against the penalty of 90 days suspended for two years for the tanker incident.

16. I conclude by saying that the injunctions granted by Judge Richardson remain in force, as of course does the extended civil restraint order. The defendant can, I suggest, be confident that in the event of any further contempt of court in breach of the injunction, he is liable to be sent to prison without suspension of the order for a fresh term of imprisonment in addition to consecutive activation of the 90-day penalty already imposed for the December 2018 incident.

LORD JUSTICE HENDERSON:

17. I agree.