



Case No: A2/2019/1483

Neutral Citation Number: [2020] EWCA Civ 1749

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE HONOURABLE MRS JUSTICE MOULDER

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

Wednesday, 29 July 2020

Before:

LORD JUSTICE COULSON
and
LADY JUSTICE CARR DBE

Between:

LEE CANT

Appellant

- and -

STEPHEN SETON

Respondent

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The **Appellant** appeared in person

The **Respondent** appeared in person

Judgment
(As Approved)
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LADY JUSTICE CARR:

Introduction

1. This is an appeal by Mr Lee Cant, the Appellant, against the order of Moulder J ("the Judge") on 3 June 2019, whereby she dismissed his without notice application for an anti-harassment injunction against Mr Stephen Seton, the Respondent ("the Application"). Both parties have appeared today in person. The Respondent has very helpfully provided a carefully prepared paginated bundle which has been of great assistance to the court.
2. The Judge dismissed the Application on the single ground that she did not have jurisdiction to make the order sought. Permission to appeal was granted on the limited basis that it was arguable that she was wrong to do so. It was noted that the Judge appeared to have failed to consider whether she had jurisdiction by reference to section 37(1) of the Senior Courts Act 1981, or section 3 of the Protection from Harassment Act 1997.

The facts

3. The origin of the dispute between the parties appears to lie in a claim by the Respondent that the Appellant, an erstwhile accountant, owed him money. The Appellant claims that at 7.00 pm on 29 May 2019, in the presence of three others and at what he describes as a "mediation meeting," the Respondent assaulted him - indeed attempted to murder him - causing serious injuries for which the Appellant was later treated in hospital.
4. On 3 June 2019 the Appellant issued an application for an injunction that the Respondent be "restrained, investigated" and "forbidden" to "go near or speak to" the Appellant and "do all as stated by equity lawyer by Mr Edward W Ellis". This appears to be a reference to a Mr Ellis, a struck-off solicitor, who was, and remains, the subject of a civil restraint order. Mr Ellis has achieved notoriety through what have been described as "frequent and mischievous interventions" in the legal claims of others in furtherance of what he calls his UK mass remedy process (see, for example, *Awodiya & Anor v HM Revenue and Customs* [2019] EWHC 251 (Admin) (at paragraph 28)). Much of the documentation that has been submitted by the Appellant here carries the hallmark of the involvement and/or encouragement of Mr Ellis.
5. The Application was supported by a one-page witness statement dated 30 May 2019 in which the Appellant alleged that the Respondent had, wholly without provocation, attempted to murder him. The Respondent was said to have threatened the Appellant with further violence if he failed to comply with his demands for cash and threatened to visit the Appellant's home "or area" within seven days. The Appellant stated that he was "terrified of any further violence" from the Respondent "and his accomplices" and required "police protection 24 hours a day".

6. The Respondent has at all times denied any assault. He accepts the existence of a financial dispute with the Appellant, but said that he does not intend to pursue what he says is the debt owed to him.

The hearing before the Judge

7. The matter came before the Judge in the interim application list in the afternoon of 3 June 2019. The Appellant appeared in person. The Respondent, having not been served with the Application or put on notice in any way, was neither present nor represented. After the Appellant had submitted to the Judge that he had been severely beaten and assaulted and had been granted "state protection as a witness" and "protection by the Crown and the Lord's Bishops," he demanded police protection.
8. The Judge indicated at that stage that she did not have any power to grant such protection. The Appellant needed to go to the police. He was complaining of a criminal act in respect of which the court could do nothing in terms of granting protection. The Judge said she had no relevant powers and dismissed the Application accordingly.

Subsequent events

9. At some point the Appellant complained to the police about the alleged assault on 29 May 2019. The Respondent was interviewed voluntarily and denied any wrongdoing. He was subsequently charged and the matter set down for trial, but proceedings were discontinued shortly before trial in February 2020 on the basis that there was not enough evidence to provide a realistic prospect of conviction.
10. Further, by an undated Part 8 claim form issued in the County Court at Central London, the Appellant commenced proceedings against the Respondent for injunctive relief and damages arising out of the alleged assault on 29 May 2019, supported by the same witness statement of 30 May 2019 that had been relied on before the Judge, and another witness statement from an alleged witness to the alleged incident.
11. On 12 June 2019 District Judge Worthington directed the Application for an injunction to be listed on notice before a Circuit Judge. The Appellant was ordered to file and serve on the Respondent within seven days Particulars of Claim, a detailed witness statement, a medical report, together with the order of 12 June 2019.
12. The matter then came before HHJ Luba QC on 20 June 2019 at a hearing attended by the Appellant but not the Respondent, who had not been served properly, if served at all. HHJ Luba QC struck out and dismissed the claim for failure on the part of the Appellant to comply with court orders. The Appellant had failed: (1) to establish proper service on the Respondent; (2) to file and serve Particulars of Claim; (3) to file and serve a proper witness statement; (4) to file and serve a medical report from a medical practitioner.

13. HHJ Luba QC also recorded that the Appellant had sent to the court "a barrage of emails containing a miscellany of attachments, including documents, audio and video clips." It was apparent to him that the Appellant was either unable or unwilling to comply with court orders. Permission to appeal was refused.
14. The Appellant sought permission to appeal from the High Court. That application was refused on the papers on 6 August 2019 by Sir Alistair MacDuff sitting as a High Court Judge. The Appellant renewed his application for permission at an oral hearing on 11 September 2019 before Bryan J, who also refused permission.
15. Today Mr Cant appears to dispute this sequence of events, but they are in fact a matter of record. He goes on to make allegations of fraud and collusion between the judges involved in the Central London County Court proceedings and submits that many others have suffered in a similar fashion at the hands of these judges.
16. It does not appear that these subsequent civil proceedings were revealed by the Appellant when applying to this court for permission to appeal the order of the Judge.
17. There is no evidence of any violence or harassment or threat on the part of the Respondent whatsoever towards the Appellant in the 14 months or so since 29 May 2019.

This appeal

18. As indicated, the appeal is limited to the question of jurisdiction. Although the Appellant's focus before the Judge was on the criminal aspect of his complaint and his request for police protection, the Judge should have considered whether she had jurisdiction to grant an injunction under section 37(1) of the Senior Courts Act 1981 ("the 1981 Act") and/or by reference to a claim under section 3 of the Protection from Harassment Act 1997 ("the 1997 Act").
19. As to the latter, section 3 provides:

"(1) An actual or apprehended breach of section 1(1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question."

Section 3(3) provides that a claimant may apply for a warrant in the event that he/she considers that the defendant has done anything prohibited by any injunction granted for the purpose of restraining the defendant from pursuing any course of conduct which amounts to harassment.

20. Section 1(1) of the 1997 Act provides:

"A person must not pursue a course of conduct -

(a) which amounts to harassment of another, and

(b) which he knows or ought to know amounts to harassment of the other."

21. Harassment includes conduct that causes alarm or distress (see section 7(2)). By section 7(3), a "course of conduct" must involve, in the case of conduct relating to a single person, conduct on at least two occasions in relation to that person.

22. The Judge may not have had jurisdiction under section 3 of the 1997 Act on the basis of an actual breach of section 1(1) since there was no clear evidence of conduct amounting to harassment in relation to the appellant on at least two separate identified occasions, but she could have concluded that there was evidence of a single occasion of harassment, coupled with evidence of at least one further apprehended breach, thus giving rise to a claim under section 3 for an apprehended breach of section 1(1).

23. In any event, section 37 of the 1981 Act provides:

"(1) The High Court may by order (whether interlocutory or final) grant an injunction ... in all cases in which it appears to the court to be just and convenient to do so."

The legislation put on a statutory footing the High Court's pre-existing inherent jurisdiction to grant injunctions. The relevant principles are set out conveniently in the notes to CPR 25.1 in the White Book and in section 15 of volume 2 of the White Book.

24. There is jurisdiction under section 37 in principle to grant an injunction to restrain a threatened tort: see *Khorasandjian v Bush* [1993] QB 727 and *Burris v Azadani* [1995] 1 WLR 1372, and an actual tort, such as trespass to the person. The power is not limited to restraining conduct which is in itself tortious or otherwise unlawful. On this basis, the Judge should have concluded that she had jurisdiction to entertain the Application. To that extent, the appeal is well founded.

25. But that is, of course, not the end of the matter. The question remains as to whether or not the appeal against the order dismissing the Application should be allowed.

26. Mr Cant, in wide-ranging and largely incoherent submissions, told the court that he wanted the court to afford relief of a wide-ranging and varied nature: a legal assistance entitlement; a "best qualification" finding relating to Mr Ellis; a discovery order against the Respondent requiring him to file a case statement within 14 days explaining why the

court should not make findings of contempt and fraud; default remedies orders; relief against the Ministry of Justice; a transcript at public expense.

27. When pressed by the court, the Appellant ultimately confirmed that he primarily sought a restraint order, but in addition sought the further relief to which I have just referred. The court allowed Ms Nedu Berry to supplement Mr Cant's submissions. She was at pains to emphasise that the original attack involved attempted murder, not the mere common assault which the CPS chose to charge the respondent with. She sought an order for an investigation against the Ministry of Justice for perverting the course of justice.
28. The court now has to decide, in the light of all the material and submissions it has before it, how to proceed and, in particular, whether to remit to the court below for reconsideration under CPR 52.22(b), or to consider the substantive merits of the Application.
29. I do not consider it appropriate to remit the matter, and the Appellant did not seek any such remission, not least since the Appellant has had a full opportunity already to pursue his application for an injunction after the dismissal of the Application. The fact that he did not avail himself properly of it was a situation of his own making.
30. There is, in my judgment, no proper basis whatsoever for the allegations of fraud and collusion amongst the judiciary in relation to the County Court proceedings. The decisions made are fully recorded, logical, readily understandable and procedurally proper. I would therefore propose to look at the substance of the Application as matters now stand. It is in the interests of justice to do so.
31. There is no proper basis for granting the discretionary relief sought by the Appellant in the form of the restraining order, let alone in the form of the additional matters that he seeks to raise. The Appellant's subsequent proceedings in the County Court for the same injunctive relief overtook the Application for urgent interim relief. This is not an appeal that should ever have been pursued once the Appellant chose to commence those proceedings, the existence of which was not disclosed to this court when applying for permission. The appeal can be described fairly as an abuse of the court's process.
32. But fundamentally, and in any event, in the absence of any evidence of violence or threat of violence or other incident of potential harassment on the part of the Respondent towards the Appellant since 29 May 2019, there is no identifiable need for any injunction. In other words, it would not be just or convenient to grant an injunction restraining the respondent in any way. The position would be the same on an application made by reference to section 3 of the 1997 Act.
33. In these circumstances, it is not necessary to address the further hurdles standing in the Appellant's path, including issues over proper service on the Respondent, further failure

to comply with court order, and those aspects of the Application seeking relief that would, on any view, fall outside the scope of any order that this court could properly make.

34. For these reasons, although the Judge was wrong to hold that she did not have any relevant jurisdiction, I would dismiss the appeal.

LORD JUSTICE COULSON:

35. I agree. When Lewison LJ gave permission to appeal in this case, he did not know, because the Appellant did not tell him and did not provide this court with the relevant documents, that his underlying civil claim against the Respondent had been dismissed by HHJ Luba QC and that his application for permission to appeal against that order had been rejected first by Sir Alistair MacDuff and then, following a hearing, by Bryan J. That failure constituted a blatant disregard for the court rules. It rendered this entire appeal an abuse of process.
36. The only answer to that point suggested this morning was the proposition that in some way those County Court proceedings should be discounted because the judges involved, and apparently lots of other judges as well, were in some way guilty of corruption. It goes without saying that there is no evidence of any of that; the allegation bears all the hallmarks of Mr Ellis's one-man campaign, described as "mass remedy," which has been the subject of numerous adverse judgments and court orders. The Respondent called all of that "a circus". I am driven to agree with that description.
37. The appeal is dismissed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge