

ENGLAND AND WALES / JUDGMENT

Krause v Associated Newspapers Ltd

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Neutral Citation Number: [2014] EWHC 293 (QB) Case No: HQ13D04334 IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION Royal Courts of Justice Strand, London, WC2A 2LL Date: 19/02/2014 Before : THE HONOURABLE MR JUSTICE TUGENDHAT

- ----- Between : JAN KRAUSE
- and - ASSOCIATED NEWSPAPERS LTD Claimant Defendant
- -----
- ----- Catrin Evans (instructed by Reynolds Porter Chamberlain LLP) for the Defendant The Claimant appeared in person Hearing dates: 12 February 2014
- -----

Judgment

Mr Justice Tugendhat : 1. 2. The Defendant applies to strike out this libel action, or for alternative orders. The Defendant is the publisher of Mail Online. The action was commenced by a claim form issued on 23 May 2013 in respect of a publication online made on 23 May 2012 under the title “Transsexual let off community service by judge after complaining she can’t push heavy lawnmower”. It was taken down (without admission of liability) on 26 April 2013, the day following the Claimant’s letter of complaint. The facts giving rise to this claim arise out of criminal convictions which were described by Moses LJ in his judgment delivered on 22 May 2012 (R v Krause [2012] EWCA Crim 2058). He was giving his reasons for dismissing the Claimant’s renewed application for permission to appeal against conviction, and for allowing an appeal against sentence. The transcript reads. “1. This is a renewed application for permission to appeal against conviction following this applicant’s conviction of acting in breach of a restraining order contrary to section 5(5) of the Protection from Harassment Act 1997. The conviction was recorded on 9th September 2011.

2. The case against this applicant was that she had breached various requirements of a restraining order which had been made against the applicant by Chester Magistrates’ Court on 29th July 2010. The prosecution case was that in relation to two of the counts she had been staring at her neighbours from her premises, the third count alleged that she had shone a torch at the vehicle and the occupants, and the fourth count that she had approached a visitor, a gas man, about apparently a long- running grievance she had in relation to noise emitted from the flue of her gas boiler.

3. The original restraining order was eight items long. As a result of an appeal, with which we have just dealt with by way of an appeal by way of case stated, the restraining order was reduced. Part of the grounds of this appeal, which the applicant pursues, is that she says that she was found guilty of breaches in respect of aspects of the original restraining order that no longer remain.
4. Even if that were correct, and we doubt that it is, it would not amount to any ground for an appeal. The order that was made by the Magistrates' Court required the applicant to obey it until such time as she was able to demonstrate either that it was wrong or could be overthrown. There might be circumstances in which an unlawful condition was imposed that was unenforceable and therefore it would amount to a defence to show that it should never have been in place, but that was not the defence of this applicant at trial, and in any event it would not have been open to her so to contend in relation to the conditions that were imposed against her. It is important to emphasise that although they sound trivial here within the courtroom, they are merely a demonstration and a manifestation of a long-running dispiriting saga of what has found to be harassment by this applicant against her neighbour.
5. The grounds she also pursued, that she has not pursued today, partly concern bad character, which the single judge disposed of since it was obvious that the history of the matter had to be laid before the jury pursuant to section 101(1)(c) of the 2003 Act.
6. Today the main thrust of the applicant's case is that she was not guilty, that what she had done was merely a distortion of the truth made by her neighbours, who have lied about what in fact occurred. She seeks to put forward today audio evidence, and we have a transcript of that, showing that they were merely, on the contrary, harassing her by seeking to trap her into committing a breach of the conditions of the restraint order, and in any event persisting in allowing their boiler to emit a noise as recorded on a decibel chart that she has shown us today that was apparently recorded on the neighbour's own CCTV.
7. It is important, and I suspect the applicant well understands it, that the grounds of appeal which it is open to her to advance before this court do not include an application merely to have a re-run of the trial in which she was convicted. There may well be things she wished she had said or been able to demonstrate, or indeed evidence she wished she had adduced, at trial. The fact is she did not give evidence and the evidence made against her was believed. In those circumstances there is no warrant or basis upon which we can reconsider it again. The application is dismissed. (Submissions on sentence followed)
8. LORD JUSTICE MOSES: Miss Krause, we think you have done enough community work. I am not quite sure on what basis, but we really want to hope that things get a bit better, we just think that all these quarrels and litigation and police and courts just make life so much worse for you and your family. What we are going to do is allow your appeal and reduce the amount of hours down to 150, so you have done it and need not do any more. 9.

10. THE APPLICANT: At least it was contact with somebody.
 11. LORD JUSTICE MOSES: Well, if you would like to go on doing it, if you would like us to say 200 -- what do you want? You can withdraw the appeal. We are just trying to make things better.
 12. THE APPLICANT: Another seven and a half hours.
 13. LORD JUSTICE MOSES: So you can say goodbye to them. We will reduce it so that you have to do another seven and a half hours, that is down to 157 or something. One more go, all right?
 14. THE APPLICANT: Thank you, your Lordship.
 15. LORD JUSTICE MOSES: To say goodbye to them.
 16. To that extent the appeal will be allowed. Do not ask me to give reasons because I cannot think of any." 3. In *Krause v Newsquest Media Group Ltd* [2013] EWHC 3400 (QB) (11 November
- 2013) I had to consider proceedings brought by the same Claimant against another news publisher and the Chief Constable of Cheshire Police arising out of the same proceedings. In that judgment at paras [34]-[35] I had a transcript of the submissions. I wrote: "34. The only reference in that transcript to the lawnmower is in an answer she gave to Moses LJ: "Are you doing any of the unpaid work or have you not started that?" The Claimant replied: "I am pushing a lawnmower around a graveyard every Sunday". In the course of her oral submissions she said that after the hearing a reporter had asked her questions, and that it was in response to those questions out of court, and not in court, that she had referred to the lawnmower being heavy.
35. It is not possible for me to determine on paper whether it was in court or out of court that the Claimant referred to the lawnmower being heavy. So I would not have struck out the claim on the ground that a defence of absolute privilege is bound to succeed." 4. 5. The evidential position as to what the Claimant said, and to whom, about the lawnmower being heavy has not changed for the purposes of the present proceedings. In the claim form against this Defendant the Claimant's claim includes the following. She set out the title to the words complained of and went on: "... falsely implying that the full court of criminal appeal had ruled in open court on 22 May 2012 that they were 'cutting' the Claimant's remaining 100 hrs Community Service punishment on despicable grounds that: 'Cheshire Probation Trust's graveyard lawnmower was deemed too heavy to push for a transsexual born a man'! Notwithstanding this the Claimant holds an exemplary work record proving her commitment to hard labour the instant defendant is alleged to have committed a serious contempt in the face of the Court by foully recomposing the extemporised judgment given on 22/5/12 by Moses LJ in *R v JK* [2012] EWCA Crim 2058 and thereupon rebroadcasting the same to its duped readership... This claimant seeks commensurate compensation & aggravated damages for an alleged flagrant breach of fair & accurate reporting committed in malice under offensive banner "Transsexual" and evidently published in bad faith, with a

harmful purpose disclosing intentionally falsified 'information' falsely portraying this claimant as a 'work-shy' who has hoodwinked Moses LJ and the full court of criminal appeal". 6. The words complained of include, in the opening paragraph: "A transsexual ordered to do community service for conducting a five year harassment campaign has been told that she doesn't have to do her final 100 hours because the lawnmower she has been asked to use is too heavy..." 7. 8. 9. 10. Those words are untrue, as can be seen from the transcript. There is no mention in the transcript of the judgment of Moses LJ of the lawnmower being too heavy, and he said nothing about the lawnmower when reducing the sentence. What the Claimant really complains about is partly the reference to her being a transsexual, which she finds offensive, and partly the inaccurate reporting. These were also her complaints in the Newsquest case, although the words complained of were different. But there is no legal cause of action for the publication of words that are offensive, nor for reports of proceedings which are inaccurate. The present claim is a libel action. Unless the words she complains of are capable of being defamatory of her, the claim cannot be allowed to proceed. As to her gender the words in the Newsquest case were 'Jan Krause is now legally a woman but used to be a man' (see para [6]). As to the lawnmower, the words complained of in the Newsquest case were set out in my judgment at para [26], where there is a similar inaccuracy in the reporting. As to that there are the following passages in my judgment: "27 In spite of lengthy statements of case and an amendment, the Claimant again failed to set out in writing a defamatory meaning. The "sting" which she does set out is that the words complained of contained a "false assertion that the [her] 250-hour community service sentence was reduced by the Court of Criminal Appeal because [she] had 'complained' to the Appeal Tribunal that the Cheshire Probation Trust's graveyard lawnmower was 'too heavy for her to push'. Notwithstanding that [she] had entertained no such explicit complaint to the Appeal Tribunal..."

28. In response to questions during her oral submissions the Claimant explained that her complaint in this action is that the report means that she is workshy and a shirker..." 11. I applied the tests of what is defamatory set out in *Jeynes v News Magazines Limited*

[2008] EWCA Civ 13 at para [14] and *Thornton v Telegraph Media* [2010] EWHC; 1414 (QB); [2010] EMLR 25 at para [16], and it is unnecessary for me to set them out again in this judgment. 12. In the Newsquest judgment I held at para [19] that the words relating to her gender were "incapable of lowering the reputation of the Claimant in the minds of right thinking people, and, even if they were, there is no dispute that the words are true". 13. In some cases publication of information about a person's gender may be actionable as an interference with their right to privacy. But I explained at para [22] in relation to these words that this "is information upon which she herself relied in the Crown and Magistrates' Courts. She relied on it in support of her unsuccessful application for the proceedings to be heard in private. According the newspaper reports in the papers, she relied on it again in support of her argument that she be not sentenced to imprisonment because of the hardship which she would suffer if she were imprisoned." 14. As to the complaint concerning the lawnmower, I held that that no reasonable reader could think

the worse of the Claimant for appealing (successfully) against her sentence on the ground that the unpaid work she had been required to do was physically too onerous. Accordingly, the words complained of were not capable of being defamatory of her. So the question whether they were true or not does not arise (although as I have said, they were not true). It may be, as the Claimant said in argument, that the criticism implicit in the article on Mail Online could make the reader think the worse of the court for allowing an appeal on that basis. But that does not assist the Claimant. (The criticism of the court was unfounded: the court reduced the sentence on the ground that it was too long, not on the ground that the work was too onerous). 15. In the present case the Claimant set out her complaint in a letter before action dated 25 April 2013. The letter covers 18 pages and has some 100 pages of exhibits. Paragraph 7 of the letter sets out the meaning she attributes to the words complained of, and this is incorporated by reference into the Amended Particulars of Claim by para 6. The meaning which she attributes to the words complained of is: "The STING ...is framed by the falsified assertion that (a) this claimant had complained in open court on 22 May 2012 to the full court of criminal appeal that the ... lawnmower was 'too heavy to push' (!) ... (b) [the first six lines of the citation from the claim form set out in para 5 above]" 16. 17. 18. 19. 20. 21. 22. The grounds of the Defendant's application include (1) the failure to comply with CPR PD53 para 2.3; (2) that the words complained of are not capable of being defamatory (and there is a reference to my Newsquest judgment); (3) that by reason of her conviction for harassment there is nothing of value which the Claimant can achieve in these proceedings (*Jameel v Dow Jones & Co Inc* [2005] QB 946); (4) that the Claimant has referred publicly to her personal characteristic and cannot complain of the Defendant's reference to that (and there is a reference to my Newsquest judgment at para [22]). In my judgment the words complained of in this case are not capable of being defamatory for the same reasons as the words in the Newsquest action. In the course of her submissions the Claimant sought to advance a new case in two respects. First she sought to argue that the words referring to the lawnmower meant that she had been dishonest in her submissions to the Court of Appeal. Second she referred to sections of the article in Mail Online which I have not set out in this judgment, and which purport to repeat a report of the criminal proceedings for harassment referred to by Moses LJ in his judgment. She had not identified in her claim a defamatory meaning arising out of this part of the Mail Online article about which she complained. Nor had she included in the court bundle documents relating to her convictions for harassment, whether in the Magistrates Court or in the Crown Court. As a result, Miss Evans had not addressed this new complaint in her application or skeleton argument. If I had thought that there was any case which the Claimant could advance by way of a further amendment, and which might have a real prospect of success, then I would have had to consider whether to give her an opportunity to re-plead her case. But in my judgment the position is irremediable. The Claimant has been convicted of harassment of her neighbours, her application for permission to appeal against that conviction was dismissed by the Court of Appeal, and her reputation stands damaged to that extent. There is nothing of value to her which she could hope to achieve by a

reformulation of her claim in this action to embrace a claim based on the parts of the Mail Online article which purport to report the allegations of harassment. The Claimant has also failed to comply with the requirements of the CPR as to the content of a statement of case, but in the light of the conclusions I have already reached I need say nothing further about this point. At the end of the hearing I stated my decision to strike out this action, saying I would give my reasons later. These are they.

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