



Neutral Citation Number: [2016] EWCA Civ 772

Case No: A2/2015/0357

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM The High Court, Queen's Bench Division
Mr Justice Warby
HQ13D05513

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/07/2016

Before:

LORD JUSTICE LAWS
LADY JUSTICE KING
and
LORD JUSTICE LINDBLOM

Between:

SIMPSON

**Claimant/
Respondent**

- and -

MIRROR GROUP NEWSPAPERS LIMITED

**Defendant/
Appellant**

Adam Wolanski (instructed by **Simons Muirhead & Burton**) for the **Appellant**
Manuel Barca QC and **Aidan Eardley** (instructed by **Lewis Silkin LLP**) for the **Respondent**

Hearing date: 24 May 2016

Approved Judgment

Lord Justice Laws:

INTRODUCTION

1. This is an appeal, with permission granted by Christopher Clarke LJ on 18 May 2015, against part of the order made by Warby J on 21 January 2015 in a libel action brought by the respondent to the appeal against the appellant. It will make for clarity if I refer to the appellant as MGN and the respondent as the claimant. MGN are the publishers of the Daily Mirror. The claimant is a Premier League footballer.
2. The claim arose out of an article published in the Daily Mirror on 16 November 2012 and (with minor variations) on MGN's website from that date onwards. The article concerns three people: the claimant Mr Simpson, Ms Ward, with whom the claimant had had a relationship for several years and who was the mother of his child, and Ms Contostavlos, a celebrity with whom the claimant also had a relationship, between November 2012 and May 2013.
3. The claim was issued one day before expiry of the limitation period. On 19 January 2015 Warby J determined as a preliminary issue the meaning of the words complained of, and struck out MGN's defence of justification as disclosing no reasonable grounds for defending the claim.
4. MGN sought permission to appeal against the Judge's determination of meaning and his order striking out the defence. Christopher Clarke LJ granted permission only in relation to the latter. MGN do not renew their application in relation to the former. So the court is only concerned with the strikeout.
5. The claim predates the coming into force of the Defamation Act 2013, which abolished the presumption of trial by jury in libel actions; although in fact the parties have agreed to trial by Judge alone. Since the case falls to be tried under the law as it was before 2013, the relevant defence is the common law defence of justification, rather than the new statutory defence of "truth".

THE ARTICLE'S MEANING AND THE PLEA OF JUSTIFICATION

6. As there is no appeal against the Judge's conclusion on meaning, I need not set out the terms of the article. The meaning found by the Judge is as follows (judgment, paragraph 24):

"By entering a romantic relationship with the celebrity Tulisa Contostavlos the claimant was unfaithful to his loyal partner Stephanie Ward, with whom he was in a long-term and committed relationship, living with their daughter as a family; he did so despite Ms Ward having sacrificed her legal career to have his children, and being, as he knew, pregnant with their next child; and by doing so he callously destroyed his relationship with Ms Ward and broke up an established family unit which was soon to be joined by the child they were expecting."

7. In concluding as he did on meaning, the Judge took something of a middle way between the contentions respectively advanced by the parties. Thus he rejected the claimant's submission that the article implied that his relationship with Ms Ward was "stable" and the family unit was "secure". He stated that "the claimant would appear to the ordinary reader to be someone who had indulged in infidelity on several previous occasions" (judgment paragraph 23). However he accepted the claimant's argument, contested by MGN, that "the reader would understand that he had remained in a committed long-term relationship, living as a family with a loyal partner and their child, which he had broken up by his latest infidelity" (also paragraph 23).
8. Turning to the claimant's application to strike out the defence of justification, the Judge summarised the effect of the draft amended particulars of justification in paragraphs 34-35 of his judgment as follows:

“34. ... [T]he couple met in 2006 and had an intermittent relationship for the next four years, during which she obtained a law degree and worked at a solicitors' firm. They began a committed relationship in June 2010, and Ms Ward 'did not continue with her legal career'. They lived together in a house in Newcastle from late 2010 until the birth of their daughter in July 2011 and thereafter – with a break from the end of 2011 into early 2012 – until about April 2012. At that time, Ms Ward moved with their daughter into a house in Manchester owned by the claimant, whilst he lived in Newcastle. The family is not said to have lived together at any time between April 2012 and the publication of the article seven months later.

35. It is also said that during that period there were frequent visits by Ms Ward to Newcastle and two holidays together, one with their daughter. It is alleged that they had a continuing though evidently intermittent sexual relationship, including a night together on 4 November 2012, and that Ms Ward was sexually faithful to the claimant, and thus loyal. The defendant's case is that the couple eventually resumed their relationship in July 2013 and moved back in together in January 2014. This is all well after publication, but is relied on as an indication of the committed and long-term nature of the relationship generally. Although the Defence does not seek to justify the epithet 'callous' I do not see that as a difference that would necessarily be held material at a trial.”

Mr Wolanski for MGN submitted, correctly, that this summary does not encapsulate the whole of MGN's plea of justification. But it shows the essence of it, and in particular, as it seems to me, confronts the fact that the alleged libel concerns a committed family.

THE JUDGE'S CONCLUSION

9. The Judge addressed the application to strike out the defence of justification at paragraphs 36-37 as follows:

“36. At this stage of the case I have to make allowance for the fact that I am addressing a pleaded case and not evidence. Even so, the account of events contained in the draft amended particulars remains in my judgment clearly and significantly different from that which emerges from the article. It is conspicuously not alleged that Ms Ward gave up her legal career for the sake of having children with the claimant, let alone that the claimant knew this. More importantly, the particulars of justification nowhere allege, nor could the facts there set out support findings, that the claimant and Ms Ward were living together as a family with their daughter at the time the claimant began his relationship with Ms Contostavlos; or that the Claimant’s infidelity broke up an established family unit. On the contrary, it is clear from the particulars that this is not said to be the case.

37. There are therefore components of the defamatory meaning of the article which in my judgment would inevitably be held to contribute significantly to their defamatory sting, the truth of which could not be established by proof of the defendant’s particulars or proposed amended particulars.”

10. The Judge correctly directed himself at paragraph 27 that a defendant pleading justification has to prove the whole of the defamatory sting. It is clear from paragraphs 32-33 that the Judge considered that the assertion of a “committed relationship and an established family unit ... living together” (paragraph 32) and the reference to Ms Ward “having given up a legal career to have children with the claimant” (paragraph 33) both added to the defamatory sting of the article.

MGN'S ARGUMENT

11. MGN submits (Mr Wolanski’s skeleton, paragraph 18) that the fact that the particulars of justification do not allege that the claimant and Ms Ward were co-habiting when the claimant began his relationship with Ms Contostavlos, or that Ms Ward gave up her legal career to have children with the claimant, does not mean that they cannot or will not prove the whole of the libel’s defamatory sting.
12. As for co-habitation, Mr Wolanski says that the article does not in terms allege they were living together at the relevant time; a couple may have a committed relationship without living together all the time; in the particular case it is acknowledged that the claimant’s job as a professional footballer means he would be “moving around the country” (judgment paragraph 22); co-habitation may be an important element in a relationship that is stable and secure, but the Judge advisedly omitted those features from his conclusion on the meaning of the article. As for Ms Ward’s legal career, Mr

Wolanski submits that the relevance of her having given up her career is that it demonstrated her loyalty to the claimant; but MGN can prove that fact in any event: she had his child, she remained faithful to him when he was serially unfaithful to her. Moreover, since Warby J's judgment Ms Ward, in her defence to a CPR Part 20 claim issued against her by MGN, has confirmed that what she had said to the MGN journalist about having given up her legal career is true – though in order to rely on this, it would appear that MGN would have to apply for a further amendment to the particulars of justification.

THE CLAIMANT'S RESPONSE

13. To all this, the claimant offers a short answer. If the points on “family” and “legal career” were in truth peripheral, then they would not or should not have been incorporated into the meaning found by the Judge. This is how it is put in Mr Barca QC's skeleton argument for the claimant at paragraphs 27-28:

“27. Warby J decided to include the “family” and “legal career” elements in his formulation of the single meaning because he considered that they made a significant contribution to the sting of the words complained of: any formulation which omitted those elements would fail to encapsulate the full sting ...

28. ... [H]aving accepted the Judge's decision that these elements required to be incorporated into the single meaning in order to encapsulate the full defamatory sting of the article, the defendant cannot now argue that proof of its particulars of justification could establish that the article was ‘substantially true’.”

There being no appeal against the ruling on meaning, the significance of “family” and “legal career” for the sting of the libel is, submits Mr Barca, beyond legal challenge by MGN.

CONCLUSIONS

Meaning and “Sting”

14. The law relating to the ascertainment of meaning in a libel suit is described in a well-known passage in the judgment of Sir Anthony Clarke MR as he then was in *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 at paragraph 14 as follows:

“(1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naive but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over elaborate analysis is best

avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any ‘bane and antidote’ taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question... (8) It follows that ‘it is not enough to say that by some person or another the words *might* be understood in a defamatory sense’.”

There is nothing in this passage about the sting of the libel. There will be cases in which (as Sir Anthony Clarke recognised at point (2)) a meaning may be arrived at which is not defamatory at all.

15. Once a publication’s meaning has been ascertained, its defamatory sting, if there is one, will no doubt be manifest. But in my judgment it is no part of the Judge’s task in finding a publication’s single meaning to choose one putative meaning over another on the footing that the former contains more of a defamatory sting than the latter. That would presume a libellous meaning over other candidates; and therefore would give systematic weight to a choice of meaning which would favour claimants over defendants. Such an approach offends justice and logic alike.
16. In fairness to the Judge, I do not consider that his conclusion on meaning was, in fact, driven by his views on the sting of the libel. His observations at paragraphs 32-33, and of course his conclusions on the justification defence at paragraphs 36-37, do not inform his decision on meaning, reached earlier in his judgment at paragraph 24.
17. In my judgment, therefore, the Judge’s unappealed ruling on meaning does not close off MGN’s submissions on the strike-out decision. The meaning having been found, it remains open to MGN to raise arguments as to the intensity of the libel’s sting. I accept, of course, that in some instances the meaning of words and their defamatory sting (and its intensity) ineluctably go together; but not always. Just as in some areas of life there are different views among reasonable people of moral and immoral conduct, so there may be different views as to the gravity or otherwise of the sting of a libel.

The Merits

18. The question, then, is whether MGN’s submissions on the merits of the points concerning family and legal career are well founded. As I have shown the Judge acknowledged (paragraph 36) that he was “addressing a pleaded case and not evidence”. That does not quite do justice to the true position, which is that if he was to strike out the defence he would have to be satisfied that no reasonable fact finder could conclude that proof of the particulars of justification would prove the truth of the words complained of in the meaning found by the Judge.
19. The ascertained meaning here refers to a committed family relationship unqualified by references to “stable” and “secure”. The essence of the sting surely consists in the assertion of a selfish disruption of that committed family relationship with father, mother, child and another child to come. As Eady J said in *Turcu* [2005] EWHC 799 at paragraph 105, “[i]t becomes important... to isolate the essential core of the libel and not to be distracted by inaccuracies around the edge – however extensive”.

20. In my judgment the extent to which the factors of co-habitation and Ms Ward's career go to this essential sting are matters upon which reasonable people might disagree. It is therefore to be ascertained by the fact-finding tribunal at trial, and not to be determined at an interlocutory hearing on the pleadings. The meaning of the published words does not, in the circumstances here, drive the conclusion as to the intensity of the sting. I would accept Mr Wolanski's submissions both as regards the cohabitation issue and Ms Ward's legal career.
21. I do not consider that the reasoning in *Chase v News Group Newspapers Ltd* [2003] EMLR 11 demonstrates the contrary; indeed it is instructive to note what was said by Brooke LJ at paragraph 38 in that case:

“... At the trial the jury must undertake a two-stage process. They must first decide whether on the admissible evidence called by the parties the defendant has proved to their satisfaction, according to the appropriate standard of proof, all or at least some of the factual propositions asserted by the particulars of justification. They must then decide whether the whole of the facts which they have found to be proved are such as to establish the essential or substantial truth of the ‘sting of the libel’.”

Thus what facts are proved is one thing; whether they justify the libel's sting is another. That seems to me to be consonant with the proposition, which I regard as being at the core of this case, that the meaning of a defamatory statement does not necessarily establish the intensity of its sting. In this case, the latter issue should have been left by the Judge to the trial.

22. I would allow the appeal.

Lady Justice King

23. I agree.

Lord Justice Lindblom

24. I also agree.