

Claim No: 1LS90012

Neutral Citation Number: [2011] EWHC 406 (QB)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

LEEDS DISTRICT REGISTRY

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2nd March 2011

Before :

THE HON. MR JUSTICE COULSON

Between :

GARY ARTHUR ALLEN

Claimant

- and -

THE GRIMSBY TELEGRPH

Defendant

- and -

**THE CHIEF CONSTABLE OF HUMBERSIDE
POLICE**

**Interested
Party**

Mr Richard Thyne (instructed by **Roy Foreman & Co**) for the **Claimant**
Ms Victoria Jolliffe (instructed by **Foot Anstey**) for the **Defendant**
Mr Rodney Ferm (instructed by **West Yorkshire Police**) for the **Interested Party**

Hearing Date: 25th February 2011

Judgment

Mr Justice Coulson:

A. INTRODUCTION

1. The claimant is a convicted sex offender. On 8th November 2010 he was made the subject of a Sexual Offences Prevention Order (“SOPO”). In January 2011, the claimant issued these proceedings, seeking an injunction prohibiting the publication of his name or any details which could lead to his identification “in the context of the making of a Sexual Offences Prevention Order on 8th November 2010.”
2. On 25th February 2010 at a hearing in the Leeds District Registry, I ordered that the proceedings be struck out. In my brief oral reasons, I explained that I was striking out the proceedings for three separate reasons. First, I had concluded that the proceedings were irregular and procedurally flawed. Secondly, I had concluded that, to the extent that the claimant was seeking an anonymity order in the SOPO proceedings, he had not made out any such entitlement. Thirdly, I concluded that recent events made the claimant’s entire position untenable. I explained that I would give fuller reasons in writing. This Judgment contains those reasons.

B. FACTUAL BACKGROUND

3. In November 1998, the claimant was charged with the murder of a sex worker in Hull. He was acquitted at trial in January 2000, although it is accepted on behalf of the claimant that the verdict was widely considered to be ‘perverse’. Following his relocation to Plymouth immediately after the trial, the claimant then committed serious assaults against two sex workers, for which he was sentenced to 5½ years imprisonment, together with a 4½ year extended licence period.
4. The claimant was released on licence twice, but recalled to prison on each occasion for breaching his licence conditions. He ultimately served the entirety of both his sentence and the extended licence period, such that he was not released until 12th April 2010. During his time in custody he refused to participate in any rehabilitation or sex offender treatment programme. Numerous psychiatric reports have concluded that he poses a high risk of sexual re-offending.
5. On his release from prison, the claimant travelled to Grimsby. On 20th April 2010 the Chief Constable of Humberside Police made an urgent application for a SOPO. On 28th April, the District Judge banned publication of the claimant’s address pursuant to section 11 of the Contempt of Court Act 1981 (“the 1981 Act”). No similar order was made in respect of the claimant’s name.
6. On 28th April and 21st July 2010, interim SOPOs were made. On 8th November 2010, a final SOPO was made which, amongst other things, prohibited the claimant from making direct or indirect approaches to sex workers or entering into known red light districts. At the final hearing on that day, the defendant’s representative, who was present in court, opposed the making of an order which prohibited the publication of the claimant’s name. In consequence, the court made a postponement order, pursuant to section 4(2) of the 1981 Act, designed to prohibit publication of the claimant’s name until the resolution of any application in the High Court for anonymity. That postponement order was continued on 31st January 2011, following the commencement of these proceedings.

7. On Wednesday 16th February 2011, the defendant's lead story was about the claimant's relocation to Grimsby, and featured a photograph of him. The thrust of the article concerned his offending history, and the view that the claimant was a danger to women. It made no reference to his address or to the SOPO proceedings. On Saturday 19th February, the defendant published a follow-up piece, with another photograph of the claimant, saying that he had moved out of the area.
8. On 22nd February, the claimant was arrested in the red light area of Scunthorpe. He had made an approach to a sex worker and it appears that she may have recognised him and called the police. The claimant assaulted a police constable when he was arrested. Mr Thyne properly accepts that the fact that the claimant was in a red light area, and the fact that he had approached a sex worker directly, meant that he was in clear breach of the SOPO.
9. On Wednesday 23rd February the same District Judge in Hull remanded the claimant in custody. He is currently in Hull prison. The following day, 24th February, the defendant published a further front page article relating to the recent arrest of the claimant. Again, there was no reference to an address, and no reference to the SOPO proceedings.

C. THE RELEVANT PRINCIPLES

10. Section 4(2) of the 1981 Act provides:

“In any such proceedings the court may, where it appears to be necessary for avoiding substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose.”

The critical question in relation to s.4(2) is whether there is a substantial risk of prejudice to the administration of justice which could be avoided by the making of a postponing order: see **MGN Pensions Trustees Limited v Bank of America National Trust and Savings Association** [1995] 2 All ER 355.

11. Section 11 of the 1981 Act provides:

“In any case where a court (having power to do so) allows a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld”

The general principle is that all evidence communicated to a court should be communicated publicly: see **Attorney General v Leveller Magazine Limited** [1979] AC 440. A number of cases have stressed the need to ensure that the power to make an order under s.11 must be exercised carefully and cannot be used simply to protect

privacy or avoid embarrassment: see *Birmingham Post & Mail Ltd v Birmingham City Council* (The Independent, 25.11.93).

12. It is important to note that a court can only exercise its powers under s.11 to give directions prohibiting the publication of a name in connection with court proceedings if the court had first exercised its power to order that the name should be withheld from the public in those proceedings: see *R v Arundel Justices Ex Parte Westminster Press Limited* [1985] 1 WLR 708, DC. That did not happen in the present case: the District Judge did not order that the claimant's name be withheld from the public in the SOPO proceedings. It is for that reason that the claimant now seeks relief in the High Court.
13. To the extent that the claimant is seeking an order for the anonymisation of any reports of the SOPO proceedings (and there is an issue about that, which I address below), then that jurisdiction derives from section 6(1) of the Human Rights Act 1998: see *Gray v UVW* [2010] EWHC 2367 (QB). The general principles to be applied when considering the making of an anonymity order or other order restraining the publication of normally reportable details can be found in the recent judgment of the Court of Appeal in *JIH v News Group Newspapers* [2011] EWCA Civ 42. The critical question is whether there is sufficient general public interest in publishing a report of proceedings which identifies a party by name, to justify any resulting curtailment of that party's right to respect for his or her private life.

D. THE FLAWED BASIS OF THESE PROCEEDINGS

14. On behalf of the defendant, Miss Jolliffe's principal submission was that the entire proceedings were flawed. She argued that a claim for an injunction, aimed solely at one defendant newspaper, was ill-founded, because the claimant had no cause of action against that defendant in a situation such as this. She maintained that, to the extent that the claimant was in fact seeking an order for the anonymisation of reports of the SOPO proceedings, then that would have to be in an entirely different form, and applied to all third parties wishing to publish reports of the proceedings. She said that, in the present case, a final injunction aimed only at the defendant could not achieve anonymisation of the SOPO proceedings in any event.
15. I am in no doubt that Miss Jolliffe is right in these submissions. The claimant has no cause of action against the defendant, and there is therefore no basis on which an injunction could be granted. Since the District Judge had not prohibited the reporting of the name during the proceedings, what the claimant really wanted was an order, arising out of those proceedings and therefore within the general jurisdiction of the High Court, prohibiting the publication of material that identified him by name. An injunction against just one local newspaper would never have achieved that aim.
16. For this reason alone, therefore, this action, which is only a vehicle for the ill-founded injunction claim, must be struck out.

E. WAS AN ORDER FOR ANONYMITY JUSTIFIED IN ANY EVENT?

17. Furthermore, I am in no doubt that an order for anonymity was not justified in any event. On behalf of the Interested Party, the Chief Constable of Humberside, Mr Ferm drew a distinction between the publication of the claimant's address, publication

of which the Chief Constable had always agreed should be prohibited, and the publication of the claimant's name and/or any photograph of the claimant. He argued that the reporting of the name, and/or a photographic means of identifying the claimant, was a proportionate response, as well as constituting important protection of the public, particularly sex workers. Thus, whilst the keeping secret of the claimant's address would provide him, and those who lived with or near him, with a certain degree of protection, the need to safeguard the public required the publication of the claimant's name and/or photograph.

18. In the light of the claimant's previous criminal conduct, and the gloomy prognosis in the psychiatric reports, there can be no doubt that there was sufficient general public interest in publishing a report of the SOPO proceedings that included the claimant's name. In the balancing of competing interests that is required, I conclude that the public's need for protection far outweighed the claimant's right to respect for his private life.
19. Accordingly, even if these proceedings had been reconstituted, and the claimant had instead been seeking an anonymisation order in relation to the SOPO proceedings generally, I would not have granted it, for the reasons set out above.

F. THE RELEVANCE OF RECENT EVENTS

20. I have so far addressed the issues by reference to the matters as they stood at the turn of the year. However, there have been two recent developments: the articles in the Grimsby Telegraph and the subsequent re-arrest of the claimant. I deal with their effect below.
21. As to the articles in The Grimsby Telegraph of the 16th and 19th February 2011, the claimant's solicitors alleged in correspondence that those articles were in contempt of court. Although that allegation was never explained, I assume that it was being suggested that the articles were in breach of the postponement order that was made under s.4(2) of the 1981 Act.
22. It seems to me that that assertion is misconceived. I am in no doubt that the two articles in the Grimsby Telegraph were not a contempt of court and did not amount to a breach of the s.4(2) order. First, the articles made no reference to the claimant's address, which was the only information that was the subject of a specific prohibition order under s.11. Secondly, the articles made no reference to the SOPO proceedings, which was the only subject matter of the claim for an injunction in the first place. Accordingly, the defendant was entirely justified in publishing those articles.
23. It may be that the sex worker who was approached in Scunthorpe on 22nd February recognised the claimant as a result of the articles in the Grimsby Telegraph. If so, that would have been a clear example of the importance of public protection which led the Chief Constable to argue against the ban on publication of the claimant's name or any photographs of him.
24. The more recent events, which saw the claimant arrested for breach of the SOPO, must also be fatal to this claim. Indeed, Mr Thyne accepts that. His original skeleton argument, written last month, argued that the claimant was entitled to the injunction because, amongst other things, he was complying with the SOPO. That skeleton

argument went on to concede that, if the claimant was in breach of the SOPO, he would not have any grounds to seek an order that his name be withheld from the reports of the proceedings.

25. Accordingly, Mr Thyne accepted before me that he could not maintain a claim for anonymisation of the claimant's name, in view of the events of last week. In my judgment, that concession is rightly made. That is therefore a third reason why this claim should be struck out.

G. CONCLUSIONS

26. For the reasons set out above, this claim should be struck out. It is procedurally flawed for the reasons given in **Section D** above. The claim is hopeless in any event, because no basis for an anonymity order is justified on the particular facts of this case (**Section E** above). Moreover, because of the events of last week, which involve a clear breach of the SOPO by the claimant, it is accepted that there is a third reason why the claim must be struck out (**section F** above).
27. For the avoidance of doubt, I make plain that, not only are these proceedings dismissed, but the earlier orders made by the District Judge under s.4(2) and s.11 of the 1981 Act are also both discharged forthwith.
28. The claimant must pay the defendant's costs of these proceedings, not to be enforced without a further order of the court. I have assessed those costs in the sum of £5,250. The defendant has indicated the possibility of seeking a wasted costs order against the claimant's legal representatives, and I have indicated that, if such an application is made, I will deal with it separately at the parties' convenience.