Case No: HQ13D00493

[2015] EWHC 4158 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
The Strand
London, WC2A

Wednesday, 4 November 2015

BEFORE:

MR JUSTICE WARBY

BETWEEN:

PETER REYNOLDS

Claimant

- and -

CHRIS BOVEY

Respondent

MR MICHAEL POLAK appeared pro bono on behalf of the Claimant

Judgment
(As Approved)

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MR JUSTICE WARBY:

1. This is a renewed application for permission to appeal against an order of Master Eastman dated 23 January 2014 by which he struck out this defamation claim and ordered the claimant to pay the costs.
2. The application was dealt with on on the papers by Holroyde J on 20 November 2014, grounds of appeal having been submitted in February of that year and a skeleton argument in June 2014. No appeal bundle had been lodged at that time. Indeed, no appeal bundle of any substance had been lodged until today, shortly before this hearing began. Holroyde J was able, however, to deal with the grounds of appeal advanced at that time, because they were narrow, as I shall explain.
3. Holroyde J granted permission for the application to be brought out of time, but refused permission on the merits.
4. As will become clear, the renewed application raises in a relatively acute form a number of important procedural issues. It brings into focus the need for the court to impose procedural discipline on litigation lest it run out of control and take up too much time and too many of the resources of the court and other parties.
5. The background in short is this. The claim relates to alleged defamation over a period of months in 2012 on various websites. The claim form was issued on 5 February 2013 following pre-action correspondence. Particulars of claim were served dated 21 January 2013. After service of a defence an application was made after service pursuant to CPR 3.4(2) to strike out on the grounds that the particulars of claim failed to disclose a reasonable basis for the claim, and were inconsistent with the pleading requirements of the CPR in defamation law.
6. Giving judgment on that application, after a hearing at which the claimant represented himself and the defendant was represented by counsel, the Master dealt first of all with the important issues raised by that situation. He said this:

> "The claimant is a litigant in person. The defendant has solicitors and counsel acting for him. I have to approach this situation with a measure of care, because it is arguable on one side that the claimant is disadvantaged by not having the benefit of professional advice and therefore, some would say, needs to be given a measure of more latitude than a person who is legally advised. Against that, if a person who is a claimant does not have legal representation the person defending the claim is potentially put to greater difficulty and expense in answering the claim, because they may be required to spend more time and effort dealing with improperly constituted or a inadequately constituted claim and proceedings. Defamation is particularly difficult in that regard, because it attracts litigants in person on the one hand but on the other hand the pleading of defamation cases is a more precise and technical art than many other areas of the law."

7. The Master went on to refer to a decision of Tugendhat J, the then judge in charge of the jury list, in *O'Dwyer v ITV Plc* [2012] EWHC 3321 (QB) in which Tugendhat J referred to the counterbalancing exercise to which the Master referred. The Master said that:

> "If there are issues of difficulty and technical issues, particularly bearing in mind that one person is bearing the legal costs in dealing

> with the claim ... and the job has been made more difficult by the inadequacy of the work of the unlegally assisted party, it is important for the court to grasp the nettle, if there is a nettle to be grasped, and to resolve things as soon as possible."

8. The Master went on:

> "I also take into account that which has taken place in the management of litigation in this court by way of changes since the Jackson reforms in April of this year whereby the court is required to take broadly a firmer line with the way in which cases are managed and prepared and to be slow to grant relief to any party who is running a case defectively ... I have all these factors in mind when considering what I should do in this case.".

9. The Master then turned to address criticisms that had been advanced of the claimant's particulars of claim and to accept that these were in the main justified. In paragraph 13 the Master said this:

> "Putting all of this together, I am satisfied that the particulars of claim in this case are sufficiently technically deficient that the action should be struck out. Mr Reynolds in argument asked for my indulgence and asked that I allow him to make amendments if I consider that amendments are appropriate, but, as I said at the outset of this judgment, “too late” effectively. The deficiencies in the claim have been pointed out to [the claimant] for a very long time and he has made no application to do anything about it. As I observed at the beginning of this hearing, pleading in defamation case is a minefield for the amateur. I am afraid that Mr Reynolds has not got through the minefield and I think, following the spirit of what Tugendhat J said in *O'Dwyer*, in all the circumstances the right and proper thing for me to do is to put an end to this action here and now and to strike it out and I will do so."

10. The grounds of appeal that were submitted in February by Mr Reynolds, continuing to act to person, were two. They were concisely expressed, for which he is to be congratulated. The first was a contention that article 6 of the Convention had been violated because there had been "no hearing of the issues in my claim and the evidence exhibited to the claim shows a large number of publications by the defendant which are clearly defamatory". The second ground was that, under article 17 of the Convention, which he quoted, the order of the Master “destroyed” his right as a litigant in person to bring an action in respect of a tort in libel because "it demands such esoteric and specialist expertise, as well as access to legal authorities and references and no legal aid or public funding is available to assist in such claims".

11. In dealing with those grounds, Holroyde J said first of all:

> "As to your first ground of appeal, it is a mistake to think the striking out procedure, which exists in order to ensure that claims with no prospect of success do not proceed and so do not give rise to an unnecessary and disproportionate expenditure of court time and costs, is inherently contrary to article 6. In the circumstances of my case, it is in my judgment impossible to argue that a proper exercise by the Master of that power, following an analysis of the

> deficiencies in all pleadings was a breach of your rights under article 6 of the Convention."

12. In argument today Mr Polak of Counsel, who has appeared pro bono for Mr Reynolds, has not sought to advance an argument that article 6 is infringed by the exercise of the court's striking out powers. He has, as I shall explain, a more subtle submission.

13. The second ground was dealt with by Holroyde J as follows:

> "It is in my judgment equally impossible to argue in the circumstances of this case that a proper application by the court of the CPR in the rules of pleading was a breach of your rights under article 17 of the Convention."

14. Holroyde J went on to refer to the fact that the Master had relied upon the decision of Tugendhat J in *O'Dwyer* and considered the position of both parties. He continued:

> "I do not see how it could be argued that a requirement to comply with the procedural rules of the court deprives you of a right to bring proceedings."

He concluded on this point:

> "You have not shown any arguable answer to the points made against you in the judgment of Master Eastman."

15. The application for permission to appeal was thereafter renewed and it has taken nearly a year for this hearing to come on. The reasons for that are not clear, but I accept for present purposes the explanation that was given to me, that this is due to administrative difficulties at the court end and not any fault of Mr Reynolds. I therefore deal with the matter without regard to that delay.
16. There is however this difficulty: that the argument which has been advanced today by Mr Polak on behalf of the appellant, in a skeleton argument lodged this morning and supported by a bundle which reached me ten minutes before this application was due to be heard, is not confined, indeed does not focus particularly, upon the two grounds of appeal that were advanced in February of 2014. Putting it broadly, the argument seeks to address the merits of the Master's decision to apply the CPR and rules of pleading in defamation in such a way as to eliminate this claim from consideration at a trial. That, in my judgment, is a distinctly different exercise from the one that was invited by the grounds of appeal and engaged in by Holroyde J.
17. The court is thus confronted with what is effectively a new set of grounds of appeal, with minimal overlap with those that were put forward and dealt with by the court previously. The court is confronted with those grounds and the documentary material relied on in support with almost no notice. That represents a fundamental breach of the rules of procedure. I refer not only to the requirements of Part 52, which require the grounds to be stated and the provision of an appeal bundle within 28 days of the appellant’s notice, but also to the obligations of litigants under Part 1 of the CPR.
18. Those rules, as I observed in the course of argument, are accessible to the public with ease via the internet, which is indeed how I myself obtain access to them readily when needed from my desktop computer. Computer facilities are available to all those who do not have them at home in a variety of locations, either cheaply or indeed free in many libraries. I therefore do not consider, despite the degree of latitude that must be

given to litigants in person, that it is acceptable for the appellant to seek to excuse these defects by submitting that non-compliance was not deliberate. It is the obligation of all litigants seeking to invoke of the assistance of the court in support of their rights to comply with the procedural rules. If they do not, they take up time and resources that would be better devoted to other cases.

19. I heard the argument on behalf of Mr Reynolds without deciding whether I should permit or grant the application which was made by Mr Polak for permission to amend the grounds of appeal. I have concluded however that I should not grant permission because of the procedural deficiencies I have mentioned, which are so serious.

20. The new arguments, in any event, I did not find persuasive. There were essentially three submissions advanced that went beyond those dealt with by Holroyde J. The first was that Master Eastman was in error in paragraph 7 of his judgment, when he concluded that the particulars of publication given in the Particulars of Claim failed to match the standard set by the CPR and the established authorities. It was said that this was an arguable point that deserved consideration on appeal. It seems to me that that is essentially a matter within the realm of the Master. I do not consider that he could arguably be said to have made any error of law. I was invited in this context to take account of what Master Bard had found in a parallel case. That, however, was an impossible task for me to undertake without considering the pleadings in that case, and in any event the decision would not bind me.

21. The second point was that the Master erred in deciding to strike out on the first occasion. It was submitted that this was a disproportionate measure, and that the Master had failed to consider other less drastic means of dealing with the case. That, however, is a matter for the Master's discretion and he plainly took into account the relevant factors. The passages I have cited from his judgment indicate that he regarded it, and in my judgment legitimately, as a relevant factor that the deficiencies he identified had been pointed out to the claimant on a number of occasions in the past.

22. The third substantive new or varied ground of appeal was that Mr Reynolds had not had a fair opportunity to put before the Master his full case in response to the striking out application, which he had failed fully to understand. It was said that in consequence he had failed, as an unrepresented litigant, to do justice to his case. It was in this context that Mr Polak's skeleton argument contended that the strict pleading requirements of defamation law represent a body of law which is out of reach of a litigant in person, thus violating the principle of equality of arms and, consequently, infringing Mr Reynolds right of access to justice. For this reason, it was submitted, the proceedings were unfair.

23. I do not consider that that is an arguable proposition. To the extent that it differs from the way in which the matter was put in the ground of appeal, it seems to imply that intelligent people with access to such resources as are available cannot, in the absence of legal advice, comply with the established rules. I do not accept that that is the case.

24. I return therefore to the grounds that were before Holroyde J. It is sufficient to say that in my judgment his reasons for rejecting those grounds are unassailable. They have barely been assailed in the course of this hearing for the reasons that I have given, but I have considered them independently. I have had regard to a skeleton argument submitted on behalf of the respondent, but it is not that which determines my conclusion on those two grounds. It seems to me that the human rights arguments advanced in the grounds of appeal are and were at all times unarguable.

25. I add this in conclusion. If it is assumed that there was available to this claimant a viable claim in defamation in respect of the publication complained of, it is unfortunate that procedural deficiencies have led to that claim being struck out. That is a

conclusion which the court will always lean against. Against that, however, as Master Eastman recognised, there must be balanced the need to make efficient use of resources in litigation. On this occasion it seems to me that the balance falls firmly in favour of the overall efficiency of litigation, so this application is dismissed.