

Neutral Citation No.: [2008] NIQB 90

FINAL

Ref: MOR7253

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 5/9/08

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

ANN CONNELL

PLAINTIFF;

-and-

MGN LTD

DEFENDANT.

MORGAN J

[1] The plaintiff claims damages for libel in respect of an article published by the defendant on page 27 of the Daily Mirror newspaper on 25 January 2007. The defendant has issued a summons pursuant to Order 82 Rule 3A seeking a determination as to whether the words referred to in the statement of claim are capable of bearing the meanings alleged and seeking consequential orders.

The complaint and claim

[2] The article of which complaint is made is entitled " 2 DAYS TO GO: SINN FEIN'S POLICE VOTE". Associated with the headline is a photograph of a republican mural in the village of Camlough celebrating the hunger striker Raymond McCreech. At the time of his hunger strike Mr McCreech was serving a prison sentence for conspiracy to murder, attempted murder, possession of firearms with intent and membership of the IRA. The logo on the mural says "Keep on marching-don't give up" and there is a phrase in Irish which translates as "We will win yet". The plaintiff is pictured directly in front of the centre of the mural and there is a subheading with the words "CROSSING OVER: A pedestrian in Camlough, South Armagh, yesterday". The plaintiff says that the impression from the photograph is that she has posed in front of the mural for it. The text of the article is on the lower left

hand side of the page and the substance of the article is identified in an introductory box "Republicans are this weekend being asked to break new ground by supporting the police. Alan Erwin finds opinion deeply divided in the IRA heartland of South Armagh". The lower right-hand side of the page contains the following words in quotation marks "If cops come in here they won't get out again".

[3] The text records the views of various people in Camlough about whether Sinn Fein should support the police. Some were plainly hostile and in the third paragraph a man is quoted as saying "if any police come here they won't get out again". Others are in agreement with Sinn Fein supporting the police but express qualifications particularly in relation to joining the police. It is common case that no view is attributed in the article to the plaintiff and the only reference to her apart from the photograph is in the subheading describing the pedestrian set out above.

[4] The plaintiff alleges that the photograph and headline were defamatory of her in their natural and ordinary meaning in the following ways: --

"(a) that the plaintiff supported or was sympathetic to an icon of the IRA who engaged in violence or was suspected of engaging in violence.

(b) that the plaintiff's known political views were hypocritical and that in fact she supported violence and was opposed to peace.

(c) that she did not support the existence of a lawful police force.

(d) that she was associated with the view "If cops come in here they won't get out again" meaning that she tolerated, condoned or supported violence and killing.

(e) that she posed for photographs for a national newspaper for the purposes of publicity and seeking support for opposition to the peace movement.

(f) that she was opposed to political reconciliation or compromise and that she was opposed to co-operation with the police.

(g) that she proudly, openly and publicly associated herself with Raymond McCreesh deceased.

(h) that the plaintiff was associated with (i) the mural (ii) the headline and (iii) the text of the article "

The plaintiff also seeks to amend the statement of claim to include further particulars by way of innuendo as follows: --

"(a) that the plaintiff in the past had supported republican violence.

(b) that the plaintiff had supported the political ideals of Raymond McCreesh.

(c) that at least until the article on 25 January 2007 the plaintiff *supported* political violence.

(d) that on 25 January 2007 the plaintiff had not decided to support peaceful politics.

(e) that the plaintiff held political views in support of violence which contribute to the area in which she lived being called "*Bandit Territory*"

The plaintiff then sets out particulars pursuant to Order 82 Rule 3(1) of the Rules of the Supreme Court (Northern Ireland) 1980. I do not need to set these out at this stage.

The legal principles

[5] The defendant brings this summons by virtue of Order 82 Rule 3A of the Rules of the Supreme Court (NI) 1980.

"Order 82 rule 3A

This rule (so far as is material to these applications) provides :-

(1) At any time after the service of the statement of claim either party may apply to a judge in chambers for an order determining whether or not the words complained of are capable of bearing a particular meaning or meanings attributed to them in the pleadings.

(2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the pleadings, he may dismiss the claim or make such other order or give such judgment in the proceedings as may be just."

The relevant legal principles to apply in such an application were helped to set out by Kerr J in *Doherty v Telegraph Newspapers* [2000] NIJB 236.

"The English rule, which is in identical terms, was considered by the Court of Appeal in England in the case of *Skuse v Granada Television Ltd* [1996] EMLR 278. Sir Thomas Bingham MR set out the following principles for the application of the rule :-

"(1) The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer watching the programme once.

[The case involved a television programme.]

(2) The hypothetical reasonable reader (or viewer) is not naïve 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) While limiting its attention to what the defendant has actually said or written this court should be careful of an over-elaborate analysis of the material in issue.

(4) A television audience would not give the programme the analytical attention of a lawyer to the meaning of a document, an auditor to the interpretation of accounts, or an academic to the content of a learned article.

(5) In deciding what impression the material complained of would have been likely to have on the hypothetical reasonable viewer the court are entitled (if not bound) to have regard to the impression it made on them.

(6) The court should not be too literal in its approach.

(7) A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking

members of society generally, or be likely to affect a person adversely in the estimation of reasonable people generally.”

These principles were adopted by the Court of Appeal in this jurisdiction in the case of *Neeson and Richardson v Belfast Telegraph Newspapers Ltd* [1999] NIJB 200.

It is clear that, in applying Order 82 rule 3A, the court must be careful not to pre-empt the function of the jury. While, as Sir Thomas Bingham said, there will inevitably be an element in the court's deliberations of the impression the words have made on the judge himself, that must be for the purpose of deciding what are the *potential* meanings of the words rather than concluding which meanings he would attribute to them. Over elaborate or zealous parsing of the words is not appropriate to the exercise that the judge must perform at this interlocutory stage. The impression created by the words rather than a close textual analysis of their import should be the touchstone for the application of this provision.”

[6] There is a further legal principle applicable in this case which is derived from the decision of the House Of Lords in *Charleston v News Group Newspapers* [1995] 2 AC 65. In that case 2 actors claim damages for libel as a result of a newspaper report which consisted of photographs of the plaintiffs' faces superimposed on the nearer naked bodies of models in pornographic poses, captions, a headline and an article which made it clear that the images had been created without the permission of the plaintiffs by a third party. The plaintiffs sought to present their case on the basis that many readers will simply have noted the headline, photographs and caption but not read the article. The House Of Lords rejected the appeal holding that the question whether an article was defamatory have to be answered by reference to the response of the ordinary, reasonable reader to the entire publication. Lord Nicholls noted, however, that whether the text of an article would always be efficacious to cure a defamatory headline would depend on the context.

Conclusion

[7] I am grateful for the helpful oral and written submissions of Mr Hill QC who appeared with Mr McCartney for the plaintiff and Mr O'Reilly who appeared on behalf of the defendant. Considerable emphasis was placed by the plaintiff on the prominence of the headline "If cops come in here they won't get out again". It is expressly contended at particular (d) that the plaintiff was associated with that view and that she thereby tolerated, condoned or supported violence and killing. I do not consider that that is a

meaning which the ordinary, reasonable reader could deduce from this article. Although the wording is marginally different it is clear in my view that the prominent statement is in fact attributed to the male referred to in the third paragraph of the text of the article. There is no basis for attributing that comment to the plaintiff or associating it with her.

[8] The plaintiff's case is that the picture of the plaintiff appears posed in front of the mural celebrating Mr McCreesh. The circumstances of this may be at issue in the trial but I accept for the purpose of this application that the plaintiff's interpretation of the picture is one which the jury could share. Murals of this sort are not uncommon throughout Northern Ireland. They celebrate events and personalities associated often with a difficult and violent past. They may be judged to celebrate some event of perceived historical or political significance. This is no exception. The mural expressly states that Mr McCreesh died after 61 days hunger strike and it appears intended to record that fact.

Although it is by no means clear that the jury will take this view I consider that if the jury formed the view that the plaintiff posed for this photograph in front of the mural it would be open to them to find that she proudly, openly and publicly associated herself with Raymond McCreesh deceased. In light of Mr McCreesh's criminal past such a meaning might well be judged defamatory. I, therefore, accept that there is an arguable case for a meaning (g).

[9] I am not sure to what extent meaning (a) is intended to add anything to this. If it covers the same ground as meaning (g) then it is oppressive. If it is designed to indicate in some way support for violence by the plaintiff then I reject it. The fact that a person should agree to pose in front of a piece of street art of this type is in my view no indicator that they are supporters of violence or in opposition to the peace movement. Of course one cannot look at the photograph in isolation and in addition to the article text it is important to bear in mind the headings and subheadings within the photograph. It is clear, however, that a range of views about support for the police are recorded within the text of the article. Some of the reservations about support for the police relate to the activity of dissident republicans with whom the person expressing the reservation does not appear to agree. There is no comment of any sort attributed to the plaintiff and no reason in my view to infer that any of the views set out in b, c, e or f should be attributed to her. Accordingly I strike out each of the meanings at paragraph 4 except for that at g.

[10] I now turn to the matters pleaded as particulars of innuendo. Each of these meanings seeks to establish that the plaintiff is or has been a supporter of the use of violence. For the reasons set out above I do not consider that the ordinary, reasonable reader could come to such a view on the natural and ordinary meaning of the article. The particulars associated with the innuendo

were criticised by the defendant as not being true innuendo meanings. I do not need to decide that point. They note that the plaintiff is and has been a peace loving law-abiding citizen who abhors violence. The particulars then go on to seek to establish a meaning for the heading and the subheading dealing with "Crossing Over". This is criticised by the defendant on the basis that the meaning is part of the ordinary and natural meaning but in any event I do not consider that the ordinary, reasonable reader could interpret the use of the heading "Crossing over" in conjunction with the reference to the pedestrian as an indication of the plaintiff's political views. The particulars note Mr McCreesh's violent past and that of his associates, refer to the fact that the mural was unveiled in 2006 with the support of some opposed to peace and that the slogans on it tend to indicate a support for violence. For the purpose of this application I accept that all of these matters might be proved by the plaintiff but in my view they do not advance the plaintiff's argument that in some way this photograph, the headings and subheadings, the article and its context together with these facts give rise to the identification of any political view about the use of violence on the part of the plaintiff. In my view each of the particulars of innuendo must be struck out. The case should proceed on the basis of the sole meaning allowed.