

Neutral Citation No. [2010] NICA 42

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

Delivered: **06/12/10**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

Wilcox's (Yvonne) Application [2010] NICA 42

**IN THE MATTER OF AN APPLICATION BY YVONNE WILCOX FOR
JUDICIAL REVIEW**

Before: Morgan LCJ, Girvan LJ and Sir Anthony Campbell

MORGAN LCJ (delivering the judgment of the court)

[1] This is an appeal from a decision of Treacy J in which he dismissed the appellant's challenge to a decision of the Criminal Injuries Compensation Appeal Panel (the Panel) made on 11 November 2009 dismissing her appeal against a refusal of criminal injuries compensation.

Background

[2] The background against which the claim is made is helpfully set out in the Panel's written decision of 6 January 2010 in which it recorded the account given by the appellant.

"3. The appellant sustained injuries in Feb 07 when she was bitten by a dog. She had been on her way home from a bar and from her daughter's house around 2.45 am when she called to see an acquaintance by the name of Ivor. She was in his house for a few hours when she was bitten by his dog. Her claim form puts the time of the incident at approximately 6.30 am. The appellant accepted that she had taken some drink at the bar, in her daughter's house and also in Ivor's house but denied the contents of the Police Report which suggested that she was heavily intoxicated when

spoken to by the Police shortly after the incident. In oral evidence she stated that she had consumed about 2 beers and 3 vodkas....

5. The appellant claimed that, on enquiry, shortly after entering the house, Ivor had told her that the dog was 'a vicious bastard'. She also told the Panel that a person had subsequently told her about being in Ivor's house and leaving because of a fear of the dog. Nevertheless she accepted that Ivor lived across the road from her, she had known him for a long time and she was not aware of any previous problem with this dog in the neighbourhood. Documentation from Down District Council confirmed no details of any previous dog related problems. No evidence was called before the Panel that the dog had previously attacked anyone nor was there any objective or reliable evidence, in the view of the Panel, that the dog had a propensity for vicious behaviour towards humans. The appellant described the dog as being black and white, fairly big and of a collie type and while the breed cannot be precisely identified it didn't appear to the Panel that its description suggested that it belonged to a breed sometimes associated with dangerous characteristics.

6. The appellant accepted that in the few hours prior to being bitten the dog had not exhibited any behaviour which caused her concern. She accepted that it had been lying at the fireplace, she had petted the dog and on one occasion the dog had given his paw. She accepted on questioning that this latter act is normally regarded as a friendly gesture and agreed that she had never previously heard of it being conduct amounting to 'sussing you out and about to bite' as claimed to have been conveyed to her by Ivor on the following day.

7. The appellant also made the case in oral evidence, for the first time, that she was alone in the room when she was bitten by the dog, Ivor having gone to the kitchen to get his own drink. The Panel had some reservations about this claim given the fact that she made no reference to this in her fairly lengthy account in her claim form. "

[3] The Criminal Injuries Compensation Scheme 2002 (the Scheme) was established pursuant to article 3 of the Criminal Injuries Compensation (Northern Ireland) Order 2002. Paragraph 6 of the Scheme provides that compensation may be paid to an applicant who has sustained a criminal injury. Paragraph 8 of the Scheme defines a criminal injury.

“ For the purposes of this Scheme, “criminal injury” means one or more personal injuries as described in paragraph 10, being an injury sustained in Northern Ireland and directly attributable to-

- (a) a crime of violence (including arson or an act of poisoning); or
- (b) the apprehension or attempted apprehension of an offender or a suspected offender, the prevention or attempted prevention of an offence, or the giving of help to any constable who is engaged in any such activity.”

[4] Paragraph 23 of the Scheme provides for the publication of a Guide to the operation of the Scheme in which there is set out where appropriate the criteria by which decisions will normally be reached. Paragraph 7.9 of the Guide deals with what constitutes a crime of violence.

“There is no legal definition of the term but crimes of violence usually involve a physical attack on the person, for example assaults, wounding and sexual offences. This is not always so, however, and we judge every case on the basis of its circumstances. For example, the threat of violence may, in some circumstances, be considered a crime of violence.”

Paragraphs 7.18-7.19 provide guidance on injuries caused by animals.

“7.18 This type of injury often results from an attack by a dog, but whilst such attacks can be savage and very distressing, we have to be satisfied that the attack amounted to a crime of violence before we can consider making an award.

7.19 There are generally 2 main circumstances in which we would consider making an award:

- (a) If the person in charge of the dog deliberately set it on you;

- (b) If the attack was a result of the dog owner's failure to control an animal which was known to be vicious towards humans and the lack of control could be shown to amount to recklessness. If, for example, a dog with a previous history of vicious behaviour was allowed out without adequate restraint or was in the charge of a child, this might amount to recklessness."

In these cases the critical issue is whether the applicant can show the commission of a crime of violence by the owner.

[5] The Panel conducted an oral hearing on 11 November 2009 and rejected the appellant's claim holding that she had not established the requisite knowledge of vicious propensity to humans and in any event had not established lack of control on the part of the owner whether or not he was in the room at the time of the bite. The appellant secured leave to pursue judicial review proceedings in respect of this decision on 2 grounds. First it was argued that the decision was irrational and secondly it was claimed that the Panel had erred in its approach to recklessness. The learned judge concluded that there was no reason to interfere with the findings of the Panel and dismissed the application.

Consideration

[6] The appellant argued that the issue in the appeal was whether it could be shown that the owner of the dog had committed a reckless assault. Mr Lavery submitted on her behalf that the evidence that the owner of the dog had stated that it was a "vicious bastard" was unchallenged. On the issue of recklessness the appellant relies upon R v Brady [2007] Crim LR 564 and submits that what was required was evidence that the owner was aware of the risk and in the circumstances known to him it was unreasonable for him to take the risk. For the respondent Mr Scoffield submitted that the findings reached by the Panel were open to it and the learned trial judge was correct not to interfere.

[7] The purpose of the oral hearing procedure is to enable the Panel to assess the reliability of the witnesses in relation to the facts upon which the claim depends. The only evidence that the owner of the dog knew that it had a propensity to harm humans was that of the appellant who said that the owner had said to her that the dog was a vicious bastard when she had enquired shortly after entering the house whether the dog would bite. The Panel did not make any express finding as to whether it accepted that this conversation occurred. It did, however, conclude that there was no objective

or reliable evidence that the dog had a propensity for vicious behaviour towards humans.

[8] The Panel clearly had concerns about the reliability of the appellant's evidence. It noted that the appellant had said that she had consumed about 2 beers and 3 vodkas during the evening when she had visited a public house and her daughter's home prior to calling with the owner of the dog at 2.45 am. The police report, however, described her as heavily intoxicated when spoken to by police shortly after the incident. That suggested that she was either mistaken about the events of the night or not being truthful. She alleged that she had been told by the owner the following day that when the dog had offered her its paw that it had been "sussing her out and about to bite". She accepted, however, that the act of offering a paw was normally regarded as a friendly gesture. That called into question whether any such conversation actually took place. She also made the claim in oral evidence for the first time that the owner had left the room at the time of the bite. This was obviously material to the issue about control yet had not been referred to before the oral hearing.

[9] Mr Lavery criticised the manner in which the Panel considered other independent evidence about the propensity of the dog to see whether it supported the appellant's claim but such enquiry was clearly material and indeed may have assisted the appellant. It was suggested that the consideration of objective evidence led the Panel away from consideration of the knowledge of the owner as to the propensity of the dog but the reference to the absence of reliable evidence and the references to requisite knowledge in the concluding paragraph of the written decision read in bonam partem support the conclusion that the Panel did apply its mind to the knowledge of the owner of the dog. We agree with Mr Lavery that the Guide would benefit from being explicit as to the knowledge being that of the owner but we do not consider that there is evidence that the Panel fell into error in this case.

[10] The onus lies on the appellant to demonstrate that there is some error by way of irrationality or improper consideration. The Panel's written decision read as a whole shows that the Panel did not consider that the appellant was a reliable witness to the events of the night of the attack. Mr Lavery was forced to argue at one stage that there was only a possibility that the Panel had fallen into error. In our view that is not sufficient. The appellant has not demonstrated any irrationality or failure by the Panel in its consideration of the knowledge of the owner as to the vicious propensity of the dog and the appeal must, therefore, be dismissed. We do not need to consider the issue of recklessness.