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IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
DIVISIONAL COURT



No. ATC19/0034

[2019] EWHC 3726 (QB)

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Wednesday, 13 March 2019

Before:

THE LORD CHIEF JUSTICE, LORD BURNETT OF MALDON

MR JUSTICE WARBY

B E T W E E N :

HER MAJESTY'S ATTORNEY GENERAL

Applicant

- and -

TINA MALONE

Respondent

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MR J. HALL QC (instructed by Government Legal Department) appeared on behalf of the Applicant.

MR A. SPEKER and MR G. CALLUS (instructed by Manleys Solicitors) appeared on behalf of the Respondent.

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**J U D G M E N T**

LORD CHIEF JUSTICE:

- 1 The Attorney General applies under Part 81 of the Civil Procedure Rules for an order that the respondent, Tina Malone, be committed to prison for contempt of court. The contempt alleged is disobedience to an injunction which has been in place now for 26 years that prohibits the publication of information about the new identities of Jon Venables and Robert Thompson.
- 2 The hearing today began as a contested application but in the course of her oral evidence, Ms Malone made concessions which resulted in her changing her position and accepting through her counsel, Mr Speker, the alleged contempt.
- 3 Thompson and Venables murdered James Bulger on 12 February 1993 when he was only 2 years old and they were children aged 10. The circumstances of the case are very well-known. They were sentenced to indefinite detention “at Her Majesty’s pleasure”. Upon their release from custody, they were given new identities which were necessary for their protection. The injunction with which we are concerned was ordered by Dame Elizabeth Butler-Sloss, then President of the Family Division, on 8 January 2001 and has been amended subsequently from time to time. The material parts of the injunction are contained in paragraph 1(1). They prohibit, subject to some specified exceptions, the publication of:
  - “(a) any depiction, image in any form, photograph, film or voice recording made or taken on or after 18 February 1993, which purports to [be] of the claimants, Jon Venables or Robert Thompson (excluding police photographs of the claimant Robert Thompson taken on 18 February 1993, or of Jon Venables taken on 20 February 1993) or any description which purports to [be] of their physical appearance, voices, or accents at any time since that date;
  - (b) (in the event of either of the claimants adopting a new name and other identifying particulars) any information purporting to identify any person as having formally been known as the claimants”

The injunction was granted against:

“the defendants and any person with notice of this order”.

- 4 The background to the original injunction and the reasons which underlay its grant are explained in some detail in the recent judgment given in this court in *Attorney General v McKeag and Barker* [2019] EWHC 241 (QB) between [4]-[12]. As we there explained, the purpose of injunction is to mitigate the real risk of serious harm or death to anyone who might be identified, correctly or otherwise, as Venables or Thompson. History shows that, on occasion, innocent individuals have been exposed to risk on account of mistaken identity or association. Subject to some changes made from time to time, the injunction has remained in full force and effect since 2001.
- 5 The most recent assessment of the need to maintain the injunction was conducted by Sir Andrew Macfarlane, President of the Family Division, on 3 March 2019, so barely a fortnight ago. The risks against which the original injunction sought to give protection have, if anything, intensified as a result of the nature of today’s social media (see [2019] EWHC 494 (Fam)).

6 On a number of previous occasions, the Attorney General has brought applications for orders punishing individuals for acting in contempt of court by disobeying this injunction. *McKeag and Barker* is the most recent application of that kind, and the judgment in that case provides a summary of earlier cases. It also seeks to explain why it is essential to the maintenance of the rule of law that the Attorney General should bring such matters before the court and, if contempt is established, the court should take steps to uphold and enforce its own orders not least because they are expressly aimed at protecting fundamental rights.

7 The allegation is that Ms Malone:

“in breach of paragraphs 1(1)(a) and (b) of the injunction and having notice of the injunction, on or around 27 February 2018 published, or caused to be published on a public computer network, namely her personal Facebook page:

- (1) Photographs purportedly of Jon Venables taken after 20 February 1993;
- (2) An alias purportedly used by Venables;
- (3) Information purporting to identify Venables by way of identifying his fiancé.”

8 The essence of the Attorney General’s evidence is that on 27 February 2018, Ms Malone used her Facebook page to share a post made by another person. The post contained a number of images accompanied by the following text. We anonymise those referred to in the text:

“Meet Jon Venables (new name [X]) girlfriend, [Y]. The woman who is standing by a convicted child murderer and pedophile. She new exactly who he was when she w...”

9 The remainder of that post has not been retrieved and is therefore unknown. What we have set out is the precise wording of the full known text of the post save, as I say, that we have anonymised those identified.

10 There is and never has been any dispute that Ms Malone did what is alleged, nor has it ever been disputed that the publication of those words and images was contrary to the prohibitions contained in the injunction in each of the respects identified in the Attorney General’s application. That is plain so far as the direct identification of Venables is concerned. The post contains what purport to be images of him and a name which purports to be his new name. It may be less obvious when it comes to the photograph and name purporting to be those of his partner or fiancé, but as Mr Hall QC for the Attorney General submits and we accept, that was indirect identification. By posting specific information about a person intimately associated with Venables, Ms Malone’s conduct contravened paragraph 1(1)(b) of the injunction.

11 It is not suggested that the order made by the President of the Family Division in 2001, as amended, should have been served personally on Ms Malone. This injunction was made against the world. Formally, we dispense with service. The issue which was raised on the question of whether Ms Malone was in contempt of court was whether she had notice of the substance of the injunction when she shared her post. That had been denied on her behalf and denied in terms in an affidavit sworn by Ms Malone, but in her oral evidence, Ms Malone said that she knew that Thompson and Venables had been sentenced and given

anonymity by the judge. She added, “everybody knows”. She had candidly accepted in the course of her evidence that she appreciated that anonymity had been given to protect Thompson and Venables from the public to stop them being hounded, to stop them being physically attacked, and “run out of town” as she put it.

- 12 The principles governing the approach to sentencing for contempt of court in cases such as this were set out in [25] and [26] of our judgment in *McKeag and Barker*. We do not repeat them now. The judgment also reviewed earlier cases involving breaches of the same injunction. Mr Hall fairly submits that the conduct in this case was less serious in the sense that it was less calculated, persistent, or defiant than in all the other cases reviewed in *McKeag and Barker*. He also accepts, again fairly, that there is strong personal mitigation available to this defendant. Mr Speker submits that the degree of culpability attaching to Ms Malone is very much less than any of the other cases which have come before this court concerning breaches of the same injunction.
- 13 Nonetheless, he accepts that there are a number of aggravating features which it is proper to take into account in arriving at the appropriate sentence. First, the nature and purpose of the injunction was and remains to protect not only two individuals who are themselves vulnerable to attack and even death but others who might be associated with either of them or wrongly identified as either of them. Secondly, the post that Ms Malone shared identified another individual, purported to identify another individual, the woman who was said to be his partner, and by doing so at least potentially exposed that person to a risk as a result. Thirdly, he accepts that some of Ms Malone’s comments made in the press when they became interested in what she had done were “defiant in nature”. We need not dwell on the detail of what Ms Malone said to the press but her comments did suggest that, at that time, she was unconcerned about the consequences of what she had done at least so far as Venables was concerned. Fourthly, it is accepted that Ms Malone failed to deal properly with the allegations of contempt when first notified of them. Once more, it is unnecessary to set out the rather unhappy procedural history and sequence of ignoring communications.
- 14 There are, as we have suggested, important mitigating features that fall to be taken account in this case. Ms Malone shared the post on only one occasion. She has no history of breaching this injunction or, indeed, any other injunction. She did not comment upon the post nor did she encourage anyone actively to take action or insight anyone in any particular way. She was not someone who was part of a concerted attempt to flout the injunction.
- 15 Ms Malone has had a very troubled history in many respects. Her evidence, which is fully supported by medical evidence that has been placed before us, is that she has alas, for many years, suffered from mental illness and mental fragility. That has, to an extent, been played out in the public domain because Ms Malone is a well-known actress. At the time that she shared this post, Ms Malone was in the midst of a period of particular difficulty. She has explained both in her affidavit and also in her oral evidence the circumstances in which, put shortly, her life and that of her immediate family ran into especial difficulty in the two years leading up to February 2018. As a result, she was suffering from serious anxiety and depression at the time of these actions. She was coping with some very profound practical difficulties that touched her family circumstances. Ms Malone also has caring responsibilities. She has a 5-year-old daughter for whom she is the principal carer. She is also the principal carer of her 80-year-old mother. At the time of this contempt, the family’s financial circumstances were desperate. Since then, Ms Malone has managed to find work and is on the way to making good some of the difficulties from the past.
- 16 Ms Malone is not somebody who can be said to be completely of good character because of a caution for a drugs offence but we put that from our minds completely. She has a positive

good character in many respects. First, she runs a number of drama groups for vulnerable young people. These would inevitably be interrupted if not stopped were she to go immediately into custody. Furthermore, Ms Malone has devoted a good deal of time and energy to supporting a variety of charitable endeavours. She is an ambassador for the James Bulger Trust which raises money to support children in difficulty. She supports a charity called Venture in Manchester which is devoted to raising money and supporting children with autism and associated difficulties. She is an ambassador for the Olivia Alice Foundation in Liverpool which is concerned with supporting children with complex unmet needs. She has supported her local women's refuge and, finally, she is supporting a charity called Chasing the Stigma which is concerned, in particular, with the prevention of suicide. Her interest in that charity is the result of her own condition of being bipolar or, as she explained to us in evidence, a manic depressive as it used to be known. All of that activity redounds to her credit.

- 17 Moreover, although Ms Malone took a point in her affidavit that she was not on sufficient notice of the order of the court, she repeatedly expressed her sorrow at the distress she may have caused to anybody as a consequence of her conduct which she described as unthinking and possibly, at least in part, generated by the difficulties she was suffering at the time.
- 18 Finally, we mention the late acceptance of responsibility as we observed in *McKeag and Barker*. One of the definitive guidelines applicable in criminal cases but not directly in contempt cases, which it is proper to bear in mind when arriving at sentence, is the guideline dealing with discounts for guilty pleas. Late though the acceptance of responsibility was, some modest discount on the otherwise appropriate sentence is called for.
- 19 We have concluded that although the custody threshold is undoubtedly passed in this case, the personal circumstances and mitigation of this defendant are such that we should impose a suspended committal order. Taking account of everything that we have heard, we order that the defendant be committed to prison for eight months but we suspend that order for two years. That means that if Ms Malone commits any further contempt within the period that we have identified, she will be liable to be sentenced not only for any further contempt but to serve the eight months that we have identified.
- 20 The Attorney General has made an application for costs. The reality in cases of this sort is that the Attorney General's office is inevitably put to significant cost in making an application for committal which, as we emphasise, is necessary to uphold the rule of law. We have heard submissions from Mr Hall and from Mr Speker. Mr Speker does not dispute the entitlement of the Attorney to an order for costs. It will be a matter for the Attorney to consider whether and in what circumstances any effort to enforce the order we make is made given the parlous financial position in which the defendant finds herself. That said, we make an order for costs in favour of the Attorney and against the defendant summarily assessed in the sum of £10,000.

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**CERTIFICATE**

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Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
civil@opus2.digital*