

IN THE HIGH COURT AT BIRMINGHAM

[2022] EWHC 1326 (QB)

QUEEN'S BENCH DIVISION

BIRMINGHAM DISTRICT REGISTRY

B E T W E E N

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

-and-

(2) TIMOTHY HEWES

(1) EILIDH McFADDEN

Defendants

MR SHEPHEARD appeared on behalf of the Claimant MR JONES appeared on behalf of the Defendants

APPROVED JUDGMENT

JUDGE RAWLINGS:

1. You have each accepted that you knew that there was an injunction in force which prohibited you from acting in the way that has been described by Mr Shephard and that you knew therefore that you were deliberately breaching the injunction. I am satisfied to the criminal standard therefore (that is so that I am sure) that you each breached the injunction.
2. Having found that there have been breaches of the injunction, I need to turn to the question of sanction.
3. The sentencing guidelines for breaches of Criminal Behaviour Orders provide guidance as to the starting point and range of appropriate sanctions for breach of a Criminal Behaviour Order. Although the guidelines do not refer specifically to civil injunctions they are taken also to also provide useful guidance as to the appropriate starting point and range of appropriate sanctions to be applied in the case of the index civil injunction breached by both of you in this case.
4. The guidelines operate by requiring the judge to first assess the culpability of the party in breach by reference to 3 levels of breach (A-C) and then to assess the harm caused by the breach by reference to 3 levels (1-3). The breach committed by each of you which you have accepted is that you walked into the middle of the road in front of the terminal gates and sat down. Your counsel, Mr Jones and the Claimant's counsel, Mr Shephard agree that, for both of you, given that your breaches are similar, your breaches of the injunction should be classified as B3, that is B (a deliberate breach) and 3 (little or no harm flowing from the breach). I agree that that is the appropriate classification of the breaches, for the purposes of the sentencing guidelines.
5. I will deal with Reverend Hewes first.
6. In relation to Reverend Hewes it is said that an aggravating factor is that Reverend Hughes has a number of convictions in relation to similar matters, which all seem to relate to protests about climate change or similar.
7. On behalf of Reverend Hewes it is said that there is a difference between his conduct, both on this occasion and on previous occasions, which is based upon his view that urgent action needs to be taken to stop using fossil fuels and that he has a moral duty to act in the way that he has acted.
8. I consider that it is right to distinguish what Reverend Hewes has done, based on what I am satisfied he sees as a moral imperative and duty to act from a defendant who breaches court orders or commits criminal offences for their own personal benefit or advantage or with an intent to hurt others ..
9. As to Reverend Hewes' means, it has fairly been accepted by Mr Jones that Reverend Hughes is able to afford a fine that I might reasonably impose upon him within 28 days.
10. I take the view that the starting point is a fine of £1,200, with a one-third deduction because Reverend Hewes has accepted that he breached the injunction at the earliest opportunity, reducing the starting point to £800. As a mark of my appreciation that

there is genuine mitigation for Reverend Hughes's breach of the injunction because, I am satisfied that he considers that he was acting under an urgent moral duty and that he would not otherwise have knowingly breached an order of the court, I will set the fine at £700 but I will say that it must be paid within 28 days.

11. As for Miss McFadden, I am satisfied (and this is accepted by Mr Shepherd) that her breach in relation to the injunction, was a fleeting one, in that she was sitting on the ground obstructing the entrance to the Terminal for a very short period of time.
12. Miss McFadden has no previous convictions, although she was on bail at the time she breached the index injunction and that is an aggravating factor, but in relation to another matter, not in relation to a breach of this injunction.
13. It is put on her behalf that she is a student who has no income beyond her student loan and the income that she does have from her student loan is swallowed up by her outgoings. Miss McFadden is a person with very little means in respect of whom a higher level of fine would not be appropriate. The starting point for Miss McFadden is £600 (half of what the fine would be for a person with means with a deduction to take account of the fact that she has pleaded guilty at the first opportunity, making a total of £400. I will impose a fine, therefore, on Miss McFadden of £400 but, as previously, to be paid at the rate of £20 per month.

(There followed further submissions)

JUDGE RAWLINGS:

14. In relation to costs, it is right that costs normally follow the event and the claimant has been successful against the defendants who have accepted their breaches of the injunction, but the court is able to make a different order in spite of that starting position.
15. A point is made on behalf of the two defendants that I am dealing with now that the costs schedule which has been produced names four people as defendants who are not the defendants who are before me today, but I accept that that is an error and that the costs schedule is meant to refer to the four defendants including Reverend Hewes and Miss McFadden, because it refers to contempt hearings on 13 and 19 May and gives some detail in relation to work done on 13 and 19 May which is consistent with hearings in relation to these defendants.
16. Try as he might, Mr Jones cannot put his submissions really any higher than that the wrong defendants have been named in the costs schedule. All other details of the costs schedule do appear to be consistent with the costs schedule being intended to refer to the proceedings taken against these defendants.
17. So, I am afraid from the defendants' perspective, the starting point is that these defendants should pay at least a contribution towards the costs of these proceedings, but I can, as I say, make a different order. Mr Jones has not however put forward any reason why Reverend Hewes and Miss McFadden should not pay a contribution towards the Claimant's costs incurred in bringing these contempt proceedings and therefore there is no reason to depart from the starting position and I will order that Reverend Hewes and Miss McFadden pay a contribution towards the Claimant's costs.
18. The costs sought when compared to the fines that I have imposed are relatively high.

There are within the costs schedules round figures specified for amounts of time spent, so that individual items are recorded for example as five hours, two hours, three hours, 10 hours and six hours. Normally costs schedules are prepared on a more precise basis than that, so far as time spent on each recorded task is concerned. Further the descriptions of the tasks performed is very generic in nature.

19. If this costs schedule were split between the six defendants who are before me equally and at the full value claimed, then that would result in each of them making a contribution of £510. I think that is too much and taking into account the imprecise nature of the time and task recording and the overall proportionality of the amount claimed. What I will order is that these defendants should make a contribution towards the costs of £250 each.
20. In relation to time for payment, Reverend Hughes will be required to pay that sum within 28 days, but so far as Miss McFadden is concerned, that it will be added to the fine that I have imposed upon her and she will have to pay the fine first and then the costs contribution of £250 at the rate of £20 per month until they have been paid in full.

This transcript has been approved by the Judge