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Case No: QB-2020-000117

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 January 2022

Before :

THE HONOURABLE MR JUSTICE MURRAY

Between :

MINHAZ BASHAR **Claimant**
- and -
DANIELLE THOMPSON
BIRMINGHAM CITY COUNCIL **Defendants**

Mr John McLanachan (direct access counsel) for the **Claimant**
Ms Maria Mulla (instructed by **Birmingham City Council, Legal and Governance**
Department) for the **Second Defendant**
The First Defendant did not make any written submissions.

Approved Judgment

I direct that copies of this version as handed down may be treated as authentic.

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MR JUSTICE MURRAY

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down are deemed to be 2:00 pm on 11 January 2022.

Mr Justice Murray :

1. This claim, brought by the claimant, Mr Minhaz Bashar, alleges that two statements made in a Family Assessment Report dated 30 August 2016 (“the Report”) are defamatory of him. The Report was prepared by the first defendant, Ms Danielle Thompson, a social worker employed by Birmingham City Council (“BCC”), the second defendant, within the Birmingham Children Services Department. BCC accepts that it is responsible for any statements made by Ms Thompson in the Report.
2. The claim was issued on 13 January 2020 together with the original particulars of claim. Further to an order of Master Brown dated 24 April 2020, amended particulars of claim (“APoC”) were filed on 8 May 2020. The BCC filed its Defence on 12 June 2020, setting out various defences, including one of limitation. Mr Bashar filed his Reply to the Defence on 29 June 2020.

The alleged defamatory statements

3. In paragraph 2 of the APoC, Mr Bashar says that the following statements in the Report are defamatory of him:
 - i) the following statement on page 11 of the Report (“the First Statement”):

“Furthermore I have serious concerns to his extreme views”
 - ii) the following statement on page 12 of the Report (“the Second Statement”):

“Given the information provided by ... and discussions held with Mr Bashar I have serious concerns to his value base and views which, in my opinion, are extreme.”

The Report

4. The publication in which the First Statement and the Second Statement (together, “the Statements”) appear is the Report, which consists of 22 pages.
5. The background to the Report is as follows:
 - i) Mr Bashar was born on 28 November 1987.
 - ii) Mr Bashar was formerly in a relationship with a woman, to whom I shall refer as “EM”, who was born on 16 June 1995.
 - iii) Prior to her relationship with Mr Bashar, EM had a son with another man. I shall refer to that son as “A”. A was born either on 1 October 2010 or on 1 October 2012. (The Report, inconsistently, specifies his date of birth as “1/10/2012” and his age as “6”.)
 - iv) Mr Bashar and EM had a son, who was born on 24 July 2015. I shall refer to him as “N”.

- v) Following the ending of their relationship in or about November 2015 and at the time of preparation of the Report, EM had sole custody of A and N. Her parents, and in particular her mother, JH, also had significant involvement in the care of the children.
 - vi) EM entered into a new relationship. At the time of preparation of the Report, she was expecting a third child with a new partner. Her projected due date was 5 February 2017.
 - vii) At some point prior to 18 July 2016, Mr Bashar made an application for a child arrangements order under section 8 of the Children Act 1989 to allow N to live with him. This led to the involvement of Cafcass in the case. Each of Mr Bashar and EM made allegations of domestic abuse against the other and raised doubts about the other's ability to care for and protect the children.
 - viii) On 18 July 2016, with the consent of N's parents, Cafcass made a Multi-Agency Safeguarding Referral (a "Mash" referral) to the Birmingham Children Services Department. According to safeguarding checks undertaken by Cafcass, each parent stated that the children were at risk of emotional and physical harm due to significant physical, verbal, and emotional domestic abuse that had been part of the relationship between Mr Bashar and EM when they were together. Mr Bashar also reported concerns about domestic abuse and alcohol misuse by EM's parents.
6. BCC instructed Ms Thompson to prepare the Report in relation to A under section 17 of the Children Act 1989, with a timeframe for completion of fifteen working days. To prepare the Report, Ms Thompson made contact with each parent, obtained parental consent to undertake checks with relevant agencies, and undertook direct work with A via play to ascertain his wishes and feelings. Although the principal subject of the Report is A, there are, as I have already noted, various references in the Report to N, Mr Bashar's son, and to EM's then unborn baby.
7. On the first page of the Report, A's ethnicity is specified to be "Mixed Parentage – White and Asian". There is also a table with the heading "Parents/Caregivers/Family/household composition", setting out the name, date of birth, gender, relationship to A, address, ethnicity, and religion of each person named in it. The persons named in the table include EM, EM's mother (to whom I shall refer as "JH"), N and Mr Bashar. Confusingly, JH is referred to in the body of the Report by a different name from the name assigned to her in the table, but it is clear that in each case the intended reference is to EM's mother.
8. In relation to ethnicity, EM is specified to be "White – UK", N is specified to be "Mixed Parentage – White and Asian", and Mr Bashar is specified to be "Asian Other".
9. EM's religion is specified to be Muslim. No religion is specified in the table in relation to Mr Bashar, but it is not disputed that he is also Muslim. Mr Bashar asserts that his ethnicity and religion are a relevant part of the context in which the alleged defamatory statements were made.

10. The First Statement appears in a section of the Report headed “Child Protection Risks” under the sub-heading “Risk Factors”. That section presents various risk factors in bullet point form. The relevant risk factor in which the First Statement appears reads in full as follows:

“- Mr Bashar has abused his religion and used this to control [EM]. **Furthermore, I have serious concerns to his extreme views**, discussions in nuclear war and him requesting [EM] to purchase a passport for she and [N].” (emphasis added)

11. I have highlighted the First Statement in bold to show it in context. It is not in bold in the Report.
12. The Second Statement appears in a section of the Report headed “Analysis and professional judgment”. The relevant paragraph in which the Second Statement appears and, for fuller context, the preceding paragraph read together in full as follows:

“Mr Bashar denies perpetrating domestic abuse but admits that he has on occasions retaliated physically. He remains (sic) that he has been subject to [EM] displaying controlling, verbal and physical violence against him. Mr Bashar has confirmed that the exchange of messages [EM] has provided me (evidence of screen shots, please see under e-records) he has sent and admits to being verbally abusive. He denies having extreme views.

Mr Bashar takes little responsibility of his actions and has provided myself and the Family Court Advisor conflicting accounts of certain incidents. In my view, this show Mr Bashar to have a manipulative and vindictive intent. **Given the information provided by [EM] (evidence of screenshots) and discussions held with Mr Bashar I have serious concerns to his value base and views which in my opinion are extreme.** I also have serious questions to his ability to protect the children given that he has undertaken Safeguarding training.” (emphasis added)

13. As with the First Statement, I have highlighted the Second Statement in bold to show it in context. It is not in bold in the Report.
14. Further description and discussion of the screenshots appears in the part of the Report headed “Family history and their understanding of family relationships” (pages 6-8 of the Report). The screenshots referred to in the passage quoted in [12] above are apparently images of “abusive text messages” sent by Mr Bashar to EM (page 7 of the Report, first full paragraph under the sub-heading “[EM’s] views”).
15. According to the Report (top of page 7 of the Report, continuation of paragraph starting on page 6, under the sub-heading “Maternal Grandmother [JH]”), the “e-records” also include images of screenshots of messages sent by Mr Bashar to JH.

16. Additional relevant background is provided earlier in the Report, where the first reference to the screenshots appears in the section of the Report headed “Child and family background / history” under the sub-heading “Identity”. The relevant passage reads in full as follows:

“Identity

[A] and [N] are half siblings and are of mixed parentage where their mother is White British and their father’s are of Asian origin. [A] and [N] are practising Muslim’s but not of age to attend Mosque. [EM] said she converted to Islam when she was 14. As the boys grow up she will allow them to make their own choices with regards to their religion.

[EM] has shared concerns that Mr Bashar has extreme views and is worried if he was allowed to have contact with [N], he would relay his extremist views onto [N]. She is worried that Mr Bashar is interested in Jihadist and Syria. In December 2015 Mr Bashar had requested she purchase a passport for her and [N]. I have seen these screenshots (please see in e-records) in which Mr Bashar requests [EM] purchases passports. He goes on to mention that there will be a nuclear war next year. Mr Bashar has confirmed he has sent the messages but had requested the passports for them to go on holiday together. In reference to him talking about a nuclear war, he said he was watching the news which were covering the war.”

17. Neither the screenshots nor the “e-records” are included in the bundles before me. It is not, however, in my view necessary for me to see them for present purposes.

Trial of preliminary issues; written determination

18. By order of Master Cook dated 1 December 2020 (“the Cook Order”), this is the trial of the following preliminary issues:

- i) the meaning of each of the Statement; and
- ii) whether the meaning found is defamatory at common law.

19. The Cook Order provides at paragraph 1 that a judge of the Media and Communications List shall make:

“... a written determination on the issue of ‘meaning’ of the alleged defamatory words as pleaded at paragraphs 2 and 8 of the amended Particulars of Claim (dated the 8th May 2020).”

20. The Cook Order also provides at paragraph 6 as follows:

“6. In the event that a defamatory meaning is established the Media and Communications List Judge [making the written determination of meaning under paragraph 1 of the Cook Order] or Master Cook will

give suitable directions for the determination of the issue of limitation;”

21. Accordingly, I am also asked to determine as a preliminary issue whether the relevant meaning of the statements complained about is defamatory at common law, as that issue must be determined before the issue of limitation can be addressed.
22. I am not asked to determine any other preliminary issues, such as whether either of the statements is an expression of fact or opinion or whether either statement has caused serious harm for purposes of section 1 of the Defamation Act 2013. I mention this because the parties have made submissions on these and other issues that are beyond the scope of this preliminary issues trial. I do not address in this judgment any submissions of the parties that are irrelevant to the determination of meaning or whether the statements complained about are defamatory at common law.
23. Pursuant to the Cook Order and with the agreement of the parties, no hearing took place. Instead, I have considered their written submissions on the issues to be determined. In accordance with the practice outlined by Nicklin J in *Hewson v Times Newspapers Ltd* [2019] EWHC 650 (QB) [25], copies of the parties’ written submissions will be made available, on request, after this public judgment is handed down.
24. The Cook Order required the parties to agree by 8 December 2020 on a bundle of documents to be put before the judge who would make the written determination of the preliminary issues. The parties, however, failed to agree a bundle, and, accordingly, I have been presented with two bundles. I will comment further on this at the end of this judgment.

Relevant legal principles

25. For the purposes of the law of defamation, the so-called “single meaning rule” applies, namely, that an allegedly defamatory statement has only a single “right” meaning: *Slim v Daily Telegraph Ltd* [1968] 2 QB 157 (CA) 171-174 (Diplock LJ), approved by Lord Bridge in *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65 (HL) 71-72; *Gatley on Libel and Slander* (12th edition), 3.16. The court must establish a single meaning, that is, a meaning which the court finds would be understood by a hypothetical reasonable reader: *Rothschild v Associated Newspapers Ltd* [2012] EWHC 177 (QB) [23] (Tugendhat J).
26. For purposes of the single meaning rule, a statement has a “natural and ordinary” meaning, which may or may not be defamatory. The relevant principles governing the determination of the natural and ordinary meaning of a statement are set out in *Koutsogiannis v The Random House Group Limited* [2020] 4 WLR 25 [11]-[14] (Nicklin J). I have had regard to them. Although it is not necessary to set them out in full here, for reasons that will become apparent below, I highlight the following principles, which are extracted from *Koutsogiannis* [12]:

“... ”

- (viii) The publication must be read as a whole

(ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.

(x) No evidence, beyond [the] publication complained of, is admissible in determining the natural and ordinary meaning.

(xi) The hypothetical reader is taken to be representative of those who would read the publication in question. ...

...”

27. In some circumstances, a statement will only convey a defamatory imputation because of extrinsic facts that are known to at least one of the persons to whom the words were published (“the publishees”). This is an “innuendo” meaning.
28. As to the different levels of meaning that a statement may bear, generally referred to as the *Chase* levels of meaning, I have had regard to the summary set out in *Koutsogiannis* [13] (quoting Nicklin J in *Brown v Bower* [2017] EWHC 2637 (QB) [17]).
29. In relation to the determination of whether a statement is defamatory at common law, I have had regard to the relevant principles set out in *Allen v Times Newspapers Ltd* [2019] EWHC 1235 (QB) [19] (Warby J).

Mr Bashar’s pleaded case on meaning

30. PD 53B, paragraph 4.2(4) requires that the claimant must set out in the particulars of claim:
 - “(4) the imputation(s) that the claimant alleges that the statement complained of conveyed, both –
 - (a) as to its natural and ordinary meaning; and
 - (b) by way of any innuendo meaning (that is, a meaning alleged to be conveyed to some person by reason of knowing facts extraneous to the statement complained of). In the case of an innuendo meaning, the claimant must also identify the relevant extraneous facts;”
31. At paragraph 23 of the Defence, the BCC asserts that Mr Bashar has failed to plead that the statements about which he complains in paragraph 2 of the APoC were defamatory, has failed to plead the alleged defamatory meaning, and has failed to plead the imputations conveyed by statements complained of both as to their natural and ordinary meaning and as to any innuendo meaning as required by PD 53B, paragraph 4.2.
32. In paragraph 5 of his Reply, Mr Bashar says:

“5. Paragraph 23 of the Defence is denied it being correctly pleaded in the final sentence of Paragraph 4 of the Amended Particulars of Claim.”

33. The final sentence of paragraph 4 of the APoC reads:

“4. ... The words complained of above [in paragraph 2 of the APoC] caused serious harm to [the Claimant’s] reputation as did the fact that he was facing Radicalisation proceedings as a result.”

34. The reference to “Radicalisation proceedings” in paragraph 4 of the APoC is to proceedings that were initiated in the Family Court after the Report was published. The Family Court proceedings were those relating to the custody of Mr Bashar’s son, N, to which I have already referred.

35. The latter half of the sentence quoted at [33] above is a reference to an alleged consequence of statements complained about rather than a pleading as to their natural and ordinary meaning or innuendo meaning, as required by PD 53B, paragraph 4.2(4).

36. It is clear from a review of the APoC that there is no pleading as to any alleged innuendo meaning of the statements complained about, nor are any extraneous facts pleaded that could support an innuendo meaning. Accordingly, I am only required to determine the natural and ordinary meaning of the alleged defamatory statements and not any innuendo meaning.

37. As to the natural and ordinary meaning of the alleged defamatory statements, the only relevant pleading is in paragraph 8 of the APoC, which reads in its entirety as follows:

“8. The word ‘extremism’ or being dubbed an extremist has become interchangeable with the word ‘terrorist’ or ‘jihadist’ and is now regularly so interchanged in the report of all too frequent terrorist offences including talk of radicalisation which categorised the hearing he was to undergo in his attempt to have his son live with him.”

38. An obvious first point to make about this paragraph is that neither of the alleged defamatory statements uses the term “extremist” or “extremism” in relation to Mr Bashar. In each statement, there is a reference to his having “extreme views”. Accordingly, the court is invited by paragraph 8 of the APoC to infer that a statement in the context of the Report that Mr Bashar has “extreme views”, in the light of his being a Muslim, is tantamount to saying that he is an extremist and, by inference in the light of his being a Muslim, specifically a jihadist.

39. Mr Bashar’s view of the natural and ordinary meaning of each of the two statements is not set out in so many words in the APoC, nor is it set out in so many words in the written submissions of Mr John McLanachan, counsel for Mr Bashar. It appears, however, to amount to the following, namely, that the natural and ordinary meaning of each of the Statements is:

“Mr Bashar is an extremist and therefore a terrorist or jihadist.”

40. Mr Bashar submits that each of the Statements is a Chase level 1 meaning or a Chase level 2 meaning.
41. The BCC’s view of the natural and ordinary meaning of each alleged defamatory statement is also not set out in so many words in the Defence or in the written submissions of Ms Maria Mulla, counsel for the BCC. Paragraph 27 of Ms Mulla’s written submissions, however, make it clear that the BCC contends that the natural and ordinary meaning of each of the alleged defamatory statement is:

“The views held by Mr Bashar are on the ‘extreme’ side.”

42. The BCC also argues that it is clear that each Statement is an expression of opinion rather than of fact, although, as I have already noted, that question does not fall to be determined at this stage under the Cook Order.

Submissions

43. Mr McLanachan has provided two sets of written submissions for this trial, his principal written submissions dated 26 January 2021 and his reply dated 23 February 2021 to the submissions of Ms Mulla, which are undated, but which were filed with the court on 9 February 2021.
44. Mr McLanachan’s principal submission for Mr Bashar on the natural and ordinary meaning is that each of the Statements amounts to saying that Mr Bashar is an extremist and that is tantamount to saying that he is a terrorist or jihadist, given the context, which includes the fact that Mr Bashar is a Muslim. It is also relevant context, Mr McLanachan submitted, that in recent years there has been terrorist violence apparently motivated by militant Islamism or jihadism. I note that the specific examples cited by Mr McLanachan in his written submissions (the Manchester Arena concert bombing in May 2017 and the London Bridge terrorist incident in June 2017) post-date the Report and therefore cannot form part of the relevant context for the First and Second Statements in the Report.
45. In support of this submission, Mr McLanachan included in the Claimant’s bundle a selection of press reports on extremism, which are said to demonstrate the interchangeability of the word “extremism” with the words “terrorism” and “jihadism”. As no evidence is admissible in relation to the determination of the natural and ordinary meaning of an alleged defamatory statement (*Koutsogiannis* [12(x)]), I have not looked at that material.
46. Mr McLanachan’s principal submission on the question whether the Statements are defamatory at common law is that to label someone an “extremist” is self-evidently defamatory, given that the term is used interchangeably with the terms “terrorist” and “jihadist”.
47. Ms Mulla’s principal submission in relation to the natural and ordinary meaning of the Statements is that to say that someone has “extreme views” does not amount to referring to that person as an “extremist”, “terrorist”, or “jihadist”. In the course of

preparing the Report in her role as a social worker, Ms Thompson simply expressed the view that, on a range of views, Mr Bashar's were at the "extreme" end.

48. Ms Mulla noted in her written submissions that Ms Thompson did not at any point in the Report make a reference to Islam, terrorism, or jihad. She submitted that Mr Bashar was inviting the court to draw an unjustified inference from the alleged defamatory statements in the Report. She submitted that there was no basis for the conclusion that a reference to Mr Bashar's having views at the "extreme" end was defamatory of Mr Bashar, particularly bearing in mind that, for purposes of the determination of meaning, as provided in the Order of Master Cook, Mr Bashar was limited to paragraphs 2 and 8 of the APoC.

Analysis and decision

49. In order to give effect to the principles set out in *Koutsogiannis*, my approach was first to read the Report in full once, noting the language complained of, before considering the written submissions of the parties. I then read the pleadings and the parties' submissions. I have not had regard to any of the evidence included in Mr Bashar's bundle, for the reason I have already mentioned.
50. I find that the natural and ordinary meaning of the First Statement is:
- "Mr Bashar has extreme views, which is a matter of serious concern."
51. I find that the natural and ordinary meaning of the Second Statement is:
- "Mr Bashar has extreme values and views, which is a matter of serious concern."
52. Each of the Statements is a Chase level 1 statement.
53. I find that each of the Statements is defamatory at common law.
54. I bear in mind that the Statements appear in the Report, which provides the context. The Report was prepared by Ms Thompson, in the course of her role as a social worker, following a referral by the Children Services Department of BCC in light of concerns raised by Mr Bashar and EM about each other regarding domestic abuse and their respective abilities to care and protect children. The principal focus of the Report is the welfare of A, although the welfare of the other children, N and EM's then unborn baby, are also considered.
55. I bear in mind that the hypothetical reasonable reader is taken to be representative of those who would read the Report.
56. I disagree with Mr Bashar's submission that saying that he has "extreme views" is tantamount to saying that he is an "extremist" or, at any rate, that it equates to "terrorist" or "jihadist". The hypothetical reasonable reader would not necessarily infer from the statement that Mr Bashar has extreme values or views that he would be prepared to act, and perhaps does act, on those views, other than to express them. At its highest, it implies that he would support or approve of action in support of those extreme values or views. I therefore disagree with Mr Bashar's submission that the

natural and ordinary meaning of the Statements is that Mr Bashar is a terrorist or jihadist. If, as a matter of semantics, he is an “extremist” by virtue of holding and expressing extreme views, then the natural inference goes no further than that Mr Bashar would support or approve of action by others in support of his extreme values or views.

57. I also disagree with BCC’s submission that the natural and ordinary meaning of the Statements is simply that his views are “on the ‘extreme’ side”, which in normal parlance diminishes the significance of the statements.
58. A hypothetical reasonable reader would, in my view, draw the obvious inference from each of the Statements that Mr Bashar would support and possibly even advocate for extremist, terrorist or jihadist action, at least in some contexts. In my view, the Statements impute conduct, namely, the espousal of extreme values or views, which would tend to lower Mr Bashar in the estimation of right-thinking people generally and to a degree that crosses the common law threshold of seriousness (but not necessarily any higher level of seriousness). For this reason, I have concluded that each of the Statements is defamatory at common law.
59. The foregoing conclusions are reinforced by the context of the Report itself, which concerns the welfare of A, N and EM’s then-unborn baby, the expression by Ms Thompson of “serious concerns” as a result of Mr Bashar’s extreme values and views (implying that those views are deleterious to the welfare of the children), the references in the Report to Mr Bashar “abusing his religion” to control EM (see [10] above) and the various references to the screenshot purportedly of abusive messages from Mr Bashar to EM that support the conclusion that he has extreme values or views that are relevant to the welfare of the children (see [12] above), and EM’s reported worry that Mr Bashar “is interested in Jihadist and Syria” and, in that context, wanted EM to obtain passports for herself and N (see [16] above).

The trial bundles

60. As I noted at [24] above, the parties failed to agree a bundle. At paragraph 11 of BCC’s written submissions, it is stated that the failure to agree was due to Mr Bashar’s insistence on including several press articles in the bundle, which the BCC, rightly in my view, considered were not appropriately included given the scope of the preliminary issues to be determined. On 8 December 2020, the BCC also wrote to the court regarding the failure to agree a bundle, noting its objection to the inclusion of the press articles and Mr Bashar’s objection to the inclusion of the full set of pleadings, which I did review, and the Cambridge definition of the word “extreme”, which I did not look at, as it is not admissible for this exercise.
61. It is not clear to me, however, why Mr Bashar’s bundle did not include the Report, which is the publication in which the alleged defamatory statements appeared or a full set of pleadings (rather than APoC alone, which is included in Mr Bashar’s bundle). The parties could have agreed a core bundle that included the Report and the full set of pleadings, as well as the Cook Order, and any additional materials that Mr Bashar wished to provide to the court could have been provided to the court by supplementary bundle. While this approach would also not have been entirely in accordance with the Cook Order, the court would have been assisted by having an agreed core bundle. In the event, BCC included the Report and the full set of

pleadings in its bundle, and so all relevant materials were before the court. According to Mr Bashar's reply to BCC's written submissions, Mr Bashar had not, at the time of preparation of that reply, been provided with a copy of BCC's bundle, but I assume he was eventually so supplied. I note these matters should they become relevant at a subsequent point, for example, in relation to costs.

Next step

62. Further to paragraph 6 of the Cook Order, this matter will now be referred back to Master Cook to give suitable directions for the determination of the issue of limitation.