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Neutral Citation No. [2024] EWCA Crim 137

IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202303766/A2

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 2 February 2024

Before:

LORD JUSTICE DINGEMANS

MR JUSTICE JAY

THE RECORDER OF REDBRIDGE
(HER HONOUR JUDGE ROSA DEAN)
(Sitting as a Judge of the CACD)

REX
V
LIAM DANIEL BATE

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MR C McNICHOLAS appeared on behalf of the Appellant.

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction

1. This is a hearing of an appeal against some provisions of a restraining order which was imposed following the conviction of the appellant.
2. The appellant is a 35-year-old man. He had four convictions for eight offences before these matters, including possession of drugs, motor offences and using threatening or abusive words. On 5 September 2023, having pleaded guilty before the Teesside Magistrates' Court, the appellant was committed for sentence to the Crown Court in Teesside and on 4 October 2023, in the Crown Court at Teesside, the appellant was sentenced to 112 weeks' imprisonment and to a restraining order.
3. The material terms of the restraining order were that the appellant was prohibited from contacting directly or indirectly, by any means whatsoever, the complainant, "except through Children Service, solicitors" for the purposes of arranging child contact or at the direction of the Family Court. Secondly, contacting a child named in the order (whose name it is not necessary to give) directly or indirectly by any meaning whatsoever, other than when arranged with Children Services. Other bars were communicating with the complainant or the child by using telephone texting, using Facebook or any social media (or getting someone else to do so on his behalf) and from entering the area enclosed in red on the annexed map, which was a particular location.

Factual circumstances

4. The reason that order was made was that the complainant had been in a relationship with the appellant for about 15 years and they had a child together, and although the relationship initially was good, it had deteriorated because of the appellant's drinking, drug taking and gambling. The couple split up in the autumn of 2022 but got back

together in March 2023, and then split up again in April 2023, and that is when the problem that gave rise to the conviction started. This is because at the end of the relationship the appellant started to stalk the complainant by sending her numerous abusive messages, calls and emails. The complainant described it as being "relentless", and that was from the whole of the period from April to June 2023, and a battery which took place on 10 May 2023, where the appellant threw a bottle of water over the complainant in front of their daughter and then started threatening to smash up her car while he was stood in the street. It was that incident which the sentencing judge relied on to justify the extension of the restraining order to include the daughter and the reported reaction, which the judge accepted was that the daughter was, at that stage, scared of her father.

5. Driving whilst disqualified and with no insurance occurred on 4 June when, following threatening emails and phone calls, he attended the complainant's address in a car. Her CCTV showed him driving away but he was disqualified from driving and uninsured and he was in breach of a suspended sentence order. He was arrested on 14 June and on 15 June, threatening calls were made that the appellant was coming round to the complainant's house. On 16 June, a non-molestation order was imposed by the family court in Middlesbrough and on 17 June the complainant received 16 no caller ID calls.
6. Following his appearance at the Magistrates' Court, the appellant was granted bail with conditions prohibiting contact but that did not stop the appellant, who came round to the complainant's house and he visited relevant areas that he was restrained from attending. The judge imposed the restraining order, pursuant to section 5 of the Harassment Act.

Relevant Principles

7. Restraining orders are commonly imposed, following convictions in a domestic setting.

In *R v Khellaf* [2016] EWCA Crim 1297; [2017] 1 Cr App R(S), the Court of Appeal stated that a court should take into account views of the person to be protected. The court should not make an order unless it was necessary to do so. The terms of the order should be proportionate to the harm that it sought to prevent and particular care should be taken when children were involved to ensure that the order did not make it impossible for contact to take place between a parent and child if that was otherwise appropriate. In *R v Awan* [2019] EWCA Crim 1456; [2024] 1 WLR 31, the Court of Appeal set aside provisions in a restraining order and reworded it to allow contact to be made through named third parties, in circumstances where the court below had directed that contact be made through a solicitor. The particular problem in that case was that the defendant and then appellant did not have a solicitor.

The appeal

8. We turn then to the three grounds on which this appeal is brought. The first is that the restraining order was simply wrong in principle to include the child. In our judgment, the judge was perfectly entitled to find that it was necessary to protect the child by means of the restraining order. That was particularly so in circumstances where the child had been immediately next to the battery which the appellant carried out on his former partner and where the evidence showed that the child was certainly, at that stage, scared of the appellant. The second point was that the 10-year duration of the restraining order was manifestly excessive. It is apparent that the appellant had been a proper father to the child for a period and it was just his descent into offending for the period between April and June 2023 that caused these particular problems. In those circumstances, we accept the submission that a period of 10 years, which the judge had taken to coincide roughly with the child becoming 18, was simply too long and we consider that a restraining order

of 5 years would be sufficient.

9. The third point is whether the wording permits contact with the child to be effective. At the moment, contact is forbidden other than through "Children's Services/Solicitors" for the purposes of arranging child contact. That raises exactly the problem that existed in *Awan*, where reference was made to a solicitor but there were no solicitors for the appellant at that stage. We were told that Children's Services had not been involved and the appellant does not have solicitors.
10. In those circumstances, we will delete in paragraph 1 the words "Children's Services/Solicitors" and insert the name "Mrs Samantha Greenwell/Solicitors" and in paragraph 2 delete the two words at the end of the order of paragraph 2 "Children's Services" and insert "Mrs Samantha Greenwell/Solicitors". That is to ensure that effective means of communication and contact can be re-established if the child wishes it. At the same time, the complainant and the child are protected from direct contact from the appellant. We should say that, in the course of his helpful submissions, Mr McNicholas identified the appellant's father and/or stepmother as the person through which contact could be made. This is in circumstances where the stepmother has come more recently into Mr Bate's life. She is more likely to be a neutral party that all parties can communicate with on a reasonable basis. Of course, if these amendments themselves cause difficulty, then there is power to revisit matters at the Crown Court.
11. For those reasons, the appeal is allowed to the extent that the period of the order is reduced from 10 years to 5 years, and those changes are made to insert "Mrs Samantha Greenwell/Solicitors".

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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