

Case Number : B02BS460

IN THE COUNTY COURT AT BRISTOL

Civil and Family Justice Centre
2 Redcliff Street
Bristol
BS1 6GR

Date: 30th June 2016

BEFORE:

DEPUTY DISTRICT JUDGE MELVILLE-SHREEVE

BETWEEN:

Knightstone Housing

Claimant

- and -

Pugh

Defendant

J U D G M E N T

Ms Joanna Morrissey appeared on behalf of the Claimant
Mr Tom Roberts appeared on behalf of the Defendant

APPROVED

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DISTRICT JUDGE MELVILLE-SHREEVE

1. Mr Pugh, do take a seat. I do not need to hear from you, Ms Morrissey. My judgment effectively started when I gave my rulings on the fifth allegation which I have excluded from consideration this afternoon, but I am going to summarise the background again in a moment. What I would like to say, though, before I forget and lest I forget at all during the course of this afternoon, is that I am extremely grateful to both Mr Tom Roberts and Ms Jo Morrissey, counsel respectively for the defendant and for the housing association, for bringing their expertise and their elegant and concise approach to this courtroom. They are both a credit to the bar. The skeleton arguments were extremely helpful and accurate, neither of them made a bad point. They are a glowing example of why, in serious cases of this nature when people's liberty and housing are at stake, the courts are so grateful to be assisted by barristers. I thank you both very much.
2. The background to this application is that after complaints from more than one tenant, it was decided by Knightstone Housing Association to apply for an anti-social behaviour injunction against Mr George Pugh last year. Knightstone had thought about the various alternatives, which include moving people, and in fact in the course of the history of this case, Mr Roach, an upstairs neighbour, has been moved; and they thought about possession proceedings; but they decided on the anti-social behaviour injunction, which was, in my judgment, a perfectly reasonable decision on their part. The injunction was granted on 28th August 2015.
3. Knightstone, who are a substantial social housing association own a property at Meadow Rise, which is divided into four flats. Downstairs, and they are the two we are interested in, are 76 and 78. 76 is the premises during the relevant period of a tenant known as Higgins. 78 of the defendant, Mr Pugh. Upstairs, were in the past, a tenant called Roach who is no longer there and has made complaints and, eventually, an unsuccessful allegation of assault against Mr Pugh, which I do not take into consideration in the course of this case, although it is part of the chronological history.
4. The injunction proceedings, and I have read all of the supporting evidence from that time, were not contested by Mr Pugh and did not come to court, so although it is true to say that none of the original allegations were effectively tested by hearing them, they were not challenged by Mr Pugh. However, I do not lay much store by them except to say that they produced, perfectly reasonably, the injunction of 28th August 2015, which is a fairly conventional injunction, including a prohibition, from using or threatening to use violence towards any person, resident in or engaging in lawful activity in, any part of Meadow Rise, Shepton Mallet, and Any person with a right to whatever description to reside in, occupy housing accommodation in Meadow Rise, and also prohibiting harassing, alarming or causing distress and from acting or behaviour in an intimidating manner to any person in any of those categories, or using foul or abusive language or gestures towards any person set out in those paragraphs.
5. It should be noted in the heading of the injunction there are also these words, "whether by

himself or by instructing or encouraging any other person.” That may be relevant when we come to consider the fourth of the allegations made against this defendant.

6. So the first allegation is that on 13th October 2015, the defendant stared into the windows of 76 Meadow Rise, causing intimidation to Melody Moon a lawful visitor to that property. I heard from Melody Moon, and she has also sworn evidence in written form in this case. Page 56 of the bundle is her evidence, and in relation to this allegation she says this, “On the 13th October and on the 14th October 2015, whilst I had been washing up in the kitchen, the defendant has proceeded to look through the windows and stare at me whilst I am doing this, which I found to be intimidating. The defendant stopped on the opposite side of the pavement to David’s house and stared through the windows, which is not for a brief moment, but is a prolonged stare. In addition, when the defendant walks past David’s home, he will often look back and stare at David’s property. David has been forced to get his windows blacked out after a couple of months of the defendant’s behaviour. However, the defendant continues to stare through the windows.”
7. About this allegation, says the defendant, “... it is perfectly simple. First of all, I haven’t done that, I haven’t stared through the window either on these occasions or at all,” he says. About this allegation and that of 14th October, what he says is this: If for some reason, Ms Melody Moon is right about somebody staring, then it is a mistake. It is somebody who may look a bit like the defendant, but it is not the defendant and I should reject the thought that it is the defendant.
8. The third allegation is as follows: On the 14th October, the defendant caused intimidation to Melody Moon by following her from Meadow Rise to the Co-op store in Hillmead; a 15 minute walk. Waited outside whilst Melody Moon carried out her shopping, then attempted to walk into Melody Moon when she left the property. The ‘property’ there means, in fact, the shop. She said in her written evidence about this, “... that on the 14th October at about 7pm, I walked out of David’s property down by Hillmead, where the youth centre is. The defendant followed me from David’s house to the youth centre, followed me up the steps, proceeded to wait outside when I went into the Co-op. After I came outside the Co-op, I walked straight past the defendant. It looked as though the defendant was going to walk straight into me. The entire time, the defendant followed me until the Co-op was approximately a 15 minute walk. I found this behaviour to be very intimidating.”
9. She told me in her oral evidence, that she had stopped at a cash machine and noticed the defendant and she had become anxious then and went on noticing the defendant after she had gone into the store, and then says that when she came out, he came so close to her that she thought he was going to walk into either her or her shopping. In fact, he came to within two feet of her before passing her into the store. She said she walked back quickly and did not look behind her and, therefore, she cannot say whether he followed her back, but of course, she did tell us that after she had eaten some food later on that evening, she saw him, she says, staring again, subject matter of the second allegation, back in through the window.

10. The defendant says to that, that he does not have any recollection of any of that happening, and he does not know Melody, but he says that if it was indeed him that had gone down to the Co-op, that is simply a coincidence. He does go shopping at the Coop, he may well have walked down there. If she saw him and she is correct that it was him, that was just serendipity, or whatever the opposite of serendipity is from his point of view, an unlucky, coincidental event. I have to decide this case on analysis of the evidence and the arguments and by applying the effective criminal standard of proof. The burden of proving the case is upon Knightstone Housing, who alleged the breaches, so they carry the burden throughout in every respect. The standard is that I must be satisfied so that I am sure, in relation to each of these four breaches; I must look at each of the breaches entirely separately and decide whether they are truthful or not. Of course, as I said in submissions, I am also entitled to look at the evidence overall to decide whether each of the breaches is true.
11. What I did not mention in my summary and now mention out of time is, of course, the fourth event, which was in December 2015. The allegation being the defendant, with unknown male, harassed David Higgins by verbally abusing him, calling him a paedophile and making offensive gestures towards him. The defendant does accept that he was present on this occasion with another person, but says that this is more or less a reversal of what happened because what really happened was that the witness, Higgins, verbally abused him and his colleague and that it is really a complete reversal of the truth.
12. I will start off with the allegation of staring through the windows. Might it be a mistake on the part of Melody Moon? I had the opportunity of watching her give her evidence and listening to her carefully. She was a considered young woman, who seemed to me to be entirely convincing. She came to court, I think, somewhat reluctantly and she seemed a little fearful. She accepted that her statement was not entirely accurate, but that its inaccuracy amounted to things being left out of it, rather than anything in it being untrue. For example, she left out the stopping at the cashpoint machine, and she accepted that that was not in her statement but she explains that she had other things on her mind when she made it. I have also borne in mind that the statement was made some time after the events that it relates and was made some time ago, and that she is, in a sense, biased in favour of Mr Higgins since he was a kind friend who was accommodating her at the time.
13. Having said all of that, I can think of no realistic reason why she would be particularly biased against Mr Pugh, other than, I suppose, trying to help out her friend, but more to the point, if one is biased in that way, why make relatively trivial allegations of this nature, one wonders.
14. Turning to the staring, she told me in her written evidence, that she recognised Mr Pugh. He had previously been pointed out by Mr Higgins as a neighbour with whom Mr Higgins had problems, and she said to me that she was good with faces and that she was not always good with words but that she certainly recognised people very well.

15. I have considered, as I have been invited to, the Turnbull Guidelines, because I know that a truthful but mistaken witness can be beguiling. However, what I have noticed is this: First of all that it was a fairly short observation on the first occasion; that the distance was across a road, which I have seen the photograph of, perhaps 12-15 feet; that it was night time, though there was street lighting; there is no complaint about the weather; the windows are tinted, but apparently during the night, that does not obscure view through them, so long as there is lighting; the period during which she observed this gentlemen face on, seems to have been a matter of a moment or two, not, I suspect much longer than that.
16. On the other hand, I notice that it is recognition identification which is strong and that she is supported, effectively by the evidence that this was exactly the same behaviour that the same person, she says, did the next night. It seems to me beyond sensible speculation that two separate but similar men should choose to behave in that way and for her to be mistaken on both of those occasions. Perhaps far more potently, the events of 14th October lay to rest any serious suggestion that she is mistaken because she was followed for some 15 minutes by the defendant and she recognised him that night, again, both as the defendant and, of course, as the person that she saw later that night staring at her through the window and earlier the day before, staring at her through the window. She recognised that person from two feet at one point. She thought that he was going to walk into her, or walk into the shopping, and it was effectively a long period during which she was well able to recognise the defendant.
17. In fact, you can take it further than that, because of course, the defendant in following her was positioning himself so he could be seen, because it would not be a very successful intimidation if he was skirting around in the shadows. I have little doubt that he was clearly visible both on the first, second and third occasions. So, I am entirely satisfied that the only purpose of his observations were to intimidate her and I am entirely satisfied that he was entirely successful. She says that she was scared. She, seemed to me, to be a young woman of some courage who has been appalling assaulted and abused in another respect but she did not overstate the effects upon her of this. As far as the staring was concerned she said that she was frightened of what she saw and in particular when she gave evidence about being followed, I was struck that she was frightened then. She said about the staring that it was a prolonged stare, not a brief moment. She said that the ‘following’ was very intimidating. The staring she said was intimidating.
18. The incident in the street: The complaint made by the defence is that this is an inconsistent account because she says that both the unknown male and the defendant were making, as she said, a ‘wanker’ type of gesture, and shouting “paedophile”. On the other hand, it is said that that is severely inconsistent with Mr Higgins who just says that the unknown male called him ‘paedophile’ and that the defendant was making a ‘wanker’ gesture. I, in fact, prefer her evidence to that of Mr Higgins. It seems to be highly likely that the defendant would have done both. I cannot imagine why he defendant would have deprived himself of shouting the word “paedophile”, bearing in mind that it seems to have appeared repeatedly in the past and has appeared in other respects in the case today.

For example, in relation to an account she gave in relation to Jamie Mitchell. Jamie Mitchell said that he had been told that David was a paedophile by the defendant, is something the defendant seems to find very irresistible and I cannot imagine he would have stunted himself during that intimidating moment.

19. I am quite satisfied that those breaches, all four of them, are made out on the evidence. The evidence of Mr Riley called by the defendant, seems to me to be potentially true, but utterly irrelevant. Certainly insofar as Mr Riley remembers being told that Mr Pugh was a person who Mr Higgins was not in favour of. That seems to me to be highly likely. I do not think Mr Riley is right when he thinks Mr Higgins was going to attack him. It is a fairly straightforward numbers game. It is not very likely that one person is going to threaten to attack two. That same observation, I think, is true of what happened in relation to Count 4, which is I do not think it in the slightest bit likely that a man who is servicing his motorbike should choose to engage in barracking with two people, one of whom is injuncted against him, who have emerged from the defendant's property. It seems to me to be highly unlikely.
20. I thought that the defendant's account was from top to bottom, utterly incredible, by which I mean impossible to believe. It seems to me to be utterly incredible that he was not staring in through those windows. Why does he think Mr Higgins has tinted windows if he has not had a problem with staring? It is, frankly, ridiculous to suggest that there was some shopping misconception on the party of Melody. Young women know when they are being followed. They have to be street-wise about these things and the difference between a coincidental transit from one's house to a shop and being followed by a person and intimidated by them, is one which Melody was quite capable of distinguishing between, and it was a nonsense to suggest that he was on an innocent shopping expedition.
21. He was given ample opportunity in the course of the day, and I know he would have had excellent advice from his counsel, to reflect on whether his admitted alcoholism and other problems might have lead him to behave in a way which he now regrets and the opportunity to say that he had done those things. He chose, nonetheless, to take the course of saying that Melody Moon was either mistaken in the case of the people outside, misconceiving the situation in the case of the following and then in the case of the fracas in the street, I suppose his view of her there is that she is being untruthful, because she can hardly have misidentified him. He admits he was there and she can hardly have misconstrued the gestures that she was describing or the words that she heard and I reject any suggestion that she was untruthful. She was doing her best to tell the truth and I think, more or less in every respect, I can rely on her evidence above anyone else's.

DDJ Melville-Shreeve So those are the findings I make on the facts. I am going to deal with sentencing here and now. What I have got from you on sentencing ...

Ms Morrissey Yes, sir.

DDJ Melville-Shreeve ... really helpful, thank you so much, is the skeleton argument. Obviously, it was done at a time when you were talking about all of

the matters.

Ms Morrissey Yes.

DDJ Melville-Shreeve But what you say to me is this, that seriousness, it ranges from no harassment, alarm or distress ...

Ms Morrissey Yes.

DDJ Melville-Shreeve ...to serious harassment ...

Ms Morrissey Yes.

DDJ Melville-Shreeve ... alarm, distress. That is really a matter for me, is it not?

Ms Morrissey That is, that is right. Yes.

DDJ Melville-Shreeve And the sentencing, Page 9, is set out in this way. If it is serious harassment, alarm or distress, start point is 26 weeks.

Ms Morrissey Yes.

DDJ Melville-Shreeve In less serious cases the start point is six weeks.

Ms Morrissey That is correct.

DDJ Melville-Shreeve In both cases, that is immediate imprisonment. And it says imprisonment will not usually be appropriate when there is no harassment, alarm or distress.

Ms Morrissey Yes, that is right.

DDJ Melville-Shreeve All right, I'm not going to trouble you on those matters. As far as the injunction is concerned, would you wish the injunction to be continued ...

Ms Morrissey Yes.

DDJ Melville-Shreeve ... whatever happens to the defendant.

Ms Morrissey Definitely.

DDJ Melville-Shreeve For another 12 months, would that be sensible?

Ms Morrissey Yes please, sir.

DDJ Melville-Shreeve Subject to anything that is said on the defence's behalf then, that would be on my mind.

Ms Morrissey Thank you, sir.

DDJ Melville-Shreeve And finally on the subject of costs, depending on what happens to the defendant, of course, but I am going to hear in a moment about the defendant's means but I think it is highly unlikely that he is going to have very substantial means.

Ms Morrissey No, and, of course, he is legally aided today so ...yes.

DDJ Melville-Shreeve Yes, so to make a costs order against him, I mean I can fine him, that is one of the alternatives that is available to me, although, again, that would be dependent on me. So you are not seeking to pursue that thousands of pounds thing, because the Legal Aid Order generally speaking, would stop that.

Ms Morrissey Yes, a Legal Aid Order we would not get it anyway.

DDJ Melville-Shreeve No, indeed, yes. All right, well then I am going to put the costs to one side. Thanks very much.

Ms Morrissey Thank you.

DDJ Melville-Shreeve Now, as far as addressing me is concerned, there is really three things I want to deal with. The first is will there be any objection to

extending the injunction in its present form for 12 months?
Mr Roberts Certainly I could sensibly do that.
DDJ Melville-Shreeve Okay. The second matter then, really, is this. I am open to be addressed on whether or not a custodial sentence is appropriate. At the moment, I am minded to think that it is. I do not think he is top of the range, but I do not think he is necessarily at the bottom. And perhaps most helpfully, on the subject of suspending the sentence, I can tell you where I stand at the moment because there is no point in making things more miserable for the defendant than they already are. At the moment, I am very minded to suspend the sentence because it seems to me that I am invited to look at the long-term future for this relationship and that if I was to send him to prison, it would be a crushing blow for him. He would probably lose his premises. If he did not lose his premises, he would be going back filled with resentment and misery and with the potential for even more trouble in the future and with nothing effectively hanging over his head. Whereas if I do suspend it for 12 months, the length of time I will reflect on after I have heard from you, then he would know that his life was effectively in his hands. That is my thinking at the moment. All right.
Mr Roberts Sir, yes, in Mr Pugh's favour, I advance this. It is the first breach. I can see that there has been more than one breach alleged. But it is the first time that breach proceedings have been brought.
DDJ Melville-Shreeve It is a very long time since December. Is probably his strongest point.
Mr Roberts Yes.
DDJ Melville-Shreeve I thought, because it is six months, in which there has not been further breach.
Mr Roberts Yes. And that the breaches started, the breaches have stopped prior to these proceedings being instigated. So you can properly conclude, in my submission, that he was, notwithstanding the finding of facts that you made, that he has already come around to the position that he was going to obey this order without the additional threat of proceedings.
Mr Roberts Sir, I have available a letter, unfortunately I have only got it in electronic form.
DDJ Melville-Shreeve Tell me what it says.
Mr Roberts It is from the Wiltshire Substance Misuse Service. I haven't shown it to my learned friend, yet. It is written by Kathryn Dugdale, who is a recovery worker for that service and she has been Mr Pugh's key worker since March of this year. She sets out that his methadone script has reduced, as he said in evidence, and that it is alcohol which is the consistent and problematic substance for him. He has been engaging with the service since, I think, 2003, and his engagement has improved markedly recently. He has been actively engaged with appointments and proactively worked towards goals, which were set as part of his care plan. He has completed the Introduction to Change group, which gives clients, the phrase used is 'a taster' for being in

groups, exploring different treatment goals and decide whether they want to make changes and it gives individuals that space to make that choice and his engagement is described as 'good' throughout, with that programme. He is due to go on the Recovery Skills Group, which will equip him with coping skills, and managing different situations including stress and anxiety which he finds himself in in future. And he is also due to attend a 24 session group of Mindfulness. That will, it is hoped, deal with managing cravings and urges as well as mood changes. So he has got a plan going forward on how he could begin to fit into society better than he has to date. Sir, as I say, these are the first breaches. While I have to concede in light of your findings, sir, that the second tier of sentencing is met, there has been a degree of harassment and I cannot argue, sir, with your finding that it was intended, so I can concede that on the guidelines, the starting point would be a custodial sentence. Sir, and if it has to be a custodial sentence, I would of course submit, sir, that you keep it as low as you can commensurate with your public duty. But I would advance this, that in light of the changes that Mr Pugh has made in his life going forward, that this is the first time the breach proceedings are instigated, and the fact that he will almost certainly lose the tenancy which he currently enjoys, sir, that is an element, not direct punishment, but it is a direct consequence, sir, of your findings today. Thank you very much for your excellent assistance, I am very, very grateful to you.

DDJ Melville-Shreeve

22. Stand up, Mr Pugh just so you can hear the order. It says this: Upon hearing counsel for the claimant and the defendant and upon hearing the evidence, it is ordered: Upon finding proved the four breaches, numbered 1 – 4 and finding the fifth breach not proved, the defendant is sentenced to 16 weeks' imprisonment concurrent on each breach, suspended for 12 months. There is no order for costs and the injunction of 28th August 2015 is to continue until midnight on 28th August 2017.
23. If there is no further trouble between yourself and Mr Higgins, nothing will come of this, and 12 months from now this will fall aside and that will be the end of it. If there is further trouble, then whatever further trouble there is, you will be subject to potential punishment for that and then this sentence will be, almost without a shadow of a doubt, implemented. So I invite you to take it utterly, scrupulously seriously.
24. What I am very pleased to hear is two things and I say to a lot of people in your position, "I have not a shadow of a doubt that you are going to be back here and down the stairs," and to you I would say, I have very little doubt that you will not be back here and not going down the stairs, because you have taken charge of the thing that is causing you trouble, and these courts regularly see people who do not make it, and regularly see people who do make it, and people who stay out of trouble like this for such a long period, generally speaking, are the people who are going to make it. So, Mr Pugh, you

have got good friends around you, people that have had similar experiences to you and people who have not. You have got good engagement with some of the right people and there is no reason why you should not be a turnaround story, I suspect that you probably are, and that this is a hangover from the bad old days.

25. Thank you all very much for your assistance. Do make sure you take all the papers and in particular could you take the bundles.

DDJ Melville-Shreeve I am going to stay in court because I have just got some paperwork to tidy up.

Mr Roberts Sir, I am asked by those who instruct me that a detailed assessment of the defendant's publically funded costs which (inaudible).

DDJ Melville-Shreeve No order for costs, save a detailed assessment of the defendant's publically funded costs. Is that what you need?

Ms Morrissey Yes, thank you.

DDJ Melville-Shreeve That's it? Okay, thank you. Thanks very much.

Mr Roberts I'm grateful.

DDJ Melville-Shreeve The court will do this order so you needn't worry about it.

Ms Morrissey Thank you, sir.

DDJ Melville-Shreeve And you haven't collected this bundle and you're not getting away without it.

Ms Morrissey (Inaudible) get away with that.

DDJ Melville-Shreeve Oddly, they have a lot of trouble shredding them and destroying them and so on, thank you.

(Court adjourned)