



Neutral Citation Number: [2017] EWHC 2692 (QB)

Case No: D92LS739

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
SHEFFIELD DISTRICT REGISTRY

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/10/2017

Before :

MR JUSTICE MALES

Between :

SHEFFIELD CITY COUNCIL

Claimant

- and -

(1) ALISON TEAL

(2) CALVIN PAYNE

Defendants

DAVID FORSDICK QC and YAASER VANDERMAN (instructed by **Sheffield City Council**) for the **Claimants**

CATHERINE CASSERLEY (instructed by **direct access**) for **Alison Teal**
and

PAUL POWLES LAND (instructed by **direct access**) for **Calvin Payne**

Hearing date: 27 October 2017

Approved Judgment

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MR JUSTICE MALES

Mr Justice Males :

Introduction

1. On 27th October 2017 I heard an application by Sheffield City Council to commit two of the defendants in this action, Alison Teal and Calvin Payne, for contempt of court. In the course of the hearing, after hearing legal argument, I dismissed the application against Alison Teal. At the conclusion of the hearing I announced that I found one allegation against Calvin Payne proved and would give my decision on the remaining allegations in writing. This judgment sets out my reasons for the decisions which I made at the hearing and gives my decision on the remaining allegations.
2. The background to this application is set out in my judgment dated 15th August 2017 ([2017] EWCA Civ 2121 (QB)). In that judgment I decided that there should be an injunction to restrain the defendants from taking action to prevent the felling by the council and its contractor of trees on the public highway by maintaining a presence within a safety zone erected around a tree. I ordered that the injunction would not take effect immediately in order to give the defendants an opportunity, if so advised, to seek permission to appeal. No such application was made.
3. Following the delivery of my judgment, the parties submitted an order in agreed terms for my approval. As a result an order was made in the following terms:

“The fourth, fifth and sixth Defendants (Alison Teal, David Dillner and Calvin Payne) must not, from 23.59 hours on 22 August 2017 until 23.59 hours on 25 July 2018:

- i) Enter any safety zone erected around any tree; and/or
- ii) Seek to prevent the erection of any safety zone; and/or
- iii) Remain in any safety zone after it is erected; and/or
- iv) Knowingly leave any vehicle in any safety zone or intentionally place a vehicle in a position so as to prevent the erection of a safety zone;
- v) Encourage, aid, counsel, direct or facilitate anybody else to do any of the matters in paragraphs (i) to (iv) above including by posting social media messages

within the area shown edged red on the plan attached to this Order (being, for the avoidance of doubt, the administrative area of the City of Sheffield).

For the avoidance of doubt a ‘safety zone’ is that area delineated by barriers erected on the public highway around a tree to be felled.”

4. The council's case is that Alison Teal and Calvin Payne were in contempt in the following respects:

“... Alison Teal [and] Calvin Payne entered a safety zone erected or remained in a safety zone after it was erected around a tree within the administrative area of the City of Sheffield. In particular:

- (1) On Monday 25th September 2017, Alison Teal entered or remained in a safety zone erected around a tree on Kenwood Road, Sheffield;
- (2) On Monday 25th September 2017, Calvin Payne entered or remained in a safety zone erected around a tree on Dunkeld Road, Sheffield;
- (3) On Thursday 28th September 2017, Calvin Payne entered or remained in a safety zone erected around a tree on Kenwood Road, Sheffield;
- (4) On Thursday 28th September 2017, Alison Teal entered or remained in a safety zone erected around a tree on Kenwood Road, Sheffield;
- (5) On Friday 29th September 2017, Calvin Payne entered a safety zone erected around a tree on Kenwood Road, Sheffield;
- (6) On Friday 6th October 2017, at 6.34 pm, Calvin Payne encouraged others to enter safety zones to be erected around trees. In a Facebook post on the Save Netherthorpe Trees Facebook page, in response to a question by another individual asking ‘Is there anything we can do to help?’, he responded ‘What I would really like is for as many people as possible to break the injunction on Monday morning’.”

Legal principles

5. The following principles apply:

- (1) The burden of proof is on the council to show that the defendants have intentionally committed acts which are contrary to the order.
- (2) This must be proved to the criminal standard.
- (3) The conduct prohibited must be clearly stated in the order.
- (4) If the order is reasonably susceptible to more than one meaning, the meaning favourable to the defendants should be adopted.

The definition of “safety zone” in the order

6. There is an issue between the parties as to the meaning of the expression “safety zone” as defined in the order, which can best be illustrated by reference to the position at Kenwood Road on 25th September. On that occasion barriers were erected on three sides around a tree. The fourth side of what the council and its contractor clearly intended to comprise a safety zone consisted of a wall which formed the boundary to the highway. The wall itself was private property belonging to a local resident.

Subsequently plastic barriers were erected adjacent to the wall, although for a while there were some gaps.

7. The council's case is that an area consisting of three sides of plastic barriers together with a natural boundary such as a wall or a garden hedge comprises a safety zone within the definition contained in the order. Mr David Forsdick QC for the council submitted that in such circumstances the safety zone is delineated by the barriers on the highway in a way which is sufficient to make clear where it is forbidden for protesters to be. The defendants, however, say that this is not enough. Ms Catherine Casserley for Alison Teal, supported by Mr Paul Powlesland for Calvin Payne, submitted that there must be a defined area enclosed by barriers forming a complete area.
8. I would accept that, as a matter of ordinary language and before considering the definition in the order, the council's approach is correct. An area consisting of plastic barriers forming three sides and a wall forming the fourth side could properly be described as a safety zone. The area from which it is sought to exclude protesters or other members of the public is clearly identified.
9. However, the order adopts a particular definition of "safety zone" and it is this which must be applied in the present case. The order prohibits protesters from entering or remaining in a "safety zone" within the scope of the definition. It does not prohibit protesters from entering or remaining in an area which does not comprise a "safety zone" as defined. In circumstances where a protester's liberty is at stake, a strict approach is necessary.
10. The definition in the present case includes the following elements. First, the barriers are to be "erected". An existing feature such as a wall or a hedge is not erected. Second, the barriers are to be erected "on the public highway". A wall which is private property is not on or part of the highway, even if it forms a boundary to the highway. Third, an area consisting of plastic barriers forming three sides and a wall forming the fourth side is not "delineated" by barriers which have been erected, but by a combination of erected barriers and an existing feature. Fourth, the barriers must be "erected ... around a tree". That suggests a complete ring of such barriers.
11. For these reasons I accept the defendants' submission. In order to comprise a safety zone within the definition in the order, there must be a defined area enclosed by barriers which have been erected on the public highway. In any event this is a reasonable interpretation of the definition in the order, which is sufficient for present purposes. A defendant who has acted upon a reasonable understanding of the order should not be found guilty of contempt.

The evidence

12. The council relies on evidence from three witnesses who provided affidavits and attended for cross examination, and who produced photographs taken at the various scenes. These were (1) Paul Billington, the council's Director of Culture and Environment, (2) Darren Butt, the Account Director at Amey responsible for the delivery of the Streets Ahead contract with the council, and (3) Jason Wignell, an employee of Acorn Environmental Management Group, a subcontractor for Amey. I

accept that these witnesses were seeking truthfully to assist the court. Other witnesses who provided affidavits were not required for cross examination.

13. Alison Teal provided an affirmation in which she explained her position, together with an affirmation from a witness, Anna Barr. However, having heard argument as to the meaning of the definition of “safety zone” in the order after the conclusion of the council’s evidence, I decided that I could not be sure to the criminal standard that Alison Teal had been within a safety zone as defined on 25th September 2017. It was therefore unnecessary for this evidence to be given orally.
14. Calvin Payne elected not to give evidence. His counsel, Mr Powlesland, confirmed that Mr Payne understood that as a result I might draw appropriate inferences against him. He called oral evidence from a witness, Paul Brooke, but this had nothing to do with the allegations against Calvin Payne. It appeared to be directed towards a submission that no finding of contempt should be made because the council had acted in other respects with “unclean hands”. However, Mr Powlesland indicated in his final oral submissions that he would not pursue any such case, at any rate as being relevant to whether a finding of contempt should be made.
15. I turn to the various incidents on which the council relies.

Allegation (1) – 25th September, Alison Teal, Kenwood Road

16. In relation to the allegation against Alison Teal at Kenwood Road on 25th September, the council relies on the evidence of Jason Wignell and Darren Butt.
17. Jason Wignell arrived at or about 9 am. He said that barriers were erected around one tree from about 10 am, and at 10:48 am they were extended to cover a bigger area. At some point he noticed that Alison Teal was present. He took the view that the safety zone was formed by three sides of plastic barriers and the wall. Although a row of barriers was also put against the wall, in his view this was not necessary. He was asked whether Ms Teal had left at a time when the row of barriers along the wall was not yet complete. He said that he was not sure, although he also referred to a possibility that one of the barriers had been moved.
18. Darren Butt arrived at Kenwood Road at about 11:30 am and took several photographs. The photographs show that by this stage some plastic barriers had been erected alongside the wall, but the barriers were not complete. There was at least one gap. Alison Teal was already within the area intended to form the safety zone. When Mr Butt told her to leave, she said that the zone was not yet complete. Mr Butt pointed out the wall and said that this was part of the safety zone barrier. That was the view which he took, although I have concluded above that this was a mistaken view so far as the definition in the order is concerned. Mr Butt accepted, however, that there were a number of gaps in the barriers adjacent to the wall which Ms Teal pointed out. However, he regarded that as irrelevant. Ms Teal then left.
19. In these circumstances the council cannot prove to the criminal standard that Ms Teal was present within a completed safety zone. On the contrary it appears that she took the view (which I have held to be correct and in any event reasonable) that a “safety zone” within the definition in the order would only be formed once the barriers

marking its boundary were complete. Once they were complete, she left. While I reach this conclusion on the basis of the council's own evidence, I note that it is in accordance with the evidence in the affirmations provided by Ms Teal and Ms Barr, albeit that it was not necessary for this evidence to be tested by cross-examination.

20. Accordingly the allegation of contempt against Alison Teal must be dismissed.

Allegation (2) – 25th September, Calvin Payne, Dunkeld Road

21. In relation to the allegation against Calvin Payne at Dunkeld Road on 25th September, the council relies on the evidence of Paul Billington. He arrived at about 12:45 pm and took several photographs. Barriers had been erected. Calvin Payne was present. Mr Billington asked Mr Payne whether he was aware that he was in contempt of court and was breaching the terms of the order. Mr Payne nodded and said "yes".

22. On the following day, 26th September, Mr Payne tweeted:

"I've been breaking the tree campaign injunction. I've been filmed doing so by SCC. I'm not wrong, the law is. And I'll do it again tomorrow."

23. Later on 26th September Mr Payne posted the following on Facebook:

"Well it's public now. A small number of us have been breaking the injunction where legal methods to prevent ecological crime on our streets haven't worked. There are so many ways that people can contribute and no-one here is going to encourage potentially illegal actions. But I've done it and so have 'persons unknown' who want to remain so. As far as I'm concerned it's 'by any means necessary' from here on."

24. It is obvious from his comment to Mr Billington and from these postings that Calvin Payne believed that he had breached the terms of the injunction and intended to do so. However, the photographs taken by Mr Billington on 25th September appear to show that the barriers erected by the contractor extended on three sides, and that the fourth side of the intended zone consisted of a resident's front garden hedge. In these circumstances I cannot be sure to the criminal standard that Calvin Payne was present within a completed safety zone. Accordingly, and fortuitously so far as Calvin Payne is concerned, this allegation of contempt must fail.

Allegation (3) – 28th September, Calvin Payne, Kenwood Road

25. In relation to the allegation against Calvin Payne at Kenwood Road on 28th September, the council relies on the evidence of Jason Wignell. He arrived at about 9 am and gave instructions to close the road and erect a safety zone around the trees to be felled that day. He also took photographs. Calvin Payne was present. Although the photographs do not show the entire zone, they do show that on this occasion barriers had been erected against the wall. Mr Wignell's evidence, confirmed in cross examination, was that the zone was fully erected. I accept his evidence on this point. The photographs show Calvin Payne standing on the highway within the zone.

26. Calvin Payne has called no evidence either to deny his presence within the zone or to suggest that the zone was not fully erected.
27. I find that this allegation against Calvin Payne is proved to the criminal standard and accordingly he was in contempt on this occasion.

Allegation (4) – 28th September, Alison Teal, Kenwood Road

28. This allegation was abandoned by the council at the beginning of the hearing.

Allegation (5) – 29th September, Calvin Payne, Kenwood Road

29. In relation to the allegation against Calvin Payne at Kenwood Road on 29th September, the council relies on the evidence of Darren Butt. He produced photographs which he had taken showing Calvin Payne within the safety zone on this date. As on the previous day, although the photographs do not show the entire zone, they do show that barriers had been erected against the wall. Mr Butt's evidence about this incident was not challenged in cross examination. He was merely asked whether he had seen Mr Payne enter the zone or whether he had merely seen him in it. His answer was that Mr Payne was already in the zone when he arrived.
30. Calvin Payne has called no evidence either to deny his presence within the zone or to suggest that the zone was not fully erected.
31. I find that this allegation against Calvin Payne is proved to the criminal standard and accordingly he was in contempt on this occasion.

Allegation (6) – 6th October, Calvin Payne, Facebook

32. On Friday 6th October, Calvin Payne posted a photograph of the committal application which had been served on him that day on the Save Netherthorpe Trees Facebook page. That resulted in a question posed by another individual:

“Is there anything we can do to help? Crowdfunding for legal fund just doesn't seem enough? What else can we do?”

33. Calvin Payne's response was:

“What I would really like is for as many people as possible to break the injunction on Monday morning'.”

34. This was a clear encouragement to others to breach the terms of the order. It was itself a contempt of court. This contempt was not admitted, but realistically Mr Powlesland advanced no argument to the contrary.

Other matters

35. Other posts by Calvin Payne, although not themselves alleged to be contempts of court, demonstrate his attitude. On 10th October, commenting on a photograph showing barriers erected around a tree on Meersbrook Road, he posted the following:

“All trees still there. It has taken methods that may be illegal, but there are bigger principles than upholding the law in play now.”

36. Later on the same day, commenting on a further post which had expressed a hope that no one would be prosecuted, he posted:

“That’s a risk we’ll have to take. I no longer care. I’d rather do what’s right than be what the powers that be see as well-behaved and respectable.”

37. This appears to represent a change of position from the evidence which he gave at the trial in July, which emphasised his good character, his belief that his actions had been lawful at all times and that he was not committing any civil or criminal wrongdoing, and that he had and continued to abide by the law.

Conclusions

38. The application to commit Alison Teal is dismissed.
39. The application to commit Calvin Payne succeeds in relation to allegations (3), (5) and (6), but not (2). There will be a hearing to consider sentence on 3rd November 2017.