Neutral Citation Number: [2019] EWHC 653 (Admin)

Case No: CO/3344/2018

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

Leeds Combined Court Centre
1 Oxford Row
Leeds LS1 3BG

Date: 14 March 2019

Before :

HIS HONOUR JUDGE DAVIS-WHITE QC
(SITTING AS A JUDGE OF THE HIGH COURT)

- -

Between :

DAMIAN DODSWORTH	**Appellant**
- and -	
CHIEF CONSTABLE OF WEST YORKSHIRE POLICE	**Respondent**

AND

Case No: CO/3345/2018

Between :

HAYDEN GRAHAM-BURROWS	**Appellant**
- and -	
CHIEF CONSTABLE OF WEST YORKSHIRE POLICE	**Respondent**

- -
- -

Ms Pamela Rose (instructed by **Wheldon Law**) for the Claimants/Appellants
Mr Oliver Thorne (instructed by **Legal Services, West Yorkshire Constabulary**) for the Defendant/Respondent

- -

SUPPLEMENTAL JUDGMENT

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

....

HIS HONOUR JUDGE DAVIS-WHITE QC (SITTING AS A JUDGE OF THE HIGH COURT)

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His Honour Judge Davis-White QC :

1. This is my supplemental judgment to that which I handed down on 20 February 2019 in these two appeals by way of case stated, [2019] EWHC 330 (Admin) and [2019] EWHC 331 (Admin) (the "February Judgment"). A draft of the February Judgment was provided to counsel in the case on Monday 18 February 2019, in advance of the formal hand down, pursuant to CPR PD 40E. The date given for the proposed handing down was Wednesday 20 February 2019 at 10am, with attendance not being required. Proposed corrections were received from Mr Thorne as requested. The February Judgment was handed down at 10 am on 20 February 2019. At about 18:20 that evening an email was received by the Administrative Court offices in Leeds from Ms Rose. That said (among other things):

   "I am sorry but I did not see this email in time to submit corrections or I would have acknowledged your email as a matter of courtesy.

   One point in particular is that The Judge has failed to raise the issue of the expert seeing the garden in August or my submissions relating to that and the amendment"

2. In light of Ms Rose's email I gave directions for further skeleton arguments addressing the issue of the points it was said that I had failed to deal with. Ms Rose lodged a skeleton argument over eight pages long. Mr Thorne replied with a skeleton argument four and a half pages long. Miss Rose then made further submissions by way of annotations to Mr Thorne's skeleton argument. On the circulation of this judgment in draft pursuant to CPR PD 40E I received a further three pages of submissions from Mr Rose. I am grateful to both counsel for the submissions. By her submissions Ms Rose raises a number of issues. In this judgement I deal solely with those issues which I consider to be necessary to clarify the February Judgment. I do not deal with points which appear to seek to re-argue points that I have already dealt with in the February Judgment. Unless the context otherwise requires, references to paragraph numbers below are to the paragraph numbers of the February Judgment.

Paragraph 5

3. Ms Rose, on instructions, sets out in her recent skeleton argument details with regard to alleged service on the Chief Constable of the draft Statement of Case. I do not have proper evidence on the points. As far as I can see they are not agreed. In any event, the underlying point that the relevant process under Criminal Procedure Rules 2015 part 35 seems to have gone wrong remains. It was not and is not necessary for the purposes of the February Judgment for me to determine and apportion responsibility.

4. In the February Judgement I stated that the Amended Case Stated was defective because (among other things) the summary of the relevant contentions of the parties are limited to the contentions of the appellant (and in large part, those on the appeal rather than those before the Crown Court). Ms Rose correctly points out that I may have overstated the position. For example, in the case of the appeal of Mr Graham-Burrows, the Amended Case Stated states "The case was opened on the basis that at the time of seizure the garden was in an appalling state causing health concerns". The contentions of the Chief Constable were clearly considerably more than these.

5. Ms Rose also invites me to make clear that the provision of the Amended Case Stated, in each appeal, followed the referral back of the matter for amendment of the respective Cases Stated. The referral back, by this Court, for amendment was on the basis that they did not provide the details required by Criminal Procedure Rules Part 35. In

referring the matters back, Lane J indicated that "the Appellant's draft would appear to constitute a suitable basis for the amended case stated". The original cases stated were not based, or heavily based, upon the Appellant's draft in each case. Ms Rose submits, as she did at the hearing before me, that (a) the Amended Cases stated followed more closely her drafts and (b) that the comment of Lane J amounts to an approval of the contents and formulation of the draft cases stated prepared by the Appellant. She suggests that there is therefore disagreement between myself and Lane J regarding those drafts and that any criticism by me of the Amended Cases Stated in terms of them adequately raising the case that she wished to pursue before me was misplaced. As regards this there are two points. First, I have not seen the relevant drafts prepared by the Appellant. Secondly, in my judgment, having compared each Amended Case Stated with the original case stated, it is clear to me that Lane J was simply expressing a view as to the format of the Appellant's draft and what the case stated should cover, rather than approving in detail the precise content of the same.

Paragraph 34

6. Ms Rose has clarified her position regarding the *Grant* case. She says that her recollection is that she "abandoned the point of *R v Baballa*", which I take to mean that she abandoned the submission that *R v Grant* was incorrectly decided. She says that she did not say that the Judge (by which I take it she is referring to the judge in *R v Grant*) was correct on the point. I put it in this way because of course Ms Rose did not refer to me *R v Grant*, rather she submitted that *R v Baballa* applied in the appeals before me (in the manner she had done in *R v Grant*). However, *R v Grant* concluded that the *Baballa* case did not apply in the manner that Ms Rose submitted that it did.

The Graham-Burrows Appeal

Paragraph 80

7. In her recent skeleton argument Ms Rose again appeared to raise the question of whether the photographs of the garden in February 2017 entitled the Crown Court to reach the conclusion that it did about it still being a hazard at that date. I have dealt with that point in the February Judgment. For completeness, I should add that the relevant photographs were not before me in evidence in any event.

Paragraph 87

8. In the context of the question of whether it was open to the Crown Court to find that Mr Graham-Burrows was not "a fit and proper person to be in charge of the dog", I dealt in paragraph 87 with the submission of Ms Rose that the fact that "the garden had been subsequently cleared up" was a matter that had not been taken into account by the Crown Court and/or that that fact was such as to mean that the Crown Court erred in law in taking into account the earlier state of the garden and/or in reaching the conclusion that Mr Hayden-Burrows was "unfit" in the relevant sense. I indicated that the Crown Court had had well in mind the fact that the garden had been subsequently cleared up. I referred to the "essence" of Miss Rose's submission, that the Crown Court should have relied upon the state of the garden by the time of the appeal hearing in October 2017 instead of only relying on the state of the garden in December 2016 and February 2017.

9. The first point I need to correct is the dates set out in paragraph 87. The reference to December 2017 where it first appears should be December 2016, as correctly stated later in that paragraph. (The same correction needs to be made to paragraph 82).

Secondly the reference to February 2018 should be a reference to February 2017, as also correctly stated later in the paragraph.

10. Ms Rose submits that paragraph 87 does not make clear that her submission regarding the garden having been subsequently cleared up, post February 2017, related both to the state of the garden at the time of the hearing (the evidence being from Mr Graham-Burrows) **and** its state earlier, in August 2017. The latter date was the date when the expert, Mr Turner, attended the home address of Mr Graham-Burrows and took some photographs (see paragraph 58 of the February Judgement, which should be amended to refer to Mr Turner, rather than Mr Taylor). In fact, I took both dates into account in reaching my assessments (a) that the Crown Court did take into that the fact that the garden had subsequently been cleared up (which was a shorthand reference to the evidence about its state in August and October 2017) and (b) that it was entitled to reach the conclusion that it did with regard to the issue of Mr Graham-Burrows' "fitness".

11. Ms Rose also submitted that I agreed that the case stated could be amended to raise this issue. This is because the question posed by the Amended Case Stated was limited in terms to the state of the garden at the time of the Crown Court hearing. There may have been discussion as to whether the parties would agree that I could treat the case stated as if it covered the wider ground. In the end, it was not necessary to take that course. Technically I cannot re-amend the Amended Case stated. That is a matter for the Crown Court. I would not have permitted remission for an amendment because there was no point in remitting. The amendment would not have altered my conclusion. In substance, I had considered the argument that the court failed to take into account the state of the garden in August and October 2017 and rejected it. I had similarly rejected the argument that the improved state of the garden at those two dates prevented the Crown Court as a matter of law from reaching the conclusion that it did that Mr Graham-Burrows was "unfit".

The European Convention of Human Rights and Fundamental Freedoms: paragraphs 99-109; 153-156

12. Subsequently to the circulation of this judgment in draft under the procedure provided for by CPR PD40E, I came across the case of *Henderson v Commissioner of Police of the Metropolis* [2018] EWHC 666 (Admin); [2018] 1 WLR 5029, to which I had not been referred. The primary issue in that case was the standing of a person to take the point that a dog had been wrongly characterised as falling within s1 of the Dangerous Dogs Act 1991. *En passant* Treacy LJ (with whom Males J, as he then was, agreed) said (obiter):

> *"29 Mr Thomas also accepted, at least for the purposes of these proceedings, that in some circumstances an owner or other individual might have a relationship with the dog such that its destruction would be an interference with a right to family or private life under article 8 of the Convention. In principle, that appears to be correct (albeit that destruction of the dog, if found to be a pit bull, will almost inevitably be justified under article 8.2 unless the dog is found not to be a danger to public safety applying subsections (2) and (2A)) and I would proceed on that basis without deciding the point or defining the circumstances in which such a right might arise)."*

That view appears to accord with my original judgment in this case.