

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Appeal Ref: A2/2020/2034

The Hon. Mr Justice Nicol [2020] EWHC 2911 (QB) (2 November 2020)

B E T W E E N:-

JOHN CHRISTOPHER DEPP II

Claimant/ Appellant

-and-

(1) NEWS GROUP NEWSPAPERS LIMITED

(2) DAN WOOTTON

Defendants/ Respondents

DEFENDANTS'/RESPONDENTS' RESPONSE TO APPLICATION FOR PERMISSION TO APPEAL

1. The Respondents ask the court to reject this application for PTA, which is solely against the judge's findings of fact. Nicol J was steeped in the case: he determined several interlocutory applications then heard a 3½ week trial with over 30 witnesses (26 giving oral evidence, the protagonists in person; cross examined by highly experienced Queens Counsel), and 13 lever arch files of documents, including photographs and many contemporaneous messages to and from Mr Depp. The result was a 585-paragraph judgment over 129 pages.
2. The Court of Appeal will only rarely review findings of fact, particularly when based on oral testimony. As Lord Reid stated in *McGraddie v McGraddie* [2013] 1 WLR 2477 at [3] "*The rationale for deference to the original finder of fact is not limited to the superiority of the trial judge's position to make determinations of credibility. The trial judge's major role is the determination of fact, and with experience in fulfilling that role comes expertise. Duplication of the trial judge's efforts in the court of appeals would very likely contribute only negligibly to the accuracy of fact determination at a huge cost in diversion of judicial resources.*"
3. Mr Depp does not contend that either the trial, or any of the interlocutory applications, were conducted unfairly.
4. This very experienced judge's task was to assess whether, on the balance of probabilities, the Respondents had proved their articles were substantially true. He concluded after conducting a painstaking analysis of the evidence that the Respondents had proved 12 of the 14 pleaded assaults perpetrated by Mr Depp on Ms Heard, and the plea of substantial truth was therefore

made out. It is apparent from the detailed judgment that there is no basis to conclude that the judge failed to examine the evidence or provide reasons for his findings.

5. Mr Depp has selected items of evidence which he contends shows the judge carried out his task incorrectly. The Respondents are unable within the confines of this document to answer these points: this would require a similarly detailed and lengthy exposition of the evidence, in many more than the permitted 3 pages. Many of the examples (including in the accompanying Schedule) are simply wrong – e.g. the claim that in taped conversations “*Ms Heard never referred to violence akin to that which she recounted in her oral evidence, save for reference to one occasion when the Appellant accidentally knocked Ms Heard’s head she accused him of head butting her.*” There are in fact many examples of Ms Heard accusing Mr Depp of violence (e.g. “*everyone around me saw all the bruises and the broken blood vessel under my eye, the bruises on my head, the missing chunks of hair, the split lip, the black eye, the swollen nose all that shit because you’re stronger...*”, which was in the Trial Bundle but is not in the Supplementary PTA Bundle); and Mr Depp admitted “*I head-butted you in the fuckin’ forehead*” in one such recording – see para. 429 of the judgment.
6. Further, as Lord Reid explained in *McGraddie* (supra) at [3] “*the parties to a case on appeal have already been forced to concentrate their energies and resources on persuading the trial judge that their account of the facts is the correct one; requiring them to persuade three more judges at the appellate level is requiring too much.*”
7. As to the 7 grounds of appeal:
Ground One: the judge’s findings were bare assertions rather than reasoned decisions.
8. This is unarguable. The judgment was long and thorough, with each conclusion of fact supported by a detailed analysis of the relevant oral and documentary evidence.
Ground Two: the judge failed to test Ms Heard’s oral evidence against contemporaneous documentary or witness evidence.
9. This is obviously wrong.
Ground Three: the judge failed to examine or properly assess the credibility of Ms Heard or the other witnesses called by the Respondents.
10. This too is plainly wrong. The judge explained his assessment of the witnesses’ (especially Ms Heard’s) credibility in considerable detail.
Ground Four: the judge failed to address his mind to the impact of finding that one of the assaults alleged by Ms Heard in the confidential schedule did not occur.

11. This is misconceived. The fact that the judge did not find that the Respondents had satisfied him, on the balance of probabilities, that one incident had occurred as pleaded did not mean that he was compelled to reject the entirety of the Respondents' case.

Ground Five: it was incumbent on the judge to closely examine and provide a proper assessment of the principal grounds on which Ms Heard's credibility was challenged, or at least address them, but he did neither.

12. This is the same as Grounds Two and Three.

Ground Six: the judge made no findings that the Appellant or other witnesses were dishonest, as would be inevitable given his findings of fact.

13. An explicit finding of dishonesty on the part of a witness was not 'inevitable' in order for the judge to reject that witness's testimony and to prefer the account of other witnesses. This is especially so in the case of Mr Depp, who admitted that he suffered from memory lapses and 'blackouts' following sustained drug and alcohol abuse.

Ground Seven: the judge erred in applying s.4(1) of the Civil Evidence Act 1995 to the evidence of a LAPD officer.

14. Section 4(1) requires the court to have regard to "*any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the [hearsay] evidence*". The judge did this, and fully explained the basis on which he concluded that the officer's evidence was not reliable.

Mr Depp's PR offensive and the timing of this appeal.

15. The judge referred at para. 580 to Mr Depp's determination to "*stop at nothing*" to subject Ms Heard to "*total global humiliation*". Mr Depp's US libel trial against Ms Heard over the same allegations is due to start before a jury in Virginia on 17 May 2021. Immediately after the verdict in this case Mr Depp instructed his UK solicitors publicly to attack Nicol J as having reached conclusions which are "*perverse*", "*bewildering*", "*troubling*" and "*ridiculous*" and to state "*we hope that in contrast to this case, the ongoing libel proceedings in America are equitable*".¹ This court can infer that Mr Depp brings this wholly unmeritorious application for PTA at least in part to promote his position in the US by continuing publicly to denigrate the supposedly "*inequitable*" English legal process, at least until after the US trial has concluded.

30 December 2020, ADAM WOLANSKI QC

¹ Press release from Schillings, 2 November 2020.