Bentley-Thomas v Winkfield Parish Council

[2013] All ER (D) 31 (Feb)

Court: DC

Judgment Date: 05/02/2013

Catchwords & Digest

CRIMINAL LAW, EVIDENCE AND PROCEDURE - COSTS - ORDER TO PAY - CLAIMANT BRINGING PROCEEDINGS AGAINST DEFENDANT AUTHORITY ON BASIS OF ALLEGED STATUTORY NUISANCE ARISING FROM PLAYGROUND - PROSECUTION BEING UNSUCCESSFUL - JUDGE ORDERING CLAIMANT PAY AUTHORITY'S COSTS - CLAIMANT APPEALING BY WAY OF CASE STATED - WHETHER DECISION AS TO COSTS INCORRECT IN LAW - ENVIRONMENTAL PROTECTION ACT 1990, S 82 - COSTS IN CRIMINAL CASES (GENERAL) REGULATIONS 1986 (SI 1986/1335), REG 3
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The claimant alleged that, between May and November 2011, the defendant authority caused noise nuisance, or permitted it to be caused, contrary to s 82(1) of the Environmental Protection Act 1990. That allegation related to a recreation ground which had been used as such since the 1960s (the site). The authority had been awarded funds to implement a scheme at the site. Phase one involved the provision of additional play equipment in an existing play area. Phase two included, amongst other things, the supply of a splash pad, beach area, BBQ facilities and a zip wire, and it was the equipment forming part of this phase to which the claimant's allegations related. In July 2011, the claimant sent complaints to the authority alleging an increase in the noise from the playground and, in August 2011, indicated in a letter to the authority her intention to launch legal proceedings (the letter). She stated, amongst other things, that the noise level generated from the playground prevented her from enjoying the usual use of her property and that it accordingly constituted a statutory nuisance pursuant to s 82 of the Act. It was accepted by the authority that the letter complied with the notification requirements of s 82(6) of the Act. The authority took steps to reduce the noise levels which included the 'winterisation' of the splash pad, the limiting of its opening times and the locking of the gates to the recreation area at dusk. The claimant subsequently issued a summons, her central contention being that it was necessary for the equipment to be removed. Additional proposals were received by the claimant from the authority in relation to altering the use at the playground. However, her position remained that it was necessary for the splash pad and zip wire to be removed and for BBQs to be stopped. At trial, the judge rejected a core element of the evidence of the claimant's expert witness and the claim was dismissed. The claimant was ordered to pay the authority's costs in the sum of approximately £18,000 (the costs decision), on the basis, amongst other things, that (i) the prosecution had been unnecessary given the claimant's indication that she would be commencing an action in the civil courts if the prosecution was unsuccessful; (ii) the claimant had been aware that the authority had instigated changes to the equipment and operating times; (iii) the claimant had been in receipt of further proposals from the authority to alter the use of the equipment, but had been adamant that only its removal would satisfy her; and (iv) accordingly, the

prosecution had been unnecessary and improper. The claimant appealed by way of case stated against the costs decision. The issue for determination was whether the judge had been incorrect in law to award costs against the claimant. Consideration was given, amongst other things, to reg 3 of the Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335).

The appeal would be allowed.

Applying established principles, the decision of the judge to award costs against the claimant had been Wednesbury unreasonable. Though it could be said that the claimant had expressed a clear wish that the equipment be removed in its entirety, that did not lead to a conclusion that her case in relation to noise pollution had been wholly without merit. It was correct and important to note that the claimant had followed the correct procedure throughout. She had commenced proceedings having sent the letter to the authority and it was accepted that she had complied with s 82(6) of the Act. It was an important feature that, at the close of the prosecution case at trial, the authority had not sought to argue that there was no case to answer and that it had instead called evidence to meet the case presented by the claimant. The fact that the trial judge had preferred the authority's evidence to that of the claimant did not justify the conclusion that the claimant had failed to conduct her case properly, nor did the claimant's indication that, if she were to be unsuccessful in the magistrates' court, she would consider bringing civil proceedings. A core issue on the appeal was whether the prosecution had ever stood a realistic chance of success. There was no basis on which to suggest that the evidence of the claimant's expert had been so transparently unreliable that she ought not to have called him to give evidence. The prosecution could not be described as having been so hopeless that the case ought not to have been brought and could not be said to have had no real chance of success.

The order for costs would be quashed and an order that the costs of the trial and appeal hearing be paid from central funds would be substituted.

Cases considered by this case

Annotations: All Cases**Court:** ALL COURTS

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Considered	**DPP v Denning**	[1991] 2 QB 532, [1991] 3 All ER 439, [1991] 3 WLR 235, 94 Cr App Rep 272, 155 JP 1003, [1991] Crim LR 699	DC	07/03/1991	CaseSearch Entry