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Case No: KA-2023-000099

IN THE HIGH COURT
KING'S BENCH DIVISION
ON APPEAL FROM ORDER OF MASTER EASTMAN dated 18 May 2023

The Royal Courts of Justice
Strand, London, WC2A 2LL

Friday, 14 June 2024

Before:

THE HONOURABLE MR JUSTICE SAINI

Between:

CONOR MCKNIGHT

Appellant

- and -

CHELSEA FOOTBALL CLUB LIMITED

Respondent

Transcript of Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE
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The Appellant in person
Kirsten Sjøvoll (instructed by Lewis Silkin LLP) for the Respondent

Judgment

(Approved transcript)

MR JUSTICE SAINI:

I. Overview

1. The matter before me this morning is an appeal by Mr Conor McKnight (the Defendant below) against an order of Master Eastman dated 18 May 2023. That order was made following a hearing on 17 May 2023 at which the Master dismissed Mr McKnight's application for permission to file and serve a Defence out of time. The Master also entered judgment in favour of the Claimant, Chelsea Football Club ("Chelsea"), the Respondent to this appeal, on Chelsea's application for judgment in default of Defence. Mr McKnight's application was considered by the Master under the familiar three-stage test in *Denton v White* [2014] EWCA Civ 906; [2014] 1 WLR 3296 (CA) (*"Denton"*): see White Book (2024) Vol. 1 at [3.9.3].

2. Mr McKnight appears in person, assisted by his fiancée. They have presented oral arguments in a clear and measured fashion. I have taken those arguments into account as well as the written submissions made earlier on his behalf by Counsel. Those written submissions, and in particular the detailed grounds of appeal, were settled on behalf of Mr McKnight by Mr Barry Coulter of Counsel (who had appeared before the Master).

3. There are four grounds of appeal pursued, but I accept the well-structured submissions of Counsel for Chelsea that, in substance, there are really two complaints which are made up of a number of sub-parts. Before I address those grounds, it is necessary for me to describe some of the background to the present proceedings and related Employment Tribunal (ET) proceedings.

II. The Procedural History

4. Mr McKnight is a former employee of Chelsea. The proceedings in the High Court which are before me today began with the granting of an interim injunction by Sweeting J on 11 August 2022. That injunction was granted in favour of Chelsea and against Mr McKnight. The basis for the injunction was a claim of harassment, made pursuant to the Protection from Harassment Act 1997, and a claim for breach of

contract. In summary, Chelsea's case was that from 17 May 2022 until at least 24 August 2022, Mr McKnight had engaged in a campaign of harassment against Chelsea's employees. Chelsea alleged that Mr McKnight was responsible for a number of anonymous emails (with abusive and harassing content) and other communications including posts online. Chelsea did not claim any form of financial remedy such as damages but did seek a final injunction prohibiting Mr McKnight from continuing what it called his "campaign" of harassment.

5. With that introduction, I need to go back in the chronology. On 30 May 2022 Mr McKnight was summarily dismissed by Chelsea for gross misconduct. The reasons given to him were that he had engaged in sending certain anonymous emails, and that he had also publicly defamed and disparaged Chelsea There were a number of additional allegations made against him concerning alleged conduct over the previous 12 months, which were said to have destroyed trust and confidence in Mr McKnight.

6. The reasons for his dismissal did *not* include the alleged anonymous emails said to have been sent by Mr McKnight after 30 May 2022 and which were the subject of Chelsea's subsequent proceedings for harassment in the High Court. After Mr McKnight's employment was terminated, Chelsea argued that Mr McKnight had continued to send anonymous emails and was responsible for setting up a website repeating allegations made in those emails about particular employees.

7. The interim injunction granted by Sweeting J was made at a hearing on notice. Mr McKnight participated in and was present at that hearing. Chelsea say that a further six anonymous emails were sent after this hearing and in due course there was some police involvement which I will not go into. The Claim Form and Particulars of Claim were served on 15 September 2022.

8. On 22 September 2022, the interim injunction was continued at the return day until further order. Again, Mr McKnight participated in and was present at that hearing. The deadline for filing a Defence was 4 October 2022. Upon learning that Mr McKnight's father had sadly passed away in September 2022, the solicitors for

Chelsea wrote to him on 24 November 2022 extending the deadline for service of the Defence to 15 December 2022.

9. Mr McKnight was on notice that if he did not file a Defence or Acknowledgment of Service, judgment in default would be entered against him. However, on 24 November 2022, Mr McKnight wrote to Chelsea's solicitors by email to the effect that he did not care if this happened. In due course, on 16 December 2022 and in circumstances where Mr McKnight had failed to file a Defence (or Acknowledgment of Service) by the extended deadline, Chelsea filed its application for judgment in default.

10. It appears that there was no substantive response to that application (other than acknowledgement of its receipt) until 12 April 2023, when Chelsea's solicitors received a telephone call from a Mr Adam Creasey of Adam Benedict Limited (a firm of solicitors). Mr Creasey said that they were now instructed to act on behalf of Mr McKnight but were yet to formally come "on the record". There was no mention in that call of any intention to make an application for relief from sanctions. That point was however later mentioned in an email from Adam Benedict Solicitors on the afternoon of Friday 12 May 2023.

11. On the evening of Friday 12 May 2023, Adam Benedict Solicitors formerly served notice of acting on behalf of Mr McKnight. The firm also served a draft Defence and, for the first time, an application for relief from sanctions. That application was made four and half months after the Defence was due and was made on short notice.

III. The Hearing

12. The Master agreed that the short notice application for relief from sanctions could be heard on 17 May 2023, which was formally meant to be the hearing of the application by Chelsea for judgment in default. There was no skeleton argument served on behalf of Mr McKnight for that hearing. He was represented (as I have indicated) by Mr Coulter of Counsel. His solicitors also attended, and they put before the Master a

witness statement setting out the reasons relied upon by Mr McKnight for seeking relief from sanctions.

13. There is no transcript of the hearing before the Master, but there is a note of the hearing. That note was agreed between the legal representatives for Chelsea, and those who formerly acted for Mr McKnight. The note shows that submissions were made by Mr Coulter in support of the application for relief from sanctions. In particular, Mr Coulter is recorded as submitting that Mr McKnight recognised that the Defence was submitted late. The note continues that Mr McKnight did not put forward a reason, which is in strict terms a "good reason" that would satisfy the *Denton* test. The note of Mr Coulter's submissions further records that:

> "The context surrounding the defendant's mental illness meant that he was severely ill at the time, being under the care of a general practitioner and Surrey's mental health service home treatment team, at which time he was suicidal."

Mr Coulter also provided the Master with a number of medical letters.

14. The Master noted that Mr McKnight had managed to bring ET proceedings and pursue other related matters during the period in which he should have filed a Defence, and he raised with Mr Coulter the following: "If he could turn his mind to bring the ET claim, then why could he not file a defence?" Mr Coulter referred in some more detail to the medication that Mr McKnight had been receiving and invited the Master towards the end of his submissions to read the witness statement and the draft Defence. The Master then took time to read these documents and also the fifth witness statement of Adam Glass on behalf of Chelsea.

15. There was then a response from Counsel for Chelsea, who made submissions in opposition to the application for relief from sanctions. It appears that Mr Coulter was not given an opportunity to reply. The Master gave his judgment as follows (using the agreed note):

> "This is an application for relief from sanctions from Mr Connor McKnight for failing to file a defence on time. The defence in this claim was due in October last year. This application was only made three days ago, first indicated on 12 May and served on Saturday 13 May. The Claimant has agreed to allow for it to be heard this morning and prepared accordingly. Mr Coulter (on behalf of the defendant) applying the *Denton* criteria, as I must, acknowledged that there is no good reason for the delay and said so in so many words. I have been told that Mr McKnight has some mental health issues and there are some letters to suggest this may be the case from the GP and the facility he has been using, but I have to take into account that during the course of the last months or so (since November last year) the Defendant has been in regular contact with the Claimant's solicitor, emailing the Claimant's solicitors over the last month or so until November last year at least a hundred times. The Defendant has also been able to launch Employment Tribunal proceedings against the Claimant, attend multiple hearings for the proceedings and the ET proceedings, and make all sorts of other applications against all sorts of people. Mr Coulter also argues that because of the ET proceedings being afoot, a judgment which I am also being asked to enter by way of the original application (which was originally listed for today) would prejudice the ET proceedings, and there is a risk of contradictory findings in judgments. I am told by Counsel for Chelsea, that the reason for dismissal was nothing to do with any of these matters which are the subject of this claim, but it was a breach of confidence issue relating to an internal investigation which led to the dismissal. I cannot see how that can be remotely affected by any judgment in these proceedings. Putting it shortly, Counsel for Mr McKnight was right when he said there was no good reason why Mr McKnight has not filed a defence on time, or why he has left it so late to make this application, and my judgment is that the application is utterly hopeless and the application fails so there is no relief from sanctions."

16. Shortly after the Master delivered that judgment, Mr Coulter said:

> "You say in the judgment that you cannot see how the ET decision could remotely affect the judgment, I would have said that the Defendant was never told what the reason for his dismissal was and, in any event, whether it was due to these emails. If the ET find he was unfairly dismissed, it will consider whether these emails and website addresses were sent by the Defendant and they will take it into account when assessing any, or what, compensation to give. Therefore, this judgment will be central to the ET's considerations as they may well say, "There is a judgment against Mr McKnight regarding serious harassment. What is the point in these proceedings as they will not allow the claimant to recover any damages, so this judgement will have very significant ramifications for the Defendant." In these circumstances, I invite you to reconsider."

17. In response, the Master said:

> "I will withdraw that part of my judgment but the result remains the same. There is no good reason to give your client any relief from sanctions."

18. At this juncture, and for completeness, I need to refer again to the ET proceedings. Those proceedings were in progress at the time of the hearing before the Master but have now concluded. I have before me a judgment dated 22 February 2024 of the ET sitting at London Central. In that judgment, the Tribunal found that Mr McKnight had been unfairly dismissed on procedural grounds, but further found that there was a 100 per cent chance that he would have been fairly dismissed for the conduct had Chelsea applied a fair procedure. The Tribunal held at paragraph 102, and following, under the heading, "Contributory conduct", that having heard the evidence, it was satisfied on the balance of probabilities that Mr McKnight did in fact send the anonymous emails and was therefore guilty of culpable conduct which caused his dismissal.

IV. Grounds of Appeal

19. I turn then to the grounds of appeal. As I have already indicated, there are four basic points made in the written documents settled by Mr Coulter. I can summarise them as follows. The first point is that the Master failed to give any or any sufficient weight (when applying his discretion) to the fact that Mr McKnight has an Article 6 ECHR right to a fair hearing. The second point was that the Master had failed to give reasons for rejecting Mr McKnight's arguments, that his Article 6 rights were infringed, and that his future employment prospects would be blighted. I add here that it was not always clear to me how it was said Article 6 was infringed (it appeared under various heads) but I will deal with the arguments as I understood them. The third point was the Master failed to give Mr Coulter a chance to respond by way of a reply to the arguments of Counsel for Chelsea. The fourth point is a complaint about the Master having initially rejected the application for relief on the basis that there was no prejudice to the ET proceedings. As I have noted, the Master withdrew this part of his reasoning. In the written grounds, Mr Coulter complained that the Master needed to

come to the whole matter afresh, rather than simply withdrawing this part of his reasoning; and that it is possible that the Master may not have reached the same conclusion on fresh consideration.

20. As I have already noted, there is force in Chelsea's submission that there are essentially two points in this appeal. The first issue for my determination is whether the Master was wrong in the exercise of its discretion to refuse the application for relief from sanctions, because he failed to take into account the arguments made on behalf of Mr McKnight. Related to this is a complaint of a failure to give reasons. The second point for determination is whether the Master's decision was unjust because of a serious procedural irregularity. This relates to the failure to provide an opportunity to reply.

V. Analysis and Conclusions

21. Counsel for Chelsea and Mr McKnight have referred me to a number of authorities. However the relevant legal principles are well established. The test for an appeal under CPR Rule 52.21(3) provides that an appeal court will allow an appeal where the decision was either wrong, or unjust because of a serious procedural or other irregularity in the proceedings in the lower court. I am not helped by seeing how other courts in other cases on different facts have applied that test. It is a fact-specific matter.

Discretion

22. I turn then to the first matter, which is whether there was an incorrect exercise of discretion. I have set out in some detail what the Master said in his reasons for refusing to grant relief from sanctions. In my judgment (and putting to one side the issue of the impact of a default judgment on the ET proceedings) there was ample material before the Master justifying the exercise of the discretion in the way he exercised it. It is clear that the Master considered Mr McKnight's witness statement, draft Defence, and the oral arguments that Counsel made at the hearing. It is of particular importance that Mr Coulter accepted that the breach was a serious one for which, in his own Counsel's

words, there was no good reason. Mr Coulter's arguments focused entirely on the third stage of the *Denton* guidance. The points he made in that regard were unconvincing.

23. I turn to Article 6 which simply reflects (in the present context) the right to a fair hearing which is no different to what the common law requires. The fair trial argument was not framed in terms of Article 6 below but was presented before the Master as follows. First, Mr McKnight said he was not responsible for the anonymous emails or the anonymous website and that if the matter went to trial, he would produce evidence of this. Secondly, a default judgment would be relied upon in the ET proceedings as evidence that he was responsible for the campaign of harassment against Chelsea, and would be likely to have a detrimental effect on the outcome. This was the point most forcefully made. Thirdly, that he should be allowed - notwithstanding that there was no good reason for the delay and that the breach was a serious one - to defend himself. The note of the hearing shows that Mr Coulter said whatever could be said on behalf of Mr McKnight in relation to mental health issues as justification. I have referred to this earlier.

24. Not only were these arguments fully ventilated during the hearing, but the Master took time to consider them and the written evidence. It is not arguable that there was any breach of Article 6 or any unfairness in the hearing, subject to the point to which I will come in a few moments concerning the failure to afford a reply. The Master considered all the circumstances of the case when deciding not to exercise his discretion in favour of Mr McKnight under the *Denton* guidance. Indeed, I would go further than saying there was no error: on the material before the Master, this was a hopeless application for relief from sanctions.

25. I would add, having now had the benefit of the ET's judgment, that it is clear that the default judgment played no role in the ET's findings of fact. The ET noted the judgment existed but recorded it was subject to appeal (the appeal before me). It is significant, that the ET's own factual findings were reached on the evidence heard by the ET over the course of a four-day hearing. Mr McKnight had a full opportunity to defend himself in relation to the anonymous emails during the ET proceedings, and ultimately that defence was unsuccessful. Indeed, it seems obvious to me that the ET

would have had to come to its own decisions: the default judgment was not a determination of any factual issue.

Article 6

26. For completeness, I need to return to the Article 6 arguments which I found difficult to follow. As I have already said, it was not clear to me how it was precisely argued that Article 6 was engaged. I have sought to unpack the arguments as follows. Ultimately, as I understood the submissions, two different points were being made. One was the point that by refusing to allow Mr McKnight to defend the High Court proceedings that in itself was a breach of Article 6 in the High Court proceedings. The other argument was that the entry of a default judgment in the High Court proceedings would defeat or interfere with Mr McKnight's rights to a fair trial in the ET proceedings (because of some form of prejudice to them). Neither way of putting the case has merit.

27. As to the first way in which the case seemed to be put (that being debarred from defending the High Court case through procedural failures is itself a breach of Article 6 in the High Court case), a party who fails without proper justification to comply with the rules and serve a Defence in civil proceedings will of course be deprived of the opportunity to defend themselves. That does not mean that their Article 6 rights are infringed. That is simply the result of the application of procedural rules which provide an Article 6 compliant medium for progress of civil litigation. Article 6 is not a trump card to play whenever a litigant's own defaults mean their case will not reach a decision on the merits.

28. As to the second way of relying on Article 6 (negative effect of the High Court judgment on the ET proceedings), a party who fails to comply with civil procedural rules and suffers entry of a judgment against them, has only himself to blame if that judgment has an adverse effect on him in other proceedings (such as ET proceedings). That did not in fact happen: there was no prejudice and indeed I agree with the Master that on the facts before him such a suggestion would have been fanciful. However, even if there had been prejudice to the ET proceedings, it is not arguable within the schema of Article 6 that a judge in a civil case must deny a claimant the benefit of a default

judgment in order to protect the defaulting defendant from the consequences of such a judgment in proceedings over which the judge has no control. I do not accept that this leads to a breach of Article 6 rights of the defaulting defendant in the other proceedings. Finally, I would repeat that I failed to see how invoking Article 6 in this case added in any way to the power (such as it was) of the arguments: that provision in the present context does no more than reflect rights our common law has long recognised.

The reply point

29. I turn then to the Master's failure to give a chance to Mr Coulter to reply to the submissions of Counsel for Chelsea. I accept the submission that the Master should have provided Mr Coulter with that opportunity. I reject the submission for Chelsea that "robust case management" justified the Master not providing a reply. But standing back from that procedural failing, I do not consider that that matter on its own (when assessed against the remainder of the hearing and the particular facts) would be a justification for allowing this appeal. The part of the reasoning that the Master excised from his reasons was in my judgment a freestanding point and the Master's other reasons for refusing relief from sanctions provided a sufficient basis for his decision. This was a hopeless application for relief.

Reasons

30. Turning finally to the ground concerning reasons. I have set out the agreed note of the reasons given by the Master. It is clear to me that the Master complied with the duty at common law to give reasons explaining why the application of Mr McKnight had been unsuccessful. The Master was not required to identify either what the law was, or every factual matter. Reasons must indicate why a party has won or lost and the essential reasoning, in brief terms, leading to that conclusion. The reasons in this case easily met that standard.

VI. Conclusion

31. For these reasons, the appeal is dismissed. I should also indicate in conclusion that Mr McKnight took me to a number of documents during his oral submissions this morning which concerned matters predating his failure to serve a Defence, in particular concerning some of the background issues which led to his grievance with Chelsea and which were considered in the ET proceedings. As I sought to indicate to Mr McKnight during the hearing (and also to his fiancée when she addressed me) the focus on this appeal has to be on the Master's order of 18 May 2023. In an appeal of the present type, the High Court is concerned with whether that order was incorrect as opposed to the merits or legitimacy of earlier grievances.

Order: Application dismissed.

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