2020/00160/A2 & 2020/000164/A2
IN THE COURT OF APPEAL
CRIMINAL DIVISION
NCN: [2020] EWCA Crim 1029

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 28th July 2020

B e f o r e:

LORD JUSTICE DAVIS

MR JUSTICE SWEENEY

and

HIS HONOUR JUDGE KATZ QC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

OLAYINKA OLATUNJI
DEJI OLATUNJI

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Miss P Rose appeared on behalf of both the Appellant and the Applicant

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J U D G M E N T

Tuesday 28th July 2020

LORD JUSTICE DAVIS:

1. This appeal and the accompanying renewed applications arise in the context of a finding that an Alsatian dog named "Tank" was dangerous. The challenge on the appeal, which is brought with leave granted by the single judge, is to the making of a restraining order against the appellant Olayinka Olatunji. In addition, however, the grounds of appeal are renewed in respect of the judge's decision to make certain other orders, including his decision to make a Destruction Order with regard to Tank. It is well understood by this court that owners can acquire the greatest degree of affection for their dogs and the prospect that a much loved animal will be destroyed can be a matter of the greatest dismay to them.

2. At the outset of this hearing today, Miss Rose, on behalf of the appellant and applicant, sought an adjournment. She did so on the basis that it was desired that there be a further examination of Tank by a different expert from those instructed below, which perhaps might take place in the next day or so, with a view to preparing a further report. This court declined to grant the adjournment as sought. The reasons for our declining to do so were, essentially, by reference to the good administration of justice. These proceedings have occasioned a great deal of delay already. The guilty plea by Olayinka Olatunji in the Magistrates' Court was in February 2019. There followed a guilty plea by the co-accused, her son, in the Crown Court at Cambridge on 23rd September 2019. The hearings in question took place on 13th December 2019 and 17th December 2019. The events in question had themselves taken place in the course of 2018. It simply is not acceptable for there now to be a further adjournment of this matter. If the case were adjourned, it could not have come back before this court within a period of several weeks – and possibly months – because of the pressure on the lists. In any event, no explanation was forthcoming as to why it had not been possible to have a fresh expert report prepared in advance of this hearing, given that several months have elapsed since the Dog Destruction Order was made and the grounds of appeal lodged. Yet further, it is complete speculation as to what such report, if obtained, would say, or whether it would satisfy the criteria for the admission of fresh evidence under the rules of the Court of Appeal. Thus it was that the court felt obliged, by reference to the good administration of justice, to decline Miss Rose's application for an adjournment. The matter has proceeded today accordingly.

3. The judge, His Honour Judge Farrell QC, had sentenced the appellant, Olayinka Olatunji, to a 12 month community order, with an 80 hour unpaid work requirement. He had also ordered her to pay a sum of money towards kennelling costs, given that Tank had been kept in kennels pending the hearing and when he was examined by experts. She was also ordered to pay a sum of money towards the prosecution costs and a sum of £8,000 by way of compensation to the complainant. In addition, however, the judge had also made a restraining order, pursuant to section 5 of the Protection from Harassment Act 1997, as against her and as against the applicant (her son), Deji Olatunji. The restraining order, which is for four years, is in the following terms. The appellant and applicant were not to:

> 1. Contact directly or indirectly [the named neighbours].
>
> 2. Take any steps to incite any hostility or hatred towards the [named] victims of the offence through any means whatsoever, including any videos, statements, comments or posters, including, but not limited to, social media or any media platforms.

4. The offence which the appellant had faced was being in charge of a dog which caused injury whilst dangerously out of control in a public place, contrary to the relevant provisions of the

Dangerous Dogs Act 1991. The applicant Deji Olatunji faced the lesser offence of being in charge of a dog whilst dangerously out of control in a public place. He was fined £2,500, ordered to pay a sum towards kennelling costs and prosecution costs. He also was made subject to the restraining order in the same terms, as we have indicated.

5. To give some context, we will briefly refer to the background facts. The appellant and the applicant live at an address in Holme, Peterborough, in a house secured by electronic gates. Outside the gates is a communal driveway shared by two other properties. Living next door were LW and PW and their little boy who was aged 12 months at the time of the offence. The complainant, JS, was LW's mother. She would regularly visit her daughter's address and would help with childcare.

6. Tank, an Alsatian dog, was born in June 2017. He was sold to the appellant on 24th August 2017. It appears that it was the son and his father who had chosen the dog. The Olatunjis apparently had not previously owned a dog and had never undertaken any training. Tank was seen to be too much for them. From a young age, he was seen to pull, to growl and to bark aggressively. One of the reasons for acquiring the dog, as the applicant said in interview, was to deter his followers (he has a very substantial following for his postings on YouTube) from turning up at his address.

7. On 23rd July 2018, the complainant, JS, spent the day with her daughter and grandson. On returning home, they found that the postman had left a delivery card stating that there was a parcel for them which had been left at the Olatunjis' house, next door. The complainant was carrying her grandson because she expected it to be something that she had ordered for him. They went to the electronic gate and pressed the intercom. The gate started to open. LW did not want to enter because she was frightened of the dog, and so she took her son home. As subsequent events proved, it was extremely fortunate that she did so. At all events, the large garage door to the right of the property opened and the appellant came out, holding the package. The complainant walked through the gates, which automatically began to close. She could hear Tank barking and saw him jumping up aggressively. The package was handed over by the appellant, and there was a brief exchange of pleasantries. The complainant was standing five metres from the gate. Moments after the appellant went back inside, the dog charged out of the open garage door and went straight for the complainant. She described it as baring its teeth and barking aggressively. She shouted for help, but no one came. She waved the cardboard package which she had in front of her, hitting the dog on the nose. The next thing she knew, the dog was biting her upper left leg, through her trousers. She knew that it had punctured her skin; she was in a lot of pain. She screamed for help. The appellant came out and shouted towards the dog, but the dog did not respond. The applicant, Deji Olatunji, was inside the house. As the gates started to open, the complainant managed to escape from the property but was followed down the road by the dog. The appellant managed to reach the complainant and comforted her. At that stage, the dog ran up again and bit the complainant a second time, higher up on the same leg. She screamed out in pain. The appellant seemed to be in shock and started to shout at the dog. At this stage, the applicant came out and walked towards them. He also looked shocked. He started to shout angrily at his mother. LW could hear her mother's screams. She hysterically rang her husband, PW, who returned home swiftly. As he arrived home, he could see the applicant and the complainant standing on the driveway. As he got out of his car, the dog ran around the side of it and attacked him, biting him twice on his upper leg. He was wearing thick, workman's trousers and, although the bites ripped the trousers, they did not penetrate sufficiently to case any injury. The dog was out of control: it ran around the driveway and communal driveway. It took no notice of the shouts from the Olatunjis or any of their commands. Eventually, the father came out, grabbed the dog around the neck and half-lifted and half-dragged it back into the property.

8. The complainant was taken by paramedics to the local minor injuries unit. She had a number of puncture-type lacerations to her front left thigh, lateral left thigh and left hip. By the time she was assessed, they were no longer bleeding, but there was bruising. She was given a tetanus booster and some antibiotics. Two days later she had to be admitted to the emergency department of the City Hospital after she collapsed. The bruising took several weeks to subside, and the swelling lasted for several weeks more. In fact, it took several months for the wounds to clear up as there had been infection. Her left leg remained sensitive and discoloured. A later medical report indicated permanent dysasthesia on aspects of her left side.

9. When interviewed, the applicant denied that the dog was dangerous. He was angry with his mother. He claimed that the complainant, JS, had hit the dog first. He made allegations of racism. When shown the torn trousers of PW, he said that PW had deliberately made the tear bigger in order to ensure that the dog was put down.

10. The appellant, on the other hand, fully accepted what had happened and showed remorse in her interview. No one disputes but that she is genuinely remorseful and always has been.

11. The applicant, however, showed no remorse whatsoever at the time. He earns a substantial living from postings to his subscribers to his YouTube account. He had constantly posted videos about the incident. Amongst other things, he referred to his neighbours as "a bitch", "piece of shit", and "idiots". He claimed that they had done this for a "cash grab", and that "it was their fault that the incident happened, as the dog only acted in self-defence and it was only a nip", and that "if the dog wanted to rip up her leg, he could have done". He referred to them, amongst other things, as "the biggest liars in history". In addition, in various other postings, he asked his subscribers to note, as he said, that the neighbours are "fricking weird. Why do I always have bad neighbours?". He also said, "You will dig a grave. These guys are scumbags. They are evil. The neighbours want to kill the dog. I'm going to be making a documentary and put out the name of the neighbour". Virtually all of these provocative comments were simply scurrilous and wholly untrue, as is evidenced by the fact that both the appellant and the applicant in due course pleaded guilty to what had happened.

12. So far as Tank was concerned, detailed expert evidence was adduced before the judge. In a nutshell, the prosecution expert said that Tank was a danger to the public and could not be controlled. The expert could not fit a muzzle on him. She did not dare put a hand near him, and indeed had to double-lead him. Her view was that no conditions could be attached to a Contingent Destruction Order so as to make him safe. The defence expert did not agree with that assessment and did not agree that Tank could not be safely muzzled (although she herself had not muzzled him). She conceded that she could not put a single lead on him. Indeed, when she examined him, she had had to use a pole, which the judge found was a control device to protect her.

13. After a thorough appraisal of the expert evidence, the judge accepted the evidence of the prosecution expert. The judge's finding was that Tank was "plainly dangerous" and that none of the conditions proposed could properly be made or would be sufficient in this case.

14. Although in the written grounds of appeal Miss Rose, on behalf of the applicants, has sought by various means to challenge the judge's approach and conclusion on the evidence, no fault in law can be discerned to the way in which he went about his appraisal of the evidence. The judge approached the matter properly and, furthermore, to the extent that some reliance was placed on Tank's behaviour whilst in kennels (if not at the time, then subsequently), that takes the matter no further. Indeed, when initially taken to the kennels and when professionally

handled, Tank was assessed as aggressive and unpredictable at the time.

15. Once her application for an adjournment today was refused, Miss Rose was not minded to press the point, as she had sought to say in her written grounds, that the Destruction Order was not one open to the judge. It must be made clear, as was said in the course of argument, that this court is not a court of re-hearing, reviewing the evidence all over again for itself. That is not the function of the Court of Appeal (Criminal Division). The function of the Court of Appeal (Criminal Division) in a case of this kind is to consider whether the judge was entitled to evaluate the evidence as he did and reach the conclusion which he did. We can see no basis, as an appellate court, as we have said, for impeaching the judge's conclusion which was one open to him on his assessment of the evidence.

16. As to the amount of the compensation order, Miss Rose submits that the sum of £8,000 was excessive. She referred us to various figures on quantum taken from Kemp and Kemp on Damages. She accepted that the complainant, JS, had indeed suffered the injuries of which she complained, although she queried the late medical report as to the long-term physical effects upon her.

17. However, there was no reason for the judge not to accept the report, late though it was, of the doctor in question. Further, the evidence revealed that JS had indeed suffered nasty injuries at the time – injuries which became infected and which in due course have had a permanent effect upon her physically. But more than that, it was well-evidenced that there was, predictably, a profound psychological impact upon her. In addition, there has been a great disruption of the family life in consequence of this very unpleasant incident.

18. In our view, in all the circumstances, whilst a sum of £8,000 by way of compensation was perhaps on the high side, we are not able to say that it was, even arguably, excessive.

19. That leaves the point raised on the appeal with regard to the restraining order. Clearly, given the circumstances, the judge was entirely justified in imposing a restraining order in the terms which he did as against the applicant Deji Olatunji. Indeed, there is no challenge in this court to that. The question is whether or not it was appropriate to make a restraining order in those terms as against the appellant mother. The nature of the postings which the son had made are as we have briefly outlined. They were, in truth, monstrous. But there was no evidence whatsoever to show that the mother had in any way encouraged or even permitted her son to make those inflammatory and untrue statements.

20. In the course of his sentencing remarks, the judge said this:

> "I am satisfied in this case that it is necessary to impose a restraining order in the terms of paragraphs 1 and 3. I am satisfied that it should be made against you, Deji, who is the prime mover in relation to the videos, but I am also satisfied that because you, Olayinka, are a director of the company and, therefore, legally responsible for what the company does, that I should also make an order against you as well."

It appears from this that the activities of the applicant son were conducted through the medium of a limited company and that the appellant mother was at the time a director of that company.

21. However, that factor of itself, in our judgment, was not a sufficient reason for making a restraining order against the mother personally, absent any evidence of her encouraging or permitting the son posting these utterly shameful postings on YouTube, as he did. In such circumstances, we consider that the appeal of the mother should be allowed to that extent.

22. Accordingly, we quash the restraining order imposed by the judge as against the appellant mother. In all other respects the renewed grounds are dismissed.
