IN THE COUNTY COURT AT COVENTRY

Neutral Citation Number: [2024] EWCC 26
Case No: 005DC762

140 Much Park Street
Coventry
CV1 2SN

Tuesday, 7th November 2023

Before:
RECORDER MALE KC

B E T W E E N :

STEPHEN POORE

and

ANGLIAN WATER SERVICES LTD

MR T JONES appeared on behalf of the Claimant
MR J HEDGMAN appeared on behalf of the Defendant

JUDGMENT
(Approved by Recorder Male KC on 1st November 2024)

RECORDER MALE KC:

1. I will give my judgment now in this fast-track case of *Stephen Poore v Anglian Water Services Ltd*. Mr Thomas Jones has appeared on behalf of the claimant and Mr Josh Hedgman has appeared on behalf of the defendant, both counsel, to whom I am very grateful for the assistance they have given me this morning.

2. There is a case summary at page four of the bundle which helps to set the scene for the findings I am going to have to make shortly. Looking at that case summary by way of background, this matter arises out of an accident that took place on 30 August 2019. The summary sets out the claimant's case that on that date the claimant was a lawful visitor to Wheatfields Green, St Ives between 2300 hours and midnight. The claimant was walking in the direction of Lorna Court, St Ives, towards Witham Close, St Ives. He decided to cross Wheatfields Green. The area was unlit. He was walking towards lights on the estate the other side of the green. As the claimant was walking, he suddenly tripped, fell over a raised inspection chamber cover sustaining injury to the right side of his chest and ribcage.

3. The claimant says the accident was caused by the defendant's breach of statutory duty, in particular under the Occupiers' Liability Act 1957, and/or negligence alternatively nuisance. The defendant denies it has been negligent and/or created any nuisance. It further denies it has breached any statutory duties under the Water Industry Act or otherwise. As such, its case is that responsibility for inspection of the accident site rests with the local authority. In the alternative, if a finding is made against the defendant, it alleges contributory negligence on the part of the claimant.

4. There is no agreement, the case summary goes on, in relation to quantum, both general damages and special damages. If I get to quantum, I have a report from Mr AS Wojcik, a consultant orthopaedic surgeon.

5. Therefore, the issues are set out in the case summary as: how the claimant came to be injured; whether the defendant was negligent and/or in breach of statutory duty and/or caused a nuisance; whether there is any contributory negligence; whether the defendant's negligence and/or breach of its duty caused the claimant's injuries; and quantum.

6. Although this is a fast-track case, I have had two very helpful skeletons together with a number of cases. I think that is partly in response to inquiries I made yesterday afternoon on doing some pre-reading. I inquired whether skeletons had been prepared, and this morning at 7.30 a skeleton came through from defendant's counsel with seven cases, and at 9.30 a skeleton came through from claimant's counsel with one case.

7. Just in terms of what we have been doing today, after some housekeeping matters and the claimant's opening, the claimant was called and cross-examined. The claimant's wife provided a witness statement, but she was not cross-examined. I then heard evidence from Ms Julie Hyne. She was cross-examined. She has a senior post in the defendant company.

8. We then had oral argument from both counsel, which, bearing in mind the evidence was dealt with quite shortly, took up most of the morning. We finished the closings just before 1.00. What I have done since then is that I have taken the time over the lunch break to re-read my notes of the evidence.

9. I am now giving an oral judgment this afternoon, which may not be as clear and concise as if I had reserved judgment, and it may not do full justice to all the detailed legal submissions I heard this morning. However, I have come to some clear conclusions in the light of my re-reading of my notes of the evidence over the lunch break. I think it is right that the parties should have an oral judgment now rather than waiting for a written judgment, which could take some time.

10. As I said earlier on when reading from the case summary, the claimant puts his case in three ways. First, under the Occupiers' Liability Act 1957. Secondly, common law negligence. Thirdly, public nuisance. For reasons which I will come on to shortly, and which arise out of the evidence I have re-read over lunch, I will concentrate on the 1957 Act. Before I do that, I should make some findings of fact as to what happened.

11. I am satisfied the claimant was a truthful witness doing his best to help the Court, so I can go to his witness statement and make some findings by reference to that. It is at page 45 of the bundle.

12. The claimant is in his late 60s. He was born in 1956. He lives at 20 William Close, St Ives. He is retired.

13. On 30 August, he had been to visit his cousin who lives at Lorna Court, St Ives. He was there until about 11pm when he decided to come home, which would take a 20-minute walk normally. Just pausing, I am satisfied he had not been drinking alcohol. He had had some tea and coffee. He had been to see his cousin who is in difficult circumstances.

14. Going back to the witness statement, which I accept, as he was walking home he decided to cross the green near Wheatfields School. He was taking a short cut which he thought would save him some distance. Again, interposing, it would only save him a matter of 60 or 70 yards. However, he took that route because crossing the green was more of a direct route home rather than keeping to the streets and walking around the green. He considered it was the best way to go. Again, just pausing to interpose, I am satisfied from my re-reading of the notes, it is a way he was familiar with having lived in this area for some time and knowing the green well.

15. He says, going back to the witness statement:

> "The green is not very wide, and I could see the streetlights on the other side of it. It's about 60 to 70 metres wide. The green isn't fenced off or anything and you can walk freely across it whatever time of day or night. I knew that route as I've lived here for a long time. It's not a normal route for me to take."

However, I am satisfied he knew what was there on the short cut route.

16. He then says this, which Mr Hedgman in my judgment rightly asked questions about:

> "I just wanted to get home as quick as possible".

17. Going on in the witness statement, he said:

> "I thought it'd be easy enough to walk straight across and head for the streetlights on the other side. The other side of the green is well lit. I

was heading for the lights. I knew where I was going as I headed towards it."

18. Then he says:

> "The green's flat. It's normally used to walk across. It's a children's playing field, but the field itself isn't lit and it was dark."

19. He walked down a footpath at the side of a house on Stirling Road. He got to the end of the house, and he walked on and slightly to the left towards a children's play area. He walked on between the children's play area on his left and a fence on his right. As he was walking, he says his foot suddenly hit something very solid and raised. It all happened very quickly. He tripped and fell forward very heavily. He went flying. His legs hit something very hard. His arms sort of flung out in front of him. He landed on the right side of his body. His face landed in grass. He was in a lot of pain on his right side, particularly in his ribs.

20. He was in shock and rested on the ground for a bit. He thought to himself, he had done something here, and it took a while to gather himself. He got up on all fours and then got up completely and managed to struggle home, which is around 300 yards away. Then he goes on to explain what he did when he got home, and that feeds into quantum if I get onto quantum.

21. A little later on in the witness statement, he says that he revisited the accident site to look at it about a week after the accident. He says he drove his car, walked down the footpath to the side of the house on Stirling Road to retrace his steps exactly. It is now that I should go to some photographs, particularly at page 51, where there is a photograph of what he tripped over. On my copy of page 51, there is an arrow pointing towards a yellow five with the arrow showing the direction he was coming from. The photograph shows a raised manhole, a metal manhole cover, circular, raised a number of inches. I will come to the precise number of inches in a moment. Then a sort of smallish square concrete base around that. Then there is a larger circular base with a handle. And then a larger square or rectangular base around all that. So, that is what he tripped over.

22. Just trying to make some more detailed findings, as I said earlier on, he had not been drinking, but he was in a hurry. He knew this field. In my judgment, he must have known there were obstacles on the way such as these and, bearing in mind he was crossing a field, that there would be uneven surfaces.

23. As far as the actual manhole is concerned, there is a difference between the witnesses as to how high it was raised. I am satisfied it was raised by about four or five inches and I am also satisfied that it had sharp edges. However, also, as I have indicated, it had a circular biscuit-shaped concrete base with a handle on it and then a square base around that so that anyone walking in the direction of the arrow, which I have mentioned is on page 51, would have known that they were changing from walking on grass to walking on concrete.

24. I should say that although he had his mobile phone with him (I think it was a Samsung), he did not have any light. He was not using any light function there might have been on that phone and he was walking in the dark without any torch.

25. I am satisfied, so far as this structure on page 51 is concerned, that it was a hazard and was

dangerous. That is my own assessment from the photographs. However, I am comforted by the fact that as I read my notes of the cross-examination, which I looked at over lunch, Ms Hyne also accepted that. As I mentioned earlier on, this is near a children's playground. Children will be playing and running around here and people walking across and children playing, would, in my judgment, be at risk.

26. According to Ms Hyne, in answer to questions put by me, the defendant is not a tenant or licensee of this structure, or rather the land on which it is constructed, but has some sort of statutory perpetual right to install its equipment there. She told me, and I accept, there is likely to be an inspection chamber below it to a depth of several metres. She said, in the course of cross-examination by Mr Jones, that the defendant occupied the area of land shown by this structure. I accept her factual evidence bearing in mind her experience of these matters. She has many years' experience with the defendant. Whether I approach this issue as a matter of fact, or as a matter of law as Mr Hedgman said I should approach it, I am satisfied that the defendant was in occupation of this area of land and this structure.

27. As Mr Jones said in his helpful submissions in closing, there can be more than one occupier, and I see no reason why in this situation that cannot be the position, that there could be two occupiers; that is the local authority in occupation of the playing field, and the defendant in occupation of this substantial area of land and the structure. When one thinks about it, this is an inspection chamber going down several metres, a substantial permanent fixed concrete structure, and there is no reason why the defendant should not be the occupier of that.

28. Mr Hedgman referred me to the case of *Buckland v Guildford Gas Light and Coke Company* [1949] 1 KB 410 at page 424, a decision at first instance, in support of the proposition that the mere presence of utility apparatus on land does not render the utility company occupier of the land upon which the apparatus is placed. That was obviously a pre-1957 Act case. It was emailed over to me earlier today. I had some submissions from Mr Hedgman on it, but I do not consider that that case regarding the wires in an electricity pylon assists me in dealing with this different factual case, which I have to consider under the 1957 Act.

29. Concluding on the facts, it is useful to see what the defendant did subsequently. One can follow the pictures through. On page 52, there is another picture of the offending manhole from another angle showing by a black arrow the direction that the claimant was coming from. Page 53 then shows how the defendant company dealt with the matter, the works they carried out subsequently. In summary only, they seem to have removed the old circular manhole, replaced it with a square or rectangular manhole, and lowered it, and also built up concrete around it so that there is a slope up to it. One can make similar comparisons by reference to other photographs later in the bundle.

30. I come on to the 1957 Act. I am, first of all, satisfied that bearing in mind the permanent nature of this structure that it formed part of the premises for the purposes of the 1957 Act. I am also satisfied from the evidence of Ms Hyne and also my own assessment, whether as a matter of fact or law, that the defendant was in occupation as Mr Jones argued.

31. Therefore, I have to apply section 2(1) and 2 of the 1957 Act:

> "(1)An occupier of premises owes the same duty, the 'common duty of

> care', to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.
> (2)The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there."

32. On the evidence, which I have re-read over the lunch, I am satisfied that the defendant was in breach of duty in the way in which Mr Jones put it, both in his oral closing and in his written argument. I may not do justice to his oral arguments but, as I understand it, what he was saying is that in this situation the defendant water authority carried out no inspections itself, which is factually correct, but instead relied upon the local authority to carry out inspections and to pass on any information of defects that it had.

33. That is what happens in the case of highways where there are utility features in highways. One knows that under the Highways Act there are special statutory duties. Here, the local authority was under no such duty. However, what the evidence shows, and I am accepting Mr Jones's point here, is that there was no system put in place by the defendant for it to liaise with the local authority. Going to his skeleton where he is making the point, which I accept, the defendant was simply hoping it would be informed of a defect in the apparatus by the local authority where the local authority did not consider itself to be under a duty to maintain the area.

34. Pausing there, I should have set this out earlier in my recital of the facts, there is evidence from the local authority in the form of information provided by it to Mr Jones's instructing solicitor at page 94. HDC, that is the local authority, say they are unable to comment on the installation. They say they carry out no maintenance. They have no record of complaints. They are not aware of any records, nor aware of HDC carrying out any repairs, and they do not have any records of any inspection carried out in the area in question as there is no obligation to carry out the same.

35. It seems to me that Mr Jones is right to put the matter in the way he does in his skeleton when he says the defendant was simply hoping it would be informed of any defect in its apparatus by the local authority where the local authority did not consider itself to be under a duty to maintain the area: see page 94. Mr Jones says, and I accept, it is not a defence to rely upon the local authority's inspections without any awareness of whether and to what extent the manhole covers were in fact being inspected.

36. As Mr Jones said, and as has turned out to be the case on the evidence, the defendant had no awareness at all of the frequency of the inspections conducted by the local authority. Also, it adduced no evidence which demonstrated that it liaised with the local authority to consider the scope of its inspections or indeed whether the manhole cover formed part of its inspections.

37. It seems to me that when one has those findings and when one takes them with what was said by Ralph Gibson LJ in *Reid v British Telecommunications PLC* [1987] WL 491602, in the copy that has been sent to me at page three, there is further support for Mr Jones' case.

38. In *Reid* the point was made that this was a case where British Telecom chose to rely upon inspections by the highway authority. What Ralph Gibson LJ said was that:

> "I would hold that British Telecom must be treated as knowing with reference to this manhole cover what they would have known if they had themselves carried out the inspections, which they were content for the highway authority to carry out, and therefore they knew what they would have discovered if they had inspected in March 1981 as the highway authority did."

39. It seems to me that that provides further support for the approach taken by Mr Jones which I have accepted. No system was put in place by the defendant for liaising with the local authority and yet it was relying upon the local authority. In these circumstances, and I am perhaps expressing in less elegant terms what Mr Jones said to me, it seems to me that he has persuaded me that the 1957 Act applies and that the defendant was in breach of its duty under section 2. I am also satisfied that that breach caused the injury which the claimant suffered.

40. In view of my finding in relation to the 1957 Act, I consider that I do not need to go further and examine the claimant's claims in relation to common law negligence and public nuisance. I have heard a lot of skilful argument in relation to that and I think those arguments raise difficult questions, which it would be hard for me to deal with in a fast-track case where we ought to try to get this case dealt with in a day, and so I make no findings in relation to those claims. I am not saying they would fail. I am not saying they would succeed. I simply put them to one side because I do not need to make any findings in relation to them as I have found for the claimant under the 1957 Act.

41. I move from those matters where Mr Jones was I think on firm ground to matters where it seems to me Mr Hedgman is on firm ground. He said, as his ultimate fallback position (he had a lot of fallbacks, but this was his ultimate fallback position), that if I was against him on liability, as I am, there must be a substantial reduction for contributory negligence, and I agree with him. I will come on to the amount in a moment.

42. Here the claimant was taking a shortcut. It was dark. He did not have a torch or a light. Insofar as concerns any torch function on his Samsung phone, which was with him, he did not use it. He knew this particular way because he knew the area. He knew and he must have known that there would be obstacles and bumps and also as Mr Hedgman brought out in cross-examination, he wanted to get home quickly. It seems clear to me that in those circumstances there was a significant degree of contributory negligence.

43. Mr Hedgman says it is two-thirds. Mr Jones says it is one-fifth. I think Mr Hedgman is closer to the mark and is the more realistic here. However, I think he is overly harsh to the claimant. I conclude that the amount of contributory negligence was 50%.

44. I come to quantum. As far as special damages are concerned, I think Mr Hedgman was the more realistic here. I accept his figure for the care provided by the claimant's wife. We will have to come on to that in a moment when we do the figures, but it seemed to me that Mr Hedgman's approach was the more realistic and based on principle. I also accept what he said in relation to the £13.50 for travelling costs, but the smaller item for travelling costs is

allowed and is in any event not disputed.

45. As far as general damages are concerned I turn to the Judicial College Guidelines. I have been referred by counsel to chapter six page 25 and in particular to the items toward the end of A to G, particularly G and then straying over into F. Setting the parameters, Mr Hedgman is at £3,250. Mr Jones is at in excess, as he puts it orally and in his written submissions, of around £5,000.

46. There is a medical report at page 33 and the summary at page 35 records that Mr Poore suffered an injury to the right side of his ribcage, developed discomfort and pain on the right side of his chest which was exacerbated with breathing. He was treated by his doctor with a course of analgesia, symptoms resolved after four months, not the six which one sees in the papers but four months. He has been left with a minor vulnerability which he reports at present two years and nearly three months from the date of accident when performing heavy or physical activities.

47. Clinical examination revealed no restrictive function in relation to chest injury. Restrictions are caused by his long-standing back pain problem. Review of the medical records does confirm the history of the accident and reported implications. He achieved a full recovery within I think that should be four months from the date of the accident. Minor symptoms interfere with but do not restrict his activities. The doctor does not see any significant implications.

48. With that evidence well in mind, looking again at the judicial guidelines, it seems to me that this is slightly outside G, but I would put the general damages at £4,050.

49. By way of postscript to the above, I should record that I gave this judgment orally on 7 November 2023 but was only asked to approve it in mid to late October 2024 and I did so on 1 November 2024. The transcript does not record the subsequent discussions with Counsel but Mr Hedgman sought permission to appeal on the grounds that this was an important matter to the defendant which had a number of installations like the one in this case. In view of what Mr Hedgman said, I granted permission to appeal.

End of Judgment

Transcript of a recording by Acolad UK Ltd
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This transcript has been approved by the judge.