



20 March 2013

PRESS SUMMARY

Hayes (FC) (Respondent) v Willoughby (Appellant) [2013] UKSC 17

On appeal from: [2011] EWCA Civ 1541

JUSTICES: Lord Neuberger (President), Lord Mance, Lord Wilson, Lord Sumption, Lord Reed

BACKGROUND TO THE APPEAL

This appeal arises out of an action for damages for harassment and for an injunction to restrain its continuance. The question at issue is in what circumstances can such an action be defended on the ground that the alleged harasser was engaged in the prevention or detection of crime.

Mr Willoughby was employed by one of Mr Hayes's companies. In 2002, the two men fell out. In late 2003, Mr Willoughby embarked on a campaign against Mr Hayes centring on allegations of fraud, embezzlement and tax evasion in relation to Mr Hayes's management of his companies. This took the form of sending numerous letters to the Official Receiver, the police and the Department of Trade and Industry. These bodies investigated and found no basis in the allegations, but Mr Willoughby continued to press these bodies and made a series of intrusions into Mr Hayes's private life.

The Protection from Harassment Act 1997 ("the Act") makes harassment a civil wrong and a criminal offence, but under s.1(3) of the Act it is a defence for a person to show (a) that it was pursued for the purpose of preventing or detecting a crime; (b) that it was pursued under any enactment or rule of law, or (c) that in the particular circumstances, the pursuit of the course of conduct was reasonable.

The trial judge found that Mr Willoughby's conduct constituted harassment under s.1(1) of the Act but that he had a defence under s.1(3)(a) because he genuinely believed in the allegations involving Mr Hayes and wished to persist in investigating them. The Court of Appeal allowed Mr Hayes's appeal on two main grounds: (1) only the purpose of the conduct not the purpose of the alleged harasser was relevant, and in this case it was not reasonably or rationally connected to the prevention of crime; and (2) the prevention of crime had to be the sole purpose of the alleged harasser, and the intrusions on Mr Hayes's privacy were not related to that purpose.

JUDGMENT

The Supreme Court dismisses the appeal by Mr Willoughby by a majority of four to one (Lord Reed Dissenting). Lord Sumption gives the judgment of the Court.

REASONS FOR THE JUDGMENT

There is no distinction between the purpose of the conduct and the purpose of the alleged harasser as such acts have no purpose other than that of their perpetrator. The issue is by what standard that person's purpose is to be assessed [10]. A wholly objective test (adopted by the Respondent) is not consistent with the wording or purpose of the Act. A test of reasonableness was not included in s.1(3)(a), as it was in other sections of the Act. It would also render the general defence of reasonableness in s.1(3)(c) otiose [11]. A wholly subjective test (adopted by the Appellant) is equally problematic [12]. Those who claim to be acting for the purpose of preventing or detecting crime may,

at a purely subjective level, entertain views about what acts are crimes and what steps are calculated to prevent or detect them which have no relation to reality. Mere existence of belief, however absurd, in the mind of the harasser that he is detecting or preventing a crime, cannot justify him persisting in a course of conduct which the law recognises as oppressive. Some control mechanism is therefore required, even if it falls short of what is objectively reasonable [13].

The necessary control mechanism is to be found in the concept of rationality, familiar in public law but also increasingly significant in other areas, such as contractual discretions. Rationality is different to reasonableness. Reasonableness is an external, objective standard applied to the outcome of a person's thoughts or intentions. A test of rationality only applies a minimum objective standard to the relevant person's mental processes. It imports a notion of good faith in requiring some rational connection between the evidence and the ostensible reasons for the decision, and an absence of arbitrariness, capriciousness or reasoning so outrageous in its defiance of logic as to be perverse [14]. If the alleged harasser has rationally applied his mind to the material suggesting criminality and formed the view that the conduct said to constitute harassment was appropriate for its detection or prevention, the court will not test his conclusions by reference to what view a hypothetical reasonable man in his position would have formed. If he has not done so but proceeds anyway, he acts irrationally. He will not have a relevant purpose and there will be no causal connection between his purpose and the conduct constituting harassment. Such a test would in any event apply to public authorities. It is not a demanding test, and it is hard to imagine that Parliament could have intended anything less [15].

Applied to the facts, this test means that after June 2007, Mr Willoughby's conduct against Mr Hayes was more than objectively unreasonable. It was irrational. He was no longer guided by any assessment of evidence, nor was there a rational connection between his supposed purpose and acts. By persisting in pressing his allegations on the Official Receiver and other investigatory bodies long after they refused to deal with him, he was acting in a way that was incapable of furthering the alleged purpose [16].

Although not strictly necessary to decide the point, it was also held that for the purpose of s.1(3)(a) the prevention or detection of crime need not be the sole purpose of the alleged harasser, but only the dominant one [17].

Lord Reed (dissenting) agrees that reasonableness is not required under s.1(3)(a), but rejects the idea that Parliament intended to impose a rationality requirement for three reasons: (1) Parliament did not provide for any rationality test. (2) A statute should not be construed as extending criminal liability beyond the limits which Parliament itself enacted it. (3) Criminal liability would turn on the subtle distinction between irrationality and unreasonableness, which could create particular difficulties in giving clear directions to juries [24-28].

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html