

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION

CIARAN HUGHES (A MINOR) ACTING BY HIS MOTHER AND NEXT
FRIEND MARIE HUGHES

and

NEWRY AND MOURNE DISTRICT COUNCIL

STEPHENS J

Introduction

[1] The plaintiff, Ciaran Hughes, now 17, then 12 years and 10 months (date of birth 12th January 1995) sustained a major injury to his left eye on 1st November 2007 at Ringmacilroy Playing Fields, Warrenpoint ("the playing fields"). In addition the plaintiff has developed tinnitus and has suffered from a psychological reaction.

[2] In accordance with a long standing tradition there had been a Halloween bonfire at the playing fields on the night of 31st October 2007. The next day, 1st November 2007, at about 11 or 11.30 a.m., the plaintiff and three of his friends had gone to the playing fields to play football. I will refer to the three friends by initials thought they are not their correct initials. They were ~CT~, then 11, ~LQ~, then 10 or 11 and ~EO~, then 13. Whilst they were there ~CT~ picked up what transpired to be a discarded firework which had been left lying some 10' - 15' from the edge of the blackened area of the site of the previous night's bonfire. It had been discarded by one of the many people who had attended the bonfire. The discarded firework was then snatched from Anthony Douglas by ~EO~ who took out a lighter and lit the two fuses. The firework immediately exploded causing serious personal injuries to the plaintiff, definite injuries to ~CT~, and what I find to have been slight injuries to the hand of ~EO~.

[3] The plaintiff brings this action claiming damages against the defendant, Newry and Mourne District Council, the owners and occupiers of the playing fields on the basis that they were in breach of the duty of care contained in Article 3 of the Occupiers Liability (Northern Ireland) Order 1987. In essence the plaintiff alleges that one of the defendant's purpose in providing the playing fields was to attract children, that the defendant knew or ought to have known of the risk of unexploded fireworks at the playing fields as a result of the activities of those who had attended the bonfire the previous night and despite that knowledge the defendant failed to inspect the playing fields and also failed to take precautions such as removing fireworks and other dangers including broken glass before permitting the plaintiff and his friends to be on their premises.

[4] In essence the defendant's case is that the bonfire was organised by others and that it was powerless to prevent its land from being used given the level of anti-social behaviour, threats and intimidation and the short period of time, some two to three hours, within which a bonfire could be erected. That because of the level of anti-social behaviour council employees could not be present or do anything whilst the bonfire was taking place. That after the bonfire occurred that it was not reasonable in the circumstances to carry out a detailed inspection of the playing fields or to commence a clean-up operation given the hostility of gangs of youths in the area towards council employees, contractors engaged by the council, members of the Police Service of Northern Ireland, and members of the Fire Brigade and Ambulance Service. Rather that the council could only wait until the hostility had diminished before having a detailed inspection of the playing fields and commencing its clear up operation.

[5] The plaintiff and the defendant have agreed the amount of damages (subject to approval) if I find in favour of the plaintiff in relation to the issue of liability. Accordingly the hearing proceeded in relation to liability alone.

[6] Mr McNulty Q.C. and Ms Moran appeared on behalf of the plaintiff, Mr Ringland Q.C. and Mr Aldworth appeared on behalf of the defendant.

The playing fields

[7] The playing fields are in a residential area of Warrenpoint. The density of the housing in the vicinity varies including detached, semi-detached and terraced housing. There is a significant population in the immediate vicinity of the playing fields.

[8] In 2007 the playing fields consisted of a large triangular shaped sloping grassed area. The side nearest the roadway known as Bridle Loanan being higher

than the side nearest Charlotte Street. There were railings separating the playing fields from Bridle Loanan. The other two sides of the playing fields being enclosed on one side by the rear of the houses in Clermont Gardens and on the other by the rear of the housing and a police station in Charlotte Street. Accordingly the police station fronts Charlotte Street and backs onto the playing fields. There is a vehicular entrance to the playing fields and that is through gates adjacent to the junction of Duke Street and Bridle Loanan.

[9] In 2007 the playing fields were not formally laid out for instance with marked football pitches or pathways but rather some goalposts had been erected so that informal kick-about football could occur. There was a large sign at the entrance with the name of the playing field and of the defendant together with a sign prohibiting golf.

[10] Since 2007 significant works had been done to the playing fields by the defendant. There are now bitmaced pathways some with railings given the sloping nature of the ground. There is an outdoor basketball court with high fencing erected around it. There are also trees planted along the pathway, benches and litterbins together with two sets of goalposts for football but with no marked football pitch.

The annual Halloween bonfire and the problems associated with it.

[11] Bonfires are traditional in many parts of Northern Ireland to commemorate a number of different events. In Warrenpoint there has been a long standing tradition of an annual bonfire at the playing fields at Halloween. The bonfire is held with support from the community but at a cost to the community and to individuals. On this occasion the cost included a lifelong cost to the plaintiff's sight. The adverse impact of bonfires organised in the manner of this bonfire is not confined to this particular location but occurs throughout Northern Ireland to varying degrees. The location about which I have heard most evidence are the playing fields in Warrenpoint. Accordingly my findings will mostly be confined to what occurred in Warrenpoint but I wish to make it clear that by highlighting the difficulties at this location I am not to be taken as suggesting that the problems do not occur elsewhere. They do. I also make it clear that many concerned people in Warrenpoint including councillors, parents, householders and community police officers have been attempting to address the adverse impacts of the annual Halloween bonfire.

[12] It is simply despicable for this unexploded firework to have been left in a location where it could be found by children. Unfortunately this disregard for the safety and bodily integrity of others is not unexpected because for instance at this location and at other locations in Northern Ireland fireworks are thrown onto the bonfire so that they can explode out in any direction towards any of the bystanders, glass bottles are thrown into the fire and broken glass is left lying around. Gas

cylinders are thrown into the fire so that they can explode with the potential for shrapnel causing serious personal injuries. Gas cylinders thrown on the fire in this way are not only a risk to those attending the fire but can explode during the clear up operation which has to be performed after the event. The vast majority of people who attend are there for an enjoyable evening but a significant number of individuals who attend are disinhibited by drink and/or drugs and are incapable of assessing the consequences for others. I also infer that the bonfire attracts some persons who are simply indifferent to or alternatively enjoy creating a risk to others.

[13] There have been long standing difficulties with the annual bonfire at the playing fields. The worst violence occurred in 2006. On that occasion there was a serious public order incident at the playing fields. This involved an attack on the adjacent police station and a major confrontation with the police. The railings separating the playing fields from Bridle Loanan were pulled out. Missiles were thrown at the police and at the police station. A police tactical support group, consisting of 29 police officers in riot gear was deployed in order to disperse a group of about 100 - 200 youths who were directing rockets, stones and bottles at the police station. The deployment of the tactical support group was not effective and it had to be withdrawn. The aggression continued throughout the night of 31 October 2006 into the morning of 1 November 2006. Council staff and the staff of independent contractors who went on site after this incident in order to clear up were physically assaulted.

[14] The evidence called on behalf of the council was to the effect that there was serious intimidation of and assaults on council employees who attempted to interfere in the annual bonfire. That in the past a Council supervisor was pelted with stones and sustained injury and a Council van was targeted. I find that Council staff have been threatened, assaulted and injured. That there have been verbal confrontations and vehicles have been damaged. That independent contractors engaged by the Council have been treated in the same fashion.

[15] Public disorder and anti-social behaviour is not confined to Warrenpoint and accordingly the problems faced by the Council are not confined to the playing fields. For instance there were some 42 bonfires in the Council area on 31 October 2007. Not all of them were on Council property but a significant number were. Those properties included playing fields and play areas. Annually there are significant problems at diverse locations all occurring at the same time. Again the worst year was 2006 when whins on the Mourne Mountains were set on fire and helicopters were required to be deployed.

[16] The evidence of the police inspector who was in post in Warrenpoint during the relevant period (which evidence I accept) was that there had been and continued

to be significant potential for public disorder at the playing fields leading up to and in the aftermath of the bonfire. That the anti-social behaviour generated by the bonfire at the playing fields could not be resolved by force alone. That it was a community problem and required community leaders to assist in order to achieve a resolution in conjunction with the police, the Council and the Fire Service. His view was that a clean-up operation after a bonfire was only achievable at the right time and *that his advice to the Council would be not to go into the area the day after the bonfire if there were youths who were still in the area* (emphasis added). He also stated that if there were a small number of youths still in the area that significant numbers could very quickly appear as a result of mobile telephone calls. I have indicated that I accept the evidence of this witness and the acceptance includes his assessment that the council employees (and that includes independent contractors) should not go into the area the day after the bonfire if there were youths still in the area.

[17] The problems generated by traditional Halloween bonfires at the playing fields had been recognised and addressed by the Council and the police. There were regular meetings between councillors and the police to devise methods of addressing these problems. The Council has positively responded to requests from the police for public engagement. Community safety officers from the council worked with individuals in the surrounding residential areas to attempt to persuade that no bonfire should occur. In 2007 councillor Ruane held a meeting with the youths responsible for building the bonfire but unfortunately at that meeting one of the youths physically assaulted his own father. This was not a minor assault but rather the youth used a broken pallet in response to his father asking that materials should be removed from the bonfire. I accept the evidence on behalf of the council that it is very hard to change traditions, though some practical precautions could be taken such as removing bottle banks.

The bonfire in 2007

[18] Some 20-30 youths individually, without any group structure or identifiable leader, decided to build the bonfire in 2007 on the playing fields. There was no organisation or formality involved. It was an inchoate group of individuals acting on their own but with the same objective of gathering material for the bonfire and then lighting it. The objective was overriding in that the convenience and safety of others and the property of others were secondary. Pallets were stolen. It was immaterial as to whether the value of residential property in the immediate vicinity of a bonfire was diminished. Material to be burnt was hidden in nearby gardens usually of those who were powerless to object. None of the youths asked the Council for permission to use the playing fields.

[19] In 2007, as in previous years, the bonfire attracted a lot of people. The total population in Warrenpoint is some 6,000 and a very significant proportion of this population converged on the bonfire on 31 October 2007. The majority of those who attended were there to enjoy an evening out but a significant proportion were drinking and were drunk. A lot of fireworks had been let off. There was a lot of broken glass in the area. The bonfire itself had been built to a significant height and size. The bonfire was alight by at the latest 8.00 pm on 31 October 2007 but was kept going and was still burning the next morning at 7.30 to 8.00 a.m. when a Council employee came to the playing fields by car to inspect from the roadway.

[20] At the bonfire in 2007 there were individuals who were wearing high visibility yellow vests. They were there in the capacity of unofficial stewards to supervise the bonfire. They were not organised by the Council nor were they Council employees or agents. They were not organised by those who had gathered together to erect this bonfire. On balance I consider that they were organised by Councillor Ruane or those connected to him or to his political party. Their involvement was limited in that in the early hours of 1 November 2007 they had to pull back from the immediate area of the fire due to the risks with which they were presented. They could in any event only hope to dissuade and they were powerless to enforce order.

The precautions that ought to be taken

[21] A properly organised bonfire should include the precautions set out in two Health and Safety Executive publications both of which were first published in 1995. The publications are HSG123 "Working Together on Firework Displays" and HSG124 "Giving Your Own Firework Display". These publications deal with the control management and clearing up of bonfires and firework displays. In relation to clearing up both publications advise that misfired and partly spent fireworks should be soaked, that there should be a return to the site at first light to clear up partly spent fireworks and other hazardous remains and that the bonfire should be extinguished properly and cooled down before the site is left. Mr Cosgrove, the engineering witness called on behalf of the plaintiff, suggested that the fire be doused with a water tanker, that the area be secured by creating a perimeter around the bonfire and that warning signs should be erected. I do not consider that warning signs or some light weight perimeter would have had any practical effect in the circumstances of this case. There was a dispute as to whether dousing was an appropriate safety measure given the potential for leeching pollutants though there was no dispute that spent fireworks should be soaked.

The incident involving the plaintiff

[22] The plaintiff and his three friends having gone to the playing fields to play football some 30-40 feet from the site of the previous night's bonfire went over to the bonfire site after a short period of time. There were a number of spent fireworks in the area. Anthony Rodgers picked up an object which he inspected and they all gathered round to see what it was. The children at this stage were all in a circle. ~EO~ then snatched the firework and lit its fuse. The firework exploded immediately it was lit causing the injuries which I have outlined.

[23] I find that they all knew that it was a firework and also that they all knew that it was not spent and would explode if it was lit. I also find that none of them knew, and given their age, the excitement of the moment and speed with which the events were occurring none of them ought to have anticipated the force of the explosion or the very serious and permanent consequences that could occur.

Immediate steps taken by the council after the bonfire in 2007

[24] The Council have 20 members of staff who are responsible for amongst other matters clearing up of open spaces belonging to the Council such as the playing fields. There are insufficient members of staff to deal with the problems generated by the traditional Halloween bonfires and accordingly the Council hire in outside contractors. They did this in 2007 but those contractors were not to start work until it was safe.

[25] The Council employee who was in charge of management services visited the playing fields at about 7.30 - 8.00 am on the morning of 1 November 2007 in order to assess the clear up requirements and the question of safety for Council and contractor's staff. Such was his concern that he used his own private vehicle rather than a marked Council vehicle. When the Council employee arrived at the playing fields the bonfire was still burning and there were people still throwing stuff to be burnt onto the fire. He saw youths in the area. He decided that it was not safe for Council employees to go into the playing fields. He felt, and I find justifiably, inhibited from getting out of his vehicle and actually walking across the playing fields to carry out an inspection. He remained in his vehicle.

Conclusion

[26] The debris generated by the bonfire at the playing fields presented a danger to the public and in particular to children. The Council knew that it was likely that there would be such a danger. The defence that the Council were overwhelmed by the tradition of this bonfire and anti-social behaviour associated with it is not an

attractive defence involving as it does the suggestion that the area was for a period of time out with the control of the Council and that there was no feasible assistance available to the council from the police. Any such defence requires careful scrutiny particularly because it is the vulnerable who suffer when control is lost. However, ultimately if the sensible precautions which ought to have been taken were not achievable then the plaintiff will not have established a breach of duty by the defendant. I consider that those precautions were not achievable in two senses. The first being that it was reasonable for the council to anticipate that its staff and the staff of contractors would be threatened, intimidated and assaulted and thereby at risk and prevented from carrying out any work at any time prior to the time at which the plaintiff was injured (that being the relevant time). The second being that is what would have occurred if the council staff or the staff of contractors had actually attempted to do anything prior to the time at which the plaintiff was injured and accordingly the staff would have had to retreat and this firework would not have been made safe.

[27] I enter judgment for the defendant.