

Neutral Citation Number: {2009} EWHC 481 (QB)

IN THE HIGH COURT OF JUSTICE  
QUEENS BENCH DIVISION  
MANCHESTER DISTRICT REGISTRY

The Civil Justice Centre,  
1 Bridge Street West,  
Manchester.

Friday, 30th January, 2009

BEFORE:

THE HONOURABLE MR. JUSTICE IRWIN

IN THE MATTER OF:

AB AND OTHERS

-V-

THE NUGENT CARE SOCIETY

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MR. R. MAXWELL Q.C. AND MISS A. WEERERATNE instructed by ABNEY  
GARSDEN McDONALD SOLICITORS appeared on behalf of the Claimants

MR. E. D. FAULKS Q.C. AND MR. N. FEWTRELL instructed by HILL DICKINSON  
LLP appeared on behalf of the Defendants

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Transcribed from the official record by  
Cater Walsh Reporting Limited, First Floor,  
Paddington House, New Road, Kidderminster. DY10 1AL  
Telephone: 01562 60921/510118; fax: 01562 743235;  
e-mail: info@caterwalsh.co.uk

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J U D G M E N T A S R E V I S E D ( 1 )

The case of [REDACTED]

78. I turn to the case of [REDACTED] [REDACTED] was born on [REDACTED] DPA [REDACTED] 1964, and brought up in the [REDACTED] DPA [REDACTED] area of Greater Manchester. He is the middle child of [REDACTED] DPA [REDACTED] and by his own account, grew up in a difficult and poor family. He recites that he was often beaten by his father, who was subject to a violent temper, and by the age of 12 or so, he had become very difficult to control. He was by then regularly truanting from school. On his account, his home was one where he was not permitted to show his emotions, and if he did, he would be told that he was soft and be sent to his room. He felt unable to tell anyone about his problems.
79. When this claimant got to secondary school, he did not try hard, and he began to get into trouble. There is a useful contemporaneous source as to his background narrative contained in the report from Chris Tucker, the claimant's social worker, dated 16 December 1980. This gives a history of previous court appearances, beginning with a [REDACTED] DPA [REDACTED] in [REDACTED] DPA [REDACTED] of 1977, when the claimant was 13 years of age. This was followed by further offences of [REDACTED] DPA [REDACTED] which led to a Care Order in June of 1978, with further offences of [REDACTED] DPA [REDACTED] to follow in 1978 and 1979. Mr. Tucker's report recites how, in the last year he was at home, the claimant ran away on a couple of occasions, fearing his parents' discipline after an extended period of truancy. It is clear from that report, and indeed from the claimant's own account, that the family relationship had come under very considerable strain.
80. Whilst in care, the claimant was placed in a childrens' home, an unsuccessful placement, and he then went for the first time to St. Aidan's. This first placement ended when the claimant was convicted of a further offence of [REDACTED] DPA [REDACTED] and on [REDACTED] DPA [REDACTED] 1979, was sent to [REDACTED] DPA [REDACTED] for three months.
81. After release from detention, the claimant returned to St. Aidan's, initially to the main building, but after a period of good behaviour, he was transferred to one of the units, which he describes as "more like being in a house." To his memory, there were something like 12 lads in each unit. The housemaster in the claimant's unit was a man called Colin Dick.
82. Colin Dick has subsequently been convicted of significant sexual offending in relation to his time at St. Aidan's. On 7 June 1995, Mr. Dick entered pleas of guilty to some of the counts on a 16 count indictment, all relating to his period at St. Aidan's. I have had the advantage of seeing the record of the proceedings before the Chester Crown Court on 7 June 1996, which records that -

"All offences committed at St. Aidan's Community Home. Police considered it better to accept the pleas offered, than put the victims through a three week trial."

83. The offences were either indecent assault or buggery. The counts on the indictment related to ten different complainants, all male, and all the offences taking place between 1978 and 1981. The offences in respect of which pleas were entered, relate to four of the ten complainants, and between them, straddled the entire period from the earliest to the latest point recited in the indictment. The most serious offences of buggery also range from Christmas 1978 to a period between July 1980 and June 1981.

84. Although [redacted] was not a complainant in any count on the indictment, he had given a statement to the police alleging sexual offending against him by Colin Dick. The statement is dated 27 March 1995, and has been admitted in evidence. The essential elements of the account set out in that statement are that Dick was friendly to all of the lads living in the unit, including the claimant, and indeed over friendly, permitting them to enter his flat at will, to smoke and to drink alcohol. The claimant then told the police how about two to three months after moving into the unit, which must take us to a date somewhere in the middle of 1980, making the claimant 16 at the time, Colin Dick returned to the flat from a public house, having drunk a good deal, sat down beside the claimant, put his arm around him and started to kiss him on the lips. Dick told [redacted] how he did not want to 'shag him or anything like that', but did want to show how much he loved him, the claimant.

85. Then the evidence goes on as follows:

"He then started to play with me. He put his hand on to my penis over my trousers. I was fully clothed. He then undid my trousers. I was totally numb. I felt trapped. I just sat there. He then had oral sex with me. I could not believe what was happening. He continued until I ejaculated, and I think he used a tissue to clean it up, but I cannot be sure."

Essentially the same account is recited in the claimant's witness statement in these proceedings.

86. The claimant told the police in 1995 that he had never told anyone about what had happened until talking to them.

87. In his evidence to the court, [redacted] confirmed the content of his witness statement, to the effect that there was one episode of sexual abuse only with Colin Dick. Following that episode, he had a strong reaction against his abuser, and sought to avoid him as much as possible. He ran away from Colin Dick. He said:

three years as a result of this, and in due course [redacted] has made a good recovery. His prognosis is now good."

101. It follows that there is a relatively narrow issue between the experts. They agreed this is a man with a lot of problems. They agreed that if his account of events is to be accepted at all, there was an adjustment disorder or reaction to the police involvement, but it is not of major consequence and it is limited in time. It arose in relatively recent years.
102. As I have already noted, there is a conviction here of the abuser in June of 1995 for four counts of buggery and three of indecent assault. He received four years imprisonment. This is, in my view, powerful evidence in favour of the claimant's case that there was actually abuse in the case.
103. In this instance, and only in this case of the four before me, the claimant suggests that there was a lack of knowledge until a late date, sufficient so that the proceedings were initiated within the primary limitation period. It is claimed that the claimant had no knowledge of a significant injury until he was told medically in 1998 to 1999 that the psychological problems leading to referral for therapy, derived from the sexual abuse.
104. I am not persuaded by this. This was not a casual fondling, but oral sex. Appreciating that there was only one episode of oral sex, it had a marked effect on the claimant at the time. He avoided Mr. Dick immediately. His reaction against what happened was strong. These are powerful indicators of the fact that even at that age he realised that what had happened to him was a significant assault. Anyone would recognise what happened on his account to be a significant assault.
105. I will not repeat the wide judicial guidance which I have recited earlier in this judgment on the approach to this issue. Given the facts of this case, it is clear that the claimant had knowledge of a significant injury for the purposes of Section 11 and Section 14(1)(a) of the Act.
106. I turn to discretion. Considering the sub-paragraphs within section 33(3): first, the length of and reasons for delay. The abuse took place here in October to November 1979. Therefore, the primary limitation period would end three years from this claimant's majority, that is to say, on 2 [redacted] DPA [redacted] 1985. His police interview was on 27 March 1995. By 26 March 1997, he received a letter from the defendant's solicitors, enquiring about whether he was concerned about sexual abuse at St. Aidan's. On 14 June 1999, he had got as far as to have an application for Legal Aid made out, and by 30 March 2001, proceedings were issued. Therefore it follows there was a period of over 22 years from the abuse to the issue of proceedings and 16 years from the end of the primary limitation period. It is a long delay, but it is to be explained by the claimant's avoidance of referring to the sexual abuse and its