

CITATION: *Dreaver v Bossenberry* [2006] NTMC 101

PARTIES: CLAIR FRANCIS DREAYER

v

CAROLINE BOSSENBERRY

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Summary Jurisdiction - Tennant Creek

FILE NO(s): 20625760

DELIVERED ON: 4 December 2006

DELIVERED AT: Tennant Creek

HEARING DATE(s): 4 December 2006

JUDGMENT OF: M Little SM

**CATCHWORDS:**

Section 99 of the Justices Act. Whether order made within power. Whether breach of order proven. Whether an "approach" by the defendant.

**REPRESENTATION:**

*Counsel:*

Complainant: In person

Defendant: In person

*Solicitors:*

Complainant: Self Represented

Defendant: Self Represented

Judgment category classification:

Judgment ID number: [2006] NTMC 101

Number of paragraphs:

HER HONOUR: Ms Claire Dreaver is the complainant in this matter. She alleges that the defendant, Ms Caroline Bossenberry has breached an order pursuant to section 99 of the Justices Act. Ms Dreaver bears the onus of proof. Mr Hicks gave evidence on her behalf. The complainant did not give evidence.

In defence, Ms Bossenberry tendered a plan, gave evidence, and called Ms Williams who drove the car she was travelling in on 9<sup>th</sup> October 2006.

Ms Bossenberry was ordered from 6<sup>th</sup> July 2006, for a period of 12 months to keep the peace towards Ms Dreaver. She was also ordered not to communicate with the complainant verbally or in writing, not to approach the complainant directly or indirectly, and remain away from the complainant's residence or workplace. Once again, this is for a 12 month period from 6<sup>th</sup> July 2006.

These orders were made pursuant to s99 of the Justices Act. A preliminary matter arises before I consider the breach application.

I have looked at s99 of the Justices Act, and I can see no power to make an order in terms as ordered on 6<sup>th</sup> July 2006, save and except there is power to order that the defendant keep the peace towards Ms Dreaver. Section 99 is limited to two types of orders that can be made.

First of all, an order to keep the peace towards a complainant. Secondly, to be of good behaviour towards a complainant. In my view, that is the limit of the power in s99 of the Justices Act. There is no power to make any other order or order in any other terms.

It's my finding there was no power to make the order that was made on 6<sup>th</sup> July 2006 in its totality. The order is capable of being severed, and I find that that part of the order which is within power, namely that Ms Bossenberry is to keep the peace towards Ms Dreaver is a valid order.

That leaves for consideration whether or not such an order was breached by Ms Bossenberry by her attendance at the Top of the Town Café on 9<sup>th</sup> October 2006. I can find no evidence whatsoever that there was a breach of the peace on 9<sup>th</sup> October 2006, and I find that the complaint of that breach is not made out.

That was the second part of the complaint laid on 10<sup>th</sup> October 2006, and that was the only part of the complaint which the complainant pursued at the hearing of the matter on 4<sup>th</sup> December 2006.

Neither in her case, nor when cross-examining Ms Bossenberry did she raise the first part of her complaint, namely that Ms Bossenberry had been in a car driving past her home. That was not pursued, except in a peripheral way when questions were asked of Ms Williams.

I find the complaint is not made out. If I'm wrong to find that the s99 order made on 6<sup>th</sup> July 2006 was made without power as regards the "not communicate, not approach" part of the order, I will consider the evidence and decide the question of whether or the defendant has breached that condition of the order.

As previously stated, the first part of the complaint was not pursued and I find that that was not made out. The second part of the complaint was pursued at the hearing. The allegation is that there was an approach made at the Top of the Town Café on 9<sup>th</sup> October 2006 at around 1 pm.

Mr Hicks is the proprietor of the café, and he gave evidence that the complainant has lunch at the café approximately four times a week, and that she dines in approximately half of that time, and the other half takes food away.

He puts the complainant and the defendant at the same location on that day. That is not in dispute. Ms Bossenberry said she was there, but did not know Ms Dreaver was there when she entered the area of the tables in front of the café. The plan that she drew up, which became exhibit D1, sets out that the car she was a passenger in was parked to the left of Ms Dreaver's car.

The evidence was that she did not see the car which belonged to Ms Dreaver as she entered the premises. Her evidence is, and the plan sets out, that she saw Ms Dreaver as she was about halfway between the car and the front door of the café. She and Ms Williams both say they had a sick child in their car who had just left hospital. They wanted to get water as a matter of priority, although they don't suggest it was an emergency, but as a matter of priority. The child was dry-reaching. I accept their evidence. I also accept that Ms Bossenberry did not see Ms Dreaver's car as she got out of the car that she was a passenger in, or when she was walking inside.

She has admitted she saw Ms Dreaver. There is no evidence she went towards her. But rather, the evidence is that she went inside the café. Ms Dreaver was seated outside the café to the right of Ms Bossenberry as she walked into the café. I have no evidence before me that she deviated from the path from the car to the front door of the café.

She was going to a shop to buy water, and as it later transpired, she also bought food. It was a public place, open to and used by the public. There was no order that she could not go to that place, although of course if there had been an order, it may well have been a question of whether there was power to make that order. But that's not necessary to be considered here.

She said that when she was getting out of the car, her attention was on the fact that the child was unwell. And there was also a cement pole which blocked her line of sight where Ms Dreaver would have been sitting. Mr Hicks conceded

that it was possible that Ms Bossenberry's line of sight might have been blocked by that pole. But he felt that the pole was not wide enough to completely block out the view. Or certainly not as much as Ms Bossenberry had asserted.

I find that there was an accidental, unintentional contact by the defendant, in that she came within approximately 10 to 15 metres of Ms Dreaver as she walked into a café. Given all of the circumstances of the case, I do not find that it was an approach in that I do not find that the defendant went out of her way to approach Ms Dreaver.

She was not driving the car. She did not see Ms Dreaver's car when they pulled up. And I'm also satisfied Ms Williams did not see Ms Dreaver's car. When Ms Bossenberry first saw Ms Dreaver, she did not deviate from the path that she was taking from the car to the door of the café. I find there was no approach and no communication on the occasion of 9<sup>th</sup> October 2006. And I find the complaint of the breach of the s99 order is not made out, and the complaint is dismissed.

By way of final comment, I would point out that hearings such as these can re-open and exacerbate situations that are already stressful for everyone. I would urge the parties here to seek mediation, possibly through the community justice centre. And I'm going to ask the orderly to give everyone a pamphlet about that.

If that is not suitable, and I note that in Tennant Creek that it is difficult because that would probably have to be done by telephone, to approach for example your local church. As I understand you are both members of the local church, or to find some other form of alternative dispute resolution here. It seems evident to me, the events leading up to this case have taken their toll on all concerned. It would be unfortunate if things were left as they are today.

Tennant Creek is a very small town. It would be very hard to ensure that there was never accidental contact such as this. If a resolution can be brokered, the health and welfare of both Ms Dreaver and Ms Bossenberry will be greatly improved, and they will both be free to attend their daily activities without the stress of this ongoing situation.

I would urge parties to consider attending some sort of mediation or dispute resolution as soon as possible so that the Christmas season can be a peaceful one for all of you.

Thank you.

Dated this 4<sup>th</sup> day of December 2006.