

CITATION: *Cameron v Mills* [2008] NTMC 029

PARTIES: JESSICA CAMERON

v

KATHY MILLS

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Justices Act

FILE NO(s): 20802256

DELIVERED ON: 28 May 2008

DELIVERED AT: Darwin

HEARING DATE(s): 23 April 2008

JUDGMENT OF: Relieving Magistrate Fong Lim

CATCHWORDS:

Breach of peace – section 99 *Justices Act* – Burden of proof

REPRESENTATION:

Counsel:

Complainant: Self

Defendant: Self

Solicitors:

Complainant: Self

Defendant: Self

Judgment category classification: C

Judgment ID number: [2008] NTMC 029

Number of paragraphs: 32

IN THE COURT OF SUMMARY JURISDICTION
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20802256

[2008] NTMC 029

BETWEEN:

JESSICA CAMERON
Complainant

AND:

KATHY MILLS
Defendant

REASONS FOR DECISION

(Delivered 28 May 2008)

Ms FONG LIM RSM:

1. The complainant applies for an order pursuant to section 99 of the *Justices Act* that the respondent sign a recognisance to the court to be of good behaviour (not to breach the peace towards the complainant). To make such an order, I have to be satisfied on the balance of probabilities, on cogent evidence (*Hulett v Laidlaw* [1996] A Crim App 240, *Briginshaw v Briginshaw* (1938) 60 CLR 336) that there has been behaviour by the respondent which has lead the complainant to reasonably apprehend that the respondent would undertake further activities and actions which would lead to the breach of the peace if not ordered by the court to restrain from doing so.
2. The complainant is a 16 year girl and the respondent the mother of a former friend of the complainant. It is agreed that an issue arose between the parties when the respondent discovered that the complainant was helping to organise a 16th birthday party for her daughter and that party was going to include alcohol.

3. The complainant gave evidence that her household had received abusive phone calls from the respondent which entailed the respondent using foul language towards the complainant, her sister and her mother.
4. There was apparently one call answered by the complainant's sister, one answered by herself and one by her mother. The complainant also gave evidence of two further calls a short time after the original abusive phone call which she and her sister did not answer for fear it be the defendant. The complainant says she recognised the defendant's voice because she had spoken to her in person a couple of times and she introduced herself to the complainant's sister the first.
5. The next phone call was between the defendant and the complainant's mother where they had a civil conversation about the party and the abuse coming from the complainant to the defendant. The parties agreed that the defendant and Mrs Cameron agreed to try and keep their daughters apart and Mrs Cameron apologised for her daughter's behaviour. Mrs Cameron gave evidence of a further call between her and the defendant where after having been told by Mrs Cameron not to call again, the defendant called and abused her about continued contact between the daughters. Mrs Cameron gave evidence that this call was extremely abusive and caused her to lodge a formal complaint with the police against the defendant.
6. The next incident between the complainant and the defendant was on Tuesday, 26 August 2007. The complainant had been dropped off to school by her mother and had proceeded to walk across a grassed area towards the school when the defendant apparently got out of her vehicle and started to verbally abuse her. The defendant apparently used words such as "stupid cunt" and "fat arsed cow". The complainant responded by verbally abusing the defendant using similar words. The complainant then gives evidence that she resumed walking towards the school, assuming the defendant had driven off because she got back into the car. The complainant then says she

proceeded across the car park area and that is when the defendant drove straight at her slamming on the brakes when she got close, but not soon enough to prevent the car from connecting with her leg. She says the defendant then got out of her car and abused her again. There were apparently witnesses to this incident, one of them being the defendant's daughter, however none of those witnesses were called. Mrs Cameron gave evidence that while statements were given to the police by several witnesses, none of them saw the car actually contact with her daughter.

7. Immediately after the car hit her, the complainant says she went straight to the Year 10 co-coordinator's office to report the incident and she spoke to the school based constable. The police became involved and she was taken home. Mrs Cameron gave evidence of receiving a call from the school about the incident and a request to collect Jessica from the school. She gave further evidence that there was a red mark on the outside of Jessica's thigh, she couldn't remember which, when she got home.
8. After the car incident the complainant says that they were notified by the security guard at Hibiscus Shopping Centre that posters were being put up around the shopping centre with the complainant's name, phone number, address and parents' names. However it was not established who had been putting these posters up. The complainant assumed that it was the defendant putting the posters up because of the previous difficulties she had had with the defendant.
9. The complainant also alleges that she has seen the defendant a couple of times at Casuarina when she has screamed and sworn abuse at the complainant. She also alleges that while she was working at Woolworths Hibiscus Shopping Centre, there were three - four times when she has heard someone screaming abuse at her saying things like "you will pay for what you have done". On those occasions it has not been the defendant, but a

person who the complainant thinks is a friend of the defendant because she has seen them together.

10. The complainant says there was a further incident with the defendant where she verbally abused the complainant at school in the corridor of the school outside the front office.
11. Mrs Cameron gave evidence of a further phone call she received from Bill Fenner, the defendant's partner, accusing her daughters of leaving prank phone calls at their house for the past hour. She assured him that had not occurred because she, her husband and daughter Courtney were sitting down to dinner. The complainant was at a sleepover at a friend's house.
12. After Mr Fenner had hung up, Mrs Cameron then rang the complainant at her friend's house to be told that they were in the kitchen with the friend's mother and the mother assured her no one had been on the phone. It was on that same night that the complainant got an abusive phone call from Mr Fenner using foul language and threatening her. Mr Fenner and the defendant agree that the phone call was made and justify the call because they had been receiving constant prank calls from young girls, who they assumed to be the complainant and her friends or sister, and that they were at the end of their tether. The defendant gave evidence that they took note of the phone number and rang it back immediately and that is how they got onto the complainant's mobile phone. I find that the defendant's evidence regarding that is not reliable. Mr Fenner says that he assumed the prank calls to be coming from the complainant and her friends because that is who his partner and daughter told him it was. He also rang the home number of the Cameron's first and after being told by Mrs Cameron the calls were not coming from that house phone, he then rang the complainant's mobile number.
13. If the defendant had actually recorded the mobile phone number when they received the prank calls, then it would be expected that they would call that

number straight away, not check on the Cameron's home number first. The call at the Cameron's house indicates that they did not know where the calls were coming from and that they assumed that they were from the complainant. I accept Mr Fenner's evidence and find him to be honestly recounting what he had done. He accepted that he made an abusive phone call and that call was motivated by frustration. He accepts however that he assumed the callers of the prank calls to be the complainant and her friends because of the issues that his partner had with them and their interactions with his daughter.

14. In about January of 2008 the defendant's phone number was blocked from the Cameron's house phone and there have not been any further calls.
15. Another incident reported by the complainant is when she was on MSN to the defendant's daughter having a friendly conversation when the conversation just turned abusive. She realised she was talking to the defendant and responded by abusing her back. The language and the content contained in that MSN conversation was appalling from both sides (see exhibit D1). The defendant accepts that it was her having the conversation with the complainant, not her daughter. In fact she goes on to say that it was her for the whole conversation and not her daughter at first, then her as alleged by the complainant.
16. The defendant accepts that there has been at least one phone call to the Cameron's house regarding the party and accepts that she had abused the complainant in that call, although she says the complainant started swearing first. The defendant also accepts that there was a verbal exchange between her and the complainant at Casuarina Secondary College and that there was an incident relating to her car. She accepts that she was driving through the car park, however states that the complainant deliberately walked in front of her car, causing her to brake heavily. The defendant produced a photo of her car with her standing in front of it which she says shows that had her car hit

the complainant in the way she suggested, then the mark on her leg would have been lower given the bumper bar of the car only reached the defendant's knee in that photo.

17. The incident was reported to the police however the investigation was apparently not pursued with the vigour one would expect when such serious allegations had been made. Both the defendant and Mrs Cameron say that they kept contacting the police regarding the investigation, however to no avail. There is apparently a current investigation into these allegations.
18. A further incident that the complainant suspects has been instigated by the defendant is the delivery of a print out of her Bebo (a personal webpage) account, with handwritten comments pointing out the behaviour of the complainant to her parents. The complainant thinks this was done by the defendant or a friend of the defendant and the same person who put up the posters, because the photo was the same in both. The defendant denies having anything to do with this delivery or the posters and accuses a third party, a Rhonda Jacques who she says has admitted to the defendant to delivering the print out. Rhonda Jacques is apparently an acquaintance of the defendant. Mrs Cameron, in her evidence, accepts that the envelope in which they were delivered was originally addressed to Mrs Jacques.
19. In cross-examination, the complainant suggested that if it was Mrs Jacques putting up the posters, then she must have been given the photos and the printout by someone else, as she has never been invited onto the complainant's website. The complainant explained that the Bebo account is her personal website and that no-one can access it without her permission. It is clear however that if a person, for example a parent of an "invited friend", got access to a "friend's" sign on, then they would be given access to the Bebo site.
20. The complainant has now moved schools and changed her employment she says because of the constant behaviour of the defendant. The complainant

accepts that there has been no further phone calls or harassing behaviour from the defendant for a couple of months, until last week when further posters of Jessica were put up at Hibiscus and posted on the “For Sale” sign outside of their house.

21. The complainant’s evidence about abusive calls, posters and the delivery of the printout Bebo account is corroborated by her mother’s evidence.
22. The tone of the defendant’s cross-examination of the witnesses indicated a person who continues to have a heightened emotional response to the proceedings against her. She was indignant and aggressive in the giving of her evidence and continued to justify any of the actions she admitted to on the basis that the complainant was leading her daughter astray. The defendant was also showing some frustration towards Mrs Cameron in her failure to accept that her daughter was not innocent in these issues and emphasised many times that she was just trying to be a “responsible parent”.
23. The defendant continued to deny any involvement in the posters and the delivery of the print out of the Bebo account in her evidence in chief.
24. I found the defendant to be a witness who clearly was sanitising her interactions with the complainant. The MSN conversation between the two parties shows that the defendant was not averse to baiting the complainant into a war on words and not averse to using highly offensive language. It makes no logical sense for the defendant to engage with the complainant in this way, it indicates to the court that the defendant has lost her sense of reason and common sense. The juvenile behaviour of both parties in that conversation is appalling.
25. The defendant admits to some abusive calls to the Cameron household and accepts that she abused the complainant at her school. She doesn’t accept the car incident as described by the complainant, nor does she accept the other actions.

26. In relation to the car incident, the defendant accepted that her daughter was in the car at the time, but failed to call her to give evidence. It is available to me to assume that her failure to call her daughter was because her daughter's evidence would not have been favourable to her defence of her case. I cannot accept that the complainant deliberately put herself in harms way by stepping in front of the defendant's car, given that the parties had already had a slanging match. Given the seriousness of the allegation against the defendant, I cannot accept that I have enough evidence to find that the defendant deliberately drove her car at the complainant. The evidence is the uncorroborated evidence of the complainant and it is more than likely that the defendant, while still angry with the complainant, was driving with little attention to the safety issues and in her own words, in a hurry to take her son to school. The most likely scenario is that the incident was a mishap and that each party has put their own interpretation on what happened because of the intense ill feeling between them. In other words, I have no doubt that the complainant believes the defendant deliberately drove at her and no doubt that the defendant believes that the complainant deliberately stepped in front of her car, however the evidence does not support either version to the level of certainty that is required on the *Briginshaw v Briginshaw*(supra) principle.
27. On the same principle, I cannot be satisfied that the posters and the Bebo printout were the doing of the defendant. While I suspect that there may have been some collaboration between the defendant and the person who may be responsible for these actions, there is some evidence that a third party may have been the author of these actions. The envelope enclosing the printouts was originally addressed to Rhonda Jacques and when challenged on that issue, the complainant became defensive, although Mrs Cameron accepted that fact. There was some implication by the defendant that Ms Jacques had an issue with the complainant because of a fight Ms Jacques' daughter was involved in and that was not addressed by the complainant. I

therefore cannot be satisfied on the balance of probabilities that the defendant is responsible for these actions. While I cannot find that the defendant is responsible, I make the comment that I find this sort of behaviour intimidatory, aggressive and totally unacceptable.

28. I am satisfied however on the balance of probabilities that the defendant has engaged in behaviour that is unacceptable and should be discouraged by the courts. The complainant, while not at all totally blameless in her interactions with the defendant, is still a young girl, who no doubt has now had a reality check on how her behaviour can affect others and can have serious consequences for others around her. She has had to move schools and her parents have had to sell their house and move the family because of the consequences of her immature behaviour. Whether the assumptions about the authors of the prank calls made by the defendant and her husband are correct, their reactions to them all stem from the complainant originally arranging an unapproved party and engaging in slanging matches with the defendant.
29. Nevertheless, the defendant is a mature woman who claims to have her daughter's best interests at heart, however has lowered herself to the level of the complainant giving her daughter the worst possible example of behaviour. The defendant also needs to accept some responsibility for her daughter's behaviour and not blame it all on her peer group.
30. The defendant attempted to intimidate the complainant when she was in the witness box by glaring at her and also while they were sitting at the bar table. Her actions were not one showing any maturity and confirmed her level of emotion continues to run high in relation to the complainant.
31. It is my view that the phone calls and abuse only stopped because of the complainant blocking the defendant's phone numbers and moving schools and should the defendant discover the new phone numbers of the complainant or the Cameron household, she may continue with this

inappropriate behaviour. I am of the view that the complainant has the reasonable apprehension that she will continue to receive verbal abuse or be subject to intimidatory behaviour from the defendant, unless the defendant is ordered not to continue with this behaviour.

32. My order is that the defendant shall forthwith enter into a written recognisance to the court of \$1,000.00 to keep the peace and be of good behaviour towards the complainant for 12 months.

Dated this 28th day of May 2008.

Tanya Fong Lim
RELIEVING STIPENDIARY
MAGISTRATE