

CO/7814/2005

Neutral Citation Number: [2006] EWHC 195 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand
London WC2

Friday, 20th January 2006

B E F O R E:

LADY JUSTICE SMITH DBE

MR JUSTICE NEWMAN

FLINTSHIRE COUNTY COUNCIL

(CLAIMANT)

-v-

MRS ANNE REYNOLDS

(DEFENDANT)

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MR C MOSS (instructed by Messrs Damien Gaskell Flintshire Legal Services) appeared on behalf of the CLAIMANT

The DEFENDANT did not appear and was not represented

J U D G M E N T
(As approved by the Court)

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1. LADY JUSTICE SMITH: This is an appeal by the prosecutor, Flintshire County Council, by way of case stated against the decision of the Magistrates Court, sitting at Mold, to acquit the respondent, Mrs Anne Reynolds, of an offence contrary to section 112 of the Social Security Administration Act 1992. The respondent, Mrs Reynolds, has not appeared before this court and is not represented.
2. Section 112 provides:

"(1) If a person for the purpose of obtaining any benefit or other payment under the relevant social security legislation whether for himself or some other person, or for any other purpose connected with that legislation -

 - (a) Makes a statement or representation which he knows to be false or;
 - (b) Produces or furnishes or knowingly causes, or knowingly allows to be produced or furnished any document or information which he knows to be false in a material particular, he shall be guilty of an offence."
3. The information in this case charged the respondent that on 21st January 2004, she knowingly produced information which she knew to be false in a material particular for the purpose of obtaining a benefit or other payment or advantage. The allegation was that she had signed a declaration of accuracy in an application form completed for the purpose of obtaining housing benefit, in which it was stated that she was not in employment when in fact she was.
4. The case stated says that the Magistrates found the following facts:

"(a) The respondent and her husband signed the claim form dated 21st January 2004, the respondent's husband signed the form as the person claiming and the respondent countersigned the form as partner's signature.

 - (b) The respondent was working when she signed the claim form on 21st January 2004 at Tesco's Store, Broughton.
 - (c) Respondent has been employed by Tesco's for 5 years.
 - (d) The respondent made no financial gain.
 - (e) The respondent is of previous good character."

The case stated contains some summary of the evidence given, from which it appears that the respondent said that her husband had completed all the particulars given in the form and she had signed it without reading it; she had not even read the declaration below which she signed. She said that she and her husband had been told by someone

from a benefit office that, if she worked for less than 16-hours a week, her entitlement to benefit would not be affected.

5. The respondent's husband also gave evidence to that effect. He said that he had completed the application form. He had said that the respondent was not working because he believed it was not necessary to declare work of less than 16 hours a week; his wife worked for only 13 hours a week. He had asked his wife to sign the form and she had done so. He had not seen her reading either the form or the declaration.
6. The case stated does not recite the words of the declaration or describe its appearance. However, we have seen it and would describe it as follows. It appears on the 25th page of the form. There is a box headed "Part 17 Declaration". Below that, in bold type of, I would estimate, font 10 or 11, it says:

"Even if someone else has filled in this form for you, you must sign this declaration if you can.

If you have a partner, it would be helpful if they sign below to confirm all the details about them are correct. But they do not have to sign.

Please read this declaration carefully before you sign and date it.

I understand the following:..."

There are then five bullet points, against which the text is in ordinary type of the same size of font, which again I estimate at 10 or 11. The bullet points are as follows:

"· If I give information that is incorrect or incomplete, you may take action against me. This may include court action.

· You will use the information I have provided to process my claim for Housing Benefit or Council Tax Benefit or both. You may check some of the information with other sources as allowed by the law.

· You may use any information I have provided in connection with this and any other claim for social security benefit that I have made or may make. You may give some information to other organisations, such as government departments, local authorities and private sector companies such as banks and organisations that may lend me money if the law allows this."

· I **know** I must let the council know about any change in my circumstances which might affect my claim.

· I **declare** the information I have given on this form is correct and complete."

Below that (in bold):

"Signature of person claiming".

There is a box to the right for the signature to appear. Below that, there is a box for the date. Below that are the words a 'Partner's signature' and there is a box to the right for the signature. Below that, there is a space for the date. There are then some instructions about what should happen if someone other than the claimant has completed the form.

7. On this form, Mr Reynolds, the respondent's husband, has signed as the person claiming the benefit. He has done that despite the fact that, on the front of the form, the person addressed was the respondent, Mrs Reynolds. But, as I have indicated, Mrs Reynolds has signed in the capacity of partner.

8. The case stated sets out the contentions advanced by the parties as follows:

"The prosecution contended that, in signing the form, Mrs Reynolds had knowingly made a false representation to obtain benefit by failing to declare that she was working at Tesco's. For the respondent, it was contended that she had not made a false representation for the purpose of obtaining benefit as she did not complete the form herself, and when she signed it she was unaware of its contents."

9. The case stated records that the magistrates were not referred to any case law. They were told the word "knowingly" was not defined under the Act. They were given a good character direction by their legal advisor. A handwritten note included in our papers, which appears to have been made by the legal advisor, suggests that the bench was told that the prosecution did not have to prove that the respondent had acted dishonestly. That is right. The offence under section 112 does not require the prosecution to prove dishonesty and, in that respect, is to be contrasted with the offence under section 111 which does have that requirement.

10. The case stated then set out the magistrates's conclusions in the following way:

"We were of the opinion that the appellant failed to prove beyond reasonable doubt that the respondent knowingly made false representations to obtain benefit. Our decision had been made on the following findings -

- (a) As a result of being married for 22 years, it has become Mr Reynolds role in the household to deal with the form filling and when the respondent was asked to sign the form she did so without question and on this basis we find she did not knowingly provide false information.
- (b) We find the respondent to be a person of good character who we felt gave a truthful account and we consider that her actions on this occasion did not amount to a criminal offence under the Social Security Administration Act. Although in giving our reasons we said the respondent was reckless in signing the form - we would refer to the dictionary definition of the word reckless which includes

careless, negligent, irresponsible and we are of the firm view that this is how we perceive the respondent."

The case stated then poses the question for this court in the following way:

"Were we wrong to acquit the respondent having found on the evidence her actions were reckless i.e. careless, negligent, irresponsible"?

11. Before this court, Mr Moss for the appellant submitted that the magistrates had been wrong. The respondent had signed the declaration asserting that the information she had given on the form was correct and complete; in fact the information was not correct because it said she was not working when she was, and she knew that she was. By signing the form, she took upon herself the production of the information jointly with her husband, even though the form had been completed by him. The actus reus of the offence was therefore complete.
12. As far as the mens rea was concerned, the prosecution had to prove that the respondent knew what was in the form and that it was false. She had, he submitted, signed the form to say that the contents were complete and accurate; therefore, she must be taken to have known what was in the form. The mens rea was made out, and she was therefore guilty of producing false information knowingly.
13. Mr Moss submitted that there was no authority directly in the point on the meaning of "knowingly" in the context of this statute or other social security legislation. There is authority on the meaning of the word "knowingly" in the context of the importation of drugs and the sale of alcoholic drinks to persons under age, and indeed on other statutory topics. None of them provide any assistance in this case.
14. Mr Moss invited our attention to the report of the case of Taylor's Central Garages (Exeter) Limited v Roper Local Government Review Reports volume 115, page 445. The facts of that case are not germane to the present appeal, but Devlin J, as he then was, made some helpful general observations about the meaning of the word "knowingly" and about how knowledge could be established in a criminal case. At page 449, he said:

"It seems to me to be very important in cases of this sort that lay justices, who are not necessarily very skilled in the handling of evidence and in the drawing of distinctions which the law requires to be drawn, should have explained to them by the prosecution, where the burden is on the prosecution, exactly what sort of knowledge the prosecution desires to be found. There are, I think, three degrees of knowledge which it may be relevant to consider in cases of this sort. The first is actual knowledge, and that the justices may infer from the nature of the act that was done, for no man can prove the state of another man's mind, and they may find it, of course, even if the defendant gives evidence to the contrary. They may say: 'We do not believe him. We think that was his state of mind.' They may feel that the evidence falls short of that, and, if they do, they have then to consider what might be described as knowledge of the second degree. They have then to consider whether what the defendant

was doing was, as it has been called, shutting his eyes to an obvious means of knowledge. Various expressions have been used to describe that state of mind. I do not think it is necessary to describe it further, certainly not in cases of this type, than by the phrase that was used by Lord Hewart CJ, in a case under this section, *Evans v Dell* (1). What the Lord Chief Justice said was: 'The respondent deliberately refrained from making inquiries, the results of which he might not care to have.'

"The third sort of knowledge is what is generally known in law as constructive knowledge. It is what is encompassed by the words 'ought to have known' in the phrase 'knew or ought to have known.' It does not mean actual knowledge at all, it means that the defendant had in effect the means of knowledge. When, therefore, the case of the prosecution is that the defendant failed to make what they think were reasonable inquiries it is, I think, incumbent on the prosecutor to make it quite plain what they are alleging. There is a vast distinction between a state of mind which consists of deliberately refraining from making inquiries, the result of which the person does not care to have, and a state of mind which is merely neglecting to make such inquiries as a reasonable and prudent person would make. If that distinction is kept well in mind, I think justices will have less difficulty in determining what is the true position. The case of shutting the eyes is actual knowledge in the eyes of the law; the case of merely neglecting to make inquiries is not actual knowledge at all, but comes within the legal conception of constructive knowledge, which is not a conception which, generally speaking, has any place in the criminal law."

15. When asked how the prosecution had put the case to the justices on this occasion, Mr Moss said that he had relied on the respondent's actual knowledge of the content of the form and its falsity. The prosecutor's position was that Mrs Reynolds was herself the benefit claimant; she had signed the form and she must have known what was in it and that the information, that she was not employed, was false. Mr Moss had to accept that the justices had found against him on actual knowledge.
16. Mr Moss recalled that he had also put the case on the basis of actual knowledge founded on Mrs Reynolds having turned a blind eye to the contents of the form. The notes of evidence we have do not specifically reflect that but, in any event, it is apparent that the justices found as a fact that Mrs Reynolds had only constructive knowledge of the contents of the form. It is clear that the basis for their decision was that Mrs Reynolds had certainly had the opportunity to read the form before she signed it; she should have read it and she was careless and irresponsible to sign without reading it. If she had read it, she would have known that some of the information was untrue, but she did not have actual knowledge of its content.
17. In my judgment, the justices were entitled to make that finding of fact, notwithstanding that Mrs Reynolds had signed the form with a declaration that the contents were complete and accurate. They were entitled to hold that she had not, in fact, been aware of the contents. In my view, they were entitled on the evidence to make that finding

and to conclude that the offence was not made out. In effect, they were saying that she had constructive knowledge of the contents of the form but not actual knowledge. I would respectfully agree with the observation of Devlin J that constructive knowledge is not enough to demonstrate that something has been done knowingly in the context of a criminal statute.

18. Mr Moss submitted that it is an important principle of public policy that those claiming benefit should be under a strict duty to provide correct and truthful information. The appellant county council is heavily dependent upon the truth and accuracy of information provided in forms such as these, when making decisions as to whether to dispense public money. If the justices's decision were allowed to stand, it would provide future dishonest claimants with the opportunity to say that, although they had signed the declaration, they had been reckless or careless as to the contents of the form.
19. I, for my part, have much sympathy with that view. It is important that those responsible for the administration of benefits should be able to enforce the requirements of truthfulness and accuracy of claims by resort to the criminal law. Parliament could have created an offence of strict liability, whereby the provision of any false information in a claim form is automatically an offence without mens rea. However, it has not done so. It has said that knowledge must be proved. It was not proved in this case and, in my view, this appeal must be dismissed.
20. However, I wish to add a few words as a rider to that decision. It seems to me that the problem that arose in this case was at least, in part, of the appellant's own making. It appears that, for some years, the council had been sending application forms for housing benefit addressed to Mrs Reynolds. Each time, it was Mr Reynolds who signed the form in the capacity of claimant. In 2004, the appellants again addressed the claim form to Mrs Reynolds, and again Mr Reynolds signed it as claimant; Mrs Reynolds signed as his partner.
21. When it was discovered that some of the information in the form was false, both Mr and Mrs Reynolds were interviewed. They both said that Mr Reynolds had completed the form as claimant and that they both regarded him as being the claimant. From the interview, it was clear that Mr and Mrs Reynolds were saying that he had completed the form and she had not known what was in it.
22. In the course of argument on this appeal, we asked Mr Moss why the appellants had not prosecuted Mr Reynolds. He must have known what was in the form and must have known that it was false. The answer was that the appellants regarded Mrs Reynolds as the claimant and the person who had provided the information. Accordingly, they had prosecuted her.
23. Mr Justice Newman observed that if the council was uncertain which of a married couple, or a pair of partners, they ought to prosecute, the answer could be to prosecute both of them. As I have said, it does seem to me that the difficulties experienced in this case were, to a large extent, of the appellant's own making. If it is their view that the claimant should be prosecuted, which seems sensible, they knew that in this case it was Mr Reynolds who was holding himself out as claimant and Mrs Reynolds as partner. He was the one to prosecute, yet the appellants had chosen to prosecute his wife.

24. I would add also that, in my view, the drafting of the declaration on this form could be greatly improved. The position of a partner is less clear than it should be. The signature of the partner is not required; it is only optional. There is no requirement that the partner should assert that he or she has read the form. The declaration is that the contents are accurate and complete, which implies that the signatory, as partner, is aware of the contents. But the terms of the declaration are not prominent, nor do they obviously relate to the partner's signature as opposed to that of the claimant. The warning that a failure to provide accurate information might result in legal action is not as clear, or as prominent, as it could be.
25. I make these observations not in a spirit of criticism but because I have sympathy with the view that there is indeed a strong public interest in ensuring that benefit applications are true and accurate. But that is not to say that an Act of Parliament that requires the proof of mens rea of knowledge can be construed so as to dispense with that requirement. As I have said, I would dismiss this appeal.
26. MR JUSTICE NEWMAN: I agree. I would dismiss this appeal for the reasons which have been given and I would also like to associate myself with my Lady's comments as to the way in which these matters could be dealt with in the future.
27. LADY JUSTICE SMITH: Thank you very much Mr Moss.