Sheriff dom of Tayside Central and Fif e at Dundee

Judgment
by Sheriff George Alexander Way
in Summary Application

AF
[REDACTED] Pursuer

against

SCOTTISH SOCIAL SERVICES COUNCIL
Compass House Dundee 0014NY - Defenders

Dundee 14th September 2017

The Sheriff, having resumed consideration of the cause, finds that the defenders decision should not be reversed, that no other order should be made and therefore refuses the application; Finds each party liable for their own expenses of the cause.

Sheriff

NOTE

1. This was an appeal by way of Summary Application against a decision of the defenders to remove the pursuer's name from the Register of Social Service Workers. The pursuer appeared as party-litigant whilst the defenders were represented by Mr Campbell Solicitor. The parties had entered into a Joint Minute of Admissions. This agreed, at paragraph 7 that a statement by [REDACTED] sent by email was a true and accurate reflection of her evidence before the defender's Conduct Sub-Committee. [REDACTED] didnot appear as a witness but I had regard to her evidence set out in the email statement. The defenders relied upon the Joint Minute and the productions and did not lead any oral

evidence. The pursuer took the oath and gave evidence. This was a mixture of factual evidence and submissions in support of his appeal. This was perfectly understandable as he is not a lawyer and the defender's agent was content to deal with the pursuer's testimony on that basis.

2. The defenders position can be stated quite briefly. The pursuer was a registered social worker. He had been found to have behaved in a manner that was deemed to be misconduct in that he had abused alcohol which had impacted upon his colleague relationships and impaired his professional judgement. This had culminated in a serious incident where he had become intoxicated whilst on a staff night out, and was arrested for a racially aggravated incident. The pursuer, in his evidence, admitted that he called a Police Officer a "sassanach c**t". He also admitted that his alcohol abuse had become a serious problem. He accepted that his behaviour had become inappropriate in general and that the racially aggravated offence was highly inappropriate, particularly for a Social Worker. He did not challenge the procedures; he did not suggest that the Sub-Committee had not heard his own evidence or that of this supporting witness. Indeed the Joint Minute agreed that the only supporting evidence that the defender laid before me was from a witness who had been heard by the Sub-Committee. The pursuers principal argument was that the Sub-Committee had failed to give due weight to the level of abuse he had endured from colleagues that had resulted in his descent into alcohol abuse. He has suffered persisted homophobic references and insults. He had been called a "fucking poofy bastard" and a senior manager had made reference to how dirty it was to have oral sex with other men. He had raised this abuse with superiors and sought the help of his trade union but to no avail. Despite this abuse going unaddressed by those in authority, once he accepted that his alcohol use was problematic he made efforts to amend his life and conquer his dependence on alcohol. He had, as was made clear in the supporting witness

statement, joined Alcoholics Anonymous and taken other remedial action. They also failed to take account of the fact that his behaviour had not been client facing: there was no criticism of his actual case handling or complaint from any social work client. He also made a subsidiary submission, based purely upon anecdotal account, that other social workers who had been guilty of crimes such as assault, inferring actual physical violence not simply verbal, had been dealt with more leniently or at least had not been removed from the Register.

3. The defenders position was that the disciplinary procedures were followed to the letter and that the pursuer was heard and his supporting evidence considered. The Sub-committee attached appropriate weight to the pursuer's evidence and the submissions made. It was accepted that the defenders inappropriate behaviour had not manifested itself with his clients and that the racially aggravated offence was his only criminal conviction. The Sub-Committee was not evaluating the pursuers work record but his fitness to remain on the Register of Social Workers. The pursuer admitted the factual allegations made against him and the Sub-Committee placed due and appropriate weight on all the factors laid before them on his behalf. The reasons for the Sub-Committees decision were properly set out and communicated to the pursuer. The conclusion reached was one which, in all the circumstances, the Sub-Committee was entitled to reach. The pursuers appeal, properly construed, sought to invite the court to interfere with the decision, not because it was wrong in law, but because the penalty selected was harsh: this is beyond the power of the court, unless the penalty was so harsh no reasonable tribunal could have imposed it. The decision of a specialist tribunal must be respected and it was not for the court to overturn such a decision because it disagreed with the outcome if it was one that fell within the proper ambit and scope of the tribunals powers.

4. I was referred to a number of previous decisions in cases of this kind. There is a well-established body of jurisprudence relating to the proper approach to appeals from regulatory and disciplinary bodies. The general principles can be summarised as follows. In respect of a decision of the present kind, the determination of a specialist tribunal is entitled to respect. The court can interfere if it is clear that there is a serious flaw in the process or the reasoning, for example where a material factor has not been considered. Failing such a flaw, a decision should stand unless the court can say that it is plainly wrong, or, as it is sometimes put, "manifestly inappropriate". This is because the tribunal is experienced in the particular area, and has had the benefit of seeing and hearing the witnesses. It is in a better position than the court to determine whether, for example, a social worker's fitness to practise is impaired by reason of misconduct, including whether the public interest requires such a finding. The same would apply in the context of a review of a penalty. If misconduct on the part of a social worker (or some other failing) is established, a committee then has to consider the appropriate penalty. Important considerations in that regard are the maintenance of proper professional standards, and retaining the confidence of the public in the profession and the regulatory process. The weight of these authorities is unchallengeable and I am bound to apply it.

5. I have every sympathy for the pursuer, who struck me as someone who had reflected upon his failings and was determined to improve his lot once more, but I regret that his appeal was ill-founded from it's inception. The pursuer was, effectively, inviting me to review the decision of the Sub-Committee because the outcome was too harsh. He could not produce any evidence that the Sub-Committee had not weighed all of the evidence carefully or had not given due consideration to all that he had laid before them other than to infer this from his submission that the penalty was too severe. In discussions he accepted that it was highly inappropriate for a social worker to behave as he did. I put to

him that it was only his analysis that another person who was guilty of actual violence should not receive a lesser penalty than he did and that others could disagree; he accepted that. I put to him that perhaps a violent outburst (and no context or background for such alleged behaviour was available to the court) could say less about someone's fitness to remain on the Register than alcohol dependency leading to a serious insult to a police officer going about his lawful duties. The point was that such decisions are for the appropriate professional body to assess.

6. I am unable, on balance, to hold that there was a serious flaw in the process or the reasoning, of the Sub -Committee: for example where a material factor has not been considered. Equally I cannot say that the outcome was plainly wrong, or manifestly inappropriate. The penalty was severe, indeed there cannot be a more severe outcome than removal from the Register, but as the cases cited to me make abundantly clear I cannot, as a matter of law, interfere with their discretion to protection the integrity of their profession, simply because I might have selected a lesser penalty. I can find no error in what they did and I am bound to respect their specialist knowledge and professional opinions enshrined in the statutory disciplinary scheme approved by Parliament.

7. For all the reasons I have set out, refuse the appeal and confirm the decision of the defenders. This was an honest, if misdirected, appeal and I direct that each side should **bear their own costs.**

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