PTA Template 269F1 - OCT16 - Re-open

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **CA-2015-003927-A**

HER MAJESTY'S COURT OF APPEAL CIVIL DIVISION
(GS: 22.02.23)
[SEAL]
03 Sept 2026
CA-2015-003937-A

BRAND & ANR –v– BERKI

ORDER made by the Rt. Hon. Lady Justice Falk

On consideration of an application to reopen a decision of Arden LJ dated 8 March 2017 refusing permission to appeal against an order of Jay J dated 28 October 2015, pursuant to CPR 52.30

Decision:

Application to reopen refused.

Reasons

1. This is an application under CPR 52.30 to reopen a final determination made by Arden LJ on 8 March 2017 (the "2017 Decision"). The 2017 Decision, which was made at an oral hearing, was a refusal of permission to appeal against a decision made by Jay J on 28 October 2015. Permission to appeal had initially been refused by Arden LJ on the papers by an order sealed on 31 August 2016, so the 2017 Decision would have been made following an oral renewal of that application.

   Background

2. In very brief outline, the claimants in the proceedings were Russell Brand and Jemima Goldsmith. The dispute arose out of a visit made by the Appellant and defendant, Szilvia Berki, to Ms Goldsmith's home on 7 June 2014. The visit had been arranged by Ms Goldsmith for what Ms Berki understood to be the purpose of providing a professional massage for Mr Brand. There is an unresolved dispute as to what happened, and Ms Berki left the property before any services were provided. Ms Berki's case was and remains that she was the victim of wrongful conduct, including assault.

3. Subsequently, Ms Berki took action which the claimants considered amounted to harassment. It included approaching media outlets and other persons as well as the police. The claimants brought proceedings against Ms Berki. They obtained an urgent anti-harassment injunction from Lewis J on 12 August 2014 which was continued by Carr J on 11 September 2014. At what was to be a pre-trial review on 28 October 2015, Jay J granted the claimants' application for summary judgment and a final injunction. It was against that decision that Ms Berki sought to appeal to this court. At that stage Ms Berki was acting in person and had received no legal assistance in the proceedings other than in drafting her defence. Ms Berki now has the benefit of pro bono assistance through Advocate.

   The papers

4. There have been some difficulties with the papers relevant to the application, but I am satisfied that I have been able to access and review the material documents, with the exception of the original grounds of appeal and skeleton argument relied on before Arden LJ.

5. In brief, the original grounds of appeal and skeleton argument relied on before Arden LJ are no longer available from court records. The Appellant, Ms Berki, has also been unable to file a copy of the bundle that she originally filed with her appeal. Instead, Ms Berki has filed fresh, professionally drafted, grounds of appeal and a detailed skeleton argument (headed "Representations on behalf of Ms Berki"), together with a witness statement dated 20 July 2026, described as her seventh witness statement.

6. The skeleton argument refers to a supplementary bundle. It became clear on consideration of the papers that this bundle takes the form of exhibits to the witness statement. The exhibits were filed as two separate pdfs, which are without tabs or numbering but total 202 pages. The exhibits contain, among other material, the ex tempore judgment of Jay J (the "Judgment"), his order dated 28 October 2015 granting both summary judgment and the final injunction (that is, the order the subject of the appeal), what appears to be an incomplete transcript of the hearing before Jay J (apparently missing a short session in the afternoon) and Arden LJ's initial refusal of permission to appeal on the papers. Separately, I have also seen and read Arden LJ's decision at the oral renewal hearing and (for more background) Carr J's judgment which is reported at [2014] EWHC 2979 (QB), to which Jay J also referred in his judgment. I do not have available the final order of Arden LJ, or (as I have said) the original grounds of appeal and skeleton argument.

   The jurisdiction under CPR 52.30

7. The jurisdiction under CPR 52.30 is confined to exceptional cases, where the integrity of the earlier process has been critically undermined. It requires a powerful probability that a significant injustice has occurred: see generally *Municipio de Mariana v BHP* [2021] EWCA Civ 1156, [2022] 1 WLR 919.

8. In the context of a refusal of permission to appeal, it is necessary to consider whether the judge grappled with the issues raised, in the sense of addressing the essential points raised by the grounds. If the judge either failed to do so or did do so but made a mistake which corrupted the whole process (such as wholly failing to understand a clearly articulated point) and there is a powerful probability that there would otherwise have been a different result, then the requirements of CPR 52.30 may be met (see also *R (Wingfield) v Canterbury City Council & Anr* [2020] EWCA Civ 1588 at [66] and *El Diwany v SRA* [2023] EWCA Civ 888 at [40]).

9. There is no right to an oral hearing of an application under CPR 52.30 unless, "exceptionally", the judge so directs (CPR 52.30(5)). Although an oral hearing has been requested in this case I do not consider it necessary in order to dispose of the application fairly.

10. There is also no formal time limit for an application under CPR 52.30. Over 9 years have elapsed since the 2017 Decision, which under any normal circumstances would be regarded as an inordinate delay. Ms Berki relies on the fresh evidence referred to below, which has only emerged relatively recently, combined with delays in obtaining case papers and advice through Advocate. For the reasons that follow I am not persuaded that the fresh evidence assists Ms Berki, but I have nonetheless put the delay to one side in order to address the merits of the application.

The grounds of appeal

11. The (now well-settled) test under CPR 52.30 in relation to permission to appeal decisions focuses on decision made by the judge, here Arden LJ, and whether she addressed the key points raised by the grounds of appeal. This exercise is hampered here by the absence of the original grounds, but I have carefully considered Ms Berki's revised grounds to determine whether reopening the appeal is necessary to avoid real injustice, and whether the circumstances are exceptional such as to make it appropriate to do so (CPR 52.30(1)). In taking that approach I have effectively given Ms Berki the benefit of the doubt, since strictly the 2017 Decision should be assessed by reference to the points put before Arden LJ.

12. The revised grounds of appeal provided in support of the re-opening application are, in summary 1) reliance on fresh evidence related to other allegations against Mr Brand (who now faces a criminal trial in respect of serious allegations made by six other women); 2) denial of procedural fairness in the manner in which the hearing before Jay J was conducted; 3) application of the wrong test for summary judgment and failure to consider whether there was a real prospect of succeeding in the statutory defence under section 1(3) of the Protection from Harassment Act 1977 (the "1977 Act"), or another compelling reason to proceed to trial; and 4) overly broad scope of the injunction.

Discussion

13. None of the arguments raised meets the high threshold needed to reopen the 2017 Decision. There is no suggestion that Arden LJ did not grapple with the issues before her. And I do not consider that any of the arguments now raised indicate a corruption of process or a powerful probability of a different result being arrived at.

14. As an initial, general, point, the skeleton argument places some reliance on comments made by Arden LJ in her initial decision refusing permission on the papers. While I have read that decision carefully, it is important to emphasise that it is not that decision but the later decision following the oral hearing (the 2017 Decision) that is the relevant decision. To the extent that Arden LJ aired concerns in her initial written decision they must be taken to have been addressed to her satisfaction when she made the 2017 Decision.

15. Turning to the individual grounds, the principal difficulty with Ground 1 is that it does not properly engage with the basis on which Jay J granted summary judgment. Ground 1 seeks to rely on fresh evidence to support Ms Berki's version of what happened when she was at Ms Goldsmith's home. But Jay J did not grant summary judgment having resolved that issue against her: see paras 42 and 44 of the Judgment. Rather, he decided that, objectively, what happened afterwards amounted to a clear case of harassment and that Ms Berki had no real prospect of establishing the statutory defence she had relied upon under section 1(3)(c) of the 1977 Act, namely that pursuit of the course of conduct was reasonable in the circumstances. This was recognised and addressed by Arden LJ, see in particular paras 6-8, 13 and 17 of the 2017 Decision. Arden LJ also considered section 1(3)(a) of the 1977 Act, even though it was not pleaded: para 14.

16. A further point to make under ground 1 is that it cannot be the case that subsequent events can be sufficient to justify the unravelling of an earlier final decision. For example, the fact that a decision is subsequently shown to be based on an error of law (typically because of a later decision in another case)

would not be sufficient to allow a final decision to be reopened. The same would be true of fresh evidence.

17. I have carefully considered the points raised under ground 2, including by reading the available transcript of the hearing. While some of Jay J's comments could have been put in more muted terms, I do not agree with Counsel's criticisms as to unfairness. It is clear to me that Ms Berki was properly heard, and had a full opportunity to put the points she wished to make. There was clearly no difficulty in her understanding or in expressing herself fully, in English. Her dyslexia – which was the disability that Ms Berki primarily focused on before Jay J – was aired during the hearing in detail. Arden LJ also considered a related point, because the 2017 Decision referred to a complaint about lack of reasonable adjustments for disabilities but rejected it on the basis that Ms Berki was unable to point to anything that she had wanted to say to the judge but had been unable to (para 9). The fact that Ms Berki was forced through lack of funds to act as a litigant in person did not justify an adjournment, and it was not for the court to conclude of its own volition that Ms Berki was not in a position to continue with the hearing, in circumstances where she was making detailed, understandable, submissions.

18. As to ground 3, this was considered by Arden LJ. Jay J could have expressed himself more clearly in his ex tempore judgment but it is sufficiently clear that he concluded, based on the undisputed documentary evidence, that the actions complained of following the visit to Ms Goldsmith's home clearly amounted to harassment and that there was no real prospect of the defence under section 1(3)(c) of the 1977 Act succeeding. He referred to the test of real prospect of success in correct terms at para 40 and (twice) at 45; it is not material that he also used the words "highly unlikely" later in para 45. It is also incorrect that he failed to consider the defence under section 1(3)(c), as the skeleton argument appears to suggest. It is true that he did not deal expressly with the alternative to real prospect of success of a compelling reason, but there is no indication that any was suggested, whether to Jay J or Arden LJ. None is suggested now other than the points that are addressed under ground 4, below.

19. Ground 4 focuses on the breadth of the order, which on its face appears to prohibit – among other things – further communication to the police, communication with other claimants in relation to civil claims, and disclosures to treating physicians or therapists (the named exceptions to this last point no longer treat Ms Berki).

20. While I quite see the concerns about the breadth of the order, the proper way to deal with those concerns would be to apply to the High Court to amend the scope of the injunction based on changed circumstances. Indeed, the skeleton argument states that an application has been made which has not been determined. It is not a matter for this court. Arden LJ made this point in relation to the police at para 11 of the 2017 Decision. There is nothing here that arguably engages CPR 52.30, not least because there is an alternative remedy. If, as the skeleton argument indicates, that alternative is not regarded as acceptable then that is because Ms Berki in fact wants to be released from the order entirely rather than being confined to exceptions to the order which would meet the specific complaints raised under ground 4.

Note: Where the application is refused the decision of the judge is final and the application cannot be renewed to an oral hearing - see rule 52.30(7) and *Taylor v Lawrence [2002] EWCA Civ 90*

Signed: BY THE COURT
Date: 03 September 2026

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