IN THE HIGH COURT OF JUSTICE **KA-2024-000059**
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

On appeal from the Order of Master Davison sealed on 14 March 2024 (KB-2023-002102)
Before the Honourable Mrs Justice Steyn DBE

BETWEEN:

RICHARD D. HALL

Appellant

-and-

(1) MARTIN HIBBERT
(2) EVE HIBBERT (by her mother and litigation friend Sarah Gillbard)

KA-2024-000059

Respondents

ORDER

UPON the judgment of Master Davison handed down on 8 February 2024 with neutral citation number [2024] EWHC 227 (KB) and Order dated 13 March 2024, sealed on 14 March 2024 ('Master Davison's Order')

AND UPON the Appellant's application for permission to appeal Master Davison's Order and for an extension of time to file his appellant's notice

AND UPON the Court directing that the case should not be automatically referred for mediation

IT IS ORDERED THAT:

1. The Appellant's application for permission to appeal is refused.

2. The Appellant may, within 7 days of receipt of this Order, apply for a hearing at which he may renew his application for permission to appeal. Such application may be made by post to the High Court Appeal Centre, Royal Courts of Justice, Strand, London WC2A 2LL quoting the above appeals reference number.

REASONS :

1. The Applicant has put forward 11 grounds of appeal (numbered 1-12: there is no ground 3), but they all come down to the allegations that the Master failed to address or to address sufficiently the Applicant's evidence, failed to give adequate or sufficient reasons, erred in applying s.11(2) of the Civil Evidence Act 1968 ('the CEA'), and that the grant of summary judgment on the identified issues has deprived the Applicant of a fair trial by preventing him bringing evidence and explaining his full case at trial.

2. In my judgment, none of the grounds of appeal have a real prospect of success and there is no other compelling reason for the appeal to be heard (CPR 52.6(1)).

3. Master Davison gave summary judgment on the following issues, which he found proved:

   3.1. "On 22 May 2017 22 innocent people were murdered in a bomb explosion carried out by a terrorist at the Manchester Arena at the conclusion of a concert performed by Ariana Grande";

   3.2. "The claimants were present at the Manchester Arena at the time of the bombing";

3.3. “They were severely injured rendering Martin Hibbert paralysed from the waist down and Eve Hibbert brain damaged”; and

3.4. “The cause of these injuries was the explosion of the bomb.”

4. There is no real prospect of the appeal court concluding that Master Davison erred in his approach to s.11 of the CEA. Hashem Abedi, the surviving brother of Salman Abedi, was convicted of the murder of 22 people on 22 May 2017, by the use of an improvised explosive device detonated by Salman Abedi, conspiracy to cause an explosion likely to endanger life and attempted murder of (among others) the Respondents. The constituent elements of those offences have been proved to the satisfaction of a jury, to the criminal standard. That encompasses at least issues 1 and 2, as the Respondents’ presence at the time of bombing would have been essential to the conviction of attempted murder.

5. In those circumstances, the Master correctly held that the burden to disprove those matters (on the balance of probabilities) shifted to the Applicant. The Master also correctly directed himself as to the test to be applied on a summary judgment application, in accordance with CPR 24.3. He recognised that the question was whether the Applicant had no real prospect of succeeding on the issues, having regard not only to the evidence that he had put forward in defence of the summary judgment application, but also evidence that could reasonably be expected to be available at trial.

6. With respect to issue 1, the Applicant’s evidence and his submissions essentially put forward speculation that there was – as he put it in his book on which he relies – a “*possibility that the event was a carefully staged managed exercise involving scores of enlisted participants*” (emphasis added), in which no one was killed or injured. The Master’s conclusion that this proposition (even if genuinely believed by the Applicant) is “*absurd and fantastical*” was not arguably wrong, and the appeal has no real prospect of success. Although the Master did not address the detail of the Applicant’s evidence in order to reach this conclusion on issue 1, it is plain he had carefully considered it, both from his judgment and the transcript of hearing. I have also done so, and it is clear that this evidence

would not come anywhere close to discharging the burden on the Applicant under s.11(2)(a) of the CEA.

7. As regards issues 2, 3 and 4, the Applicant's evidence asserts a lack of concrete evidence that the Respondents were at the Manchester Arena on 22 May 2017, speculates that they might not have attended the concert, and (while accepting their injuries) hypothesises that those injuries might have been suffered on an earlier date. He does not have any *positive* evidence that they were not there, or that their injuries were *not* suffered at the Manchester Arena.

8. Against this, in addition to the fact of the conviction of Hashem Abedi for their attempted murder, the First Respondent has given evidence confirming not only each of the facts identified in 3.2, 3.3 and 3.4 above, but also that there are photographs contained in his 'Sequence of Events' put together by Greater Manchester Police for the Inquiry that show them entering the City Room at 20.03 and re-entering the City Room against at 22.30.53 after the concert, just before the explosion. The First Respondent was shown those photographs by Greater Manchester Police but not given copies. He has also provided the invoice for their tickets to the concert.

9. In addition, Mr Terry Wilcox, a solicitor of Hudgell Solicitors, who was instructed by the families of two of the deceased in connection with the inquests into their deaths has explained that images of a distressing nature were not put in the public domain by the inquiry "to respect the privacy and dignity of the victims and those bereaved by their deaths, as well as to protect the public more generally from the distressing images". Mr Wilcox confirmed in his evidence that he had personally viewed the sequence of events for both Respondents. Having done so, he personally confirmed that they were both present at the Manchester Area on 22 May 2017, and that they were viewed pre and post-detonation. He explained that the Second Respondent was seen being covered on several occasions by different materials including a poster and a t-shirt. His evidence indicates that she was initially covered by an employee of the medical company of the owners of the Arena, who apparently believed she was dead or that her chances of survival were minimal. The Applicant questions the absence of direct photographic evidence of the Respondents at Manchester Arena, but the reasons why

neither the police nor the inquiry permitted that evidence to be placed in the public domain are readily understandable.

10. The Respondents' application for summary judgment was also supported by a lengthy medical report from the First Respondent's treating orthopaedic surgeon, Mr Soni, a shorter report in respect of the Second Respondent, and a statement from the Second Respondent's mother. This is not a case in which the detail of the medical evidence is required to be established: there is no personal injury claim.

11. The Applicant has no real prospect of persuading the appeal court that Master Davison was wrong to conclude that he had not raised anything other than a fanciful case that the First Respondent, and the Second Respondent's mother, were lying about the circumstances in which the First Respondent and their daughter had suffered their (admitted) injuries.

12. Giving summary judgment on the identified issues was not unfair, and the Master made no error in concluding that it accorded with the overriding objective of dealing with cases justly and at proportionate cost, bearing in mind that it was likely to reduce the trial time estimate from 10 days to 4 days. The Applicant had fair notice of the hearing, an opportunity to adduce evidence in response, which he took by adducing a lengthy statement and exhibits, and a fair opportunity to make submissions in writing and orally. It is plain that he was given as much time as he needed to make his oral submissions. The principles applicable in determining a summary judgment application, which the Master applied, take into account that if the matter were to go to trial there would be more evidence. It is only when, as here, the answer is nonetheless so clear that the Applicant has no real prospect of success, even allowing for further evidence, that the test is met.

13. In my judgment, there is no real prospect of the appeal court concluding that Master Davison's reasons were inadequate, or that his conclusions were wrong.

14. As I have refused permission on the merits, it is unnecessary to determine the application for an extension of time.

Dated this 15th day of April 2024