Domestic Violence and Homelessness

The Supreme Court has recently redefined domestic violence for the purpose of homelessness applications in the decision of ***Yemshaw v Hounslow LBC*** [2011] UKSC 3, overturning the decisions of the Court of Appeal in both ***Yemshaw*** [2009] EWCA Civ 1543 and ***Danesh v Kensington & Chelsea RLBC*** [2006] EWCA Civ 1404, which had interpreted the term restrictively to include only physical violence.

The brief facts of Mrs Yemshaw's case were that she was married with two children aged 6 years and 8 months. In August 2008 Mrs Yemshaw left the matrimonial home due to the treatment that she had received from her husband. This treatment did not consist of physical violence or threats of the same, but included: fear that he would hit her if she confronted him about seeing another woman and/or his hatred of her, his shouting at her in front of the children causing her to retreat to the bedroom, his "not treating her like a human", his not giving her money for housekeeping, and her fear that he would take their children away from her. As a consequence, Mrs Yemshaw applied to Hounslow as a homeless person and they concluded that she was not homeless as her husband had never hit her or threatened to do so. This decision was appealed and both the County Court and the Court of Appeal dismissed Mrs Yemshaw's appeal on the ground that only physical violence fell within the definition of violence in s177 HA 96.

The Supreme Court in overturning the decision of the Court of Appeal concluded that the definition of domestic violence had "moved on" since 1977 and redefined it as follows: **"Domestic violence includes physical violence, threatening or intimidating behavior and any other form of abuse which, directly or indirectly may give rise to the risk of harm."** (Para 28). This means that other sorts of behaviour such as silent phone calls, heavy breathing, stalking behaviour, locking a person within the home and depriving a person of food or the money to buy food are capable of falling within the definition of domestic violence (Para's 31 and 32).

The significance of the decision of the Supreme Court is that a person is treated as homeless automatically by virtue of s177 Housing Act 1996 if it is probable that their continued occupation of their accommodation will lead to domestic violence, as newly defined, against them or a person who normally resides with them or a person who might reasonably be expected to reside with them. This in turn also means that such a person cannot be intentionally homeless within the meaning of s191 Housing Act 1996 as it would not have been reasonable for them to continue to occupy that property.

Before leaving this case, both Lady Hale and Lord Rodger considered (obiter) whether this extended definition should apply to violence, which is not domestic violence. In their views the term violence did have this wider meaning (Para's 35 and 46) although Lady Hale made it explicit that this issue did not arise on the facts of this case. Nonetheless, it seems that there is in these two judgments support for a wider definition of "other violence" of the highest authority.

DEVON CHAMBERS

UPDATES IN HOUSING LAW BY RUSSELL JAMES

Set Aside v Appeal

The decision of ***Force;ux v Binnie*** [2009] EWCA Civ 854 has recently been revisited by the Court of Appeal in ***Hackney LBC v Findlay*** [2011] EWCA Civ 8, where it was argued by the local authority that Forcelux had been decided per incuriam a number of authorities culminating in ***Roult v Strategic HA*** [2010] 1 WLR 487, which had consistently decided that the power to set aside should not be used by a judge as a power to hear an appeal against himself. This argument was rejected but the Court of Appeal did conclude that in the absence of unusual and compelling circumstances, such as were present in the case of *Forcelux* (a case of a possession order following forfeiture of a lease for non-payment of ground rent where the tenant did not attend court and the effect of the order if undisturbed would be a windfall for the landlord for arrears of a modest sum), the court should apply and give precedence to the requirements of CPR 39.3(5) on an application to set aside a possession order, but should also have regard by analogy to the checklist in CPR r3.9.

The points of importance that can be extrapolated from the decision of *Findlay* are as follows:

(1) Where an individual fails to attend their possession hearing and seeks to have it set aside subsequently, the court will consider and give precedence to CPR r39.3(5) which requires the tenant to show that he acted promptly in applying to set aside, that there was a good reason for his non attendance and that he has a reasonable prospect of success. In addition the court will consider by way of analogy the checklist in CPR 3.9.

(2) Where there are some unusual and compelling circumstances, as in *Forcelux*, the court might take a different approach to the requirements in CPR r39.3 (5). However, other than the facts in *Forcelux* there is no assistance as to when such circumstances might exist.

(3) Where an individual does attend the first hearing but a possession order is made and, for example, he is shut out from pursuing his arguments, or an adjournment is refused it would seem that an appeal is the correct route.

(4) The power to set aside pursuant to CPR r3.1(2)(m) and r3.1(7) can be exercised even after a warrant has been executed, as compared with the power to stay or suspend a possession order at any time before execution of the warrant in s85 HA 85 and s9 HA 88. However, the fact of execution will be highly relevant if e.g. the property has been re-allocated or refurbished.

(5) Once an order is set aside the court can again consider all options including suspending any possession order that it might consider it reasonable to make.

- Robert Linford
- Nigel Lickley QC
- Paul Rowsell
- Iain Leadbetter
- Barrie van den Berg
- Rupert Taylor
- Edward Bailey
- Jason Beal
- Ramsay Quaife
- Alison Crookes
- Paul Bitmead
- Stuart Frampton
- Piers Norsworthy
- Russell James
- Kelly Scrivener
- Victoria Hoyle
- Mathew Dors
- Joanna Martin
- Julia Cox
- Nicola Isaacs

Clerks

- Peter Dadge
- Zoe Cater
- Hollie Gilbery

Contact Details

3 St Andrew Street
Plymouth
Devon
PL1 2AH
DX: 8290 Plymouth 2

Tel: 01752 661659