

IN THE HIGH COURT OF JUSTICE

CLAIM NO: QB-2018-000390

QUEEN'S BENCH DIVISION

MEDIA AND COMMUNICATIONS LIST

BEFORE MR JUSTICE JULIAN KNOWLES

BETWEEN:-

EMIL KIRKEGAARD

Claimant

and

OLIVER SMITH

Defendant

ORDER

UPON the Court ordering that there be a trial of the meaning of the words complained of, and whether the words complained of were fact or opinion, by way of a trial of a preliminary issue

UPON READING the Application Notice dated 13 February 2019 for an order that there be a trial of a preliminary issue and the witness statements of the Claimant, dated 3 July 2019 and the Defendant, dated 12 June 2019, and exhibits thereto.

AND UPON HEARING Counsel for the Claimant and Counsel for the Defendant at the hearing on 26 November 2019.

IT IS ORDERED THAT

1. The Court finds the following in respect of the four publications complained of by the Claimant:

1.1. The meaning of Post One is:

a.The Claimant supports the possession of animated child pornography and wishes to see it legalised and is a paedophile;

b.His writings concerning pubescent and pre-pubescent children, and the distinction that he draws, supports the viewpoint that he is a paedophilia apologist.

1.2.Meanings (a) - (b) are expressions of opinion that are defamatory of the Claimant at common law.

1.3.The meaning of Post Two is:

a.The Claimant is an apologist for paedophilia;

b.Any right-thinking person would regard him as vile and a paedophile;

c.He is in favour of animated pornography involving babies, supports possession of it which he considers ought to be lawful, and has published material that is critical of Sweden and Norway for having laws against it.

1.4.Meanings (a) - (c) are expressions of opinion that are defamatory of the Claimant at common law.

1.5.The meaning of Post Three is:

a.The Claimant supports legalising baby pornography because he has written an essay defending animated baby pornography;

b.The Claimant is a paedophile apologist because he expressed himself not to have thought about it for some years when asked if he supported possession or legalisation of it, whereas a non-paedophile apologist would have been unquestionably against it;

c.The Claimant has adopted arguments which those who apologise for paedophilia utilise;

d. The Claimant supports the right of adults to have sex with children under the age of consent and that he believes that raping children whilst they sleep would not cause harm;

1.6. Meanings (a) - (d) are expressions of opinion that are defamatory of the Claimant at common law.

1.7. The meaning of Post Four is:

a. That the Claimant's own writings demonstrate that he supports child rape and supports paedophilia;

b. That anyone making such an observation can anticipate being the subject of retaliation or unspecified vindictive behaviour but, presumably, online abuse such is the nature of the Claimant's unpleasant character.

1.8. Meanings (a) and (b) are expressions of opinion that are defamatory of the Claimant at common law.

2. The Claimant shall, by 1 January 2020, file and serve an amended Particulars of Claim, incorporating the findings set out in paragraph 1 above.
3. The Defendant shall, by 29 January 2020, file and serve a Defence in response to the Particulars of Claim or make any application in the alternative.
4. The Claimant do pay 50% the Defendant's costs as per the schedule of 21 November 2019, of this trial of a preliminary issue, to be summarily assessed in the sum of £13,500 and payable within 14 days of the date of this order.

Dated this 10th day of December 2019.