IN THE COUNTY COURT AT LEEDS

Case No. E80LS546


Courtroom No. 16

The Courthouse
1 Oxford Row
Leeds
LS1 3BG

Monday, 11th November 2019

Before:
HIS HONOUR JUDGE DAVIS-WHITE QC

B E T W E E N:

[redacted]

and

PAULA MCCORD & JAMES GUINAN

MS TODD appeared on behalf of the Applicant
NO ATTENDANCE by or on behalf of the Respondents

JUDGMENT
(Approved)

HHJ DAVIS-WHITE:

1. On 18 October 2019, in these proceedings, I gave judgment and made an order finding that the respondents, Ms Paula McCord and Mr James Guinan, are guilty of contempt of court in failing to comply with the order of District Judge Kelly in these proceedings, dated 18 January 2019, as later varied by the order of His Honour Judge Saffman, on 1 July 2019.
2. This is my *ex tempore* judgment, which should be read together with my earlier judgment of 18 October.
3. Ms Todd appears on behalf of the applicant, [redacted], who has sought the order for committal in this case. I am grateful to Ms Todd for her very careful presentation of the case and drawing my attention to relevant authorities and practice and seeking to put matters before the court effectively, on behalf of the respondents who are not present.
4. The circumstances, in very brief form, are these. The applicant, [redacted], is the registered proprietor of 74 [redacted] Huddersfield and, from about August 2012 the defendants have been tenants of a property known as number 70 [redacted] Number 74 and number 70 comprise part of a terrace of houses on Upper Brow Road. Between number 68 and number 70 is a covered passage. The passage is open from the road up until the line of the houses. It then goes between the buildings of number 68 and number 70 and is covered over at that point. There is a white, in effect front door to the passage where it enters the covered area between the two houses.
5. The passageway connects [redacted] Road to an area at the rear of the properties on which there formerly stood a block of outhouses. The applicant, [redacted], is the owner of part of the 'outhouse site', as it has been referred to.
6. The defendants have not engaged with the court at all, as I understand it, and all relevant hearings before the court have taken place in their absence. In particular, by an order of District Judge Kelly, f 18 January 2019, she made various declarations (the defendants not attending) in particular, as regards the rights of number 74 to a right of way granted by way of a conveyance, specifically along the passage that I have referred to.
7. In addition, at that stage, she made an injunction in three parts. First, that the right of access to the passageway should be cleared, it being, at that point, obstructed.
8. Secondly, that after removal of those items, but, in any event, from a certain date, the right of way was not to be interfered with, in particular, by placing or allowing items or structures to be put there, which restrict, prevent or otherwise interfere with the reasonable enjoyment of the right of way.
9. Thirdly, again, either after removal of the relevant items or in any event, from a certain date, ensuring that the claimant, that is [redacted], be provided with a key or otherwise the ability to open the white door that I have described earlier on.
10. That order was subsequently amended by His Honour Judge Saffman and the injunction was extended, not least because, as I understand it, by the time of service, the periods laid down by the order of District Judge Kelly had expired. Judge Saffman remade the relevant order and, as I described in my earlier judgment, in fact, amended the declarations in certain respects. His order is dated 1 July 2019. It started the relevant time periods as running for a 14-day period after service of the relevant order. In addition, he provided for alternative methods of service, he being satisfied that personal service was proving difficult.
11. I, at this point, add in that there was evidence before me that personal service has been evaded by each of the defendants. There is reason to believe that they have been in the property when the process server has attended to seek to serve them personally, in accordance with earlier letters following the Practice Direction and that they have refused to answer the door. In

addition, there is evidence, for example, that the proceedings and documents that were served by post, at least in the most recent instance, were then subsequently found by [redacted] on his own property.

12. On 18 October 2019, applying the principles set out by Cobb J in the case of *Sanchez v Oboz and Oboz* [2015] EWHC 235 (Fam), I was satisfied that it was appropriate to proceed in the absence of each of the defendants. As I have said, on that occasion, I made findings that each of the three injunctions had been breached.

13. The breaches were as follows. First, in that, by 4.00pm on 30 July, they had failed to remove broken paving slabs and bags of sand which were left in front of the white door which obstructed access to the passage.

14. Secondly, in breach of paragraph 2 of the order, they had placed and failed to clear wooden window and door frames in the passage, and had placed and failed to clear insulation bags in front of the white door, which interfered with the applicant's reasonable enjoyment of the rights of way.

15. Thirdly, as regards paragraph 3 of the order, they had, at all times, kept the white door, as I have described it, locked and failed to provide the claimant with a key, by 30 July, or at any time since then.

16. In each case, I was satisfied to the criminal standard of proof.

17. As has happened in other cases, I then adjourned the question of sentencing, and it is that adjourned hearing, which is taking place today, to enable the defendants another opportunity to take legal advice and to consider their position. I also ordered that they should attend today.

18. I am satisfied that, in accordance with the provisions for alternative service, which I have continued in to subsequent orders, they were properly served with the order, my order, of 18 October and that, therefore, they must be taken to know that this hearing is going ahead and that they should attend and also have notice, by reason of the order itself, of their ability to apply for non-means tested Legal Aid.

19. Ms Todd refers me, again, to the principles in *Sanchez v Oboz and Oboz*, as to whether or not it is appropriate for me, again, to continue with this next stage of sentencing in the absence of each of the respondents. Having considered the checklist of matters, which I need not set out again, I am satisfied that, in effect, nothing has changed in favour of not proceeding since the last occasion on which I considered those guidelines and that, in the circumstances, it is, therefore, appropriate for me to continue to consider the question of sentence.

20. As regards sentence, I have been referred to a number of cases, most importantly probably, the case of *Liverpool Victoria Insurance Company Limited v Khan and Others* [2019] EWCA 392 (Civ) WLR 3833. That deals with the usual criminal way of dealing with sentencing, namely that the court starts by deciding, by reference to the seriousness of the offence, to be gauged by a combination of considering culpability and the consequences of harm, where the case stands on the appropriate spectrum by way of starting point. From there, the court goes on to consider matters of mitigation and aggravation. It then considers whether or not the matter can be appropriately be dealt with by way of a fine, and , if not, and if the custody threshold has been passed, whether custody is necessary and, if so, what is the minimum period of custody that can be justified in the particular circumstances. I t may then go on to consider whether the sentence can be suspended.

21. The courts, on a number of occasions, have stressed the importance of upholding the rule of law in terms of requiring persons subject to court orders to obey them. As Nugee J said in the case of *Johnson and Jones v Keir Argent* [2016] EWHC 2978 (Ch), at paragraph 29,

> 'The court cannot allow people to choose whether to comply with orders or not. It is an essential part of the administration of justice that where a court

makes an order the respondent to the order complies with it, and deliberate and repeated breaches of orders of this type will almost inevitably lead to significant punishment.'.

22. As did Nugee J on the facts of the case before him, in the particular circumstances of this case, it does seem to me that a custodial sentence is the only sentence which sufficiently marks the court's disapproval of the way in which each of the respondents has entirely failed to even attempt to comply with the orders in this case. I also bear in mind that a main concern is to secure compliance with the order that was originally made and has been breached.

23. The first question, therefore, in light of that, following on, is what the minimum period of sentence that can be justified. Having considered the culpability of the respondents, which seems, essentially, to simply ignore court process and court orders and, indeed, coupled with the way in which the documents have been simply returned, effectively, to the applicant, and also bearing in mind that, on the face of matters, there is no appropriate mitigation either by way of pleas of guilty or otherwise, and in circumstances where I cannot assume in their favour, any remorse, apology or, really, positive good character, it seems to me that the minimum period of sentence that I should impose is one of six months' imprisonment.

24. The next question is, whether that should be an immediate period of imprisonment, or whether I should suspend that sentence in any way. Essentially, for the same reasons given by Nugee J in the *Johnson and Jones v Keir Argent* case, it does seem to me that I should suspend the immediate operation of the sentence for a short period. The purpose of that being to give each of the respondents one final opportunity to comply, albeit belatedly, with the mandatory aspects of the order of District Judge Kelly, as amended by His Honour Judge Saffman and to make an application to purge their contempt.

25. As Ms Todd has submitted to me, the order contains very clear requirements which were not onerous to comply with and where each of the respondents, apparently, has made no attempt either to comply or to excuse non-compliance.

26. I will, therefore, suspend the six-month period of sentence for a period of one month. If, at the end of that period, no action has been taken by either respondent to apply to the court to remit the sentence, then the custodial sentence against that respondent will come in to effect and he or she will be liable to be arrested and committed to prison.

27. If, during that period, either respondent applies to the court for remission and, in effect, to purge their contempt, and if he or she has demonstrated by their actions that they are willing to comply and has complied with the orders, albeit out of time, then no doubt the court will listen much more sympathetically to an application to remit the custodial sentence.

28. The sentence that I pass, therefore, is a single period for each breach, concurrently, for a period of six months.

29. The practical effect of the order, as in the case of Nugee J, will be that each respondent will be at liberty for one month, that is, until the same calendar date in December, so until 11 December, during which period he or she is at liberty to apply for remission of the sentence, but if no such application is made, that person will be liable to arrest and committal from expiry of the period and will be committed to prison to serve such part of the sentence as is to be served under the provisions applicable to sentences of that length.

**End of Judgment**