IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
BRISTOL DISTRICT REGISTRY

No 3BS30780

The Magistrates' Court
Marlborough Street
Bristol

17th April 2015

Before:

MR JUSTICE NEWEY

B e t w e e n:

SEXTON & PATTERSON

Claimants

and

ANDREW JOHN HOYLE

Defendant

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(Official Court Reporters and Audio Transcribers)
1st Floor Paddington House New Road Kidderminster DY10 1AL
Tel. 01562 60921: Fax 01562 743235: info@caterwalsh.co.uk

MR A TROUP appeared on behalf of the Claimants

MR P WORRALL appeared on behalf of the Defendant

APPROVED JUDGMENT

Friday 17th April 2015

SEXTON AND PATTERSON – v – ANDREW JOHN HOYLE

JUDGMENT

1. MR JUSTICE NEWEY: On 6th March of this year, I found that the defendant, Mr Andrew Hoyle, had been guilty of contempt of court in failing to file or serve any affidavit in accordance with paragraph 1 of an order made by District Judge Britton on 31st October 2014. I now have to consider what, if any, sentence I should impose for that contempt.

2. I outlined the history when giving judgment on the last occasion. The relevant events include these:

   (i) On 4th February 2014, District Judge Britton revoked a grant of probate that had been made in Mr Hoyle's favour as a result, it is now admitted, of his having forged the claimants' signatures. District Judge Britton also ordered Mr Hoyle to file and serve an affidavit exhibiting a full inventory of the estate of the testatrix and an account of the administration of her estate.

   (ii) No affidavit having been forthcoming from Mr Hoyle, on 31st October 2014 District Judge Britton made an order paragraph 1 of which reads:

   > "The Defendant shall by no later than 4pm, 21 days after service of this order upon him file at court and serve upon the Claimants' solicitors a sworn affidavit exhibiting a full inventory of the estate and an account of the administration of the estate in accordance with S.25(b) of the Administration of Estates Act 1925, such account to include (but not be limited to) an account of all rent received in respect of the property known as 13 Balmoral Gardens, Topsham, Exeter, Devon, EX3 0DJ."

   (iii) At the end of last year, Mr Hoyle having again failed to supply the requisite affidavit, the claimants launched the present application. This first came before the court on 29th January, but, Mr Hoyle being neither present nor represented, I adjourned the matter to 3rd March.

(iv) Despite having been directed to do so, Mr Hoyle failed to attend on 3rd March. I therefore issued a bench warrant pursuant to which Mr Hoyle was brought before me on 6th March.

(v) At that hearing, I found Mr Hoyle to have been guilty of contempt of court but adjourned sentencing to today. I also ordered Mr Hoyle to file any evidence by 7th April and to pay £12,500 in respect of the claimants' costs by the same date. Mr Hoyle had said that he anticipated being able to raise £12,500 by 7th April.

(vi) In the event, Mr Hoyle has not paid any of the £12,500, and he did not file any evidence by 7th April. He served an affidavit subsequently, on 15th April, but that of itself did not fully comply with District Judge Britton's orders.

(vii) Still more recently, the claimants have been supplied with some further documents, including documents referred to in the personal statement annexed to Mr Hoyle's affidavit and invoices which are stated to be to Miss Catherine Coverdale from AH Accounting Services, covering a period from 28th March 2012 to 31st October 2013. Having regard to those documents, Mr Alex Troup, who appears for the claimants, accepts that the deficiencies in Mr Hoyle's affidavit have now largely been made good, and he does not suggest that Mr Hoyle should be required to take further steps to comply with District Judge Britton's orders.

3. What, if any, sentence should I impose? Various factors point, it seems to me, to a sentence of imprisonment. District Judge Britton's orders were made for good reason. By failing to comply with them, Mr Hoyle both denied the claimants information to which they were reasonably entitled and deliberately flouted, over an extended period, what the court had ordered. Beyond that, despite the adjournment that I directed on 6th March, Mr Hoyle did not achieve substantial compliance with District Judge Britton's orders until very recently indeed, and his recent evidence was filed and served late. To make matters worse, Mr Hoyle's evidence offered no real explanation (let alone a good one) for his behaviour. It is a remarkable feature of that evidence that Mr Hoyle passed straight from January 2014 to March of his year without attempting to account, or expressing any contrition, for his conduct in the intervening period. Instead, and irrelevantly, he sought to throw mud at the testatrix's family.

4. Matters have moved on to an extent today in oral evidence that Mr Hoyle has given. Mr Hoyle said in the course of that evidence that the reason that he did not comply with District Judge Britton's orders was that he felt after discussions with the testatrix before her death that she wanted her affairs to be dealt with in a particular way and he understood that she had encountered difficulties with the solicitors acting for the claimants. Mr Hoyle asserted that he felt that it was in the testatrix's interests that he should not release the information that he had been ordered to provide. Mr Hoyle said that he now accepted that he had made a mistake and that he was sorry for it.

5. I have to say that I find that late expression of contrition unconvincing and the reason given for non-compliance entirely unsatisfactory. Even supposing that that is what Mr Hoyle felt, it could not provide a halfway adequate justification for his failure to comply with the court orders that the properly appointed executors had obtained. To compound matters, the explanation that Mr Hoyle gave not only is not to be found in his evidence but sits uneasily with other explanations he has given; in particular, at the last hearing he referred to having failed to attend court hearings because of meetings with clients. In short, I have not been persuaded that the reason that Mr Hoyle has proffered is the true reason but, even supposing that it is, it cannot begin to excuse Mr Hoyle's failures.

6. One result of Mr Hoyle's behaviour has been that the claimants, the court and also the police have been put to trouble and expense. The claimants were placed in a position where they had to bring the present application and then, when Mr Hoyle failed to attend court or to cooperate, to incur the expense of repeated hearings ultimately leading to Mr Hoyle's attendance pursuant to a bench warrant. On the last occasion, as I have said, Mr Hoyle was ordered to make a payment in respect of the claimants' costs to date, but in the event the claimants are still out of pocket because, as Mr Hoyle explained to me, he has not succeeded in raising the requisite money. I find Mr Hoyle's conduct still less explicable when I remember that he is professionally qualified as a chartered certified accountant.

7. What is there to put into the scales on the other side? Mr Philip Worrall, who appears for Mr Hoyle, understandably stressed that Mr Hoyle has hitherto had a clean record with, I understand, neither cautions nor convictions. Mr Worrall pointed out that the courts have indicated in the past that they should have in mind the desirability of keeping offenders, in particular first time offenders, out of prison and that imprisonment is "only appropriate where there is serious, contumacious, flouting of orders of the

court." Mr Worrall made the point, too, that Mr Hoyle indicated in his evidence today that he is willing to do what he can to put matters right.

8. One specific topic that has been the subject of debate before me has been whether or not a suspended sentence might be appropriate. Mr Troup suggested that a sentence could be suspended on the basis that it would take effect were Mr Hoyle to fail to comply with payment arrangements. In that connection, Mr Troup noted that some £23,000 is owing to the claimants in respect of costs and that there is good reason to think that Mr Hoyle is liable to the claimants for at least another £11,000.

9. One problem with any approach of that kind is that the prospects of payment of that sort of money seem relatively remote. On his own evidence, Mr Hoyle has very limited existing financial resources and has recently given up his job. Beyond that, on the last occasion that this matter was before me Mr Hoyle expressed optimism that he would be able to raise £12,500 in respect of the claimants' costs but those hopes came to nothing.

10. In the end, I have concluded that the right order has to be an immediate custodial sentence, albeit for quite a limited period. In *JSC BTA Bank v Solodenchenko (No 2)* [2011] EWCA Civ 1241, [2012] 1 WLR 350, which concerned failure to comply with disclosure provisions in a freezing order, Jackson LJ, with whom the other members of the Court of Appeal agreed, said that where there is a continuing failure to disclose relevant information, the court should consider imposing a long sentence, possibly even the maximum of two years, in order to encourage future co-operation by the contemnor. Jackson LJ went on:

> "In the case of continuing breach, out of fairness to the contemnor, the court may see fit to indicate (a) what portion of the sentence should be served in any event as punishment for past breaches and (b) what portion of the sentence the court might consider remitting in the event of prompt and full compliance thereafter. Any such indication would be persuasive, but not binding upon a future court."

11. On that basis, had Mr Hoyle still not substantially complied with District Judge Britton's orders, I would have imposed a sentence that included a period that could be remitted in the event of prompt and full compliance. As matters have turned out, Mr Troup accepts that the omissions have largely been made good. I do not, therefore, consider that the sentence should include any period of that kind. What I am left to consider is what

sentence should imposed by way of punishment for Mr Hoyle's past failures to comply with his obligations.

12. In that regard, as I say, Mr Worrall referred me to the authority where it is stated that imprisonment is "only appropriate where there is serious, contumacious, flouting of orders of the court", but it seems to me that this is a case of that type. I do consider that there has been serious, contumacious, flouting of District Judge Britton's order.

13. In all the circumstances, I shall impose an immediate sentence of imprisonment of two months. I should add in fairness to Mr Hoyle that I understand that the two month period will be halved automatically pursuant to statute. All, however, I need say now is that I impose an immediate custodial sentence of two months.

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