IN THE CENTRAL LONDON COUNTY COURT No. B00BM862

Thomas Moore Building
Royal Courts of Justice

Thursday, 9th July 2015

Before:

DISTRICT JUDGE BROOKS

B E T W E E N :

ONE HOUSING GROUP LTD — Claimant

- and -

TRISHA CLIFTON — Defendant

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MR. LANE appeared on behalf of the Claimant.

THE DEFENDANT appeared in person.

J U D G M E N T

(For revision)

DISTRICT JUDGE BROOKS:

1 Today I am dealing with the sentencing following findings of contempt of court in relation to ten breaches of a court order by Trisha Clifton. The committal order was dealt with on 24th June. The defendant was arrested on 6th July and I remanded her in custody on 7th July until today. She made a request for an adjournment which I refused earlier for the reasons I then gave. The committal was based upon a notice to show cause and two arrests which had taken place on 6th May 2015 and also on 20th June. On 24th June I heard evidence from PC King, Ms. Cahill, an employee of the claimant, and viewed CCTV footage of all ten incidents which took approximately an hour of court time. Ms. Clifton did not attend on that occasion. She has given me two reasons for her non-attendance on that day, those reasons being that she was either incarcerated or she was in hospital following an assault. It matters not because even if she had been here, given the weight of evidence which I had in front of me, particularly the CCTV footage and the evidence of two live witnesses who saw her on the premises, I would have and did find those incidents proved to the criminal standard. She was not here and I found them proved in any event. I was sure that those breaches had taken place. I have to ensure that court orders are complied with.

2 Today, Mr. Lane appears on behalf of the claimant. He says that it is really a matter for the court to decide what sentence to impose, if any, but it is his job to point out various matters to me. He says that two of the breaches are more serious, those are the breaches on 3rd and 5th May, but his client does recognise that Ms. Clifton has an alcohol dependency problem; indeed it is the job of the claimant to house people who have drug and alcohol dependency problems. He also tells me that the claimant recognises that the defendant is in a relationship with Mr. O'Connor. He says that the other eight breaches can be categorised as the defendant being in an area where she should not be. He drew my attention to Ms. Cahill's statement where she

says that when the injunction was applied for Ms. Clifton's behaviour was abusive and threatening, that it was seriously affecting their housing function and other tenants were fearful for their safety. He also drew to my attention to the fact that the injunction has three limbs. Taking into account those limbs, the last one being that she should not attend the premises, that that part of the injunction could easily have been dealt with by the defendant arranging to meet Mr. O'Connor outside the premises, particularly bearing in mind that the defendant has not lived there for many, many years, since about May 2011. He says that the breaches are repetitive and serious and alcohol dependency does not excuse the behaviour and there is no evidence of what Ms. Clifton was doing to resolve that problem. He drew my attention to the guidelines and the three categories set out herein. He said that the breaches are constant breaches and I must give serious consideration to saying that the breaches fall within category 1 or at the very least category 2. He says that something should be given for the cumulative effect of these breaches.

3 Ms. Clifton was given an opportunity over lunch to consider Mr. Lane's submissions so that she could put forward her plea in mitigation. I explained what that meant and pointed out that she should draw my attention to the matters which she believed I should take into account. She wholeheartedly apologised if her behaviour had caused any problems to the staff or if they found it upsetting. She said that staff often said "hello" to her outside the premises. She denied that her behaviour had caused a problem to any of the residents, many of whom had serious drug and alcohol problems, and told me that it was part of the banter between them. She said in terms, "Sometimes I was greeted and sometimes not," and she told me that if I was considering a custodial sentence, that it should be a suspended sentence. She said that she had had one imposed for two breaches of another injunction which is not relevant here. If I were to do that or to impose some other sentence not involving a custodial sentence, it would allow her

to go on a detox, or rehab and engage with psychiatric services. She told me that she has a number of problems. She told me she suffers from depression, gender dysphoria and post-traumatic stress disorder. She said that given that Mr. O'Connor is shortly about to be evicted from the property, she believes within the next six weeks as he had been served with a notice – nothing was said from the claimant about that but that is what she tells me – that there would be no reason whatsoever for her to return to the property bearing in mind that really Mr. O'Connor was her sole reason for going to the property as he is her partner. She says that there has been no deliberate or serious harassment of the claimant.

4 Mr. Lane handed up two authorities which were of assistance. One of the authorities, *Solihull Metropolitan Borough Council v Willoughby* [2013] EWCA civ 699 at paragraph 19 mentions the case of *Hale v Tanner* [2000] 1 WLR 2377, where Hale LJ (as she then was) gave some guidance on sentencing for contempt. She set out ten matters which I will just go through. The first one is that imprisonment is not to be regarded as an automatic consequence of a finding of breach. Secondly, the range of sentencing options is more limited than in crime, the court can consider the alternatives to immediate custody, i.e., adjourning the hearing, making no order, imposing a fine, requisitioning assets, and consider orders under the Mental Health Act 1983. Thirdly, if imprisonment is appropriate the length of the committal should be decided without reference to whether or not it should be suspended; a longer period of committal is not justified because it is to be suspended. Fourthly, the length of sentence depends on the court's two objectives; one, to mark disapproval and disobedience of the order and, two, to secure future compliance with the order. The seriousness of what has taken place is to be viewed in light of that as well as for its own intrinsic value. Fifthly, the length of the sentence must bear some reasonable relationship to the maximum sentence of two years, which is the maximum here. Six, suspension is possible in a much wider range of circumstances than it is in criminal cases.

It does not have to be the exceptional case and it is usually the first way of attempting to secure compliance with the order and that is certainly something which Ms. Clifton has asked me to do. Seventhly, the length of suspension required separate consideration although it was often appropriate for it to be linked to continued compliance with the order underlying the committal. Eight, the court must bear in mind the emotional context within which a breach has occurred. Nine, the court cannot ignore the impact of any parallel proceedings in another court based on some or all of the same facts which support the committal, the contemnor should not suffer punishment twice for the same event (but that is not relevant here) and, ten, the court should give very brief reasons for the contemnor to know, one, why the sentence is imprisonment; two, why it is the length that it is and, three, if it is to be suspended, why suspension is imposed in that way.

5 I also have to take into account, if I decide to go down the custodial route, the time spent on remand which should be doubled as required by section 258 of the Criminal Justice Act which provides for release after one half of the sentence has been served.

6 As I mentioned, I was referred to the case of *Solihull v Willoughby* in Mr. Lane's skeleton argument and to the judgment Pitchford LJ. He refers to *Hale v Tanner*, which I have already mentioned and in that case he puts forward three objectives for the court to consider, punishment for breach of the order, to secure future compliance with the court order if possible and also rehabilitation. He also went on to say that a committal order should reflect the aggravating and mitigating features of the breach and this could include whether the breach was deliberate, flouting or on repeated occasions. Mitigating factors may include personal inadequacy, admissions of breach, a low-level of antisocial behaviour or efforts to reform. As I mentioned, my attention has been drawn to the sentencing guidelines which I will come to in a

few moments but going through those guidelines under the heading of "Setting the seriousness" I have to consider two aspects of culpability; one, the degree to which the offender intended to breach the order and, two, the degree to which the offender intended to cause the harm that resulted or could have resulted.

7 When I look at the category in the box which appears in the guidelines there are three categories under the heading "Nature or failure and harm, serious, lesser degree or no harassment." Before I come to those in detail I just wanted to reflect on the order which was made on 21st April 2015 and I should highlight the fact that that order was made after the claimant had put evidence before the court that it had been the subject of persistent and repeated harassment by Ms. Clifton over a number of years, having evicted her from and banned her from their property on 29th May or 28th May 2011. It was certainly said in the evidence which was called at court that Ms. Clifton had returned on many, many occasions and eventually the claimant decided to take some action. After looking at that evidence, the court granted an interim injunction on 21st April 2015 which forbid Ms. Clifton from using or threatening violence towards various individuals at Arlington (and that is not being alleged here), using aggressive behaviour, foul and/or abusive language and/or gestures towards various individuals at Arlington (which has been proved in relation to the breaches of 3rd and 5th May) and then, lastly, entering or remaining in Arlington. That is certainly the case in relation to the eight other breaches as well as the breaches of 3rd and 5th May. Ms. Clifton was served with that order personally the day after at 5.20 on 22nd April.

8 When Ms Clifton made her submissions she told me that she had been served with two bits of paper. I drew to her attention the certificate of service which is in the court bundle which confirmed the documentation that she had been served with at that time. I know, because I

have read them, that there were considerably more than two bits of paper and I took her through those items. What she told me was that when she was served with that documentation she simply tore it up. She says she was not aware for at least two days of the contents of the injunction despite being served with it. She also made a similar submission in relation to being banned from the premises. She said she was not aware that she was banned and I drew her attention to the letter of 29th May 2011 which at the end of the first paragraph says, "You are evicted and banned." She seemed to accept that.

9 I have found ten matters to be proved, as I indicated previously. The first was on 22nd April at 8.50 when she entered into and remained in Arlington. I found that proved having listened to the evidence and seen the CCTV footage. I find in relation to the categories of seriousness which I have to consider that this breach falls into the third category of no harassment or alarm being caused. I do take into account that the breach occurred less than four hours after being served with the injunction. The starting point is whether a community order should be imposed. I do not consider that there are any mitigating factors which assist Ms. Clifton. She has taken me through the range of matters which she says suffers from. I cannot say whether or not she does suffer from those because no evidence has been placed before the court to assist me. I realise she has a difficulty in doing that because she has been held at Pentonville for the past two days but what I do take into account is that she appeared before District Judge Langley on 7th May and was given an opportunity to file evidence to deal with the breach which was being alleged at that time. No evidence has been filed whatsoever following that hearing or the two months following that up to this hearing before me. I do accept that she has an alcohol dependency problem. She has not pleaded guilty to any of these breaches leading to the court having to hear evidence and find her in breach of the order. Taking all those matters into

account I do impose a community order for this breach. That sentence will become academic because of what follows in this judgment.

10 On 24th April at 8.30 Ms Clifton entered into Arlington and remained in the premises by locking herself in the toilet. Again this is a further breach of the order and again I consider this falls into the third category of there being no harassment or alarm. There being no mitigating factors I impose a community order for this breach.

11 The next incident is on 25th April where she again entered the property, going to the toilet and sitting on the bench. I find that that falls within the second category of the guidelines. I say that because this is now the third breach of the order. The starting point is a six-week period in custody. I see no reason why that should not be imposed here and I sentence her to six weeks in prison. I have already dealt with the mitigating factors. I do not believe that there are any here or there is certainly no evidence of them and even if there is evidence of them, subject to what I say about whether it should be suspended or not, she will have the opportunity to use the services in prison to assist her with those.

12 The next breach is on 26th April when she entered into Arlington and tried to get into the lift with Mr. O'Connor and he tried to discourage her. She then got into the lift and went to his room. Again, in my judgment, that falls within category 2, and again this is a breach on the following day and I say the same about the mitigating factors. I impose a sentence of six weeks.

13 The next breach, and here I should point out that Mr. Lane says this is more serious than the other breaches, is that on 3rd May she went into Arlington, she banged on the toilet door in

reception, because someone was already in the toilet, and she then had an altercation with a carer for another resident who had been in the toilet and she became verbally abusive and threatening towards him. That carer was Mr. David Roadhouse, as I understand it, and I recall reading the incident report which was prepared at the time and I accepted that evidence. I have considered whether that should fall into the serious or lesser category and, in my judgment that should fall into the lesser category. The starting point is again a six-week period in custody. In my judgment, this was a much more serious breach of the order than the previous breaches. Clearly, in my judgment, Ms. Clifton was directly flouting the order. Even when she gave her mitigation she said that she was not aware of the injunction for a couple of days. She was served with the injunction on 22nd April and this occurred almost two weeks later. As a result, I am going to impose a sentence of three months in custody.

14 On 5th May she entered into Arlington again. She did what she had done before, locked herself in the toilet, and when she came out she told the staff that she was going to get the army on them. Again the starting point here as far as I am concerned is the second category, that it is lesser degree. The period of incarceration should be a six week period. Bearing in mind she had attended the premises on a number of occasions and was asked to leave and simply ignored requests, sitting in reception or going into the toilet and locking herself in, I impose a sentence of imprisonment of three months.

15 I now come to another incident again on 5th May – in fact two further incidents on 5th May – where she arrived later in the day at 4.45 and 7.30 and where, firstly, she ignored requests to leave after having come in and sat on the bench and subsequently went into the toilet and later at 7.30 she came into the building with Mr. O'Connor and attempted to get into the lift and was prevented from doing so but stayed in reception. Again the starting point is the lesser degree

and a six-week period of imprisonment is the starting point. However, bearing in mind that this is yet again a subsequent breach or a repeated breach of the order; I am going to impose sentences of imprisonment of two months each for both breaches.

16 Then we have the incident of 6th May where she entered into Arlington and remained in the property. She went into the toilet. On that occasion I believe she was ushered out but she ignored that. Police officers had to be called and she was arrested and removed from the building. That is a matter about which PC King gave evidence. Again the starting point is lesser degree of harassment, so the starting point is six weeks in custody. I am going to impose a two-month period of imprisonment. I impose this sentence as this is another repeated breach, particularly after going into Arlington on three separate occasions the previous day.

17 The last breach was on 20th June when she was found to be in Mr. O'Connor's room. Staff had to remove her after calling the Police and using a security pass to gain entry. Again, I would categorise that as a lesser degree of harassment, no violence was used. I would say that generally in relation to all of the proved incidents and although the starting point is again six weeks, I will impose a period of custody of two months.

18 It is clear to me that there has been a persistent and flagrant breach of disorder. Ms. Clifton has decided for reasons of her own not to comply with the order. She tells me that she visited the property to see Mr. O'Connor. If she wished to do that, she could have done it outside. She simply chose to ignore the court order and in fact her act of tearing the order up when she was served with it really demonstrated her attitude towards it. That is one of the reasons why I have imposed the sentences which I have.

19 I am also satisfied that if I were to impose a suspended sentence in relation to the periods which she is to spend in custody that she would continue breach the order. In my judgment, I believe that she has no intention whatsoever, despite what she tells me today because Mr. O'Connor will no longer be there, that she will comply with the order. I believe her attitude was demonstrated in court when she turned round to Ms. Cahill, who was simply doing her job and told her that she had won. In my mind, Ms Clifton conducted a campaign or vendetta against the claimant because she had been evicted in 2011. There was no good reason for her to attend that property. She had been asked not to attend in May 2011 yet she continued to do so and continued to do so despite an injunction being obtained against her. These actions put the claimant to considerable expense and caused an extreme nuisance to its employees and also the residents within the property.

20 Mr. Lane has drawn my attention to paragraph 8 of his skeleton argument where he sets out five matters which I wholeheartedly agree with as I have demonstrated through this judgment. There have been repeated breaches, there has been significant disruption and cost to the claimant, there is also a concern for the safety and wellbeing of Arlington residents as demonstrated with the altercation with Mr. Roadhouse and also the threats and abuse which were made and also the fact that Ms. Clifton has been banned from the premises since 2011.

21 For those reasons I am not going to make a suspended order. There will be a custodial sentence which will not be suspended. Items 6, 7, 8 and 10 from the notice to show cause will be consecutive which add up to a total of ten months. Items 1, 3, 4, 5 and 9 and the incident on 20th June will be concurrent so they will run at the same time. I have an obligation to look at the totality of the sentence imposed which adds up to ten months and to consider whether that achieves the objectives which the court has set out it must achieve. Those objectives were to

punish Ms Clifton for breaching the order, to secure future compliance with the order if possible and also her rehabilitation. I think that perhaps ten months is slightly too long and will reduce that down to a total of eight months. I do take into account that Ms. Clifton does have the alcohol dependency problems which have been mentioned and accepted by the claimant but while she is incarcerated she should be able to obtain help from the services which are in prison. I hope that she is able to do that.

22 She should bear in mind that the order which I made when I heard the matter finally, I believe, at some point in May, maybe 28th May, was to put that injunction in place for a period of five years. So if she comes out of prison and breaches the order again no doubt she will be before the courts again. I sincerely hope that that is something that does not happen. Taking those matters into account, that is the sentence which I am going to impose, a period of eight months.

23 Some account must be taken of the period already served in prison. That period has to be doubled. She has been there for two days so that period is doubled up to four days. The total sentence, rather oddly, bearing in mind that she will come out in February of next year and February has 29 days next year, will be seven months and 25 days.

24 For items 1 and 2, the community orders, there will be a period of 20 hours each.