

Warwickshire Justice Centre
Vicarage Street
Warwickshire, CV11 4WX
Friday, 18th December 2015

Before:

DISTRICT JUDGE EMMA KELLY

BETWEEN :

HINCKLEY & BOSWORTH BOROUGH COUNCIL

Claimant

- and -

DARROL HARDY

Defendant

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MR. HOSKER (instructed by Legal Services) appeared on behalf of the Claimant.

THE DEFENDANT was not represented and did not attend.

JUDGMENT

(Approved)

THE DISTRICT JUDGE:

Background

1 This is the hearing of the claimant's application to commit the defendant to prison for breach of an injunction order granted by District Judge Severn on 3rd August 2015 under s.5 of the Antisocial Behaviour Crime and Policing Act 2014. District Judge Severn ordered that Mr. Hardy be forbidden, whether by himself or by instructing or encouraging any other person, from:

(1) For any period of time after 4pm on 1st September 2015 being in charge of or otherwise keeping the Alsatian dog known as Midas at 21 Willow Street, Desford, Leicestershire, LE9 9HB.

2 The claimant issued an application to commit, dated 8th August 2015. The notice to show cause gives particulars of one allegation, namely that the defendant has continued to keep the aforementioned dog, Midas, at his premises of 21 Willow Street in contravention of para.1 of District Judge Severn's order. The application is supported by affidavit evidence of Joanna Hankin, the defendant's neighbour, who lives at 23 Willow Street.

Service

3 I am satisfied on the evidence that I have before me that the original injunction was personally served on the defendant on 11th August 2015 by Amy Carroll. I

am further satisfied that the application to commit was served on the defendant on 27th November 2015, again, by personal service. The notice of hearing, and indeed a covering letter that the claimant hand delivered with the notice of hearing, could not have been clearer that the matter was listed at 10am on 18th December 2015 at this court. The claimant went further than it had to and advised the defendant to take the paperwork to an independent solicitor to see whether or not he would qualify for legal aid and again confirmed that he should attend court today. The defendant has not attended court today and, in those circumstances, I have proceeded to hear the matter in his absence.

Evidence

- 4 I have heard oral evidence from Joanna Hankin. She confirmed the contents of her affidavit, dated 8th October 2015, namely that on a number of occasions after 1st September 2015 she has both heard and seen Midas, the dog, at the defendant's property at 21 Willow Street in contravention of para.1 of the injunction. Her affidavit evidence is dated 8th October 2015. It is now over two months later and Ms. Hankin has given updating oral evidence that the dog is still present at the property; she heard it barking as recently as this morning and last night inside the property and also being let out into the back garden of the defendant's property; the defendant repeatedly referred to the dog as "Midas". She further confirmed that she has also seen the dog on a number of occasions and therefore knows that it is the same dog that is the subject of the injunction.

The application

- 5 I remind myself that with an application to commit I have to be satisfied to the criminal standard of proof, namely beyond reasonable doubt on the evidence that I have had before me. There has been no challenge to that evidence because the defendant has not been here to cross examine Ms. Hankin's evidence. However, on the evidence that I have heard, I find Ms. Hankin to be wholly credible and I accept the evidence that she gives. I am therefore satisfied, having accepted Ms. Hankin's factual evidence, that the committal application is proved to the criminal standard.
- 6 Ordinarily at this stage Mr. Hardy would have an opportunity to mitigate in relation to the sentence. He is not here to do that and I propose to continue with the sentencing exercise in his absence. The injunction was granted by District Judge Severn in early August of this year. He gave the defendant a period of time of approximately four weeks to re-house the dog known as Midas. It is apparent from the evidence that I have before me that Mr. Hardy has failed to act on the injunction and seems to have shown scant regard for the terms of the injunction order. It is of note that Mr. Hardy was in attendance before District Judge Severn and therefore can have been under no illusion as to the seriousness of the order that was being granted and what was required of him. It seems to me that he is in flagrant breach of that order. I do not have Mr. Hardy here so have no confidence

that he shows any remorse or regret for breaching the court order. Having said that, this is the first time the matter has been before the court.

7 The disposal I propose to adopt in this case is to make an order for his committal to prison for a period of seven days, but suspend it until 31st May 2016 on terms that he now remove the dog known as Midas from the property and thereafter comply with para.1 of the original order. I am going to give the Defendant a further period of seven days to re-house the dog.

8 In accordance with the Practice Direction on committals I am conscious that any application which results in a committal to prison, whether immediate or on a suspended basis, requires a transcript of the judgment. Therefore, I order that a transcript of this judgment be obtained at public expense and the details of the committal will be published in accordance with the Practice Direction.
