

IN THE COUNTY COURT AT BRISTOL

Bristol Civil and Family Justice Centre
2 Redcliff Street
Bristol
BS1 6GR

20th May 2016

BEFORE:

HIS HONOUR JUDGE COTTER QC

BETWEEN:

North Somerset District Council

Claimant

- and -

George Montgomery

Defendant

J U D G M E N T

Mr Richard Shepherd appeared on behalf of the Claimant
The Defendant was not present

APPROVED

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HIS HONOUR JUDGE COTTER QC:

1. This is the hearing of an application for committal for contempt brought by the claimant, North Somerset District Council, against Mr George Montgomery. It concerns land at the north of 86a Stowey Road, Yatton, which I shall refer to as ‘the land’.
 2. This case, as with so many cases of this generic type, has a protracted history, which started with a mobile home being delivered onto the land in the summer of 2012. Thereafter, quite properly, upon notification of its existence, there being no appropriate planning permission, the claimant, commensurate with its statutory duties, has taken planning enforcement action. Firstly, there was a planning enforcement notice of 22nd January 2013. Mr Montgomery appealed against that enforcement notice and, in essence, although there was some variation, the notice was upheld. He then put in retrospective planning application but by virtue of the existence of enforcement action, as is so commonly the case, the authority declined to consider it.
 3. There then was some correspondence from the defendant’s planning agent in the summer of 2014 whereby he said that the caravan had not been used for residential use and would be used for agricultural use. Having seen a photograph, it is, in my view, not adequately or accurately described as a caravan and very difficult to see how it would be for agricultural use; it is a luxury mobile home.
 4. Eventually, by virtue of non-compliance, proceedings were issued on 11th September 2015 with a witness statement from Miss Bartlett, and at about the same time criminal proceedings were also commenced.
 5. The relevant order for the purpose of this application is an Injunction Order made on 21st September 2015 which set out that Mr Montgomery should, by 5th January 2016, comply with the requirements of the planning enforcement notice issued on 22nd January 2013, namely by,
 - “a) Ceasing the use of the land for the caravan for residential use.
 - b) Removing from the land the caravan and all materials and parts brought onto the land.
 - c) Removing all domestic paraphernalia including the trampoline.
 - d) Reseeding with grass the land upon which the caravan was standing. And e) returning the land to agricultural use.”
- The order also stated “Mr Montgomery is forbidden, whether by himself, by instructing, encouraging or permitting any other person, for replacing or reinstating a mobile home or caravan onto the land shown edged red on the plan annexed hereto.”
6. There was an application to set aside made by Mr Montgomery which was dismissed by District Judge Cope on 14th January 2016.
 7. The application for committal before me was then made on 27th January 2016; it has also

become a protracted matter.

8. Eventually the case came before Recorder Malwinney on 22nd April 2016. He took an entirely correct and cautious approach that he was not satisfied, notwithstanding some correspondence, that there have been service upon Mr Montgomery such that he could be sure that it was proper to proceed; he adjourned the matter to today.
9. I have a letter sent to the court from Mr Montgomery of 17th May. It is a letter sent to the Queen, the Archbishop of Canterbury, the Archbishop of Westminster and various other people. It is of a form that is, to say the least, difficult to understand. It appears, however, to assert that Mr Montgomery is not within my secular jurisdiction. It states, as Mr Shepherd, on behalf of the claimant, correctly points out, as follows, “Unless you can provide evidence to the contrary of these utterings, your court has no authority over one called George Montgomery. Your request to conduct a meeting on 20th May 2016 is denied.
10. Further, I have evidence of personal service of the order of Recorder McWhinney setting out today’s date on 9th May 2016.
11. I am satisfied, to the criminal standard, that Mr Montgomery was served and is fully familiar with today’s hearing date and has chosen not to attend, I can only conclude, for the reasons that he sets out in the letter, being one of several, setting out, at some length, his views together with a number of extracts from various parts of the old testament.
12. So what of the evidence before me. The evidence before me, and confirmed by Miss Bartlett, who is present, is that set out in her witness statement of 13th May 2016; she has annexed to that statement, helpfully, photographs of the site.
13. It is clear from those photographs that Mr Montgomery has complied with Paragraph 1(a); the caravan, if it could be so described, as I say, to my eye, it is more clearly properly described as a large and luxury mobile home, has been removed.
14. However, it is also clear that Paragraphs B to E of the order have not been complied with. Specifically, I am quite satisfied to the criminal standard, that the hard core and concrete upon which the mobile home was situated, constituting a very significant eyesore, remain to the present. Further, the rotary washing line is still present, piping is still present, as are a trampoline and a domestic gas source; the area has not been reseeded or returned to agricultural use.
15. There are photographs that show other caravans in the vicinity, but, very properly, Mr Shepherd restricts himself to the matters which are unequivocally proved and does not seek to urge upon me that there has been a breach at Paragraph 2 of the order.
16. I am, therefore, entirely satisfied that by the necessary criminal standard, that Mr Montgomery is in breach of the order of 21st September 2015.

17. Mr Montgomery is not here, intentionally having decided, as I have indicated, not to attend.
18. So I now turn to sentence. I bear in mind, of course, as I should, as an aid, although not entirely prescriptive, the Sentencing Guidelines for breach of an order. I am informed helpfully by Mr Shepherd, that the criminal proceedings that were commenced at the same time that this application was commenced, resulted eventually in the conviction of Mr Montgomery before Bristol Crown Court whereby he received a substantial fine and a suspended sentence.
19. Naturally, one must have regard to that sentence, however, this court has a dual purpose when seeking to deal with a contempt of an order. It is properly to punish for that breach, but it is also to ensure compliance with the order of the court. I bear in mind the sentences that have been passed and what really needs to occur here, which is something Mr Montgomery needs to fully appreciate, is that he has to comply with the terms of that order.
20. Bearing in mind all the circumstances of the case, I am minded to adopt a path which, I have to say, sensibly and refreshingly, Mr Shepherd has urged upon me, which is to make, rather than an immediate custodial sentence, a suspended sentence order. I observe Mr Montgomery has already been fined, and whatever that fine, and indeed the existence of a suspended sentence order, has not meant that he has complied with the order. Sadly, it is my experience, as the Designated Civil Judge for an area in which there is a significant amount of attractive agricultural land which people sometimes to occupy without necessary planning permission, the criminal courts do not always achieve the aim that the injunction requires.
21. In all the circumstances, the order that I make is that there should be a sentence of 28 days custodial sentence, which will be suspended upon the condition that by 1st July 2016 at 4pm, Mr Montgomery has complied with B, C, D and E of the injunction, specifically that he has removed from the land the caravan and all materials and parts brought onto the land. c) He has removed all domestic paraphernalia including the trampoline. d) He has reseeded, with grass, the land upon which the caravan was standing. And e) he has returned the land to agricultural use.

HHJ Cotter Right, that is my order.

Mr Shepherd Thank you, your Honour.

HHJ Cotter Costs, Mr Shepherd?

Mr Shepherd Yes, please, may I hand in a short schedule?

HHJ Cotter Yes. Right.

Mr Shepherd If I can ask that your Honour's eyes as drawn half way down the page to counsel's fee, that is in relation to 22nd April; because that hearing did not take place, I halved my fee for that day, but that amount now transfers to today's date. So, in essence, what I am asking for is an additional £725 that would undertake that would undertake that (inaudible).

HHJ Cotter So what, on top of this figure you want an additional £750?

Mr Shepherd 725. (pause) Though it is not often for counsel to polish an order, your Honour, just one note of caution, if I may, before turning to costs?

HHJ Cotter Mmm.

Mr Shepherd Your Honour might be aware of the body of case law from the Court of Appeal more recently, that warns about the risk of a defendant in these types of proceedings who might go to prison, not having the benefit of legal aid or not being aware of legal aid. For that reason, my instructing solicitors wrote to Mr Montgomery as part of the bundle.

HHJ Cotter Yes, Mr Shepherd, I deal with it, I deal with it very frequently, but he is not here.

Mr Shepherd No, he is not.

HHJ Cotter So there is no point in me telling him about his ability to seek legal aid when he has decided not to turn up, Mr Shepherd, so there is no point in putting it in the judgment. Anyway, I am not sure he would necessarily meet the financial criteria for legal aid.

Mr Shepherd I am sure he would not and, in fact, he opted not to have lawyers in the Crown Court proceedings, but I simply draw it to your Honour's attention.

HHJ Cotter No. I mean, R v Brown (formerly Latham) (2015) EWCA Crim 1328, (2015) MHLO 100, which is probably the case you are referring to ...

Mr Shepherd Yes.

HHJ Cotter ... highlights the difficulties that a lot of people have. And I find, particularly anti-social behaviour cases, rather alarmingly, a lot of solicitors in the criminal field do not realise that they can actually get some legal aid because they cannot get it on the computer system in the Magistrates Court ...

Mr Shepherd Quite right.

HHJ Cotter ... so they have to phone up somewhere in the north east, I think, and they do not. But no, in this case, he has not turned up, he has got a Crown Court trial, he has got the money to afford legal representation, he has made it clear his problem with me is that I do not appear to have some sort of divine authority. Well, be that as it may ...

Mr Shepherd Maybe that is for the High Court.

HHJ Cotter Well the Higher Court and the High Court possibly. But the ... Well yes, I order costs in the sum of £3,002, which is what I make it. Okay.

Mr Shepherd Would your Honour give a date for payment of that? Shall we also tally that with 1st July?

HHJ Cotter Well if you want to be so generous, yes, I normally say 28 days, Mr Shepherd.

Mr Shepherd I want it to be perfectly clear.

HHJ Cotter Okay, by 1st July then. All right, okay. I will have to fill in an order. Now the order will have to be served upon him.

Mr Shepherd Yes.

HHJ Cotter Okay. Now, what I would suggest we do is I actually fill it in now. Have we got a copy of the form down there for me to fill in?

Clerk I didn't know we were doing this today. Shall I go down and get one?

HHJ Cotter Is that all right?
Clerk Yeah.
HHJ Cotter Please.
Clerk Which one is it, is it the M79 one?
HHJ Cotter The big one with the, it has got four sides on it, it is a really cumbersome form.
Clerk (inaudible).
HHJ Cotter Yes.
Clerk Yeah.
HHJ Cotter Thank you.
Clerk Do you want me to do that now?
HHJ Cotter Please, that would be very kind.
Clerk (inaudible).
HHJ Cotter No, no, please do.
Clerk Shall I put the, this on ...?
HHJ Cotter No, just leave it really. Thank you very much. So I can fill that in and then it is 1st July. So I will do it here, 1st July. (pause) Who prosecuted it then in the Crown Court?
Mr Shepherd It was originally my case, I was not available and therefore Alan Michelin prosecuted it.
HHJ Cotter Mmm.
Mr Shepherd It was brought again by North Somerset Council.
HHJ Cotter Yes.
Mr Shepherd There was also another environment agency prosecution going on as well.
HHJ Cotter Who tried it?
Mr Shepherd I think it was His Honour Judge (inaudible) ...
HHJ Cotter Mmm.
Mr Shepherd ... but I am not entirely confident about that myself.
HHJ Cotter No. I mean, the difficulty about these cases, in my experience, is one of continuity. I have had several very long running ones on my reach, because people seem to think that they can achieve bucolic bliss by simply taking whatever it is down to Devon and Somerset, or Cornwall, and setting up house, well not really house but some form of mobile structure on ...
Mr Shepherd Yes.
HHJ Cotter ... a nice piece of land.
Mr Shepherd I think the only dual-ticketed judge now in Civil and Crimes would be His Honour Judge Lambert.
HHJ Cotter Yes.
Mr Shepherd I think that is right.
HHJ Cotter I do not, it is not quite right because I sit in the Crown Court here as well.
Mr Shepherd I apologise, your Honour.
HHJ Cotter No, no, I do not sit here very often, I sit six weeks a year mainly, but I do sit here now and again. But Judge Longman is now (inaudible).
Mr Shepherd (inaudible).
HHJ Cotter I think, I mean, although I have done this, I think probably it is ... I mean, I

normally try and reserve cases like this to myself simply because it makes matters easier, but I am not sure it does make any matters easier for you because I have not heard what he has had to say. My judgment has to be transcribed anyway under the Lord Chief's practice direction, so there is ...

Mr Shepherd Yes.

HHJ Cotter ... a copy of my judgment that everybody can read. So I think, unless you want to say otherwise, Mr Shepherd, I am inclined not to reserve any further matters to myself simply because of listing problems.

Mr Shepherd Well the fact that your Honour has made a suspended sentence order, means that that would be (inaudible) in any event, so that determination has already taken place. The only aspect would be a matter of contrition, but of course to purge the content, following of Swindon Borough Council v Webb (t/a Protective Coatings) [2016] EWCA Civ 152 (16 Marc), for instance, however, because your Honour has not heard from Mr Montgomery in any event, it would not seem to hinder another judge in hearing that ...

HHJ Cotter Hearing it.

Mr Shepherd ... contrition.

HHJ Cotter Yes.

Mr Shepherd So I would not urge your Honour ...

HHJ Cotter You would be surprised how rarely people seek to oppose the contempt, you know, very rarely in my experience, surprisingly, in these types of case.

Mr Shepherd Of course there is the other set of authorities where an individual enjoys the notoriety of serving a prison sentence for contempt and a court takes the alternative view to discharge in any event, despite not having a purge.

HHJ Cotter Well it is very difficult, I mean, the end goal, as I said in the judgment, is to achieve, certainly in part the end goal is compliance with the order. But this, sort of, has a feel that it is not quite over, Mr Shepherd, that is the sort of feel that I have about it, which is why I was thinking about this.

Mr Shepherd I am not sure it is a feeling, I think it is more of a dread.

HHJ Cotter Well ... Yes. But in my experience it is quite the largest structure I have seen ancillary to agricultural purposes, I have seen some decent ones, but this one is ... And can you help me, maybe you cannot help me, with what he means, while we are waiting, in his letter of 19th April. It appears to be a view that god requires a bungalow.

Mr Shepherd An L-shaped one.

HHJ Cotter An L-shaped Grand Design bungalow. Is that something you have come across before? I have not come across that before?

Mr Shepherd Well I am not sure my experience of architecture is necessarily integrally level, but I am not sure why L-shaped would be relevant to the judgment that your Honour needs to exercise.

HHJ Cotter No, but it is, you said that you understood this to be a form of (inaudible) of the land, but the freemen of the land do not normally then seek to assert authority over anybody, their very role is that because of the (inaudible) that in lawful dispute ...

Mr Shepherd Quite.

HHJ Cotter ... and they do not have to, in lawful rebellion, in fact, as it is, whereas he seems to be saying that god wishes there now to be a bungalow on this land. And this is 19th April, Mr Shepherd.

Mr Shepherd It is, it is a letter I read with interest. There is a line of authority that deal with religious structures and therefore religious persecution if an individual seeks to tear down that structure. And it might be a hybrid of that, but I am certainly not going to reference that in correspondence to give further (inaudible) an opportunity of running. But if I can just make ...

HHJ Cotter Are these outlines of arguments on websites?

Mr Shepherd They are ... May I just turn my back for one moment, I am just going to get a case name for your Honour.

HHJ Cotter Yes.

Mr Shepherd (pause) Your Honour, if your Honour wants some more reading on this particular subject, there is a 2012 Canadian authority ...

HHJ Cotter Oh yes.

Mr Shepherd ... that recorded all of it, it is either called Deach and Deach or Beach and Beach, something similar, it is certainly available on Lawtel.

HHJ Cotter On Lawtel, well I will look it up. Deach or Leach?

Mr Shepherd Or Beach.

HHJ Cotter Or Beach. Okay.

Mr Shepherd And it deals with the background to a particular body that appears to sell either books, templates or, in some circumstances, attendees to assist individuals who are in difficult circumstances. Whether that body is fraudulent or not, I make no comment.

HHJ Cotter Mmm. Anyway, you sit yourself down, Mr Shepherd, while I write this order out.

Mr Shepherd Certainly. (pause) Your Honour, I am told the case is Meads, M E A D S.

HHJ Cotter Oh right, thank you. (pause) I am going to suspend it for a full period of two years on terms that he complies with the order.

Mr Shepherd Yes.

HHJ Cotter Yes. (pause) Actually, no, I am going to put it for a year. (long pause) Okay. All right, well we need to put a court stamp on that and it needs to be accompanied because it actually makes reference to the order with a copy of the order.

Mr Shepherd Yes.

HHJ Cotter So we just need to, I am just going to sign this as well. (aside conversation with clerk) (pause) All right, so we just need some copies of that and then that is it. And that is what we need to serve on him personally. I have not, as I say, Mr Shepherd, reserved this, but I do sit here on occasions. If you find yourself in a position where, for continuity purposes ...

Mr Shepherd Yes.

HHJ Cotter ... something is required, enquire of them downstairs ...

Mr Shepherd I will.

HHJ Cotter ... rather than send somebody else in. The final part we need to do is we need to, it is not an order, but we need to have a transcript of the hearing. So

we need to order it, we have to have a transcript of the hearing in every single one of these now as a matter of course following the Lord Chief Justice's practice direction.

Clerk Do we put the request in the order.

HHJ Cotter No that is the original order.

Clerk I will go and take a photocopy of that then (inaudible).

HHJ Cotter No, so the only thing that we need to do, we do not actually need an order, it just needs to be recorded that someone needs to do it because we need to get a transcript of the judgment which we then rather remarkably need to send on to a third party; he does not have any of the funding to deal with it.

Mr Shepherd Please may I just check, on the last occasion I handed in the authority of Swindon Borough Council v Webb (t/a Protective Coatings) [2016] EWCA Civ 152 (16 Marc) to deal with an application for discharge, if an application for discharge is required in this case.

HHJ Cotter I have not seen it on file. Is it on ... Let us have a look at it. I think it is actually Smyth ...

Mr Shepherd It is of Swindon Borough Council v Webb (t/a Protective Coatings) [2016] EWCA Civ 152 (16 Marc), it is simply a helpful guide for a judge who is picking up the papers in the future if there is an application to discharge.

Clerk Would you mind if I just (inaudible).

HHJ Cotter Yes, of course you can. I did not see it, I mean, I took the bundle home last night.

Mr Shepherd I am sure your Honour would have come across. It was.

HHJ Cotter You have given me Doncaster and Wynn-Stanley (?).

Mr Shepherd Maybe it has gone astray.

HHJ Cotter I am afraid it has actually, it looks like it has gone astray. But I think you deal with that. I mean, what would be kind is if there was any application of that form, if you just emailed the reference to the authority, to any of them here.

Mr Shepherd Yes.

HHJ Cotter And remember that your average judge who bothers with his or her library has access on E-List, Mr Shepherd, to everything.

Mr Shepherd Yes.

HHJ Cotter You have just got to go and find it if you tell them what it is. I appreciate not every judge will be quite happy to do that, but you have more than discharged your duty in doing that in telling me simply that that is the case. But as I said, in my experience, maybe yours is different, there has not actually been an awful lot of discharging.

Mr Shepherd No, I have just been involved in one or two cases that have gone horrendously wrong on discharge.

HHJ Cotter Well, yes.

Mr Shepherd Where, for instance, the applicant has not been invited to make submissions, or was not there to find that the hearing was taking place. So the Court of Appeal has given some broad guidance as to how courts, to on a belt and braces approach, to approach (inaudible).

HHJ Cotter Mmm. Can I say ... And is that Swindon?

Mr Shepherd Swindon. And I cannot remember if it is the Borough Council, but it of Swindon Borough Council v Webb (t/a Protective Coatings) [2016] EWCA Civ 152 (16 Marc).

HHJ Cotter I mean, it is the authorities on the basis that you can, in terms of the way people deal with what an applicant may say, if they want to oppose their contempt whereby you cannot just ...

Mr Shepherd Say sorry.

HHJ Cotter ... you have got to actually have, yes, you know, I feel sorry for somebody, it has got to be when you're not the judge who has made the order, that is a trap I have seen people fall into.

Mr Shepherd Yes. So of Swindon Borough Council v Webb (t/a Protective Coatings) [2016] EWCA Civ 152 (16 Marc) draws together ...

HHJ Cotter Those strands.

Mr Shepherd ... (inaudible) the authorities ...

HHJ Cotter Oh I see.

Mr Shepherd ... and just puts them on compendium.

HHJ Cotter Right. And how recent is that one?

Mr Shepherd Last couple of months.

HHJ Cotter Oh well that makes me feel a bit better. I do not think I have had to deal with one for the last couple of months. Okay. Well that is very helpful, that has passed me by. All right. Well look, you will get your order ...

Mr Shepherd Thank you very much.

HHJ Cotter ... so I will not hang around anymore. Thank you for your help, very helpful indeed. It is particularly important in these cases where you may have a judge who is not familiar with this area of law and dealing with the matters to have somebody who deals with the cases in the way that you do and it certainly has been noted, Mr Shepherd, that you have been extremely helpful

Mr Shepherd Thank you.

(Court adjourned)