

1

IN THE BIRMINGHAM COUNTY COURT

No. 0BM30333

2

3

4

5

6

7

8

9

Tuesday, 14 June 2022

10

11

12

Before:

13

14

HIS HONOUR JUDGE WILLIAMS

15

16

17

18

19

B E T W E E N :

20

21

22

(1) KULBIR BLAGGAN

23

(2) PERMINDER BLAGGAN

24

Claimants

25

26

27

- and -

28

29

30

ARVINDER SINGH TALAFAIR

31

Defendant

32

33

34

35

36

THE CLAIMANTS appeared as Litigants in Person.

38

MR M. PIRONE appeared on behalf of the Defendant.

40

41

42

43

S E N T E N C E

44

45

JUDGE WILLIAMS:

46

47

This is the adjourned hearing of an application to commit the respondent, Mr Talafair, to prison for allegedly disobeying the order of His Honour Judge Worster, dated 10 August 2012.

48

49

49

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

By way of brief background, the underlying dispute relates to a right of way leading to Unit 3, 50 Grove Lane, Handsworth, which is owned by the applicants, Mr and Mrs Blaggan. Mr Talafair is the owner of adjoining Unit 2, and also the strip of land accessing both units. Mrs Blaggan and Mr Talafair are sister and brother.

Following a contested trial, His Honour Judge Worster made the order dated 10 August 2012 and in which he declared that Unit 3 had the benefit of a right of way to pass and re-pass at all times and for all purposes, with or without vehicles, along the land hatched blue in the plan attached to the order. It was further ordered that Mr Talafair was to remove the vehicle then parked on the right of way outside Unit 3 by 17 August 2012, and Mr Talafair was forbidden, whether by himself or by instructing or encouraging any other person, from obstructing in any way the right of way, and was not to interfere with the lawful use of that right of way by Mr and Mrs Blaggan, their servants, agents and lawful visitors, including any tenants and licensees of Unit 3. The order contained a penal notice warning Mr Talafair that if he did not obey the order, he would be guilty of contempt of court and may be sent to prison. That order has not been appealed.

On an earlier committal application, the court held that Mr Talafair was in breach of the court order by continuing to obstruct the right of way with a parked van. By order dated 24 April 2015, the committal application was adjourned to allow Mr Talafair a final opportunity to remove the van from the right of way, which Mr and Mrs Blaggan accept Mr Talafair eventually did. However, in his witness statement, dated 24 July 2021, in support of the application before me today, Mr Blaggan alleged that, since early 2018, Mr Talafair has resumed parking his van over the right of way. In addition, it is alleged that Mr Talafair has further obstructed the right of way by leaving upon it items of rubbish and debris. Exhibited to the witness statement of Mr Blaggan are numerous photographs, timed at 1 July 2021, evidencing those obstructions.

Mr Talafair has, today, admitted the alleged breaches and it now falls upon me to determine what sentence, if any, I ought to impose upon Mr Talafair for those admitted breaches.

Mr Talafair, would you stand up, please. So far as the penalty to be imposed upon you, I may impose a sentence of up to 2 years' imprisonment or a fine of unlimited amount. I do not believe that a financial penalty would serve any useful purpose in this case, bearing in

1 mind that it is not disputed that you have failed to pay monetary compensation that was
2 awarded in favour of Mr and Mrs Blaggan for previous found breaches in June 2015. If I
3 impose a sentence of imprisonment, it is open to me to order that the prison sentence be
4 suspended for such period and on such terms as I consider appropriate.

5
6 The sentence for contempt has a number of functions: to punish you for historic breaches
7 and to secure future compliance with the court order. In addition, there are compelling
8 public policy grounds for ensuring that
9 courts orders are complied with.

10
11 You have admitted breaching the order by parking the van outside Unit 3, which is, of
12 course, a finding that was previously made by this court. You have also admitted
13 otherwise obstructing the access way with debris and rubbish. Based upon the
14 photographs that I have seen I am satisfied that those breaches were serious and deliberate.
15 This is not the first time that you have been found in contempt by breaching the court
16 order, although I accept that the previous contempt was found some seven years ago and
17 thereafter there was a period of compliance. The contempt, I am satisfied, has caused both
18 emotional and financial harm to Mr and Mrs Blaggan. Their written evidence is that their
19 tenant of Unit 3 has withheld rent as a result of the continuing obstructions.

20
21 In mitigation, I take into account that you are otherwise of good character. I also take into
22 account that you have taken some steps to remedy the position, but I remain very
23 concerned that the van and much of the debris remains in place, despite a number of
24 promises that you have made to put right the position long before today.

25
26 I am satisfied that the custody threshold is passed in this case. Having regard to all the
27 circumstances, including what I consider to be a high level of culpability, the aggravating
28 and mitigating factors, I find that the appropriate sentence is 4 months' imprisonment.
29 Applying a 25 per cent reduction to reflect Mr Talafair's late admission, although also
30 recognising that this is the first opportunity that Mr Talafair has had representation at a
31 court hearing, the prison sentence I impose is 3 months. I consider that such a sentence is
32 as short as possible commensurate with the gravity of the contempt and the need to deter
33 Mr Talafair from further breaches.

34
35 I now need to consider whether or not the prison sentence should be suspended. This is
36 perhaps the most difficult aspect of the decision that I have to make. But, on balance, I

1 consider that it should be suspended for the following reasons. Firstly, Mr and
2 Mrs Blaggan, to their credit, have repeatedly said to this court that their primary motive is
3 not to punish Mr Talafair or have him sent to prison. They just want him to comply with
4 the terms of the order. A period of suspension has the aim of securing Mr Talafair's future
5 compliance with the court order. There is still further work to be done to remove the
6 obstructions. It is difficult to see how Mr Talafair could do that from prison. Secondly,
7 there was a period of time, albeit relatively short, where it is accepted that Mr Talafair
8 complied with the terms of the court order. Thirdly, the desirability of keeping offenders,
9 particularly those with no previous convictions, out of prison. Therefore, I suspend the
10 order sending Mr Talafair to prison. I suspend the prison sentence for a period of 5 years
11 on terms that Mr Talafair, within 4 weeks of today, removes all remaining obstructions,
12 including the van and debris, and thereafter keeps the access route free of obstructions. If
13 he fails to do so, the prison sentence that I have imposed may be activated, together with
14 any further sentence imposed by the court in relation to any subsequent breaches.

15
16 So, in summary, Mr Talafair, I have found that you have deliberately breached the court
17 order; that the breach was serious, such that a prison sentence is appropriate, a prison
18 sentence of 3 months, but I have suspended it. But, to be clear, Mr Talafair, that was a
19 very close-run thing, but I have given you one last opportunity to show to the court and to
20 Mr and Mrs Blaggan that you accept the order of His Honour Judge Worster and that you
21 will comply with it. I have given you 4 weeks to clear the remaining obstructions. You
22 have had plenty of time to do this already. If you do not do so within the 4 weeks, or you
23 do it within the 4 weeks but then, in the next 5 years, those obstructions arise again and the
24 matter comes back to court, then the judge on that occasion will sentence you for that
25 further breach, and the sentence I have imposed today may be activated and added on.

26