

IN THE COUNTY COURT AT SHEFFIELD

Case No. G20SE079

Courtroom No. 11

The Law Courts
50 West Bar
Sheffield
S3 8PH

Friday, 15th March 2024

Before:
HIS HONOUR JUDGE ROBINSON

B E T W E E N:

MARTINA GILERT

Claimant

and

NATALIE WILKINSON

Defendant

THE APPLICANT appeared In Person
THE RESPONDENT appeared In Person

Approved JUDGMENT (Sentence)

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HHJ ROBINSON:

1. I received written submissions concerning penalty on behalf of the claimant. I have heard oral submissions on behalf of the defendant. I have had regard to the Guideline annexed to the CJC Report, copies of which I supplied to the parties.
2. On behalf of the claimant, for most of the breaches, it is submitted that the appropriate category is A1. On an individual basis, it is difficult to see how that can apply, save possibly for the police incident, amounting to breach four in committal application three, and the Facebook posting, breach eight in committal application three.
3. Dealing with the police incident there was no significant degree of premeditation. However, it does seem to me this was a very serious breach because it resulted in precisely the action that the injunction was intended to prevent, namely unjustified investigation by official bodies, in this case the police. It was a serious and untrue allegation of criminal behaviour by the driver of a deadly weapon, namely a motor car, directed towards a defenceless child. The fact that the allegation had been made and the fact that the police felt obliged to investigate, must have caused extreme distress. Coupled with the fact that there have been multiple breaches of the undertaking and injunction, I agree that this falls within category A1 with a starting point of six months and a range of up to 18 months' imprisonment.
4. I take the same view in relation to breach eight of application three, the Facebook posting. This sought to equate the claimant, who although not named, is plainly recognisable and has had the false description of "psycho" applied to her with a convicted sex offender. There must have been a degree of premeditation connected with the breach. It is not to be equated with words spoken in the heat of the moment. The claimant knew what she was doing when she was typing this posting. She told me that she was scrolling through Facebook when she saw the posting related to the Star article and that "it must have caught me at that moment". She has unreservedly apologised for her actions. Again, I consider this to fall within category A1, when taken in conjunction with the fact of persistent breaches.
5. I consider that all of the other breaches straddle culpability A and B and category 1 and 2. The aggravating features of all of the breaches of injunction is that they were committed whilst penalty was under consideration for the breaches of the undertaking, and this justifies moving upwards outside the otherwise appropriate bracket.
6. The claimant urges me to pass sentences of immediate imprisonment.
7. The defendant has, when addressing me, offered her apologies to the claimant and her daughter. She has moved from the house and says there have been no breaches of injunctions since she has moved.
8. I repeat that I bear in mind the concept of totality. First, I am entirely satisfied that taken collectively, each breach, whether it be of undertaking or injunction order, passes the custody threshold. I propose to reflect totality by imposing concurrent terms of custody. I am also conscious of the issue of delay which has affected everyone.
9. The custodial terms are as follows:
 - (i) Breach four in committal application three, the report to the police, eight months' imprisonment.
 - (ii) Breach eight in committal application three, the Facebook posting, after allowing a slight reduction for the admission at the start of the trial in the region of about 10%, six months' imprisonment.
 - (iii) All the other breaches, four months' imprisonment.
 - (iv) All to run concurrently together.

10. I next consider whether the terms of imprisonment can be suspended. I am satisfied that they can. The fact that the defendant has moved away is hugely important. I consider that suspending the sentence will aid and encourage compliance with the terms of the injunction. The terms of imprisonment will be suspended for two years on condition that the defendant does not commit any further breach of the injunction granted on 9 September 2021 or any amendment to that injunction once any amended order has been notified to her. In addition, the period during which the injunction order takes effect is for two years from today, namely 15 March 2026.
11. I, first of all, determine that it is just that the usual order for costs should follow the event, the loser pays the winner's costs. In this case, Ms Wilkinson is the loser.
12. Secondly, the fact that for part of the proceedings, she has been legally aided does not assist her anymore, following the Court of Appeal's decision that there is no protection afforded by the grant of a criminal Legal Aid certificate, which, paradoxically, is the type of legal aid available in civil committal proceedings.
13. I assess costs that are reasonably incurred and reasonable in amount and I have regard also to the conduct of the litigation as a whole. Any doubt is resolved in favour of the paying party, that is Ms Wilkinson.
14. The use of a direct access barrister was reasonable, and the fee is reasonable, I allow £1,440.
15. The other costs relate to work done at £19 per hour and various incidental expenses such as printer ink. I think the time spent is too much. The test is what is reasonable for the paying party to pay, having also regard to the concept of proportionality. The claimant has not been wholly successful in committal applications two and three of the 20 allegations made, she has succeeded in only four.
16. Doing the best I can, I consider that a reasonable additional amount will bring the total allowed, including the £1,440 up to £3,250. Therefore, the total amount allowed is £3,250. In addition, I make it plain that ability to pay those costs is not a relevant consideration when assessing the amount.
17. I direct that a transcript of the proceedings this afternoon be obtained at public expense and published on the website of the Judiciary of England and Wales.
18. Ms Wilkinson, you have an automatic right of appeal to the Court of Appeal. The time is 21 days, and I will ensure that before you leave the court you are given details of where to send the appellant's notice, and if possible, we can download a notice for you for you to complete.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com

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This transcript has been approved by the judge.