Case number 14045326

IN THE COURT OF PROTECTION

[Manchester Civil Justice Centre]

Date: 20th September 2024

Before :

[District Judge Matharu
Sitting as a nominated judge of the Court of Protection Tier 1]

- -

Between :

KL **(by her litigation friend, GRACE WHITRICK)**	**Applicant**
- and -	
MANCHESTER CITY COUNCIL	**First Respondent/ Claimant**
v	
MICHAEL ADAMOU	**Second Respondent/ Defendant**

Mr Richard Borrett (instructed by **Manchester City Council**) for the First Respondent/ Claimant
Miss Hannah Haines (instructed by **Irwin Mitchell solicitors**) for the **Applicant**

The Defendant/ Second Respondent being unrepresented
Hearing date: 20th September 2024

Approved Judgment

District Judge Matharu:

Introduction

(1) Today is the sentencing hearing of Mr Adamou, who once again does not attend the Court hearing. I am asked by both Counsel to proceed in his absence. The relevant legal considerations I must have regard to it is submitted are summarized by Cobb J in Sanchez v Oboz [2015] EWHC 235 (Fam) (repeated in P v Griffith [2020] EWCOP 46).

(2) They are set out in Mr Borrett's skeleton argument for the hearing of 5th September 2024:-

> i) Whether the Respondent has been served with the relevant documents, including the notice of this hearing.
>
> ii) Whether the Respondent has had sufficient notice to enable her to prepare for the hearing.
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> iii) Whether any reason has been advanced for the respondent's non-appearance.
>
> iv) Whether by reference to the nature and circumstances of the respondent's behaviour, they have waived their right to be present (i.e. is it reasonable to conclude that the respondent knew of, or was indifferent to, the consequences of the case proceeding in their absence).
>
> v) Whether an adjournment would be likely to secure the attendance of the Respondent, or at least facilitate their representation.
>
> vi) The extent of the disadvantage to the Respondent in not being able to present her account of events.
>
> vii) Whether undue prejudice would be caused to the applicant by any delay.
>
> viii) Whether undue prejudice would be caused to the forensic process if the application were to proceed in the absence of the respondents.
>
> ix) The terms of the overriding objective to deal with cases justly, expeditiously, and fairly.

Macdonald J added in P v Griffith [8]:

> ... the court must bear in mind that committal proceedings are essentially criminal in nature and the court should proceed in the absence of the accused with great caution, that findings of fact are required before any penalty can by imposed... Arts 6(1) and 6(3) ECHR are actively engaged, entitling the respondent to, inter alia, a 'fair and public hearing' and to 'have adequate time and the facilities for the preparation of his defence.'

Service of the Findings of Contempt as made on 17th September 2024.

(3) I am told that the solicitors for the Litigation Friend sent an e mail to Mr Adamou at around 14:00 where the hearing had concluded at approximately 13:00. They informed him that the hearing had proceeded in his absence and the allegations of contempt were proven.

(4) The draft Order from the hearing of 17th September was filed at Court on 18th September. It was issued and returned to the solicitors for service at 16:55 on 18th September. They emailed the Orders immediately to Mr Adamou at 16:57. Mr Adamou has during this matter had consistent and frequent access to his emails. This is his chosen and preferred method of communication.

(5) On that same date, after 8pm the Process server attended at "the Property". Mr Adamou did not answer to any knocks on the door but both vehicles previously identified as belonging to him (the black BMW and silver camper van) were still parked on the driveway). The Order and Schedule of Findings were posted through the letterbox of "the Property" at which Mr Adamaou is living.

(6) i) Using the criteria identified by Cobb J in Sanchez v Oboz, I am satisfied that Mr Adamou has been served with Notice of today's hearing.

ii) Has Mr Adamou had "sufficient notice" to enable him to prepare for today's hearing? Mr Borrett accepts that 48 hours' notice is "fairly short notice". I also say that this is not a lengthy period of time but Mr Adamou knows of the issues, that the allegations against him have been proven and that there was a risk of the court proceeding in his absence. The Court orders are clear on their face with such warning. He was told to be here for sentencing.

iii) Once again, he has offered no reason for not attending. I am told that since 5th September, when he did attend at Court, there has been no communication from him.

iv) I do find that in light of his knowledge of these proceedings he has waived his right to be present. Further, it is reasonable to conclude that he knew of the consequences of the case proceeding in his absence as this was made clear on the face of the Orders listing the hearings, including today's hearing.

v) An adjournment of today has not been sought by Mr Adamou. I cannot say with any certainty that an adjournment by this Court of its own motion would be likely to secure his attendance.

vi) The extent of the disadvantage to Mr Adamou in not being able to present his version of events does put him at a disadvantage. But to counter that, his position is provided

in the abundance of emails to the Court and the parties and no doubt the Court can be referred to them.

vii) I accept what Mr Borrett says that the Litigation Friend is the Applicant in substantive Court of Protection proceedings. He says, the Council, which brings this application, would not suffer undue prejudice by any delay. But the Litigation friend who acts for the Protected party would. The protected party is 92 years of age. This situation has already resulted in her not being able to go home for at least 6 months due to Mr Adamou's actions of occupying the home she owns. A week is too long for a party of this age. There is no time for yet further delay and obstruction.

viii) There is no undue prejudice to the forensic process if the application proceeds in his absence. The findings have been made. This factor was perhaps more relevant at the Contempt hearing stage. Today is to deal with sentencing.

ix) The terms of the overriding objective are to deal with cases justly, expeditiously, and fairly. This means to all parties in this case, not Mr Adamou alone. The lawyers for the local authority and protected party urge that I proceed in Mr Adamou's absence. There must be a recognition of the particular facts of the protected party's needs. I must weigh her needs into the balance, needs that Mr Adamou seemingly has absolutely no regard for. He has been in "the Property" since 4th June 2024 and has repeatedly made I clear that he has no intention of leaving. This is not fairness to the protected party. He leaves the Court with no choice but to have to proceed in its exercise of judicial discretion to pronounce sentencing in his absence.

Sentence

(7) I would like to thank Counsel for their submissions.

(8) Mr Borrett took me through the relevant provisions that the Court must consider.

(9) The Court of Protections Rules 21.9 sets out the powers of the Court. The relevant rule for purposes of sentencing in contempt proceedings is at (1). If the court finds the Defendant in contempt, it may impose a period of imprisonment, a fine, confiscation of assets or other punishment under the law. Both Counsel submit that a fine is not sought and the appropriate sentence should be a period of imprisonment.

(10) Mr Borrett in his Skeleton Argument for this morning's hearing, identifies a Court of Appeal decision of Lovett [2022] EWCA Civ 1631 which identifies that sentencing for contempt of court is to achieve and ensure future compliance with the order, punishment, and rehabilitation. What Mr Borrett also did was take me through the decision of Mr Justice Poole in Sunderland City Council v Macpherson[2023] EWCOP3 at paragraph 51.This set out that the basis of any penalty being proportionate,

imprisonment not being the starting point, and not an automatic response. Roman numeral 4 of that paragraph emphasises proportionality, that is any sentence is to be by proportionate to the seriousness of contempt, and where an immediate sentence is ordered it should be as short as possible and bear some reasonable relationship to the maximum of 2 years.

(11) Mr Borrett identifies that where a term of imprisonment is appropriate, the length it should be determined without reference to suspension. Only when length has been determined, court should expressly ask itself whether a sentence of imprisonment should be suspended.

(12) Neither party suggest that a fine or seizing of assets is appropriate. They say that the only sanction available to the court is a sentence of imprisonment, because no fine could correct the breaches that have been brought before the court and proven. Both say Mr Adamou will not leave the protected party's home without a sentence of imprisonment.

(13) I accept that the only possible and proportionate option is a sentence of imprisonment. There is no other way of achieving compliance with the order of 25th June 2024. Mr Adamou has made it repeatedly clear he will not leave the property.

(14) I have already set out the steps taken to inform Mr Adamou of the findings I made. Despite knowing of the findings that the court has made, Mr Adamou once again fails to comply with the court process, and he is not at court again.

(15) Turning once again to the steps I must have regard to, Counsel took me to the Court of Appeal decision of Lovett which sets out the sentencing matrix. There is a caveat to its applicability. That case authority was in the context of anti-social behaviour injunctions, those known as "ASBI's" but the principle that the court should apply, set out three levels of culpability.

(16) C is lower culpability for minor breaches, B is for a deliberate breach falling between A and C, with A being the highest level of culpability for a very serious breach or persistent serious breaches.

(17) He then identified levels of harm with Category 1 for serious harm or distress; Category 2 for those cases falling between categories 1 and 3; Category 3 for a breach which causes little or no harm or distress.

(18) Mr Borrett's conclusion after his submissions were that this conduct of Mr Adamou fell into the A level of culpability and Category 2 of level of harm, and even if it were Category 1 for level of harm the period that the court could order would be at the lower threshold of Category 1so he sought no more than 6 months. That is the position of the Local authority.

(19) Those submissions are supported by Miss Haines who also said the following: she represents the Litigation Friend and that sight must not be lost of the fact of the substantive Court of Protection proceedings. I am the Judge in that case, so the Protected party benefits from judicial continuity. She says the level of culpability is high culpability because not only is this a very serious breach of an injunction order, but Mr Adamou has persistent serious breaches of court orders in the substantive proceedings.

(20) There was an order made in the substantive Court of Protection proceedings prohibiting Mr Adamou from removing the protected party from where she resides currently. I understand he has not been to visit her since February of this year. She says that despite that order preventing him from removing her, that is precisely what he did. What is notable is that this removal took place on the evening of the 5th of September 2024, which is the date of the very first committal hearing of this application. This caused great upset to her.

(21) The other breaches include, Mr Adamou confirming in writing that he records court hearings. That is not a matter he is permitted to do, it is a matter of law. The injunction order of the 25th June 2024 upon which the committal application was brought records that Mr Adamou elected to take possession of a property that he does not own on the 4th June 2024. Having been informed of the outcome of the findings of fact hearing on 17th September it would appear that MA continues to reside in the property, because the vehicles he has a connection are still parked at or on the premises of the Property. What Miss Haines says is that the appropriate culpability level is "A".

(22) On the issue of level of harm her submission to the court is that this is a Category 1 level of harm case. The breaches identified by her are causing very serious harm or distress to the protected party. She continues that having regard to the many breaches of court orders in the substantive Court of Protection proceedings Mr Adamou has embarked upon causing serious harm or distress to everybody involved in those substantive proceedings. She says the breaches are egregious and he has caused harm or threats of harm to every other professional involved in this case.

(23) She identified that the solicitor who had conduct of this case for the protected party is no longer being involved in this case. The Deputy for Property and Affairs for the protected party made an application to be removed as a Deputy because of threats made by Mr Adamou to torch the premises in which his employees were working and that a tracker would be put on the Deputy's car. I confirmed to parties that the Deputy came to court and gave evidence to the court in those terms. I granted that application, and accepted what the Deputy had to say that the new deputy must not be in the area, but outside the locality to avoid the same situation arising. She says that there is a fear for one's own safety of anybody involved with Mr Adamou.

(24) I revisited my notes of the evidence of the process server Mr Watson the process server who came to court on 17th September to give live evidence. His evidence was in these words, "it was his whole demeanour he was clenching his fists; it was the way he approached and the way he was towards me". Miss Haines stated that across the board Mr Adamou causes distress and serious harm.

(25) Her final submission was that when it came to sentencing, it was not a significant factor but the Court should have regard to the protected party who was central to the case. She wants to go home, and in order to go home Mr Adamou cannot be there and the only way to ensure this is to reflect that in any custodial sentence to ensure that he does not return to the Property.

My Decision on Sentencing

(26) The case authority of Lovett identifies the analytical approach to be used. Thereafter there is a "grid" or table which can be used when performing this exercise. There is further guidance at paragraph (49) which I shall address shortly.

(27) The starting point for sentencing is "the matrix" both Counsel took me to, the starting point. Then having identified the level of Culpability and level of harm, this allows the Court to determine a starting point for the sentence and a range within which the sentence can be adjusted taking into account any "additional elements which increase or decrease the seriousness of what has happened or amount to personal mitigation".

(28) My decision and my judgement are that the level of culpability is in bracket A where this is a breach of an injunction order which specially recorded that Mr Adamou was to leave the Property. It was issued with a Penal Notice. It is clear as to what was ordered and what the consequences of breach could be. There are also the persistent "other" serious breaches of Court Orders which I have been addressed upon by Miss Haines.

(29) As for level of harm, in weighing up all the factors the level of harm in this case is Category 1 where the various breaches identified with Miss Haines have caused very serious harm or distress to all who have had any dealings with Mr Adamou. The starting point is a six-month custodial sentence with a Category range of 8 weeks to 18 months.

(30) There is a history of disobedience of court Orders by Mr Adamou. Factors which increase seriousness include that there is a protected vulnerable party who has been made a victim of Mr Adamou as the 5th of September, immediately after the first hearing on that date. The Court has been provided with a witness statement of the Manger of

the Care Home where the protected party currently lives. The Court is told that Mr Adamou intimidated staff to allow him access to that place. They felt threatened by him. They told him he could not remove her from those premises as there was a Court Order forbidding him from doing so. He dared anyone in the place to stop him. He removed the protected party for about 90 minutes. The placement Mr Adamou had removed the protected party from called the Police. The protected party was returned "not seeming herself". The witness statement of the care home manager staff reports that the protected party said "her home is a mess". Mr Adamou would appear to have taken her to "the Property". I am told that she was fine throughout night, but when she got up she was crying and very upset. She told a member of staff that her house smells, and "my palace is broken" that she wanted to go home and Mr Adamou was living In her house.

(31) This is lady is 92 years of age. She has declining cognition, with her predominant wish being to return home. Solicitors for the parties, in accordance with their duties as officers of the Court have been candid and thorough in bringing the court up to date on the position of any return home. That is to say, it may well be that she may not be able to return home because of her financial position and the condition of property. The cost of works to the property to make it habitable for her may simply render any return not viable. But she cannot even get in to her home for her to visit.

(32) Because of Mr Adamou's actions and threats, the Deputy FOR Property and Affairs, Occupational Therapist, and carers refuse to go to the Property. The previous Deputy changed the locks, Mr Adamou changed them back. They are fearful of their and their staff's safety. I find that these are relevant aggravating factors.

(33) What other factors would increase the seriousness of any sentence? When it comes to factoring in relevant matters it cannot be tolerated that Mr Adamou considers that he is out with the bounds of the court. He unlawfully records court hearings, he tells the court he records court hearings and seeks to justify this by saying it is for his protection.

(34) At a hearing in the substantive proceedings on 19th December 2023 before me, he produced a metal compressor clip from an A4 arch lever file and approached the bench. He told me "Security should be informed that he had been able to enter court with [it] that it was "sharp". This was formally recorded on the Order. What he had to say was not a gesture of goodwill to the Court. It was clearly intended to intimidate the Court. These are factors that are employed by Mr Adamou to intimidate and cause distress to the authority of the court.

(35) He has bombarded legal representatives and court with email communications, many of which are aggressive and challenging. I address one example dated 16th

September timed at 08:21 the day before the hearing of 17th September. It is addressed to the court and all the legal representatives. "I can't wait for tomorrow I told you I would take you to a place you've never been before, and my promise is a promise..." When I consider the earlier submission of Mr Borrett that sentencing for contempt of court has three functions the sentence, I am to about to pronounce is to ensure future compliance with this order, punishment and with hopes of rehabilitation.

(36) There are no mitigating factors such as any remorse of Mr Adamou. Mr Adamou has shown no regard for the wishes of the protected party. He was offered the opportunity to move out without any adverse findings of any sort at the hearing of 5th September when he attended at Court. He answered "you would like that wouldn't you. You will make me and my son homeless". I am not aware of any ill health or any other factors that I can invoke or engage as any sort of mitigation. The starting point is a 6 month custodial sentence, and in light all of these matters and having listened to Counsel the sentence this court is passing is a 12 month custodial sentence. In reality this will mean he will serve no more than 6 months. This will ensure those involved with the care of the protected party can take steps to ensure visits to her home or investigate a return home without fear or obstruction by Mr Adamou. This is the proportionate sentence for the circumstances I have identified.

(37) The decision I have made is a necessary and proportionate measure to grant a protected party's sole desire to return home to her "palace". It could even be said that a reason for the protected party hanging on to life is to go home. It is her home and is not to be forcibly taken from her by Mr Adamou.

(38) I must then consider Whether such sentence should be suspended in accordance with the case of P v Griffith (Application to Commit) [2020]EWCOP 46 at paragraph 42 and adopted by Poole J in the case of Sunderland City Council v Macpherson [2023] EWCOP 3 at paragraph 51:- (vi) Having determined length of term of imprisonment, the court should expressly ask itself whether a sentence of imprisonment might be suspended.

(39) I am entitled to take into account that Mr Adamou has made it very clear he has no intention of moving out of the Property. Would a short suspension on condition of him voluntarily vacating the property perhaps cause him to change his position? Both Counsel are of the view that a suspended sentence should not be given. In Mr Adamou's own words recorded in one of his many emails, one dated 3rd September 2024 at 18:21 is, "This is our home, and I have not 1 intention of moving out." There is no basis on which the objective of compliance with the injunction order can be achieved in any other than by way of an immediate custodial sentence. That is my decision in relation to sentencing.

(40) This is an ex-tempore judgment. I am grateful for the provision of a Note of my judgement provided to me by solicitors for the parties so that I could produce this judgement as promptly as possible in order to publish it. I ordered a transcript at public expense at the conclusion of the hearing but am still awaiting this from transcribers and did not wish to incur any further delay.

END