

IN THE COURT OF PROTECTION

13455313

IN THE MATTER OF THE MENTAL CAPACITY ACT 2005

BETWEEN

Derbyshire County Council



Claimant

–and–

JAMES GRUNDY (by the Official Solicitor as Litigation Friend)

Defendant

–and–

P (by SB her litigation friend)

Interested Party

1. I am today dealing with a further application by Derbyshire County Council for the committal to prison of James Grundy. It includes an application to activate a suspended sentence of imprisonment that I imposed in August 2023.
2. Representation today was by Ms McKinlay on behalf of the claimant, Mr. McCormack instructed by the Official Solicitor, and Mr Borrett on behalf of P as I will refer to her.
3. Mr. Grundy is not present today. This case was called both here at Derby Justice Centre and over at the Combined Court.
4. In an earlier ex tempore judgment, I decided, following the guidance in Sanchez v Oboz [2015] EWHC 235 (Fam) to proceed in Mr. Grundy's absence. I was told by Mr. McCormack that during a short adjournment when I was completing my viewing of the footage, his instructing solicitors tried to make arrangements for Mr. Grundy via the day centre where he is apparently this

morning to get a taxi to court. He refused this offer and refused to come to court.

5. The court has to decide today:

- a. Mr. Grundy's capacity to conduct these committal proceedings, to comprehend and make decisions as to the injunction order and the suspended sentence which was handed down on the previous application.
- b. If the four alleged breaches are proven.
- c. Whether to deal with sentencing if capacity is established and the breaches made out.

6. **Background.** Details of the injunction granted by DJ Parker and of the terms it contains are set out in my earlier judgment of 16 February 2023. I do not propose to repeat these details.

7. The suspended sentence order and my judgment were personally served on Mr Grundy on 23 September 2023 along with a further copy of the underlying injunction.

8. The current application was made on 24 October 2023 seeking activation of the suspended sentence passed on 22 August 2023 and in respect of further and continuing breaches of the injunction. Mr. Grundy has been personally served with the application and affidavit in support of Nicola Burke which exhibited videos of police bodycam footage. He has also been served with the notice of committal, and a further copy of the original injunction on 17 November 2023. There is an affidavit of Susan Ward, process server in the bundle dated 21 November 2023.

9. It is submitted by the Claimant that Mr. Grundy has thus been properly served and moreover is aware of the application to commit with supporting evidence. The claimant refers to a conversation Mr. Grundy had with Justine Williamson

within her assessment dated 29 November 2023 which confirmed that he told her that he was aware of the sentencing outcome on 22 August 2023 and that he will be sent to prison should he continue to visit P. He told Ms. Williamson that he was aware he is not allowed to see P, that he had received the bundle from the court and that there had been requests for it to be provide in easy read format.

10. The injunctions, orders and notice of contempt all in my judgment take the proper and correct forms. I have seen and accept the submissions of Ms. McKinlay as set out in her supplemental position statement. I don't propose to go through the relevant provisions. By reference to her document as to paragraph 13 I am satisfied that Mr. Grundy has had reasonable time to prepare for the hearing and has declined to engage. As to paragraphs 17, 19, 20, and 22 insofar as is required, strict compliance is waived given the fact that Mr. Grundy is and has been legally represented. I also place on record that notice of the hearing today was duly given to the Press Association and confirmed to me by the hub. I also record that the hearing has taken place in public and has been properly listed on Courtserve for both the Court of Protection and Derby Family Court. In addition, a door notice has been displayed to indicate that this is an application by Derbyshire County Council to commit James Grundy to prison for contempt of court.

11. I now turn to the alleged breaches. Firstly, and secondly that on 15 June 2023 at 11.35am and on 30 June 2023 at 19.10 pm Mr. Grundy was present at P's home when P was there and met her face to face and he was unsupervised when doing so.

12. The third alleged breach is that on 14 September 2023 at 20.55pm Mr. Grundy was present at P's home when P was there and met her face to face and he was unsupervised when doing so.

13. Finally, it is alleged that on 12 October 2023 at 18:37 Mr. Grundy was present at P's home when P was there and met her face to face and he was unsupervised when doing so.
14. Those latter two breaches, if established, also constitute a breach of the suspended sentence imposed on 22 August 2023.
15. I turn to the claimant's evidence of breach. I have written evidence from Nicola Burke which exhibits body worn footage from the police. I have been able to view all of that this morning. I am satisfied that the date and time stamps on the footage are accurate.
16. Breach 1. The body worn footage shows Mr. Grundy opening the back door of P's house from inside to a police officer. He tells the police that he was just dropping some stuff off for the cats. When asked if he was supposed to be there, he appears to avoid the question by saying he did not know and that he was on his way to an appointment at Fountain Street at 11.45.
17. Breach 2. Body worn footage shows Mr. Grundy's car outside P's home. Again, he opens the door to the police officer from inside the house. He agrees with the police officer that he and P were seated together on the sofa. He tells police that he has fed the cats and had a cup of tea. He appears then to have left by 19:11 after which P tells the officer that she is glad the officer attended and appears distressed.
18. Breach 3. Body worn footage is exhibited taken by two police community support officers who attended P's home at about 8:56pm to complete a safe and well check. This shows Mr. Grundy's vehicle parked outside. His voice can be heard, and a conversation is held with the officers during which one of them tells Mr Grundy he is not supposed to be at the property. He replies 'just coming away now' whereafter he exits the property and walks back to his van.

The officers then speak to P who confirms Mr. Grundy had been there and was acting oddly.

19. Breach 4. The two PCSO's attended again on 12 October 2023 and the body worn footage starts at 6.43pm. Mr. Grundy's van is again seen outside. The officers knock at the back door, P answers and tells them that Mr. Grundy is there and is not supposed to be. Mr. Grundy is clearly visible in the footage. The officers tell him he is not supposed to be there, he replies that he is just been up the road to feed the cats and have a cup of tea. He leaves soon thereafter.

20. The claimant of course has to prove these alleged breaches to the criminal standard that is to say beyond reasonable doubt.

21. There was no oral evidence required to be given, as Mr. Grundy has not attended and given any instructions to his legal team to allow any cross examination. As such the Claimant's evidence was unchallenged.

22. I heard brief submissions from all counsel. Ms. McKinlay relied on her two position statements, but in summary she made the points that the facts of the breaches are undoubtedly proved by the video evidence and that insofar as mens rea is concerned, this is established, not least by Mr. Grundy's own admission to Claire Burbidge when she was carrying out her capacity assessment. There is, Ms. McKinlay submitted, insufficient evidence that would permit the court to take any other view but that Mr. Grundy has capacity.

23. Mr. McCormack on behalf of the Official Solicitor accepted that there was no evidence to rebut the presumption of capacity, and that the task of the court is to consider whether at the behest of the court, given previous doubts as to capacity, the parties have taken all reasonable steps to address the questions of capacity, this against the backdrop of Mr. Grundy's refusal to engage. The Official Solicitor is satisfied that all such steps have been taken and there is no

positive case to be put forward to justify a further adjournment to look further into capacity.

24.Mr. Borrett on behalf of P took a neutral position as regards breach and capacity.

25.I come now to my decision. It is clear to me that beyond any reasonable doubt Mr. Grundy is in breach of the injunctions, certainly as Ms. McKinley puts in, as to the actus reus. The body worn footage is irrefutable evidence that Mr. Grundy was at P's property meeting with her unsupervised on the dates in question. I find all four alleged breaches proven.

26.However, the court needs to go on to consider Mr. Grundy's capacity to understand the injunction and the suspended sentence order. Specifically, breaches 3 and 4 are breaches of the terms of the suspended sentence order.

27.In terms of the legal framework, counsel have set this out clearly in their position statements. The law is clear and uncontroversial, albeit that Mr. McCormack was right to point out that both Wookey and P v P predate the Mental Capacity Act. I do not propose to set the law out but rather to apply it to the facts of this case.

28.At the previous sentencing hearing, the legal representatives for Mr. Grundy were clear that Mr. Grundy was capacitous in response to a direct question from me. We proceeded on that basis. Since then, we have had an assessment from Justine Winterbottom (who is a social worker with the claimant in fact) which concluded that Mr. Grundy lacked capacity. That led to an interim declaration and to a direction to a medical expert Dr. Parvez for a fuller assessment on a joint instruction.

29.A subsequent assessment was carried out by Claire Burbidge, also a social worker with the Claimant, which opined that Mr. Grundy was capacitous. This assessment has been considered by Dr. Parvez within his report.

30. Dr. Parvez visited Mr. Grundy at the day centre on 4 August 2024. Mr. Grundy is reported to have become irate and disengaged. As a result, Dr. Parvez has not been able to complete a face-to-face assessment but has been able to file a desk top assessment dated 6 January 2025. Dr Parvez comes to a different conclusion to Ms. Winterbottom. His view is that there is insufficient information to conclude that Mr. Grundy lacks capacity for any of the relevant matters, though there were some caveats.

31. To summarise Dr. Parvez's findings, he states that there is evidence of a potential impairment based on his mini-mental assessment of September 2023. There is evidence of difficulty with more complex tasks requiring planning, judgment and execution for example with regard to his property and other personal characteristics. It is unclear whether that evidence of executive dysfunction was considered in previous capacity evidence.

32. Dr Parvez references the capacity assessment of Claire Burbidge, and the written evidence of Lee Brotzen and Brogan Brown. He has seen Justine Winterbottom's earlier assessment but does not reference it.

33. Ms. McKinlay submits that the evidence weighs heavily in favour of a finding that Mr. Grundy has capacity.

- a. Firstly, Dr. Parvez, whilst raising some questions, does not go so far as to say that Mr. Grundy lacks capacity in any area or that there is sufficient evidence to rebut the presumption of capacity.
- b. Secondly, whilst Ms. Winterbottom's assessment is to the contrary, she does not sufficiently address injunctive capacity for the court to be satisfied that Mr. Grundy lacks capacity and acknowledges that he can identify that he should not be seeing P, but notes that he continues to do so despite knowing this from which it is submitted Ms. Winterbottom makes an unjustifiable leap to conclude that Mr. Grundy cannot use or

weight the relevant information when considering decisions and around conducting proceedings.

- c. Thirdly, Mr. Grundy has expressed to Ms. Burbidge that he will continue to visit P no matter what the court order says.
- d. Fourthly, Mr. Brotzman, who I should add is a member of the Older Age Community Health Team for the area in which Mr. Grundy lives, has given written evidence which notes that in February 2024, Mr. Grundy was able to tell him that there would be expected consequences from not attending a court hearing.
- e. Fifthly, the court is asked to consider Mr. Grundy's demeanour in the video footage.
- f. Sixthly, Ms. Brown, the deputy manager at the day centre describes Mr. Grundy as someone grounded in time and place who attends the day centre at the right time on the right days and who can manage his own finances (and someone who has had his driving licence returned to him following a successful driving assessment).
- g. Seventh, that Mr. Brotzman's opinion is that as at the end of 2023 and early 2024 Mr. Grundy was not suffering from any identifiable low mood, depression or other mental health issues, was not displaying short term memory loss, or cognitive problems, and that in a meeting in February 2024, Mr. Grundy demonstrated that Mr. Grundy could understand the discussion, communicate back and show a clear ability to use and weigh relevant information appropriately.
- h. Finally, Ms. McKinlay asked the court to note that there had been an injunction in place in previous Court of Protection proceedings in the same terms as the present one which Mr. Grundy had complied with.



34. Having taken all of the relevant evidence into account (and I would say here that I consider that the parties have taken all reasonable steps to clarify the questions that the court needs to grapple with in order to make a determination, for which I thank them), and having considered the legal framework I have come to the conclusion that Mr. Grundy has capacity to understand the terms of the injunction, capacity to understand that if he disobeys the order that he will be in breach and could go to prison, and capacity to understand that a suspended sentence has been imposed and that the consequences of his continued breach could be the activation of that sentence. I also find he has litigation capacity.

35. There is a lack of evidence to overturn the assumption of capacity. On the contrary, the evidence when balanced is clearly in favour of a finding and thus a determination of capacity.

36. I will not be dealing with sentencing today. I do not think this is appropriate and this mirrors the way in which I dealt with determination of breach and then sentence separately on the last occasion. It also follows the course of action taken by Cobb J in Sanchez and MacDonald J in Griffiths, as Mr. McCormack pointed out.

37. Mr. Grundy has the right to appeal the court's decisions– he does not need permission. Time runs from today.

38. The effect of my finding is that the Official Solicitor will now be discharged as Mr. Grundy's litigation friend.

39. That is my judgment.

**District Judge Davies**

**20 January 2025**