

IN THE FAMILY COURT AT LEEDS

1 Westgate,
Leeds,
West Yorkshire,
LS1 3BY

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Before:

HER HONOUR JUDGE MURDEN

Between:

HAZELINE SIMPSON

Claimant

- and -

TRACEY SIMPSON

Defendant

THE APPLICANT (Claimant) was not present or represented
MS GUILDFORD (Counsel) appeared for the **Respondent (Defendant)**

JUDGMENT

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HER HONOUR JUDGE MURDEN:

1. In this matter I am concerned with an application for the committal of the defendant, Tracey Simpson, made by her mother in fact, the claimant, Hazeline Rosetta Simpson. I will refer to those parties either as Ms Simpson and Mrs Simpson, or defendant and claimant throughout this judgment. The application arises out of proceedings which followed the making of an occupation order by District Judge Akers on 2nd September 2024. That application was made by Mrs Simpson against her daughter, Ms Simpson, who was living in the family home at the time, and it followed the making of a non-molestation order earlier in the year. That non-molestation order runs until February of next year.
2. Neither Ms Simpson nor Mrs Simpson were in fact present at the hearing at which that occupation order was made, but it was nevertheless made, and it was made for ten years, starting when the order was served on Ms Simpson.
3. There is a complex family background to those proceedings and therefore, to some extent, these proceedings. I am not going to rehearse that background in great detail. It does not impact to a great extent upon the decisions that I am asked to make today, but, if I find any part of that history relevant to mitigation or the ultimate sentencing exercise, then I will refer to it specifically.
4. The occupation order that was made by District Judge Akers at that hearing was made as follows: that

"Ms Simpson shall leave [ADDRESS]. When the order is personally served, whether by personal service or otherwise, the court shall effect personal service of this order on the respondent via a court bailiff. Having left [ADDRESS], Ms Simpson must not obstruct, harass or interfere with Mrs Simpson's peaceful occupation of [ADDRESS]. Ms Simpson shall return to Mrs Simpson all the keys to the property and the keys for the gas and electric meters."

That order was served personally on Ms Simpson and there is a statement of service to that effect. It was served at 14:57 on 2nd September.

5. After that service, Police Officers McDowell and Burne attended the address at Wiggan Lane because they had been called by Ms Simpson's sister, Jackie Simpson. The officers attended at 22:34 on 3rd September – so approximately 30 hours after the order had been served on Ms Simpson. The officers knocked at the door and Ms Simpson answered and confirmed who she was. She allowed entry to the property freely, but she said she would not leave the address and that she had to remain there to care for her parents, who I note are both very elderly and have health conditions also.
6. The police officer's statement records that Ms Simpson refused a request to leave the property and she was therefore arrested at 23:40 that evening. During the booking in process, she confirmed that she was aware of the order and the conditions which had been delivered to her by the bailiff. Ms Simpson spent overnight in the cells, and she was produced before District Judge Dawson, who bailed Ms Simpson to attend before me at a hearing on 15th October. Ms Simpson duly attended, and she had instructed solicitors and counsel to represent her, as is her right.
7. At that hearing, the court had not been furnished with the evidence of the police officers, or indeed any evidence of the breaches Ms Simpson was said to have committed. Despite that, it is important to note that through her counsel, Ms Guildford who appears for the defendant today, Ms Simpson freely admitted that she had breached the occupation order and there was a clear indication at that hearing that she would plead guilty to that matter. I made a direction for the filing of a committal application by Mrs Simpson on Form FC600, and I also made directions for the order to be served on Mrs Simpson and for a court link to be sent to her to enable her to

attend the hearing this morning if she so wished. It was important that she was given permission to attend remotely because of her age and her health difficulties.

8. Mrs Simpson has filed an FC600 and effectively sets out in that document three alleged breaches of the occupation order: firstly, that Ms Simpson refused to leave the property on 3rd September after the order was served; secondly, that she did not hand over all of the keys to the property as the order ordered; and, thirdly, that she returned to the property on 4th September and let herself in with a key. She was on bail at that time and was arrested for breach of those bail conditions.
9. There is no statement attached to the FC600, as that document requires and as the Family Procedure Rules also require at rule 37.4(1). That paragraph says:

"Unless and to the extent that the court directs otherwise, every contempt application must be supported by written evidence given by affidavit or affirmation."
10. Helpfully, in discussions with Ms Guildford this morning and for reasons which will become apparent in the rest of this judgment, Ms Simpson, through Ms Guildford, does take the procedural point and request an adjournment of this case for a written statement to be provided from Mrs Simpson. The reasons for that are as follows: firstly, on Count 1 there is a statement of evidence from the police officer which, in any event, along with her admission, proves that Ms Simpson was present at the property on 3rd September after the order had been served on her. Secondly, in relation to Counts 2 and 3 (which are not formally evidenced in the form of a written statement or affidavit or affirmation), Ms Simpson has responded in her statement in full to both of those allegations, accepting that they constitute a breach of the occupation order.

11. Given that that is the position of Ms Simpson through Ms Guildford, I am satisfied that I should 'direct otherwise' as per rule 37.4(1) that Counts 2 and 3 of the contempt application do not need to be supported by any other written evidence given by affidavit or affirmation beyond the statement provided by Ms Simpson herself in which she admits those allegations; and in relation to Count 1 I 'direct otherwise', in that I am prepared to accept the police statement as written evidence of Count 1. There is no need, in my judgement, for that statement to be redrafted in order for it to constitute formally an affidavit or an affirmation.
12. That waiving of those requirements is in accordance with case law, as counsel has cited to me. In my judgement, there is absolutely no unfairness on Ms Simpson, who knows the case against her and has, sensibly and entirely to her credit, fully admitted the breaches that are set out in the FC600, albeit the requirements of that form have not been complied with fully by Mrs Simpson. That procedural defect is remedied, in my judgement, by the matters that I have just set out and Ms Simpson's position in relation to that.
13. Ms Simpson's response in her statement is a full and frank admission. She also admits to Count 3, namely that she returned to the property after the court hearing before District Judge Dawson. She says that she returned to get her possessions to see if her father was alright. She denies that she used a key on that occasion and said that the door was open. I am content for these purposes to accept the defendant's position. On that issue, it would not be remotely proportionate for me to investigate whether in fact a key was used, and indeed, as I have already noted, there is no written evidence to the effect that it was. So, I proceed on the basis of the defendant's admissions.

14. Ms Simpson then says that the police were called again on 4th September, and that is when she gave the police the keys. She was interviewed and released without charge on that day, albeit she was in police custody for about 12 hours, I am told, and the police in fact took her back to the property in order for her to get some of her belongings. She has lived in that house for a considerable period of time. As of 4th September, she tells me in her statement, she has been homeless. She lived in her car for a period of time, and she now lives with a friend and has been sleeping on a chair. She started work, happily, on 16th October. Her statement is a full and frank set of admissions and apologies to the court. She describes herself as having buried her head in the sand over the previous proceedings and she reiterates her apologies for breaching the order.

15. It is on that basis that I come to consider the sentence which would be appropriate given the defendant's guilty pleas to all three allegations that she has breached the occupation order. I direct myself to the summary of sentencing principles as set out in the case of *Allami v. Fakher* [2023] EWFC 59 at paragraph 62. That is a full exposition of the relevant factors, and I will only summarise them for the purposes of this judgment. I can order an immediate sentence of imprisonment or a suspended sentence. I can order that Ms Simpson pays a fine, or I could adjourn a consideration of the penalty for a fixed period or enlarge the terms of the relevant injunctions. The terms of the disposal must be proportionate to the seriousness of the contempt and reflect the court's disapproval of those actions. The punishment should be designed to secure compliance with the orders in future. Committal to prison is appropriate only when no reasonable alternative exists. Where the sentence is suspended or adjourned, the period of suspension or adjournment and the precise terms for activation must be specific. Imprisonment is not the starting point and is not the automatic response to a

contempt of court. Equally, there is no principle that a sentence of imprisonment could not be imposed on a contemnor who has not previously committed a contempt.

16. In assessing the seriousness of the contempt, it is right to have regard to the purpose for which it was committed and the likelihood of any risk to the process of justice. If prison is appropriate as a sentence, it should be as short a term as possible having regard to the gravity of the contempt and must bear some reasonable relationship to the maximum sentence of two years' imprisonment that is available to the court. The length of the prison sentence should be determined without reference to whether that term is suspended or not. Having determined the length of the term of imprisonment, the court should ask whether it should be suspended and, if it is suspended, it can be suspended on terms. The court should, as this judgment purports to do, briefly explain the reasons for the disposal.
17. There are two primary functions of a sentencing exercise in this court: to uphold the authority of the court and deter others from breaching orders; and, secondly, to secure future compliance. I also direct myself that any period spent in custody or in police custody is not automatically taken into account in any sentence that I pass. So I have to take those matters into account in deciding what the sentence should be. Ms Simpson was incarcerated overnight in the police station on 3rd September and produced on 4th September; and then spent another day, essentially, in police custody before being released to be escorted to get her belongings from the property.
18. I do acknowledge when I consider the sentence that Ms Simpson breached the order made at court immediately because she did not leave the property on being served with the order which was clear in its terms. The police had to be called and the police seem to have given Ms Simpson a further chance to leave and she did not. Ms

Simpson had to be arrested, held overnight and produced before the court the next day. In terms of Count 3, the return to the home on 4th September, that is aggravated of course because Ms Simpson had been in court about the previous breach only that morning. She was more than aware of the terms of the order, and she went back to the house, she says, to collect her belongings. Again, the police had to be called and spent, essentially, the whole day dealing with Ms Simpson and the issues raised by the order and her breaches of it.

19. I do note that the circumstances in which the order was made are somewhat unusual. There are very difficult family dynamics within this family unit. They are obvious to anybody reading the evidence filed in those proceedings that I have had some access to. That order, though, was made to protect vulnerable people and the court felt that the protection of the court was required. That order was not appealed. Ms Simpson did breach it three times, but the first two counts are part of the same incident really - so the order was breached on two substantive occasions in very quick succession after that order had been made. Those, in my judgement, are the aggravating features of Ms Simpson's actions.
20. There are a number of mitigating features in this case, however. There have been, to my knowledge, no issues with compliance either with the occupation order or the non-molestation order since 4th September. That is now over two months ago. When Ms Simpson talks in her statement about burying her head in the sand and not really appreciating the impact of the order that was made, I am quite satisfied that is what happened. She was not represented in those proceedings, and she now seems to be trying to get her life back into order after what she would say was the shock of what had happened in those occupation order proceedings.

21. She has expressed remorse through her counsel and in her statement. She has indicated a guilty plea at the earliest opportunity to all three counts, and, particularly in relation to Count 3, she did not have to in her statement indicate that she was guilty of going back to the property on 4th September. But she did so, and I think that that is something for which she deserves considerable credit. Perhaps beyond the usual credit for a guilty plea, because it was almost in anticipation of the evidence about her attendance on that day. She has avoided the need for her elderly mother, Mrs Simpson, to give evidence to this court or even to attend at these proceedings. That also is considerable mitigation, in my view.
22. Although there were two occasions of contempt, these represent the first offences of Ms Simpson and there is no indication, to my knowledge, of any other breaching of court orders before that time or since that time. She has cooperated with these contempt proceedings, in that she has instructed solicitors and counsel. She has attended court. On 3rd September of course she was produced from custody on that day. She was bailed to attend before me on the 15th and she did, and she was bailed to attend before me today and she has.
23. She has given instructions in the meantime for the provision of a full statement, and I am very mindful that Ms Simpson has gone through two months and three court hearings in which she has believed she could go to prison, and of course that was the case. This is the third court hearing where she has attended and thought that that was a possibility until I released the bailiff at the start of this hearing.
24. The protective orders remain in place; the occupation order runs until 2034; and the non-molestation order until 6th February 2025. So, the relevant people are already protected by the terms of that order.

25. I would not wish any of my remarks in this judgment to be taken as minimising the seriousness of breaching court orders. Those orders were made by the court, they were properly served, and Ms Simpson was aware of the contents of them. She breached those orders twice in quick succession. However, in light of the substantial mitigation in the statement of Ms Simpson and through her counsel, Ms Guildford, I am minded not to impose a separate penalty in relation to any of the three counts at this hearing today. I decide that because in relation to Counts 1 and 2 Ms Simpson spent overnight in police custody, and in relation to Count 3 she spent 12 hours in police custody. So she has had that no doubt unpleasant experience and she has had the threat of a prison sentence hanging over her head for some time now. The impact of these proceedings and the previous proceedings on Ms Simpson's life are very obvious from my reading of her statement.
26. I have considered whether the offences were serious enough to justify immediate custody. In my judgment, they were not. I considered the imposition of a short period of custody with a period of suspension, but, taking everything in the round and noting that there have not been further breaches since 4th September, it is my judgement that that would be disproportionate in the circumstances where the orders are now being complied with. That really is a very significant factor in my consideration.
27. I have also thought about whether a small or relatively modest fine would be appropriate in this case, but I have read with sympathy the impact that these proceedings have had on Ms Simpson's life. They have effectively rendered her homeless. She has managed to secure employment, which I am very pleased to read about, but it is not my view that the imposition of a fine is appropriate or

proportionate in this case, or really would serve any useful purpose. I am satisfied that Ms Simpson is aware of the serious nature of what she did, and I am as satisfied as I can be that she will not breach these orders again.

28. I hope that I am right about that. I should say to Ms Simpson that if the court had occasion to deal with you again in relation to breach of either of these orders, it may well be that a different court would take a different view on a second set of offences, and I hope that you understand that. For the sake of the record, Ms Simpson is nodding her head at my remarks.
29. So, essentially, on Counts 1 and 2 (they form part of the same incident) I find that the overnight in custody is sufficient for the punishment of those offences. In relation to Count 3, the day or 12 hours in police custody is sufficient in relation to that and there is no separate penalty required in light of all the other mitigating factors.
30. I have to record that there is an automatic right of appeal to the High Court which should be filed within 21 days from today's hearing, and there should be a transcript of the judgment today which I will order at public expense. I will approve that transcript in due course, and it will be uploaded to the relevant website as is appropriate for applications for committal, which of course are dealt with in public.
31. Just before I leave the case, I should record that, although the claimant, Mrs Simpson, has been sent the link to this hearing and was of course welcome to attend either in person or remotely, she has not attended and the link has been open throughout the court hearing but she has not attended. That is not intended as a criticism of her, but, just for the sake of completeness, that opportunity was given.
32. So that is my judgment on the application for committal.

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