



Neutral Citation No. [2023] EWCA Civ 574

Case No: CA-2023-000160

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COURT OF PROTECTION
MR JUSTICE POOLE

The Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday, 4 May 2023

Before:

LORD JUSTICE PETER JACKSON
LORD JUSTICE DINGEMANS
LADY JUSTICE ELISABETH LAING

Between:

LIUBOV MACPHERSON

Applicant

- and -

SUNDERLAND CITY COUNCIL

Respondent

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MS L MACPHERSON appeared in person

The Respondent did not appear and was not represented

Judgment

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LORD JUSTICE DINGEMANS:

1. This is the hearing of an appeal by Liubov Macpherson ("the Appellant") against an order of Poole J dated 20 January 2023 committing the Appellant to 28 days' imprisonment, suspended for 12 months, for five contempts of court. The Appellant had admitted in the proceedings before Poole J that she breached orders made by the court preventing her from recording or videoing a named individual known as FP or health or social care staff concerned with FP; and publicising the proceedings relating to FP or evidence in the proceedings by way of posting on social media or publishing video or audio recordings of FP. As this was an order made for contempt of court, the Appellant brings this appeal as of right, pursuant to section 13(3) of the Administration of Justice Act 1960. By order dated 21 March 2023 King LJ ordered that the respondent, Sunderland County Council, need not attend the hearing of the appeal. As the underlying proceedings are in the Court of Protection and concern FP, there were reporting restrictions imposed below, preventing the identification of FP. We repeat that order, and no report of these proceedings or judgment shall identify the name or address of FP.
2. The background is necessarily slightly cryptically expressed because of the reporting restrictions. The Appellant is particularly concerned with the proper care and treatment of FP. FP is a woman in her 30s who was born with cerebral palsy. She suffered from meningitis, which led to mental health problems, and FP has developed paranoid schizophrenia. FP was sectioned in the past under the Mental Health Act 1983 and has been assessed as lacking capacity. It is apparent that the Appellant does not accept that FP lacks capacity. The Appellant has been very critical of the arrangements for and the delivery of care provided to FP. The respondent and FP's guardian ad litem disputed the Appellant's views and various hearings took place.
3. On 21 October 2020, in the Court of Protection, HHJ Moir held that FP lacked capacity to conduct proceedings, to make decisions for herself about where she should live, her care arrangements and her contact with others. HHJ Moir also made various findings against the Appellant, including that the Appellant showed no recognition of the effect of her behaviour upon other people, including FP, or any acceptance of any

responsibility for the distress occasioned to FP. The judge found that the Appellant's contact with FP often contributed to a decline in FP's mental health, and that the appellant had sought to control FP's care and treatment and to prevent FP from expressing her own views. HHJ Moir declared that it was not in FP's best interests to reside with the Appellant and made injunction orders against the Appellant in relation to the recording of FP and staff and publishing materials about those proceedings. Permission to appeal that order was refused.

4. On 30 June 2022 Poole J made an order suspending face to face contact between FP and the Appellant, although he permitted telephone contact to continue. Upon review of that order on 6 December 2022, he continued the suspension of face to face contact but directed that video contact could be introduced. The Appellant applied to the Court of Appeal for permission to appeal against the order of 30 June 2022, and permission was refused and the application certified as being totally without merit. The order made by the Court of Appeal recorded that the restrictions imposed on the Appellant were based on the evidence and history of her conduct and justified in FP's best interests.

The Relevant Orders which are the Subject of the Committal Proceedings

5. On 30 June 2022 Poole J remade and extended orders previously made by the court prohibiting the Appellant from publishing written and video material which deride those caring for FP and which identify FP.
6. The relevant part of the orders made by Poole J were: (1) the Appellant shall not (a) record FP by video or audio for any purpose or in any way; (b) record, whether by video, audio or photographing staff from placement 3 or any other health or social care staff concerned with FP; (c) in any way publicise these proceedings or any evidence filed in these proceedings, including by way of posting on social media, YouTube or any internet platform or website, including private or public sites; and (d) cause to be published on any social media, video or streaming service, including YouTube, any video or audio recording of FP recorded at any date; and (2) the Appellant shall forthwith remove from any social media, video or streaming service, including

YouTube, and from any website or other location on the internet, including private or public sites, any video or audio recording of FP and/or staff supporting FP which is present on any of those sites or services.

The Committal Proceedings

7. The respondent made three applications to commit the Appellant in November and December 2022, listing 11 separate alleged breaches of the June orders. The first hearing of the committal applications was held on 8 December 2022. The Appellant had the benefit of pre-arranged legal representation by solicitor advocate Ms Turner at that hearing. The judge started the hearing by reminding the Appellant that she had the right to remain silent and that she was entitled to sufficient time to consider the allegations. The appellant elected to continue and did not request further time through her legal representatives, and she admitted all 11 of the breaches.
8. At the December committal hearing Poole J indicated that he would adjourn for approximately one month before considering sentence. He asked whether Ms Turner sought any capacity assessment or medical reports on the Appellant prior to sentencing, but she did not and said she was satisfied that her client had full capacity to give instructions. Ms Turner's firm then came off the record prior to the hearing on 16 January 2023.
9. Only five breaches of the orders were ultimately pursued by the respondent counsel at the January committal hearing. Those were numbered 1, 3, 4, 5 and 11. The Appellant subsequently secured representation by direct access from a barrister, Mr Lewis, who appeared at the January committal hearing. He did not seek any capacity assessment or medical reports either. Although Mr Lewis did prepare a skeleton argument which suggested that the Appellant no longer accepted any breaches of the order, it was confirmed at the hearing that the Appellant was not seeking to withdraw her admissions of breaches of the relevant court orders.

The Judgment Below

10. The judge set out the relevant background and procedural matters. The judge then summarised the five relevant admitted breaches in his judgment of 20 January 2023 at paragraph 14 of the judgment. He retained the original numbering from the 11 breaches of the order and referred to the appellant as the defendant:

"[No. 1] ... The video entitled 'The hospital number 2' uploaded on 29 October 2022 shows the defendant on the telephone to FP, switching it to loudspeaker. The video records the defendant saying, 'They are hurting you more? They don't understand that, people around you. They are hurting you more. Tell them ... They are hurting you. They are not looking after you. They are insulting you.' FP begins to speak in Russian and the defendant tells her to speak in English. FP can be heard to say, 'They do something to my head ...' The defendant then tells FP that she is distressed and instructs FP to tell 'them'. FP then says, 'I am very distressed,' The defendant says, 'They are breaking you.'

[No. 3] On 2 November 2022 the defendant tweeted a link to an article on Facebook dated '1 April' which itself has links to video films of FP. This remained available for me to read and view on 18 November 2022. The long article is said to be the second part of [FP's] story. The defendant refers to FP by name (her first name only) and to 'her being mercilessly destroyed by so-called medical professionals, by social services, by lawyers and by the court ... what happened to the safeguards that were introduced after Dr Shipman's murders?' The defendant also writes that 'I would like to show the distress that [FP] suffers daily, because so-called professionals keep [FP] in deliberately induced illnesses to suit the agenda that she lacks mental capacity.' She refers to [FP's] treatment as 'torture'. There are a number of videos linked. They include an 'interview' by the defendant of FP. Her face is obscured by blurring. It is edited as can be seen by jumps in the film. The second video film is of an interview with FP by a professional. This is evidence in the Court of Protection proceedings. I have then viewed a further six films linked to the tweet, showing the defendant on the telephone with FP. In the first, the defendant puts FP on loudspeaker. FP says that she is not feeling well. The defendant says, 'I think you are in big big danger. Something is going on.' The Defendant begins sobbing. FP then says to someone who must be present with her, 'I need a doctor'. The defendant sobs, "Good girl. Good girl." In the second FP says that she thinks she is going to be killed that night, 'They are going to just kill me.' In the third the defendant is holding the phone and FP can be heard screaming uncontrollably. It is a disturbing listen of FP clearly suffering from a severe mental health episode. One of the other videos is the 'hospital number 2' video posted on YouTube, referred to above.

[No. 4] On 31 October the defendant tweeted a link to an article posted on Facebook on '3 June' which uses FP's first name and refers to complaints the defendant has about [FP's] care at Placement 3 and the Court of Protection proceedings. Three videos are attached. One is of the defendant speaking to FP on the phone. FP speaks in Russian, and the defendant responds in English, 'You are not feeling very well.' She asks to speak to the staff. The defendant says to FP, 'I don't know what's going on ... Tell me what's going on, please ... Why are you so unwell ... shall I phone 999?' The carer says that the phone call should end. The second is a video of a face to face contact ... although all that is shown are people's feet. It is brief but records the defendant saying to [FP], 'Are you not happy with me?' FP replies, 'Always.' The third is a very short film of the defendant showing one of FP's feet with the defendant saying, 'Look at that. It is just unbelievable.'

[No. 5] On 24 October 2022 the defendant tweeted a link to another article which she had posted on Facebook on 21 October which sets out a letter written by the defendant to the President of the Family Division dated 21 July 2021. It only obliquely refers to the Court of Protection proceedings, but it then shows a video of FP, plainly showing her face. It is an 'interview' with the defendant -- the same one posted with the article dated '1 April' but FP's face is not obscured as it was on the version linked to the tweet on 3 November 2022. FP is there for all to see."

11. The judge's final finding of breach was in relation to number 11, which he described as:

"[No. 11] The video posted on 2 December 2022 on YouTube is another video of the defendant talking to FP on the telephone. The defendant begins by saying, 'You are still suffering for long periods of time ... and they are ignoring you ... same old story.' The carer who must have been present with FP interrupts in response, to which the defendant raises her voice and says that the court orders 'does not exist' ... The defendant then says, 'They not looking after you. And all this medication business.' The carer interrupts again and, in response, the defendant raises her voice to the carer and says, 'I expose you for everything you are doing to [FP].' FP could of course hear all of this."

The judge continued to find that, so far as the breaches were concerned, they were deliberate and serious, they involved a significant invasion of FP's privacy and the manipulation of a vulnerable person. Each of the five breaches constituted a contempt of court. The contempt had been part of the Appellant's mission to expose what she considered to be wrongdoing in relation to FP.

12. The judge then considered as mitigating factors the Appellant's attendance at court, as ordered, her admissions at the first opportunity and the fact that she had removed the recordings of FP from Facebook and YouTube. The judge noted the Appellant's absence of income and assets and her personal circumstances. The judge was satisfied that the only appropriate sentence was one of imprisonment. In light of the mitigating circumstances, he set the length of that sentence at 28 days for each of the five instances of contempt, to run concurrently, giving an overall sentence of 28 days' imprisonment. The judge also decided that immediate imprisonment was not justified and therefore suspended the sentence for 12 months on condition that the Appellant did not commit any further contempts of court during that time.

The Grounds of Appeal

13. The Appellant has set out a 14-page document headed "Grounds for the appeal". There are two grounds set out at the start of that document. These are:

"(1) Validity of the case ... Violations of the rules and procedures of the Court of Protection, including errors by the Court in listings and violations in handling the process.

(2) Unsafe decisions that are not in the best interests and discrimination against the race, culture, humanity and life. The health and safety concerns remain."

It is apparent from the rest of that document that the Appellant has a number of complaints. These include the following: that the order dated 30 June 2022 was flawed; the respondent had abused the court process by serving material on her late; that she had been set up to fail; that FP was being prescribed unnecessary medication and was not being properly cared for; that FP's views and wishes were not being fairly represented in the proceedings; and the Appellant was not being properly supported; and the Court of Appeal should take an opportunity to look at the whole case.

14. In comprehensive oral submissions made by the Appellant this morning, the Appellant made the following points. First, she complained of the refusal of permission to appeal

by the Court of Appeal in relation to the order of 30 June 2022. Secondly, she referred to authority, *Abbasi v Newcastle Upon Tyne Hospitals NHS Foundation Trust* [2023] EWCA Civ 331, Times 15 May 2023 and the judgment of the Lord Chief Justice. Thirdly, she said that FP was suffering deplorably and that this was what involved the whole case. Fourthly, she complained that nobody listened to her and that there had been perjury committed against her and hearsay evidence adduced. Fifthly, she made specific complaints in relation to the care that was being given to FP. Sixthly, she complained that her GP was ignored when he contested drug prescriptions. Seventhly, she complained that Poole J did not consider the evidence of the treatment of FP's foot. Eighthly, she complained that there was a need to discharge all orders. The Appellant also handed up some materials containing her written speaking notes and some notes about reports in relation to coercive psychiatry.

Relevant Principles of Law

15. As some of the Appellant's submissions appear to be directed to showing that she should not be found guilty of contempt of court even though the breaches were admitted, the case of *R v Tredget* [2022] EWCA Crim 108; [2022] 4 WLR 62 provides some assistance by way of analogy. In that case the Court of Appeal Criminal Division reviewed the basis on which an appellant might appeal against conviction after a plea of guilty. Three main categories were identified. These were: (1) the guilty plea was vitiated either because the plea was equivocal or because impermissible pressure had been exerted on the appellant; (2) there was an abuse of process because there had been entrapment, for example; and (3) where it could be shown that the appellant had not as a matter of fact committed the offence. The court made it clear that the categories were not closed.
16. In *Her Majesty's Attorney General v Timothy Crosland* [2021] UKSC 15; [2021] 4 WLR 103 [44] the court set out the proper approach to sentencing for contempt of court. The court should adopt an approach similar to that in criminal cases and assess the seriousness of the conduct and the harm caused, intended or likely to be caused. The court should consider whether a fine would be a sufficient penalty. If the contempt were so serious that only a custodial sentence would suffice, the court should impose

the shortest period of imprisonment which reflects the seriousness of the contempt. Weight should be given to mitigation, including any genuine remorse and previous good character. There should be a reduction for an early admission of contempt. Once the appropriate term has been decided, consideration should be given to suspending the term of imprisonment.

17. So far as this court is concerned, the Court of Appeal may allow an appeal if the decision on appeal was wrong or unjust because of serious procedural or other irregularity. A sentence for contempt of court may be amended on appeal if it was wrong in principle or manifestly excessive, compare *Cuadrilla Bowland Ltd & Ors v Persons Unknown* [2020] EWCA Civ 9; [2020] 4 WLR 29.

A Proper Finding and Sentence

18. As the Appellant has invited the court to look at the whole case concerning FP, it is important to make it clear that this court is only concerned with the appeal against the finding of contempt and the sanction imposed on the Appellant for contempt of court. This court does not have an appeal before it against the order of 30 June 2022 because permission to appeal was refused and the application was certified as totally without merit. Whatever the Appellant's views about the validity of the orders (and it is apparent from her submissions that she strongly contests they were wrongly made) she must conform with them while they remain in place.
19. I turn then to the two grounds set out by the Appellant. The first is violations of the rules and procedures of the Court of Protection, including errors by the court in listings and violation in handling the process. It is apparent from the materials before this court that on occasions bundles were served by the council late and the respondent's applications were made late, and it seems that there was a failure in personal service. It is apparent that there was some late service of material but it did not lead to an abuse of process because the judge ensured that the Appellant was given sufficient time to deal with the matters. The Appellant had been present at court, which was why the judge waived a requirement of personal service of some orders. All of the relevant failings were addressed by the judge, and the Appellant made the admissions that she had acted

in breach of the orders of the court with the benefit of legal advice and with full knowledge of the late service. The reference to an error in listing appears to be a reference to the fact that the Appellant's name was not given on the court list in earlier hearings. The judge revisited that and the Appellant's name was given on court lists below, as it has been here. As already noted, reporting restrictions have been imposed to protect FP's interests.

20. The second ground was:

"Unsafe decisions that are not in the best interests, and discrimination against a race, culture, humanity and life. The health and safety concerns remain."

This is not a ground of appeal against the finding of breach or the sanction imposed by the judge but a complaint about the process leading up to the making of the orders which were subsequently breached. For the reasons already given, this is not a matter which can be raised on this appeal. This failure to identify the correct names on the published court list does not form a basis for reducing the penalty imposed on the Appellant because it did not affect the penalty imposed on the Appellant.

21. Further, I can see no basis on which the Appellant might revisit the acceptance of her breaches of the order. There were 11 breaches which were admitted but only five were relied on as justifying a finding of contempt of court. The Appellant was represented when she accepted the breaches. The Appellant had new and different representation before she was sentenced, and although a skeleton argument had been prepared in which it seemed that the Appellant was not accepting that she had committed breaches of the order, the new legal representative confirmed that the Appellant was accepting those breaches. This was after the judge had raised the issue specifically to ensure that the pleas were not equivocal. There was no evidence that the pleas were equivocal or the product of improper pressure. There are no features of abuse of process for the reasons already given. The Appellant is unable to show that she did not commit the breaches. Indeed, all of the evidence summarised by the judge is clear. There was an

overwhelming case that the Appellant had deliberately breached orders made by the court.

22. As to the other complaints made by the Appellant in writing, a proposed appeal against the order of 30 June 2022 has been dismissed, as I have already noted. The Appellant was made the subject of court orders which she breached, and that is not being set up to fail. The treatment and representation of FP are not issues on this appeal.
23. So far as the specific matters raised by the Appellant this morning are concerned, the Appellant has complained of the refusal of permission to appeal by the Court of Appeal in relation to the order of 30 June 2022 but we have no jurisdiction to consider that refusal, which is not an issue on this appeal.
24. So far as the reference to the cases which the Appellant relied on, that did emphasise the importance of the article 10 rights of individuals to tell their story but it also required the balancing of other rights involved, including, critically in this case, the rights of FP and her privacy in relation to the treatment that she is receiving.
25. So far as the issue that FP has suffered deplorably, the interests of FP were considered by HHJ Moir and permission to appeal was refused in relation to those orders.
26. So far as the complaint that nobody listens to the Appellant is concerned and that perjury has been committed against her and that hearsay has been relied on, these matters were again considered by HHJ Moir. Just because the Appellant does not accept what others say does not mean that they have committed perjury. Hearsay evidence is admissible and it is for the judge to make a fair assessment of the reliability of that evidence.
27. So far as the complaint about carers is concerned, it is apparent from what the Appellant told us this morning that she has contacted the ombudsman, regulatory authorities and judges but those complaints have been rejected and they are not before us.

28. So far as the complaint about ignoring the GP and the contested drug prescriptions were concerned, it is apparent that HHJ Moir did consider the prescriptions and drugs being prescribed to FP and found that they were required.
29. So far as the complaint that all orders ought to be discharged is concerned, the issue before this court is only whether or not the finding of contempt should be upheld and whether there should be a reduction in the sanction imposed on the Appellant. The other orders are not before the court.
30. In all of the materials that I have had an opportunity to consider, I can discern no basis for finding that the orders finding a breach of the court orders made by Poole J were wrong or indeed that the sanction was wrong. It was apparent that Poole J considered carefully whether there were contempts which were found and found on overwhelming material that breaches of orders had been made and the findings of contempt were therefore inevitable. The sentence was as low as it could properly be, given the circumstances.
31. This simply leaves one issue which was raised by the Appellant in writing, in which she complained about the absence of support for her in her dealings with everyone. It is apparent that the Appellant's relationship with FP's carers and legal representatives has broken down. This is unfortunate and the relationship will need work to be rebuilt. As part of that process, it seems that the Appellant will need to accept that, even though she disagrees with the treatment of FP, those pursuing the treatment are attempting to act in the best interests of FP and have been found to be acting in the best interests of FP by a judge who considered the evidence. Finding that as common ground may be a start.
32. For all the reasons set out above, I would dismiss this appeal.

LADY JUSTICE ELISABETH LAING:

33. I agree.

LORD JUSTICE PETER JACKSON:

34. I also agree. The way in which the judge has conducted these sad proceedings cannot be faulted. The orders which the Appellant admitted breaching were clearly necessary in FP's best interests. The Appellant's disagreement with those orders has been carefully considered by the Court of Protection on several occasions in decisions upheld by this court when refusing permission to appeal. The Appellant maintains her entrenched opinions which have repeatedly been found to be gravely misguided. In the circumstances, a sentence of 28 days' imprisonment suspended for one year was, in my view, entirely appropriate. No valid ground of appeal from this order has in the end been placed before us. Accordingly, the appeal is dismissed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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