

**IN THE COUNTY COURT**  
**BIRMINGHAM**

Priory Courts, 33 Bull Street,  
Birmingham. B4 6DS.

Date: Monday 16<sup>th</sup> July 2018

**Before:**

**HIS HONOUR JUDGE ROWLAND**

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**Between:**

**DUDLEY METROPOLITAN BOROUGH  
COUNCIL**

**Applicant**

**- and -**

**SHAUN HILL**

**Respondent**

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**MS. NAGEENA KHALIQUE QC** for the **Applicant**  
**The Respondent** did not attend and was not represented

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**Approved Judgment**

*If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.*

**HIS HONOUR JUDGE ROWLAND:**

1. The protected person in these proceedings is a gentleman by the name of KJ who is 82 years of age and suffers from dementia. The Court of Protection is concerned with him, both in relation to questions about his health and welfare and also his property and affairs. There has been a provisional declaration made within the proceedings that KJ lacks capacity. He continues to live at home with support, and the Local Authority are heavily involved in his affairs.
2. Shaun Hill, is the Second Respondent within the Court of Protection proceedings and he is the Respondent to this application for his committal to prison for breach of certain injunctive orders.
3. The COP9 application which brings this matter before the court is dated 30<sup>th</sup> May 2018 and seeks Shaun Hill's committal to prison for contempt due to several alleged breaches. These alleged breaches all relate to an order made by District Judge England, originally on 13<sup>th</sup> October 2017. Paragraph 1 of the injunction prevents Mr. Shaun Hill and another man from contacting KJ whether directly or indirectly, from in any way obstructing the officers of the Local Authority or any other professional who provides care to KJ and in any way obstructing those officers or professionals from carrying out mental capacity assessments. A further injunction forbids Shaun Hill from coming within 100 metres of KJ's current residence.
4. These interim injunctions remain in force and their continuing effect has been reflected in subsequent orders, such as that made within these proceedings on 20<sup>th</sup> December 2017.
5. The notice to show cause sets out the alleged breaches of the injunction. They appear in the bundle at pages B20 and 21 numbered from (a) to (j), and I will return to them in a moment.
6. The papers relating to the committal application were personally served on Shaun Hill on 27<sup>th</sup> June 2018 and the application came before me on 29<sup>th</sup> June 2018 when neither Shaun Hill nor any representative on his behalf attended court. While I was satisfied that Shaun Hill had been personally served with the notice to show cause he had not had sufficient time under the rules to respond to the application, which of course involved serious allegations that concerned his liberty, and accordingly I adjourned the matter until today and directed that he should be given notice of this adjourned hearing by post, and indeed he was sent such a notice on 4<sup>th</sup> July 2018 at his girlfriend's address where he had been personally served with the proceedings. That is the only known address for Shaun Hill and I am satisfied from the papers that he lives there or attends that address on a very regular basis. Accordingly, I am satisfied that he has been made aware of this hearing today, had the opportunity to attend and had the opportunity to file evidence if he wished to do so but he has taken none of those steps and therefore I proceed to deal with the application.
7. I should also mention that I am satisfied that he was served with the original injunction and is fully aware of its terms.

8. As these are committal proceedings the onus of proving any matter is on the Applicant Local Authority. Shaun Hill does not need to prove anything and the Local Authority must satisfy me to the criminal standard of any alleged breach, that is beyond reasonable doubt, or so that I am sure.
9. I turn now to the alleged breaches, the first of which is that on 25<sup>th</sup> November 2017 Shaun Hill was seen by a carer, Sammie-Jo Smith, to leave KJ's property. Here the evidence is contained within the affidavit of David Hearnden, the social worker, who exhibits a section 9 statement of Sammie- Jo Smith which bears the usual heading to the effect that Miss Smith understands that she will be liable to prosecution if she has wilfully stated anything which she knows to be false or does not believe to be true. Her statement is dated 7<sup>th</sup> December 2017, which is about a fortnight after the alleged events.
10. She says that around lunchtime on 25<sup>th</sup> November 2017 she made a call as part of her employment on the home of KJ and, as she drove into the street and parked her motor vehicle, she saw Shaun Hill come out of KJ's property and shut the door. She already knew Shaun Hill from her previous visits to KJ's property. She says: "I could tell by the way he limps". He got into the driver's seat of a burgundy A4 Audi that was on the opposite side of the road to her and Shaun Hill reversed the car back up the road past her so she was able to see his face and again she recognised him. Therefore, Miss Smith had a good view of Shaun Hill, recognised him as somebody who she knew well and, on the basis of that evidence, I am satisfied so that I am sure that on 25<sup>th</sup> November 2017 Shaun Hill was in breach of paragraph 2 of the injunction order by attending the property when he was not permitted to do so.
11. Paragraphs (b) through to (e) of the alleged breaches relate to a period between Christmas and New Year in 2017 and the evidence here is contained in the witness statement of Mr. Hearnden but does not in the same way as the first allegation rely on a section 9 or similar statement. It relies upon discussions that are therefore hearsay or upon several emails.
12. The effect is that it is said that Shaun Hill was seen by KJ's niece to visit the property on one particular day and also by a care worker on another, and an inference is drawn from the evidence that Shaun Hill had been eating or removing some food from KJ's property.
13. Having considered the evidence I am not satisfied of these matters to the criminal standard in the absence of evidence either in affidavit or statement form or containing the warning about prosecution in a section 9 statement.
14. In broad terms, I reach the same conclusion about paragraphs (f) and (g). The evidence here is contained within the affidavit of David Willetts, a Trading Standards Officer employed by the Local Authority, who attended the property with two police officers to undertake a search on 1<sup>st</sup> January of this year. They found paraphernalia indicating the use or consumption of illegal drugs in a bedroom of the property that was left in an unhygienic and unsafe state. Miss Khalique invites me to draw an inference that the only person who could have left that paraphernalia at the property, and who has been there around that time, is Shaun Hill. I am not satisfied that it is a breach of the injunction because there is not, in my judgment, evidence from which I can draw an inference so that I am sure that that paraphernalia had been left there since 13<sup>th</sup> October

2017 when the injunction order was made. It is within the reasonable bounds of possibility that it had been left there some months earlier and the evidence does not satisfy me that the bedroom had been checked more recently than the date of the injunction. Miss Khalique makes the point that there are regular carers going in, but their duty is to look after KJ and go to the parts of the property which are used by him, and I do not know to what extent they needed to go into the particular bedroom where the items were found.

15. Similarly in relation to (h) I am not satisfied that that this is proved to the criminal standard. I see from the evidence of Mr. Hearnden that around Christmas-time, between Christmas and New Year, KJ made requests for money which Mr. Hearnden feared arose from pressure being placed on him by Shaun Hill, but paragraph 9 of his statement in relation to one such transaction says this: “I asked why he needed that amount and he was extremely vague and evasive, leading me to suspect that Shaun Hill was asking him for money as he has continually done”. It may be that Shaun Hill was putting pressure on KJ but there are other plausible explanations for that request and, in the circumstances, I am not satisfied to the criminal standard that those requests came from pressure placed on KJ by Shaun Hill.
16. Finally, I turn to paragraphs (i) and (j) of the committal grounds, which relate to the ordering and usage of a BT phone line together with a broadband facility and other matters. The evidence here is contained in two affidavits of Emma Moody and in a witness statement of David Willetts. By the relevant time in January 2018 Miss Moody had been appointed a Deputy to manage KJ’s financial affairs and therefore no other person, absent authority from her, was able to commit KJ to any form of expenditure.
17. The evidence reveals that an order was placed on 20<sup>th</sup> January 2018 for telephone equipment. Miss Moody’s second affidavit, dated 4<sup>th</sup> July 2018, was sworn after Miss Moody had the opportunity to listen to a recording of a conversation between a man and a BT operative on 20<sup>th</sup> January 2018, and a transcript of that telephone conversation is exhibited to the affidavit. Miss Moody says in her affidavit: “I believe the man in the recording is Shaun Hill as I have spoken with him before”. She says: “It is difficult to hear but I can also make out the voice of a female in the background”. What one reads in the transcript is that the caller purported to be KJ, gave details, including his address and date of birth, and I am satisfied that, in the first place, somebody was fraudulently purporting to be KJ by not only ordering telephone landline equipment but also trying to order a mobile phone, although that aspect was unsuccessful.
18. What, in my judgment, takes the connection between the caller and Shaun Hill well beyond the point of reasonable doubt is that the call log in relation to this line shows that the landline has been used on very many occasions to call the number of Shaun Hill’s girlfriend, a lady by the name of R , on the number XXXX. Mr. Willett’s affidavit says that that number has been called eleven times in nine days, that is, five times on 6<sup>th</sup> February 2018 between the hours of 22.08 and 22.17, four times on Wednesday 7<sup>th</sup> February 2018 between 20 and 46 minutes after midnight, once on 18<sup>th</sup> February at 20.08 hours and once on 13<sup>th</sup> February at 09.54 hours. I am satisfied so that I am sure that all those calls were made by Shaun Hill and therefore, in addition to fraudulently purporting to be KJ in making the call to order the telephone equipment, on those occasions which I have read out he was at the property in breach of paragraph 2 of the injunction order to make the calls.

*Further submissions given.*

19. In the judgment already delivered, I have found Shaun Hill to be guilty of breaches of the injunction order made on 13<sup>th</sup> October, as subsequently extended, by firstly attending at the property occupied by his father on 25<sup>th</sup> November 2017 and also that on a day in January 2018 he fraudulently arranged for the installation of BT equipment without authority and on a number of days thereafter, made a large number of telephone calls from KJ's property and therefore was in attendance on those dates.
20. The court has several courses which can be taken in circumstances where a person has been found to be in contempt of court. The court can do nothing. The court can adjourn, but adjournment is only appropriate where a particular purpose is intended by that adjournment. The court can levy a fine, seize assets, or make an order committing the contemnor to prison either immediately, or with a suspension on certain terms.
21. I reached the conclusion, in relation to (i) and (j), which concern the ordering of BT equipment and making the calls, that these are serious and repeated breaches. They involve an element of dishonesty in that I have found Shaun Hill to be guilty of impersonating KJ and also by incurring cost on KJ's behalf that he was not authorised to do. In addition, there are a large number of telephone calls made from the property on days when he must have been there, so these are both serious and repeated breaches.
22. Shaun Hill, in addition, has been evasive when it comes to service on orders on him. He has declined to attend or file any evidence in response to that filed by the applicant. There is no evidence before the court upon which the court can be satisfied that he intends to comply with the injunction order in the future.
23. In the circumstances, I make no order in relation to the first breach which I have found to be proved, that relating to 25<sup>th</sup> November 2018, because it is now somewhat stale. I do intend to impose a sentence of imprisonment that reflects the gravity of the matters which are the subject of paragraphs (i) and (j). In relation to each of those matters, I sentence Shaun Hill to four months' imprisonment, to be served concurrently.
24. I have considered whether that sentence ought to be suspended. I decline to do so in circumstances where Shaun Hill has shown contempt for the court and has not deigned to attend.

*This Judgment has been approved by the Judge.*