



Neutral Citation Number: [2024] EWCOP 8

Case No. 13258625

IN THE COURT OF PROTECTION

Date: 22nd January 2024

Before:

THE HONOURABLE MR JUSTICE POOLE

B E T W E E N:

SUNDERLAND CITY COUNCIL

Claimant

-v-

LIUBOV MACPHERSON

Defendant

Mr S Garlick (instructed by **Sunderland City Council Legal Department**) for the **Applicant**
The Respondent appeared In Person

Hearing Date: 22 January 2024

This judgment was delivered in public but a transparency order is in force in the Court of Protection proceedings. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the FP and of her place of residence must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mr Justice Poole:

1. On 19 June 2023, in the course of Court of Protection proceedings concerning the defendant's adult daughter, FP, the Court made injunctions against the defendant, Ms MacPherson. Those injunctions were supported by a penal notice.
2. The injunctions were that she shall not a) record her daughter, FP, by video or audio for any purpose or in any way; b) record, whether by video, audio or photographing, staff from placement 3, where FP is cared for, or any other health or social care staff concerned with FP; c) in any way publicise these proceedings or any evidence filed in the proceedings, including by way of posting on social media, YouTube or any internet platform or website, including private or public sites; d) cause to be publicised on any social media, video or streaming service including YouTube, any video or recording of FP recorded at any date.
3. The applicant Local Authority, Sunderland City Council, has issued an application dated 15 November 2023 for Ms MacPherson to be committed to prison for breach of those injunctions.
4. The defendant was summoned to attend court on 7 December 2023. The summons included the required notices to Ms MacPherson including her right to non-means tested funding for representation. She chose not to attend in person but I was aware from her correspondence to the Court and to others that she was in fact in France, and that she was ready to join the hearing remotely. After hearing submissions from counsel for the Local Authority and the litigation friend for FP, I allowed Ms MacPherson to join the hearing remotely. She was not represented but wanted to make submissions to the court. She indicated on that occasion very clearly that she would not attend a further hearing of the committal application.
5. I told her that a further hearing could be listed on 19 December 2023 which would allow her time to travel to England for that purpose. However, she said that she would not come to England and indeed that she was claiming political asylum in France.
6. I issued a warrant for her arrest, hoping to secure her attendance at court by that means. That could only have been executed in the event of her return to this jurisdiction, or at least that was my expectation. On reflection, after the hearing I decided that a further hearing ought in any event to be listed, otherwise the application to commit Ms MacPherson for contempt of court might stand in abeyance for a very long time. Accordingly, I listed the application for a further hearing with personal attendance by the defendant directed again, the listing being for today, 22 January 2024 at 2.45pm. Again, Ms MacPherson has not attended in person. She remains in France. However, she was able to attend remotely, and again I have allowed her to do so after giving an opportunity to counsel to make submissions. Ms MacPherson again attended remotely and unrepresented. She was prepared to argue her case and did not ask for an adjournment to seek representation or otherwise. Ms MacPherson was keen to make her arguments and I gave her ample opportunity to do so. I have a long experience of Ms MacPherson appearing before me remotely and she can become angry and unfocused. I repeat that she has been notified of her rights in the notice and summons served upon her in accordance with the requirements of COP Rules 2017 r21.4. Given the defendant's departure to France, and her address in France being unknown and not revealed to the court or the claimant, I have previously allowed service to be by way

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of email as well as post at her last address in England, where her husband still lives. She has been effectively served. I was satisfied that it was appropriate to proceed.

7. The burden of proof is on the claimant and the standard of proof is the criminal standard beyond reasonable doubt.
8. The brief background is that the defendant's daughter, FP, is a protected person who was until very recently the subject of Court of Protection proceedings which lasted for five or six years. Those proceedings have recently concluded. FP was diagnosed and is treated for paranoid, treatment-resistant schizophrenia, which causes her, amongst other problems, to have delusions about being persecuted by others.
9. Her mother, Ms MacPherson, believes that her daughter is indeed being persecuted by others, namely healthcare and other professionals and the courts. She describes all healthcare professionals who have dealings with FP to be corrupt and that they are part of a conspiracy to torture FP. That is a position she has made quite clear in numerous previous court hearings, in correspondence and complaints, and again in documentation presented to the Court today.
10. In addition, Ms MacPherson believes that the Court of Protection and the Court of Appeal are also corrupt. She believes that her daughter is being poisoned with medication that she does not need. She is convinced that a wrong turn was taken with her daughter's treatment some time ago. These beliefs are, as I have found at many previous hearings, deeply entrenched. Indeed, today once more she has demonstrated that.
11. Ms MacPherson is convinced that the mission that she must accomplish is to reveal this supposed conspiracy and corruption. She has tried to do so throughout the Court of Protection proceedings, including when seeking to appeal decisions of the Court. She has made multiple complaints to regulators, professional bodies who govern medical and legal professionals, the Court of Protection, and the police. She has brought, as I say, multiple appeals against decisions of the Court of Protection, all of which have been dismissed with permission to appeal refused, most certified as totally without merit.
12. Notwithstanding the amount of time that the Court and regulator and the police have given to these complaints, all of which have been dealt with in a manner with which Ms MacPherson disagrees, she still maintains that she is being ignored. She has not been ignored; rather no one has agreed with her analysis and her description of her daughter's position and treatment. As it happens, her daughter, having previously been detained as an inpatient under the Mental Health Act 1983, has avoided that form of detention and is being cared for at a specialist placement by experienced and caring professionals, I am sure to her benefit as the Court has previously found.
13. I should record that, sitting in the Court of Protection, I have determined that it would be in FP's best interest to have face-to-face contact with her mother. However, Ms MacPherson has refused to give her daughter the opportunity to see her on the grounds that she will not visit her daughter unless or until changes which she believes are necessary are made to her medication regime. Those changes would be contrary to professional medical opinion, and contrary to her daughter's best interests. These are matters that the Court of Protection has previously considered and concluded.

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14. In January 2023, I found the defendant to be in contempt of court for having breached previous injunctive orders not to post and, having posted, to take down material from the internet. She was found on her admissions to have been in breach of the previous court orders. Those breaches also interfered with her daughter's right to a private and family life. These posts clearly identified her daughter. Indeed, they included recordings of her daughter, usually in conversation with the defendant during contact times between them. FP does not have capacity to consent to the defendant using the recordings as she did so.
15. Breaches of injunctions amounting to contempt of court were admitted by the defendant on the application for her committal on that occasion. The sentence I imposed was one of 28 days' imprisonment concurrent for each established breach, suspended for 12 months. That suspension was effective until 15 January 2024 – *Sunderland City Council v Liubov MacPherson* [2023] EWCOP 3. Ms MacPherson's appeal against the order was unsuccessful – *Liubov MacPherson v Sunderland City Council* [2023] EWCA Civ 574. I note that the alleged contempt of court by way of breaches of identical further injunctions will, if found proven, have been committed during the currency of the suspended sentence passed on 16 January 2023.
16. On 22 August 2023, the Court having made the injunctions to which I have referred on 19 June 2023, Ms MacPherson applied to the Court of Appeal for permission to appeal that order. However, having been refused permission, her appeal certified as totally without merit, Ms MacPherson sent an email direct to the Court of Appeal and copied in Ms Lynas, who is a paralegal at the firm instructed by the Local Authority. Within this email, Ms MacPherson wrote:

“Please don't be surprised if you see a lot more videos on social media. I also will reinstall of all the old posts and videos with material evidence that the Court forced me to delete in January of this year, except one video which is not pixelated”.
17. Ms Lynas has given evidence before me today and confirmed that she responded to that correspondence by advising Ms MacPherson that were she to do act as she had threatened, it would be considered, by the Local Authority at least, that she would again be in contempt of court. True to her word, as Ms Lynas' evidence establishes, the defendant did repost a number of items on social media, which the Local Authority alleges were in breach of the injunctive orders made on 19 June 2023.
18. The allegations made by the Local Authority in relation to breaches of the orders are as follows:
 - a) On 3 September 2023, Ms MacPherson posted a link to an article which had been posted to Facebook on 23 August 2023. However, it also has a date of 1 April 2022 on the article. This post, it is alleged, breaches paragraph D of the injunctive order that I referred to earlier. It refers in the post to her daughter being mistreated and the corrupt legal system, and it shows video recordings of E and of her mother talking to FP, with FP's voice recorded. The defendant says in her post that she is posting these recordings to show how her daughter is being mistreated.

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- b) On 4 September 2023, Ms MacPherson posted a link to an article which had been posted to Facebook on 26 June – it is not clear from that in which year – which contains links to documents filed within these court proceedings, in breach of clause 1c. These were attached to a letter which she posted, with the links to the attachments, a letter written to The Open Justice Project.
- c) On 7 September 2023, she posted a link to an article which had been posted to Facebook on that date. However, there is also information dated 26 October 2022 linked to it. Contained within that article is a video which appears to be the same video contained at point G, which I will come to.
- d) On the same date, 7 September, Ms MacPherson posted on X, formerly Twitter, links to two separate videos which are videos to which I have already referred. These were videos of FP, in breach of clause 1d of the injunctive order. It is fair to say that FP’s face has been pixilated on these videos.
- e) On 16 September 2023, Ms MacPherson posted to X, formerly Twitter, a link to a video uploaded on her YouTube account in June 2021 entitled “The 21st Century Disgrace Supported Accommodation”. This video records Ms MacPherson on the phone to FP on loudspeaker, breaching clause 1d of the injunction.
- f) On 17 September 2023, the defendant posted to X another link to a video on her YouTube account. This was entitled “The 21st Century Disgrace: the Current Hospital 1”, uploaded on 13 February 2021, which records Ms M on the phone to FP on loudspeaker, breaching clause 1d of the injunction.
- g) On 17 September 2023, Ms MacPherson posted to X again a further link to a video uploaded to her YouTube account on 29 October 2022, entitled “The Hospital 2”, which records Ms MacPherson again on the phone to her daughter. Ms MacPherson was found in contempt for posting this video on 16 January 2023.
19. Indeed, four of the alleged breaches involved reposting material which had been posted in contempt of court in the previous committal proceedings. In her oral evidence Ms Lynas, confirmed affidavit evidence and documents exhibited to her affidavit evidence, which clearly show that the breaches that I have just set out have been committed by Ms MacPherson in the manner alleged. She was not challenged in relation to that.
20. In short, the alleged breaches include posting of material which, cumulatively, names FP by her first name, refer to FP as her daughter, and refer to the Court of Protection proceedings. Hence they easily identify FP as the subject of the Court of Protection proceedings. They identify by name her placement; they identify by name a number of professionals who have cared for or been responsible for the health and wellbeing of FP, they mention the Court of Protection proceedings; they include posting links to documents within the proceedings.
21. These are on the face of it clear breaches of the injunctive orders to which I have referred. The breaches are in the context of Ms MacPherson not only having being advised that to post these materials would be regarded as a contempt of court, but also in the context of her

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deciding shortly before posting these materials to leave England and to move to France, where she remains.

22. Ms MacPherson denies that she has been in breach of the injunctions. This is not because she denies that she has posted these materials and that in doing so they were, on the face of it, in breach of the injunctive order, but on the basis, as she submits, that she entitled to do so in exercise of her Article 10 right to freedom of expression, and that the injunctive order was made illegally by a corrupt court, which did not provide her with her Article 6 right to a fair hearing. In that context, she also maintains that the Court has disregarded and failed to comply with the Mental Capacity Act 2005 during the proceedings as a whole.
23. Dealing with those matters, firstly there have been many Court of Protection hearings, and there are published judgments in this case including *SCC v FP* [2022] EWCOP 30. In those judgments and in the orders that have been made, the Court has repeatedly and clearly addressed the Mental Capacity Act 2005 and has made findings in accordance with the provisions of that Act. The defendant has not only had the opportunity to appeal those findings, but she has taken those opportunities on a number of occasions. On each occasion permission to appeal has been refused by the Court of Appeal. There are no grounds on which I could proceed on the basis that the Court of Protection, in making the injunctions in June 2023, acted in contravention of the Mental Capacity Act 2005, or acted in an illegal or corrupt manner. In any event, Ms MacPherson's bases her allegation of corruption only on the fact that the courts and others have not agreed with her analysis of her daughter's capacity, condition, treatment, and best interests. She has not pointed to any other grounds for making the sweeping allegation of corruption.
24. As to Article 6, again Ms MacPherson has had an opportunity, and has availed herself of the opportunity, to challenge the previous court hearings, including the hearing in June 2023 when the injunctive order was made, as being unfair or contrary to her convention rights, including Article 6. She availed herself of that opportunity seeking permission to appeal the June 2023 orders on the grounds of procedural unfairness. However, permission to appeal has been refused as being totally without merit.
25. As to Article 10, her right to freedom of expression, Ms MacPherson is perfectly entitled to express opinions about the court proceedings and about decisions that have been made, including on social media, but she must do so without breaching the injunctions. It is important to be clear as to why the injunction orders were made: they were to protect her daughter, not to persecute her daughter or to persecute Ms MacPherson. FP has rights of her own. She is an extremely vulnerable individual. She suffers from paranoid schizophrenia. She does not have capacity to make decisions for herself in relation to a number of decision-making areas. Posting material as the defendant has done, contributes to the difficulties of staff caring for PF – they are accused of torturing her. Were PF to lose her current placement there is no readily available alternative.
26. I have listened, in preparation for this hearing, and on many previous occasions, to the recordings of Ms MacPherson talking to her daughter during contact periods, which the defendant has published on the Internet in prima facie breach of the injunctive orders that have been made by the Court. They are an unsettling and troubling listen. Ms MacPherson manipulates her daughter into saying certain things and into fearing persecution causing her

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distress. It is clearly recorded on one or two of the recordings with FP saying that she is in distress.

27. Ms MacPherson interprets FP's distress as being caused by the care she is receiving at the placement. However, it is clear on listening to the recordings that what is distressing FP is her mother's behaviour, her mother's suggestions that FP is being mistreated or is unwell, and her mother cajoling her to report concerns to medical professionals and others. It is deeply manipulative behaviour of a vulnerable young woman. That is why the injunctions were made to protect the welfare and privacy of FP.
28. The breaches cannot be justified on the grounds that Ms MacPherson has put forward to the Court today. She accepts that she did post the material. She accepts that the injunction was made. That injunction and the other orders made that day have been upheld by the Court of Appeal and were lawful orders. She was aware of them. They contained penal notices. She accepts that she was warned in advance that reposting material which had been previously found constituted contempt of court may be regarded again as a contempt of court. It is quite clear that she knew what she was doing. She knew what consequences had followed when she had posted them previously in breach of injunctive orders. She knew that by posting this material she was openly defying the Court. That appears to have been her purpose and she pursued it from what she regards as the safety of France.
29. I am satisfied that the injunctions, to which a penal notice was prominently attached, and which were served on the defendant, were breached by the defendant. All of the alleged breaches are proved to the criminal standard of proof. The breaches I have found established clearly amount to a contempt of court.
30. I will now proceed to consider sentence, and indeed must decide whether sentence should proceed today or whether there are any other matters that need to be considered before the Court proceeds to sentence. The first matter I have to decide is whether to proceed to sentence. There are benefits in adjourning after a finding of committal before sentencing, not least for a party to take legal advice, and to take steps to mitigate the sentence that the Court might otherwise pass, including, in a case like this, to take down offending material. However, I am sure, having heard from Ms MacPherson, firstly that she has no intention of removing the posts from the Internet. What she has said is she is willing to compromise by taking down names for now, but not to remove the offending posts. Furthermore, she has reposted repeat items shortly before this hearing, indeed on the eve of the hearing.
31. Secondly, the defendant has been aware from the beginning of this application for committal for contempt, as she was on the previous application, of her entitlement to funding for legal representation. She was legally represented in the previous committal proceedings. She says that she has taken steps to try and secure legal representation for this application but has failed to secure it. She says no-one will take her case. It seems to me that there is very little prospect, particularly as she is in France and intends to remain there, of her trying to obtain legal representation in time for an adjourned sentence hearing, or perhaps at all. Also, there appears to me to be no medical or other evidence that would assist the Court in relation to sentence that could be made available to the Court prior to sentencing. The defendant has continued to resist all suggestions that she might require medical assessment. She regards such suggestions as a feature of the conspiracy against her and her daughter.

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32. Under the Court of Protection rules, Rule 21.9, it is provided that the powers of the Court in contempt proceedings include a period of imprisonment, which is known as an order for committal, a fine or confiscation of assets, or other punishment permitted by the law. The general principles that I adopt are those set out by Mr Justice MacDonald in *Re Dahlia Griffith* [2020] EWCOP 46. I quote from paragraph 42:

“As Mr Justice Marcus Smith made clear in *Patel v Patel* [2017] EWHC 3229 (Ch), at paragraphs 22 and 23, a penalty for contempt has two primary functions. First, it upholds the authority of the Court by marking the disapproval of the Court and deterring others engaging in conduct comprising the contempt. Secondly, it acts to ensure future compliance”.

He went on at paragraph 43:

“In considering the appropriate penalty in this matter, I have had regard to the following principles applicable to that exercise: 1) the penalty chosen must be proportionate to the seriousness of the contempt; 2) imprisonment is not the starting point and is not the automatic response to a contempt of court; 3) equally, there is no principle that a sentence of imprisonment cannot be imposed on a contemnor who has not previously committed a contempt; 4) in circumstances where the disposal chosen must be proportionate to the seriousness of the contempt, where an immediate term of imprisonment is appropriate, it should be as short as possible, having regard to the gravity of the contempt, and must bear some reasonable relationship to the maximum sentence of two years’ imprisonment which is available to the Court; 5) where a term of imprisonment is the appropriate sentence, the length of the term should be determined without reference to whether the term is to be suspended or not; 6) having determined the length of the term of imprisonment, the Court should expressly ask itself whether a sentence of imprisonment might be suspended”.

33. I adopt those principles and approach. Firstly, in relation to any possible financial penalty, the defendant appears to have no means by way of income with which she could pay a fine, certainly not a fine at a level that the Court would consider commensurate to a contempt of the kind that she has been found to have committed.
34. Secondly, although it appears she co-owns the family home with her husband, he is presently living there and he has care needs. Ms MacPherson has left that home and left the country to go to live in France. It is not clear to me with what means to support her but her house is needed by her husband and those who might help to care for him. In the circumstances, it seems to me that a fine or a confiscation of assets is not an appropriate penalty in this case.
35. However, in any event, I have to consider the seriousness and nature of the contempt which I have found. The contempt of court committed by the defendant by her breaches of

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- injunctive orders was committed on various dates in September 2023 and during the currency of the suspension of the sentence of imprisonment of 28 days passed on 16 January 2023.
36. The defendant knew that what she was about to do before she posted the material online would be a contempt of court, both because of her involvement in the previous contempt proceedings and the suspended sentence that had been passed by the Court, but also because she had been told as much in correspondence from Ms Lynas, as I have previously described.
 37. Ms MacPherson threatened to breach the injunctive orders and to post the material online again, and indeed to post new material. She was advised that to do so would be regarded as a contempt of court, and she chose nevertheless to do just that. She only took those steps after she had moved from England to live in France. I am satisfied that she thought that by doing so, she would be beyond the reach of the law. It has been reported to me in evidence today that the defendant has posted further material identifying her daughter on the eve of this hearing. She continues to show no intention of removing posts which I have found were posted in breach of the injunctive order and in contempt of court.
 38. I do take into account that although she denied contempt of court and the alleged breaches, she did not dispute that she had in fact posted the material and so she has not required the claimant to prove that she did. She did not dispute the fact that the injunction had been made. Her grounds of dispute were those previously referred to, namely that she considered the injunction itself was illegal or invalid. I cannot give her full credit for admitting the breaches, but I do take into account the more limited admissions that she has made.
 39. I doubt whether a sentence of imprisonment will ensure future compliance. However, it is possible, if it any warrant for committal were executed, that a period of imprisonment would at last cause the defendant to see the error of her ways in breaching clear court orders to the detriment of her daughter. Nothing else has yet had that effect.
 40. I do take into account that although the breaches of the orders are detrimental to her daughter in the ways I have previously described, it is unlikely, although possible, that FP is aware of what her mother has done, and thereby the harm caused to her would not be as severe as it might otherwise have been. The possibility that FP is aware arises from the fact that she does have access to the Internet.
 41. The defendant is in France. I have to take into account that, realistically, she would have to return to England for any warrant of committal to be executed. I note that I issued a warrant for her arrest on 7 December 2023, and she has not returned to this country in the meantime, and clearly has no present intention of doing so. Therefore, for her to commence any sentence of imprisonment would require her to return to this country, in effect.
 42. The Court has no desire to pass a sentence of imprisonment on the defendant, not least because in some sense that is exactly what she is provoking the Court to do. She wants to highlight her complaints about the treatment of her daughter. She has, for example, I understand, tweeted about the hearing today, no doubt to try and draw attention to herself and her allegations of conspiracy, corruption, and the torture of her daughter. In many ways, by bringing this committal application, the Local Authority has helped the defendant draw attention to her own position and campaign. On the other hand, the Local Authority is

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seeking as best as it can to protect FP, the protected party in the Court of Protection proceedings.

43. However, very importantly, a purpose of sentencing is to uphold the authority of the Court and discourage others from flagrantly breaching court orders. The law applies equally to all, even to those who believe, contrary to all the evidence, that they are conducting a justified campaign. The defendant has openly and intentionally defied the court in a brazen manner. I cannot allow the defendant to treat herself as beyond the law.
44. Taking into account all the mitigating and aggravating factors, and weighing all the relevant circumstances, I am satisfied that the only sentence that is appropriate in this case is one of imprisonment. Nothing else would meet the seriousness of the defendant's contempt of court. In this case, given the previous suspended sentence and that the current contempt of court is of an identical kind to the previous contempt, it would not be appropriate to suspend the sentence of imprisonment.
45. The contempt of court was committed during the period of suspension of the sentence of imprisonment for the previous contempt and that sentence ought now to be made immediate.
46. Weighing all the matters, I have determined that the appropriate sentence of imprisonment is one of three months for the contempts of court that I have found the defendant committed in September 2023. Additionally, the 28 day sentence of imprisonment that was passed and suspended on 16 January 2024 is now imposed as an immediate sentence which shall run consecutively to the three-month period of imprisonment that I impose for the contempts committed in September 2023.
47. I must remind the defendant that she has a right to appeal without permission, and that the time limit for appealing to the Court of Appeal is 21 days from today, 22 January 2023.
48. I shall direct that an expedited transcript of this judgment shall be prepared at public expense and, once approved, that it shall be published on the website of the Judiciary of England and Wales. It will be supplied to Ms MacPherson and the other parties.