

THE HIGH COURT
THE CIRCUIT COURT ON APPEAL
EASTERN CIRCUIT, COUNTY OF WICKLOW

[2014 No. 37 C.A.]

BETWEEN

BRIAN SHERRY AS LEGAL REPRESENTATIVE OF JAMES GUNNING (DECEASED)

PLAINTIFF / APPELLANT

AND

EILEEN GUNNING (OTHERWISE EILEEN HAMEED)

DEFENDANT / RESPONDENT

DECISION of Mr. Justice Hedigan delivered the 12th August, 2014

1. The only issue before the court on this appeal is whether a judge may make a coercive order of committal which is one that provides for indefinite detention. The court cannot and will not allow the re-litigation of issues already concluded in the courts. In this regard a final order for possession was affirmed by Murphy J. on 26th February, 2009. No appeal lies from this decision absent fraud. In proceedings heard by Hogan J. commenced on 8th November, 2011, the defendant herein sought to set aside that judgment on grounds of fraud. Hogan J. in a judgment delivered on the 28th February, 2012 refused to do so.

2. This judgment was appealed but was eventually struck out by an order of the Supreme Court of 7th June, 2013, which provided that if books of appeal were not filed within three weeks, the appeal would be struck out. No books of appeal having been filed, this strike out order came into effect.

3. The defendant, Eileen Gunning, refused to vacate the property in question and apparently continues to do so. On 24th October, 2013, in Wicklow Circuit Court, Mahon J. made an order that Eileen Gunning be committed to prison for contempt, in that she failed to comply with the order of the Circuit Court. He ordered that she be imprisoned until she purged her contempt, which she may do by agreeing to vacate the property. For reasons unclear, the matter was re-entered before Griffin J. in Wicklow on 20th and 21st February this year. He appears to have believed, following legal argument, that the court could not impose a coercive order of detention for an indefinite period. He instead imposed a further thirteen days imprisonment for Eileen Gunning's failure to purge her contempt. It is unfortunate that this matter was dealt with by Griffin J., it should have been brought back before the judge who made the order unless this posed particular problems.

4. In any event, it is clear that the court has the power and may have the unpleasant duty of sending to prison indefinitely a person who wilfully refuses to comply with an order of the court. In *IBRC v. Quinn* [2012] IESC 51, at p. 10 of the judgment Hardiman J., dealing with this issue, stated as follows:-

"It is well established in the authorities set out below that punitive imprisonment for a criminal contempt of court must be for a finite fixed period of time. On the other hand, coercive imprisonment in order to enforce compliance in the future with a court order is imposed for civil contempt and can be indefinite in duration."

5. In this case Mahon J imposed what is clearly a coercive order for the indefinite detention of the defendant. The learned Circuit Court judge on the 21st of February last should not have interposed a sentence of a fixed time and appears to have misdirected himself in doing so. The defendant had not purged her contempt and so, as ordered by Mahon J., had to remain in custody. Coercive orders may be and all too frequently must be made by the courts. It is one of the most unpleasant duties a judge may have. It is, however, an essential duty. The orders of the court must be complied with. The alternative is anarchy in which the strong will triumph over the weak. The jurisdiction of the courts to enforce their own orders is an essential aspect of the rule of law.

6. The concept of indefinite detention is, however, something that no judge wishes to contemplate. As a matter of practice, I consider that the better course is to impose a coercive detention of indefinite length until a contempt is purged, but to review that detention after a fixed period. I think it is best practice after making the order for committal to have the contempt proceedings adjourned for such fixed period as the judge with seisin of the case thinks appropriate. A period fixed of three months may be an appropriate time. At this subsequent hearing, the person affected should be brought back from prison before the court to ascertain whether immediate compliance with the court's order will be made. If not, save for exceptional reason, the detention should continue until the contempt is purged. The proceedings should be adjourned for a further period of time. Judicial oversight of indefinite detention is the intended purpose, and is the preferred course.

7. The order of the Circuit Court made herein on 21st February, 2014, will be set aside. The order of Mahon J. made on 24th October, 2013, is affirmed. The defendant will be committed to prison forthwith in accordance with that order. The Circuit Court proceedings will be adjourned to a date to be fixed by the County Registrar for Wicklow immediately after the expiry of three months from 12th August, 2014, as may be practicable. If possible, the matter should be set down before Mahon J.