

IN THE COURT OF PROTECTION
SITTING IN LEEDS

Leeds District Magistrates' Court and Family Court
Westgate
Leeds. LS1 3BY

Date: 22 January 2024

Before:

MR JUSTICE POOLE

Between:

SUNDERLAND CITY COUNCIL

Claimant

- and -

(1) EO

(by her Litigation Friend)

First Respondent

(2) LIOUBOV MACPHERSON

Second Respondent/Defendant

MR S GARLICK for the Applicant

MISS H BAKSHANI for the First Respondent

THE SECOND RESPONDENT/DEFENDANT appeared In Person

APPROVED JUDGMENT

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This judgment was delivered in public but a transparency order is in force. 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 EO or the place where she is cared for, or members of her family other than the named Defendant. 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. This is an ex tempore judgment.
2. On 19 June 2023, the court made injunctions against the Defendant, Liubov Macpherson (“Mrs Macpherson”). Those injunctions were supported by a penal notice and the injunctions were that she shall not: (a) record her daughter, EO (who must not be identified in any report of the proceedings today) by video or audio for any purpose; (b) in any way record, whether by video, audio or photographing, staff from Placement 3 or any other health or social care staff concerned with EO; (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 audio recording of EO recorded at any date.
3. The applicant local authority, Sunderland City Council, has issued an application dated 15 November 2023 for Mrs Macpherson to be committed to prison for breach of those injunctions. The Defendant was summoned to attend court on 7 December 2023, but she did not attend in person. I was then 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 EO, I allowed Mrs Macpherson to join remotely. She indicated on that occasion, very clearly, that she would not attend a further hearing of the committal application. I told her that that could be listed on 19 December, to allow her to travel to England for that purpose, but she said that she would not come to England and indeed that she was claiming political asylum in France. I issued a warrant for her arrest,

hoping to secure her attendance at court by that means. That, of course, could only be executed were she to return to this jurisdiction, or at least that was my expectation.

4. On reflection, after the hearing, I decided that a further hearing ought, in any event, to be listed, otherwise the application to commit Mrs Macpherson for contempt of court might stand in abeyance, that is it might be put off for a very long time. Accordingly, I listed the application for a further hearing, again direction personal attendance by the Defendant. That hearing is listed today, 22 January 2024 at 2.45 p.m.
5. Again, Mrs Macpherson has not attended in person; she remains in France, but she was able to attend remotely and, again, I have allowed her to do so after giving an opportunity to counsel to make submissions.
6. The brief background is that the Defendant's daughter, EO, is a protected person who has been the subject of Court of Protection proceedings now for five or six years. Those proceedings have in fact concluded. EO was diagnosed and is treated for paranoid treatment-resistant schizophrenia which causes her, amongst other problems, to have delusions about being persecuted by others. Her mother, Mrs Macpherson, believes that her daughter is indeed being persecuted by others, in particular by healthcare professionals and the courts. She describes all healthcare professionals who have had dealings with EO to be corrupt and the court ----

THE DEFENDANT: Not all.

MR JUSTICE POOLE: Please, Mrs Macpherson, you must not interrupt me. Please.

THE DEFENDANT: (inaudible) ----

MR JUSTICE POOLE: If you are going to interrupt I will ask for your microphone to be switched off.

THE DEFENDANT: Not all ----

MR JUSTICE POOLE: Mrs Macpherson, please.

THE DEFENDANT: (inaudible) not all (inaudible) ----

MR JUSTICE POOLE: Mrs Macpherson, I am going to ask for your microphone to be switched off because you must not interrupt while I am giving this ruling. Thank you.

7. As I say, she believes, and has said today, that medical professionals and indeed healthcare professionals who are caring for her daughter are corrupt, that they are part of a conspiracy to torture her – that is a position she has made quite clear on previous occasions and indeed in documentation presented to the court today – and that this court, by which I mean the Court of Protection, and indeed 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.
8. These beliefs are, as I have found at many previous hearings, deeply entrenched as further demonstrated at the hearing today. Mrs Macpherson is convinced that the mission that she should accomplish it to reveal this supposed conspiracy and corruption. She has pursued that goal 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 marked as totally without merit.
9. Notwithstanding the amount of time that the court and the regulators and the police have given to these complaints, all of which have resulted on conclusions with which Mrs Macpherson disagrees, she still maintains that she is being ignored. She has not been ignored, but no one has agreed with her analysis or 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, 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.

10. It is worth also recording that this court, the Court of Protection, with me sitting in the Court of Protection, has determined that it would be in EO's best interests to have face to face contact with her mother, but Mrs Macpherson has refused that opportunity on the grounds that she will not see her daughter unless or until changes are made to her medication regime. Those changes would be contrary to professional medical opinion and clearly contrary to her daughter's best interests. These are matters that the Court of Protection has previously considered and reached conclusions upon. Mrs Macpherson will not accept those conclusions.
11. 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 which was in clear breach of previous court orders, and also of 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.
12. 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 twenty-eight days' imprisonment, concurrent for each established breach, suspended for twelve months. That suspension was in effect until 15 January 2024. I note that the alleged contempt of court by way of breaches of identical further injunctions would, if found proved, have been committed during the currency of the suspended sentence passed on 16 January 2023.

13. On 22 August 2023, the court having made the injunctions to which I have referred on 19 June 2023 and Mrs Macpherson having applied to the Court of Appeal for permission to appeal that order, but having been refused permission and her appeal having been certified as totally without merit, Mrs 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, Mrs Macpherson wrote:

“Please don’t be surprised if you see a lot more videos on social media. I also will reinstall all of the old posts and videos with material evidence that the Court forced me to delete in January this year, except one video which is not pixelated.”

14. As I say, she copied in the solicitor for the local authority. Ms Lynas has given evidence before me today and she confirmed that she responded to that correspondence by advising Mrs Macpherson that were she to do so, it would be considered, by the local authority at least, that she would be, again, in contempt of court.

15. As Ms Lynas’ evidence establishes, the Defendant was true to her word and did re-post a number of items on social media which the local authority alleges were in breach of the injunctive orders made on 19 June 2023.

16. The allegations made by the local authority in relation to breaches of the orders are as follows:

(a) That, on 3 September 2023, Mrs 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. The material refers to the Defendant’s daughter having been mistreated and to the “corrupt legal system”, and it shows video recordings of EO and of her mother talking to EO with EO’s voice recorded. The

Defendant says in her post that she is posting these recordings to show how her daughter is being mistreated.

- (b) On 4 September 2023, Mrs Macpherson posted a link to an article which had been posted to Facebook on 26 June – it is not clear in which year – which contains links to documents filed within these court proceedings, in breach of clause 1(c). These were attached to a letter to The Open Justice Project which she posted with the links to the attachments.
- (c) On 7 September 2023, the Defendant posted a link to an article which had been posted to Facebook on that date. However, there was also information dated 26 October 2022 linked to it and there is a video contained within that article which appears to be the same video contained at point (g), which I shall come to.
- (d) On the same date, 7 September, Mrs Macpherson posted two links on X (formerly Twitter) to two separate videos which are videos to which I have already referred, which were videos of EO, breaching clause 1(d) of the injunctive order. It is fair to say that these videos showing EO do show her face pixelated.
- (e) On 16 September 2023, Mrs Macpherson posted to X (formerly Twitter) a link to a video uploaded onto her YouTube account in June 2021 entitled, “The 21st Century Disgrace Supported Accommodation”. This video records Mrs Macpherson on the phone to EO on loudspeaker, breaching clause 1(d).
- (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 Mrs Macpherson on the phone to EO on loudspeaker, breaching clause (d) again of the injunction.

- (g) On 17 September 2023, Mrs 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 Mrs Macpherson again on the phone to her daughter. Mrs Macpherson was found in contempt for posting this video on 16 January 2023. Indeed, four of the current alleged breaches involve re-posting material which had been posted in contempt of court as found in the previous committal proceedings.
17. As noted, I have received affidavit evidence from Ms Lynas, paralegal at the solicitors instructed by the local authority, in which she confirms exhibited affidavit evidence and documents which clearly show that the breaches that I have just set out have been committed by Mrs Macpherson in the manner alleged. She was not challenged in relation to that evidence. Mrs Macpherson denies the breaches but her defence is based not on denial of the alleged facts, but on a different ground or grounds which I will come to shortly.
18. In short, the breaches include the posting of material which names EO by her first name, but which, thereby, and given that it was her mother, Mrs Macpherson, who was posting them, easily identify EO as the subject of the Court of Protection proceedings. They identify her by name and identify her placement. They identify, by name, a number of professionals who have cared for or been responsible for the health and wellbeing of EO, subject to the Court of Protection proceedings. They include posting links to documents within the proceedings. These are clear breaches of the injunctive orders to which I have referred. This conduct must be seen in the context of Mrs Macpherson not only being advised that to post this materials would be regarded as a contempt of court, but also in her deciding shortly before posting these materials to leave England and to move to France, where she remains.

19. As noted, Mrs Macpherson denies that she has been in breach of the injunctions, 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 that she was, she believes, entitled to do so in exercise of her Article 10 right to freedom of expression and because the injunctive order made was made unlawfully 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.
20. Dealing with those matters: firstly, there have been many Court of Protection hearings and there are published judgments in this case. In those judgments and in the orders that have been made, the court has 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 and, 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 acted unlawfully when making the injunctions in June 2023, or has acted in contravention of the Mental Capacity Act 2005. The Defendant has not put forward any evidence that even hints at possible corruption – she merely asserts it. The only corruption, as she puts it, identified by Mrs Macpherson is that, in effect, the courts have not agreed with her analysis of her daughter's situation, which I briefly described earlier.
21. As to Article 6, again Mrs 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 has availed herself of that opportunity but, again, permission to appeal has been refused on that occasion as totally without merit.

22. As to Article 10, her right to freedom of expression, Mrs Macpherson is perfectly entitled to express opinions about the court proceedings and about decisions that have been made, but to do so without breaching the injunctions. Those injunctions do not prevent her expressing her opinions. Insofar as her right to freedom of expression has been restricted, it has been necessary and proportionate to do so in order to protect the rights and interests of her vulnerable daughter.
23. It is important to be clear as to why the injunction was made. It was made to protect her daughter, not to persecute her daughter or to persecute Mrs Macpherson. EO has rights of her own. She is an extremely vulnerable individual. She suffers from paranoid schizophrenia. I have listened, in preparation for this hearing and on many previous occasions, to recordings of Mrs Macpherson talking to her daughter during contact periods, and especially those that have been published on the internet in breach of the injunctive orders that have been made by the court. They are an unsettling and troubling listen. Mrs Macpherson manipulates her daughter into saying certain things and into fearing persecution and appears deliberately to make her daughter distressed, as she clearly is in some of the recordings. EO will say that she is in distress. Mrs Macpherson of course interprets that as EO being distressed by the care that she has been receiving at the placement, but it is clear on listening to the recordings that what is distressing EO is mother's behaviour and her mother cajoling her to report concerns to medical professionals and others. It is deeply manipulative behaviour of a vulnerable young woman.

24. That is why the injunctions were made: to protect the welfare, best interests and privacy of EO. The breaches cannot be justified on the grounds that Mrs 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. She accepts that she was warned in advance that re-posting material which had been previously found to have constituted contempt of court may be regarded again as a contempt of court. It is quite clear that she knew what she was doing. The criminal standard of proof applies. By posting this material, the Defendant has openly defied the court from, as she sees it, the safety of France. The breaches constitute a significant interference with the administration of justice. I am certain that the alleged breaches have been committed and that the Defendant's conduct by breaching the injunctive orders amounts to a contempt of court. .

25. I will now proceed to consider whether sentence should proceed today or whether there are any mother matters that need to be considered before the court proceeds to sentence. If I decide to proceed to sentence I shall consider the matters relevant to the sanction to be imposed, if any.

LATER

26. 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, 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 Mrs Macpherson that she has no intention of removing the posts from the internet; what she has said is that she is willing only to remove names from posts "for now", but not to remove the offending posts themselves.

Furthermore, she has re-posted further items, or repeat items I should say, on the eve of the hearing.

27. Secondly, she 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 says that she has taken steps to try to secure legal representation, but has failed to to secure it. It seems to me that there is very little prospect, particularly as she is in France and intends to remain there, of her obtaining legal representation in time for an adjourned sentence hearing or at all. Also, there appears to me to be no evidence by way of medical evidence or otherwise that would assist the court in relation to sentence that could be made available to the court prior to sentencing.

28. 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 of committal”, a fine or confiscation of assets, or other punishment permitted by the law. The general principles which I adopt are those set out by Macdonald J in *Re Dahlia Griffith* [2020] EWCOP 46, and I quote from paragraph 42:

“As Marcus-Smith J made clear in *Patel v Patel and Ors* [2017] EWHC 3229 (Ch) at [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 from engaging in the conduct comprising the contempt. Secondly, it acts to ensure future compliance.”

29. 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:

- i) The penalty chosen must be proportionate to the seriousness of the contempt.
- ii) Imprisonment is not the starting point and is not the automatic response to a contempt of court.

- iii) Equally, there is no principle that a sentence of imprisonment cannot be imposed on a contemnor who has not previously committed a contempt.
- iv) 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 that is available to the court.
- v) 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.
- vi) Having determined the length of the term of imprisonment, the court should expressly ask itself whether a sentence of imprisonment might be suspended.”

I adopt those principles and approach.

30. In terms of any financial penalty, the Defendant, Mrs Macpherson, appears to have no means by way of income by which she could pay a fine, certainly not a fine of a level that the court would consider for a contempt of the kind that she has been found to have committed. Secondly, although it appears she jointly owns or co-owns the family home with her husband, Mr Macpherson, he is presently living there and he has care needs. Mrs Macpherson, to repeat, has left that home and left the country and is living in France, but it is not clear to me with what means to support her.
31. In the circumstances, it seems to me that a fine or a confiscation of assets is not an appropriate penalty in this case but, 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 injunctive orders was committed on various dates in September 2023 and during the currency of the suspension of the sentence of imprisonment of twenty-eight days passed on 16 January 2023. The defendant knew before she posted the offending material that what she was about to do 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. Mrs Macpherson threatened to breach the orders and post the material online again, and indeed to post new material. She was advised that to do so would be regarded as being in contempt of court but she chose to go ahead anyway. However she took the precaution of only posting the offending material once 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.

32. 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. I take into account her offer to remove names from the posts but she shows no intention of removing the posts themselves which I have found are in breach of the injunctive order and a contempt of court. 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. She did not dispute the fact that the injunction had been made and her grounds of dispute were those previously referred to, namely, in short, that she considered that the injunction itself was illegal or invalid. I have found that it was not.

33. I doubt whether a sentence of imprisonment will ensure future compliance, but it is possible, if it were executed, that it would do so, and that a period of imprisonment would, at last, sober the thoughts of the Defendant so that she realises the error of her ways in breaching clear court orders to the detriment of her daughter.

34. I do take into account that although the breaches of the order are detrimental to her daughter in the ways I have previously described, it is unlikely, albeit possible, that EO 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. That said, I am aware that EO does have access to the internet.

35. The Defendant is in France. I have to take into account that, realistically, she would have to return to England for any warrant of this court to be executed. I note that I issued a warrant for her arrest on 7 September and she has not returned to this country in the meantime and clearly has no present intention of doing so. So for her to commence any sentence of imprisonment would require her to return to this country.
36. The court does not want to have to pass a sentence of imprisonment on the Defendant, not least because that is what she is provoking the court to do. She wants to highlight her complaints about the treatment of her daughter. She has, for example, tweeted about the hearing today, no doubt to draw attention to herself and her case in respect of the “corrupt court, corrupt professionals and the torture of her daughter”.
37. In many ways, by bringing this committal application, the local authority have helped the Defendant draw attention to her own position and campaign. On the other hand, the local authority is seeking, as best as it can, to protect EO, the protected party in the Court of Protection proceedings. 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. I cannot allow the Defendant to treat herself as beyond the law.
38. Taking into account all the mitigating and aggravating factors and weighing all the relevant circumstances, mindful of the narrow range of sanctions available, 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, in particular given the previous suspended sentence, during the currency of which suspension Mrs Macpherson has committed these further contempts of court, which were of an identical or similar nature to those for which she was previously sentenced to a period of suspended imprisonment, it would not be appropriate to suspend the sentence of imprisonment.

39. Weighing all the matters, I have determined that the appropriate sentence of imprisonment on this occasion is one of three months for the contempts of court that I have found the Defendant committed in September 2023 and, to run consecutively to that, the twenty-eight-day sentence of imprisonment that was passed and suspended on 16 January 2023. That shall run consecutively to the three month period of imprisonment that I impose for the contempts committed in September 2023.
40. 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 twenty-one days from today, 22 January 2023 (sic). I shall direct that a transcript of this judgment, expedited, shall be produced at public expense and, once approved, that that shall be published on the website of the Judiciary of England and Wales. It will be supplied to Mrs Macpherson and to the other parties, particularly in the event of an appeal by her to the Court of Appeal.

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Postscript:

The transcript was only provided to the Judge for approval on 13 November 2024

Approved:

Nigel Poole

Mr Justice Poole, 2 December 2024

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