

TRANSCRIPT OF PROCEEDINGS

Ref. H00BQ145

IN THE COUNTY COURT AT SOUTHEND

Tylers House
Tylers Avenue
Southend-on-Sea

Before **HIS HONOUR JUDGE DUDDRIDGE**

IN THE MATTER OF

SWAN HOUSING ASSOCIATION LIMITED (Claimant)

-v-

CLAIRE AIMABLE (Defendant)

MISS HALL appeared on behalf of the Claimant
THE DEFENDANT appeared in person

APPROVED JUDGMENT
31st AUGUST 2022, 14.37-15.08

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JUDGE DUDDRIDGE:

1. In this case, the claimant, Swan Housing Association Limited, is the freehold owner of 5 Viola Close, Laindon, Basildon, Essex, SS15 5JW. The defendant, Mrs Clare Aimable is the tenant of that property under a “non-shorthold” assured tenancy that began on the 29th of November 2013.
2. On the 25th of May 2021, DJ Humphries, sitting in the County Court at Basildon, granted an antisocial behaviour injunction which prohibited Mrs Aimable from the following:
 - 1) Causing a nuisance, annoyance or disturbance or behaving in a manner likely to cause a nuisance or annoyance to the claimant’s residence, the claimant’s staff, contractors or agents or persons lawfully within the locality of 5 Viola Close, Laindon, Basildon, Essex, SS15 5JW (“the Property”). For the avoidance of doubt, this includes the playing of loud music and talking loudly/shouting so that it is audible outside the property.
 - 2) Harassing, intimidating, using offence language towards, abusing or causing distress and alarm to the claimant’s residents, the claimant’s staff, contractors or agents or persons lawfully within the locality of the property.
3. The injunction was made following complaints by Mr Damian Kijanczuk who owns the adjoining property at 28 Viola Close of persistent loud music, shouting and swearing by Mrs Aimable and her children. He said that that had been going on since 2019. Following complaints by him to the claimant, they first attempted to resolve the issue by arranging mediation between Mrs Aimable and Mr Kijanczuk and also wrote letters to Mrs Aimable pointing out that they would bring proceedings for an injunction if her behaviour did not desist, and other matters.
4. The injunction was initially granted for a period of one year and a power of arrest was attached to paragraph 2 of it. It was personally served on Mrs Aimable on the 27th of May 2021. It has since been extended until the conclusion of these proceedings and, as will be seen in a moment, there is an application to extend it for a period of a further two years.
5. By its application notice dated the 11th of May 2022, the claimant applies to commit Mrs Aimable to prison for breach of the injunction. The application alleges 10 breaches of the injunction between the 18th of June 2021 and the 3rd of March 2022. I don’t intend to read each of those alleged breaches out one by one into this judgment. They are set out in the application notice itself and a document attached to the application notice and can be appended to a transcript of this judgment in due course if that is appropriate.

6. The alleged breaches vary in their gravity, but the general gist of each of them is that there has been continued nuisance coming from Mrs Aimable's property consisting of one or more of the following:

- Loud music during the day and sometimes until late at night or even in the early hours of the morning
- Shouting, swearing and use of audible, very offensive language which, again, is sometimes during the day but sometimes also late at night or even in the early hours of the morning.

7. The behaviour itself is not targeted at anybody outside the property. It appears to be, insofar as it consists of shouting and swearing, going on between Mrs Aimable and her children with sometimes them swearing at her and sometimes, her shouting and swearing at them. There are also allegations of other noise which Mrs Aimable attributes to her children's behaviour.

8. In terms of their gravity, in my view, a certain amount of noise during the daytime inevitably has to be tolerated between neighbours who live next door to each other. That's not to say that it can't amount to a breach of an injunction but, in terms of how serious it is, a certain amount of noise, particularly noise that is not itself offensive such as the playing of music or the television being on during the daytime inevitably has to be tolerated.

9. What is more serious is loud shouting and swearing and abusive language at any time of day if it can be heard outside a property and any noise that goes on late at night and into the early hours of the morning that causes a disturbance to neighbours. And, of course, even music or a television being on above a certain volume can itself be serious, if there's no really good reason for the music to be so loud and it's not just the ordinary transference of noise from one property to another that neighbours have to tolerate because it's inevitable.

10. I say that just by way of background and summary of the nature of allegations and to make the point that some of them are clearly more serious than others. And the ones which are said to have occurred for lengthy periods of time during the day and overnight are ones that I regard as being particularly serious.

11. Evidence of the allegations is set out in the affidavits of Shaun De Souza Brady who is an Antisocial Behaviour Officer who works for the claimant and the neighbour, Mr Damian Kijanczuk who I've already referred to; each affidavit is dated the 11th of May 2022. They are supported by many recordings that Mr Kijanczuk has made on both his mobile phone and has made or, at least, they have been captured on the CCTV system that he has at the front of his property.

12. Mr De Souza's affidavit exhibits a 13-page table which lists over 200 recordings of incidents which are dated and timed which took place between the 28th of May 2021 and the 16th of April 2022, although, of course, I am only directly concerned with the 10 specific allegations that have been made in this application.

13. Mr Kijanczuk's affidavit sets out the distress that it has caused him and to his family. So far as their personal circumstances are concerned, they go beyond the ordinary distress that a person might feel at being disturbed by their neighbour persistently over a long period of time. Mr Kijanczuk is a forklift driver, although, at the time of his affidavit, he was signed off work because of stress which he attributes to Mrs Aimable's behaviour. But being a forklift driver, it's essential for him to be well-rested and to have slept well when he goes to work because forklift driving is inherently a somewhat dangerous occupation, where it's important for the driver to be awake, alert and attentive at all times if accidents are to be avoided.

14. Going beyond that, he has a disabled son who has a chromosomal disorder and requires 24-hour care and who, it appears from Mr Kijanczuk's affidavit, is unable to communicate other than by facial expression and who is particularly affected by all of the forms of loud noise that emanate from Mrs Aimable's property.

15. The proceedings came before me first on the 24th of June this year. On that date, I adjourned them with directions to enable Mrs Aimable to get legal advice. At that stage, she had not obtained Legal Aid or arranged for a solicitor to represent her. But I recall that she told me at that hearing that she had been in touch with a particular firm and arrangements were in hand for her to be represented. However, today I learnt that despite them attempting to get public funding for her, they'd not been granted a Legal Aid certificate.

16. According to Miss Hall who represents the claimant, Mrs Aimable told Miss Hall that the solicitors had said that that was because Mrs Aimable didn't meet – or exceeded, rather – the earnings threshold for getting public funding. That explanation makes no sense whatsoever. But that is not to say it's not correct in terms of what the solicitors told Mrs Aimable, because, in my experience, it does seem to be the case that there continue to be difficulties with defendants to contempt proceedings obtaining public funding, even though it should by now be well understood that they are entitled to criminal Legal Aid, which is not means tested and, therefore, they should be entitled to it as of right.

17. Nonetheless, Mrs Aimable wished to proceed with the hearing today and I can understand that it must be stressful having proceedings of this nature hanging over her and there may have been a sense that she just wanted to get it over with. She told Miss Hall, and

she has told me, that she admits the allegations. Although she is not represented, I have had the chance to speak to Mrs Aimable, and I am satisfied that she does understand what the allegations are. In fact, they're very straightforward. And she does understand the evidence that the claimant relies on and, therefore, that she makes those admissions understanding what is being said, why it's being said and what the evidence is to support it and that those admissions are made freely on her part.

18. I also consider that this is the first effective opportunity that she's had to make admissions or, at least, that I should treat it as such. I did not explore with her at the hearing on the 24th of June whether she should make admissions, because that was the first hearing, and she was not represented, and I was anxious that she should not be under any pressure to say anything that might incriminate her at that early stage. But I am satisfied that as of today, she understands the consequences of making the admissions, but also that I should treat them as being made at the earliest effective opportunity and give her credit for that.

19. She has also agreed to an extension of the injunction. The claimant seeks an extension for a further two years and Mrs Aimable told me that she would not oppose that. Indeed, she said she would agree to any extension for any period, effectively, if it meant that she could avoid going to prison.

20. I bear in mind that she has accepted that extension of the injunction and that that acceptance is itself a serious matter because it means that she will have an injunction against her for a further two years. And that itself is a consequence of the conduct alleged by the claimant which she has admitted, and I should take that into account.

21. The effect of Mrs Aimable's admissions is that I, therefore, don't need to make findings about the 10 allegations. Having been admitted, they are, effectively, therefore, proved and can be found to have happened or treated as having happened without me having to make any findings based on the evidence. I would say though that the evidence is compelling, being supported by many, many recordings of the behaviour in question, including specific recordings on the dates and times set out in those allegations.

22. I have to deal with sentencing today and I have had regard to the guidelines issued by the Sentencing Council for breach of a Criminal Behaviour Order, those being the most up to date guidelines which are relevant to civil contempt for breaches of an antisocial behaviour injunction. Those guidelines, of course, require me to consider, first of all, what category the offence falls into and then the appropriate starting point for a sentence and the range of options available to the court within that category. And then, thirdly, to take into account any

aggravating or mitigating factors including, importantly, factors of personal mitigation that apply to the defendant.

23. I also bear in mind, where the court is dealing with contempt proceedings, whilst a sentence for contempt of court is intended to punish the person who is in contempt, it's also intended to secure future compliance with the court's order. And that serves a substantially similar purpose to the sentencing purpose in criminal proceedings of rehabilitation. I bear in mind, therefore, that in deciding what sentence is appropriate, it's important to bear in mind the need to encourage compliance in the future as well as to address the past contempt.

24. Turning then to the category of offence. The guidelines, first of all, require me to consider what level of culpability these breaches fall into, and they identify three levels of culpability. Culpability A, which applies to very serious or persistent breaches, culpability B, which applies to deliberate breaches that fall between A and C, and culpability C, which applies to minor breaches or a breach where the circumstances were just short of having a reasonable excuse for the breach.

25. In my judgment, these particular breaches are capable of falling into either culpability B or culpability A. They are certainly not minor breaches and they certainly do not amount to breaches where they fall just short of a reasonable excuse. They are not the most serious breaches and, of course, they are not in themselves targeted at any particular victim and they don't amount, for example, to harassment or assault or anything of that kind which would make them very serious.

26. What tends to take them towards the top of culpability B or possibly even into culpability A is that they are persistent, and they are a continuation of behaviour that had been going on for about two years before the injunction was granted, despite the efforts of the claimant to resolve the issues so that the behaviour would stop. And they have persisted from very shortly after the injunction was granted, in terms of the breaches that are actually alleged in the allegation, from about a month after the injunction was granted and continued and were continuing up until the date when the application was issued. It is that persistence, involving repeated breaches of the court order which is, in my judgment, particularly serious.

27. Nonetheless, in considering whether they should fall into culpability A or culpability B, I do bear in mind that they are not targeted breaches, even though they are, in my view, persistent. And although many of them must have been intentional in the sense that turning on music is, clearly, a deliberate act, many of them also involved what was probably a momentary loss of self-control or loss of temper. And, therefore, although the defendant was clearly responsible for keeping her temper and maintaining self-control, they were not

deliberate in the sense of premeditated, but involved behaviour that was associated with a loss of self-control. And for those reasons, I shall treat them as falling within culpability B, notwithstanding their persistence. Nonetheless, they are serious at that level.

28. The guidelines also identify three levels of harm. Category 1: breaches which cause very serious harm or distress, or which demonstrate a continuing risk of serious criminal and/or antisocial behaviour. Category 2: cases falling within categories 1 and 3. Category 3: breach causing little or no harm or distress or demonstrating a continuing risk of minor criminal and/or antisocial behaviour.

29. In my judgment, these breaches fall within category 2. They are not – in terms of the level of harm caused, they are not the most serious of breaches. They, as I've already said, are not targeted at anybody, although they clearly impact Mr Kijanczuk and his family more significantly than anybody else. But they are not targeted at him; they don't amount to deliberate harassment of him or assault or threats of anything of that kind. What they amount to is persistent and ongoing behaviour which is, undoubtedly, a nuisance and which I've no doubt cumulatively is very distressing for Mr Kijanczuk. Indeed, that is the effect of his evidence. But nonetheless, it is a case which is serious, but which falls really within category 2 rather than category 1.

30. Looking at the table that provides the starting point and range of sentences from that analysis, culpability B, category 2, the starting point is 12 weeks custody, and the range is a medium-level community order, which is not available in the County Court but only in the Criminal Courts, up to one year's custody. That means that, in this case, what is described as the custody threshold, the point at which the court can properly impose a custodial sentence is clearly met by these particular breaches. I then need to go on to consider aggravating and mitigating factors.

31. In terms of aggravating factors, I've already taken into account the persistence of the breaches and the repeated nature of them in deciding what culpability level to assign to them and so, I should not take that into account a second time in deciding on aggravating factors. However, aggravating factors in this case do include that the first breach of the order that has been admitted was within a month of the order being made.

32. Secondly, that the breaches have continued despite continuing efforts by the claimant to avoid committal proceedings by persuading Mrs Aimable to desist from this behaviour. And those efforts include letters that were written to her to warn her of the consequences of her behaviour and meetings with her at her property to discuss her behaviour with her and see what could be done to get her to comply with the order and avoid committal proceedings.

33. I note that a warning letter was written to her on the 30th of June within a few days, less than two weeks of the first breach that is specifically alleged in these proceedings, and a home visit was made on the 5th of October. Notwithstanding that home visit, one of the allegations took place on the 16th of October, so within less than two weeks of that. And she was also given a warning letter which was delivered to her by hand on the 28th of February 2022, but her behaviour continued despite those interventions by the claimant. And a further aggravating factor that can't possibly have escaped Mrs Aimable's notice is that Mr Kijanczuk has a disabled child. And the impact on him, given his circumstances and his child's disability, is quite serious and shows a high level of, at the very least, lack of consideration for him and his family.

34. However, there are also a number of mitigating factors in this case. First of all, I'm required to treat this as a first breach or set of breaches of the order by a defendant who otherwise is of good character. Secondly, as I've already recorded, this is the first date when Mrs Aimable has, effectively, had the opportunity to admit the allegations and so she has admitted to them at the earliest stage and is entitled to credit for that, and I'll return to that in a moment.

35. Thirdly, there are a number of personal mitigating factors in her case. She has three children, all of them boys, two of whom have now been diagnosed with ADHD. The oldest, who is 14, was diagnosed about three years ago; the middle child who is 11 was diagnosed with ADHD in March this year. Mrs Aimable told me that she'd been battling for two years to try and get help to manage his behaviour but had not been successful in getting a diagnosis until March this year.

36. I bear in mind the challenges of managing teenagers generally, but also of managing children who have specifically been diagnosed with that condition which, of course, is well-known to cause hyperactivity and bad and impulsive behaviour which can be very difficult to manage. I bear in mind that she is, effectively, a single parent, having separated from her husband some time ago and she told me that he's not significantly involved in their care.

37. Related to that point, the three children are 9, 11 and 14 years old and Mrs Aimable is their carer. There is no alternative family member who is available to care for them if I were to impose an immediate prison sentence today. The result would be that three children would probably end up having to be the subject of care proceedings by the Local Authority, or at least urgent arrangements would have to be made by Social Services for their care in the absence of a family member who is able to step in.

38. Next, Mrs Aimable has a part-time job on a 16-hour contract. She earns a very modest salary from that; she's working for B&M Retail, and she told me she takes home £458 per month. Again, of course, the effects of an immediate custodial sentence would be that she would lose that job and might find it very difficult to get another one.

39. Fifthly, her tenancy is at risk as a result of her behaviour and that itself is a form of consequence arising from her behaviour. As I've already said, she agrees to an extension of the injunction for a period of two years which, again, is a form of consequence for her behaviour or at least something that results from her behaviour because, had her behaviour stopped when the injunction was first granted, I've no doubt that it would simply have lapsed this year with no application to renew it and the matter could have been considered closed. And so, she's already at risk of fairly significant consequences for her and her family as a result of the very behaviour which is the subject of this committal application and I bear that in mind when deciding what the appropriate sentence should be.

40. Finally, she's told me, although not provided any medical evidence to support it, that she has herself been suffering from mental health problems. She's been receiving treatment from the community mental health team for those. She considers that she had had a breakdown. She feels, looking back, that she was not in control but feels that she is now in control. Time will tell whether that is true or not, but I do bear in mind, by way of personal mitigation, that some of the behaviour may have arisen as a result of her mental health difficulties and, therefore, to that extent, that mitigates the seriousness of what has happened.

41. Bearing all those matters in mind and weighing the aggravating and mitigating factors against the starting point, I consider that the appropriate sentence remains at the starting point of 12 weeks custody. As I've said, this is a case where the custody threshold is clearly passed, where there has been persistent ongoing breaches over a long period of time and although there is quite significant personal mitigation, it remains the case that a number of those breaches were deliberate. Even where the breaches were not premeditated, it is, at the end of the day, Mrs Aimable's responsibility to control her own behaviour and the behaviour of her children.

42. However, I do not consider that it would be appropriate, in this case, to activate that custodial sentence immediately. I consider this an appropriate case, bearing in mind the mitigating factors and bearing in mind the important consideration of motivating, if not securing, compliance with the order for the next two years, that the sentence should be suspended.

43. My sentencing decision before taking into account the admissions is that Mrs Aimable would be sentenced to a period of 12 weeks' custody, but that that should be suspended for two years. However, Mrs Aimable should be given a full discount for her admissions and, therefore, that sentence will be discounted to eight weeks. And so, my final sentence is eight weeks' imprisonment suspended for a period of two years.

44. The effect of that is that Mrs Aimable will not be required to serve a prison sentence today, but if there are further breaches of the order, then the court may decide to activate that prison sentence following such further breaches, if they are proved, in addition to any sentence it imposes for those further breaches.
