

Legal Research & Writing
Professor Kerns
12-8-10
High Pass

MEMORANDUM

DATE: December 8, 2010
TO: Professor Kerns
FROM:
RE: Ms. Brown's Charge of Contempt of Court

I.

Issues

- 1) Were County officials justified inciting Ms. Brown for contempt for failing to stay out of her storm-damaged home?
- 2) Was the decision to find Ms. Brown in contempt based on fact or mere conclusion?
- 3) Did the County give Ms. Brown the opportunity to comply with the order to vacated her house?
- 4) Was Ms. Brown able to comply with the court order?

II.

BRIEF ANSWERS

- 1) The County's use of a contempt order was unjustified because the County resorted to what is essentially a tool for resolving criminal matters and had not exhausted the civil alternatives to resolving the matter.
- 2) Based on the findings of the engineer who examined Ms. Brown's house for her insurance company, whether the house was in imminent danger was a conclusion rather than a matter of fact.
- 3) By denying Ms. Brown the opportunity to recover her pet cats, the County officials overstepped their authority and prevented Ms. Brown from complying with the order to vacate.
- 4) The County failed to ensure that Ms. Brown was able to comply with the order to vacate by assisting her in finding another place to stay. Ms. Brown's safety should have been the County's primary concern, but the County order may instead have forced her out on the street.

III.

FACTS

Ms. Brown, an 85-year-old woman living in Monte Rio, had her residence red-tagged by County officials due to damage caused by heavy rains the previous winter. The County gave Ms. Brown no warning of its decision to rule the house uninhabitable, nor did it give Ms. Brown the opportunity to retrieve any of her belongings, including her two pet cats. Ms. Brown retrieved her pets despite the County's order. The County then detained a court order barring Ms. Brown from entering the house.

An engineer hired by Ms. Brown's insurance company deemed the house in need of major repair but not in imminent danger. Based on the engineer's assessment, Ms. Brown returned to her house. The County responded by asking the court to find Ms. Brown in contempt.

IV.

DISCUSSION

Section 1209 of the Code of Civil Procedure States that "[d]isobedience of any lawful judgment, order, or process of the court" is one of the acts constituting contempt of the authority of the court. The crime is punishable by up to \$1,000, up to five days in jail, or both, in addition to possible attorney's fees and other costs of the initiating party. (Code Civ. Proc., §1218)

In *In re Cardella*, Court of Appeals, Third Appellate District, the petitioner argued that the court failed to find the facts on which it determined that the petitioner was able to pay overdue alimony and fees he owed. Instead, the court's finding was a "mere conclusion." Likewise, in Ms. Brown's case, the opinion of the insurance company's engineer contradicted the County's determination. This indicates the question of whether Ms. Brown's house was indeed an imminent danger was a matter of conclusion rather than a matter of fact. Therefore, the court has no fact on which to base its decision. The court in *Cardella* also stated that "[N]o presumptions and intendments will be indulged in favor of the order." The lack of fact on which to base the contempt order brings its enforceability into question.

In *Uhler v. Fresno County*, 117 Cal.App.2d 147, the court referred to contempt of court as a "drastic remedy" that "should be used only when necessary in order to maintain law and order." The court stated further that contempt "should rarely, if ever, be used for the purposes of settling differences of opinion between conscientious officials." Such differences of opinion can be extended to experts in a specialty, such as when engineers differ as to whether a damaged house is uninhabitable. The County had not exhausted non-criminal alternatives prior to resorting to contempt charge in its attempts to resolve the matter.

The County also denied Ms. Brown the opportunity to recover some of her belongings prior to barring her from her house. The people who lived in the houses in San Francisco's Marina District that were red-tagged due to damages caused by the Loma Prieta earthquake were allowed several minutes to retrieve personal items. Those houses were often partially collapsed. By contrast, Ms. Brown had lived in her storm-damaged house for an unspecified period of time without incident prior to the house being red-tagged. The County clearly overstepped its authority and denied Ms. Brown a reasonable right to comply with the court order.

More importantly, the County did not ensure that Ms. Brown was able to comply with the court order to vacate her house. By contrast, in *Young v. Hayes*, 9 Cal. 4th 1052, the court found that Mr. Young's "[W]illful failure to comply with an order of the court constitutes contempt. "In Ms. Brown's case, there was nothing willful about her failure to comply with the court order. Her only alternative may have been to live on the street. For an 85-year-old woman, this constitutes a death sentence. There is no indication that the County took any measures to ensure Ms. Brown's health, safety, and well-being after putting her out of her house with absolutely no warning or recourse. This unconscionable act alone renders the County's contempt order unenforceable.

V.

CONCLUSION

The County overstepped its authority when it requested that the court issue a contempt order against Ms. Brown. By doing so, it escalated a civil matter into a criminal one. The contempt order can also be challenged because it was based on a matter of conclusion rather than a matter of fact. There was no agreement among experts that Ms. Brown's house was unequivocally uninhabitable. The County failed to ensure that Ms. Brown had the opportunity to comply with the order to vacate her house, nor did it take any steps to ensure that Ms. Brown herself could comply with the order without putting herself in jeopardy. Therefore, the contempt order should be rescinded and County officials should be ordered to work with Ms. Brown in resolving this matter in a way that does not involve the courts. While the County is to be commended for its work in protecting citizens from harm due to inhabitable living conditions, it must balance the needs and rights of individuals to determine for themselves what are acceptable risks when the perceived danger is a matter of conclusion rather than a matter of fact.