

Blue Book

NAME

SUBJECT Intro to
Research & Writing

INSTRUCTOR Kerns

EXAM SEAT NO.

SECTION

DATE 7 Dec, 2011

GRADE High Pass

10^{7/8} x 8^{1/4}

50-16 PAGE

I.

BRIEF ISSUES

A. Is Mrs. Brown in contempt of the court?

Will Mrs. Brown be required to suffer
B. ~~If Mrs. Brown is found to be in contempt of~~
potential exposure, and if so what kind?
~~The court, what would her potential exposure entail?~~

II.

BRIEF ANSWERS

A. No. Mrs. Brown is not in contempt of the court
as she does not fulfill any of the elements required
in the California Code, (Cal. Code Civ. Proc. §1209
(a) 5).

B. No. Mrs. Brown should not have to suffer potential
exposure as she is not in contempt of the court.

III. FACTS

Mrs. Brown, an eighty-five year old citizen of Monte Rio, lived happily in her family home with her two cats, Scooter and Snoopy. The house holds much significance for Mrs. Brown as it has been passed down through two generations, and she grew up in that very house. The rains from last winter moved and destabilized the earth beneath Mrs. Brown's house, causing it to shift, rendering it unstable. County officials inspected and red-tagged the house without any warning to Mrs. Brown. Mrs. Brown called, confused, to ask the County what the red-tag meant. Officials informed her that this meant

she was prohibited from entering and using the house. Mrs. Brown asked for permission to retrieve her two cats, but was told that she would have use animal control. Her fear that animal control might possibly take her pets to the pound and euthanize them led Mrs. Brown to enter the house herself to fetch Snoopy and Scooter. A court order was later obtained ~~being~~ by County officials barring Mrs. Brown from entering the house for any reason at all, due to their belief that her home was unsafe. They gave Mrs. Brown a copy of this order. Mrs. Brown's insurance company hired an engineer to evaluate the house, and the engineer ~~stated~~ ^{stated} in a written

opinion that although the house required major repair work, Mrs. Brown was not in any imminent danger. This report, read by Mrs. Brown, prompted her to return to her home where she intends to stay. Mrs. Brown is scared and confused as she cannot afford to buy another house and has nowhere else to stay. The County officials feel sympathy for her situation, but are concerned for her safety. They have asked, therefore, that the court declare Mrs. Brown in contempt due to her ~~refusal~~ ~~or~~ intention to continue living in the house and her refusal to leave.

Good
Factual
Summary

IV.

DISCUSSION

A. Mrs. Brown will be in contempt of the court if she fulfills the elements of the California Code of Civil Procedure (Cal. Code Civ. Proc. § 1209 (a) 5) which states,

"The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

5. Disobedience of any lawful judgment, order, or process of the court;"

Mr. Mrs. Brown's refusal to leave her home was not disobedient to a lawful judgment.

Mrs. Brown's insurance company hired an engineer to inspect and evaluate the house, subsequent to the

County's decision to red-tag it. The professional second opinion found in the expert advice of the engineer did not deem the house to serve any imminent danger to Mrs. Brown, only that it needed major repairs. This brings into question the validity of the court order in the first place.

In Uhler v. Superior Court of Fresno The Court of Appeal of California ~~found that~~ debated whether or not the superior court's order was ~~valid~~ ^{valid.} They found that whether or not the power to do so existed in that situation, it was still an abuse of discretion under the circumstances. (Uhler v. Superior Court of Fresno (1953))

117 Cal. App. 2d 147 [256 P. 2d 90]).

It is ^{unlikely} that ~~the established~~ ~~order~~ ~~the~~ County's order was valid ~~order~~, due to the indiscretion between the two opinions on the safety of the house. Therefore, Mrs. Brown was not directly disobedient to a "lawful...order... of the court." (Cal. Code Civ. Proc. § 1209 (a) 5).

~~The~~ Mrs. Brown's ~~was~~ house was red-tagged by County officials without any prior notice to her. The near-condemnation of her home came as a shock with no warning. In ~~Grady v. Superior Court~~, Unter v. Superior Court of Fresno, the court held that the auditor, on trial for contempt of the court, was innocent as he should have been allowed a reasonable time in which to act.

(Unter v. Superior Court of Fresno (1953) 117 Cal. App. 2d 147)

In Cardella v. California, a father accused of

being in contempt of the court ~~was~~ for ~~his~~ failure to pay child support, was discharged due to his inability to

comply. In a headnote from the case an exception to

contempt was defined as,

"Disobedience of an order of court is not contempt

where it is due to the inability of the accused to

comply with the order and such inability is not

due to fraudulent conduct on the part of the

contemner." (Cardella v. California (1941) 47 Cal. App.

2d 329, 330).

~~Mrs. Brown's~~

Mrs. Brown's inability to comply to the order_s can

be ~~over to~~ compared to the father's inability to make child

Don't
write
the
same
point
in
the
case
itself.

support payments. Mrs. Brown had nowhere to go, and no money with which to buy another house. Therefore, Mrs. Brown did not possess the ~~ability~~ ability to follow the court's order for her to evacuate the house. To do so would have left an eighty five year old woman out on the streets after heavy downpours, presumably suggesting cold ~~late~~ winter weather, with her only family members - the two cats. (Uhler v. Superior Court of Fresno (1953) 117 Cal. App. 2d 147 [256 P. 2d 90]).

Further evidence of Mrs. Brown's innocence can be seen as demonstrated in the case of Young v. Hayer. In this case, an attorney is found in contempt of the court for ^{willful} failure to file an appellant's opening brief in

his criminal case after 19 extensions for deadline, Young was found guilty by the court under the ~~fact~~ statement

"Willful failure to comply with an order of the court constitutes contempt." (Cal. Code Civ. Proc. § 1209(a) 5).

The attorney was aware of and had the ability to

comply with the orders, and did so in the immediate

view and presence of the court. In fact, Mr. Young

was granted 20 extensions to comply before finally

being ordered in contempt. (Young v. Hayes (1995) 9 Cal. 4th 1052).

Mrs. Brown's case can be distinguished from the

Young v. Hayes case for several reasons. Namely, Mrs.

Brown's failure to comply to the County order was

~~not~~ ^{not} willful. ~~Her~~ Her decision to remain in her home

was based on a fear of being homeless and stranded.

She was not able, therefore, to comply due to her

inability to buy a new home and the fact that she had

nowhere else to go. (Young v. Hayes (1995) 9 Cal. 4th 1052).

Also, it should be noted that Mrs. Brown received

no prior notice. Her expulsion from her home was

sudden and left her with no recourse. Young, however,

received 20 extensions with plenty of notice. An

attorney's decision to willfully refrain from filing a

client's opening brief can hardly be equated with

an 85 year old woman's attempts at survival.

(Young v. Hayes (1995) 9 Cal. 4th 1052).

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The County is taking drastic measures by finding Mrs. Brown in contempt of the court. In Uhler v. Superior Court of Fresno, the court held that to punish for contempt was a drastic remedy that should only ever be used when necessary to maintain law and order. The court found the order to be an abuse of discretion, and decided that the situation "should have been presented and handled in some manner more appropriate to a just decision than that afforded by a resort to a quasi-criminal proceeding..." (Uhler v. Superior Court of Fresno (1953))

17 Cal. App. 2d 147 (56 P. 2d 90))

Mrs. Brown is not in contempt of the court.

B. Mrs. Brown will not be required to suffer potential exposure such as prison time or fines, as she is not in contempt of the court.

If, however, the court were to ^{somehow} find her guilty,

Mrs. Brown would ^{possibly} be required to pay a fine up to \$1,000 and be imprisoned for up to 5 days.

(Cal. Code Civ. Proc. § 1218 (a))

IV.

CONCLUSION

Mrs. Brown has a good case against the County because she has not placed herself in contempt of the court. Her inability to comply, lack of willful disobedience and evidence of a second opinion on the condition

Good

of her home all indicate that she will have a
strong case,