

Blue Book

NAME

SUBJECT *Research & Writing*

INSTRUCTOR *Kerns*

EXAM SEAT NO.

SECTION

DATE *08-06-12*

GRADE *HP*

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

50-16 PAGE

~~Memorandum~~

Memorandum

To: Mrs. Kerns

From: 201121679

Re: Mrs. Brown Contempt of Court

I. Issues

(1) Is Mrs. Brown in contempt of Court by returning to her residence contrary to Sevier County Officials' order?

(2) If Mrs. Brown is in contempt of court, what is her penal exposure?

II

Brief Answers

(1) No, Mrs. Brown is not in contempt of court because she is unable to comply with ^{the} order and the factual basis for said

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order is in question.

(2) If Mrs. Brown is found guilty of contempt

of court, she may be subject to ^{up to} a \$1,000

~~fine~~ fine, up to 5 days ~~in~~ in jail, or both.

III

Facts

~~At~~ Mrs. Brown is an 85 year-old

person that lives in the same home she was

born in. She inherited the home from

her parents who had inherited the home from

their parents. The home is in Monte Rio

and after heavy rains and resulting ground

movement, County officials have deemed it

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unsafe. There was no warning to Mrs Brown, nor was there an explanation when the County "Red-Tagged" the home. A phone call to the county informed Mrs. Brown that she could not return to her home for any reason because it was unsafe.

Mrs. Brown lives alone ~~with~~ Her two pet cats are her sole companions and rely on her for care and feeding. The cats provide to Mrs Brown necessary solace and affection. Fearing the cats would be taken to the pound and euthanized if the County official called Animal Control like he indicated

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he would, Mrs. Brown returned to the home and retrieved her cats.

Subsequently, the County obtained an order from the court barring her from entering the house for any reason because the county engineers stated the house was unsafe.

Since the order, Mrs. Brown's insurance company sent out a different engineer who issued a written report ~~that~~ stating while the ~~though~~ house is in need of repair, danger is not imminent. Upon receiving that report and ~~the~~ lacking funds to ~~arrange~~ arrange

for alternative housing, Mrs. Brown has returned to her home.

IV Analysis

(A)

(1) Rule of Law: Code of Civil Procedure Section 1209 (5)

states that contempt of the authority of the court exists when ~~there~~ there is "[d]isobedience of any lawful judgment, order, or process of the court."

(2) However, the accused must have an ability

to comply with the court's order for a failure

to comply to be contempt of the court's

authority. [In re Alfred Cardella (Cal. Ct. App. 3d 1941) 47 Cal. App. 2d 239, 117 P. 2d 908, Cal. App. LEXIS 1164.]

In Cardella, Ibid, the ^{Court} found that "[d]isobedience

of an order of court is not contempt where it is due to the inability of the accused to comply with the order... ~~This is not~~ The court qualifies ^{that} the disability inability must not be "due to voluntary and fraudulent conduct."

Here, Mrs Brown has initially complied, but upon learning that the insurance company has deemed the ~~house~~ to danger to inhabitants of the house ~~is~~ ^{is} not imminent and therefore will not pay for alternative housing, she had no choice but to return to her home.

The California Supreme Court adds to the ability to comply test another test and

that is awareness. [In re H. Peter Young (1995)

9 Cal. 4th 1052, 592 P.2d 148, 40 Cal. Rptr. 2d 114 ~~3~~ ⁷ (Attorney

sought and received 19 extensions to file documents,

court finds contempt) ~~In re~~ In Young. ~~Say~~ Ibid

the court found that contemnor, Young "was aware of and had the ability to comply."

Here, Mrs Brown is aware of the order, though she does not fully understand it. But it cannot be said that she is able to comply with the order. As stated by the Cardella, Supra court, "... it is essential ... that the party found guilty had the ability to perform."

Further, an accused must be allowed a reasonable time in which to act to ~~remain~~ ^{become} in compliance of a courts order [Ullmer v. Superior Court of Fresno County (1953) 117 Cal. App. 2d 147, 256 P. 2d 90]. Mrs. Brown had no such time. The county simply showed up and placed a "red-tag" on the house with no prior discussion or warning.

(3) An additional element in contempt~~s~~ matters is when there is an apparent inconsistency of reports, documents and ~~reports~~ ^{opinion}.

In Ullmer Supra the court was dealing with an auditor that became aware of conflicting

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laws or codes. The auditor sought ~~the~~ ^{to learn} which law superseded the other and was advised by the County Counsel to wait for a definitive answer as the Attorney General was reported to be working on an opinion. In the mean time the lower court held the auditor in contempt. ~~The Whelan, supra~~ ~~case~~ Though ~~that~~ Mrs. Brown's conflicting opinions are not statutes, they are important and substantial works of authority, in that they are engineer's opinions as to the level of danger her home presents.

(4) The Cardella, Supra court tells us that "proceedings in contempt are in their nature criminal in character". So, ~~too~~, does Uhlen, Supra. However, Uhlen reminds us that "punishment for contempt... is a drastic remedy which should be used only when necessary in order to maintain law and order." It can not be said that allowing an 85 year-old woman to return to her home of 85 years would be a credible challenge to Law and order.

(B) If Mrs Brown is found in contempt Code of Civil Procedure Section 1219 (a) prescribes

a fine "not exceeding one thousand dollars...
or
imprisonment not exceeding five days, or both"

[Code Civ Proc § 1218 (a)]. Section 1218 (a)

also ~~and~~ states that under certain conditions that the... "adjudged guilty of contempt... may be ordered to pay... reasonable attorney's fees and costs."

V.

Conclusion

Mrs Brown is not guilty of contempt of court because ⁽¹⁾ she does not ~~the~~ have the ability to comply with the order, (2) has not been allowed the time to comply;

(3) Important material data with which the original order relied upon is in conflict with other equally important and qualified data, and (4) the contempt of court proceedings, in this instance are too harsh and therefore improper.