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## James v James

[2018] EWCA Civ 1982

**Court of Appeal, Civil Division**

**Bean and David Richards LJJ**

**9 August 2018**

*Contempt of court - Civil contempt - Committal*

### **Abstract**

*Contempt of court - Civil contempt. The orders for the appellant's committal of 6 July and 13 July 2018 for six months for contempt had to be set aside, and the case remitted to the County Court for another circuit judge to determine the application for committal. The Court of Appeal, Civil Division, held that the 6 July order had been defective because it was required to be for a fixed term and on 13 July the judge had been wrong to proceed to impose a sentence of immediate custody on an unrepresented appellant.*

### **Digest**

The judgment is available at: [2018] EWCA Civ 1982

### **Background**

The appellant was ordered to attend at the County Court with a witness statement, verified with a statement of truth, providing an account of her administration of the estate of the parties' father. She failed to do so. The respondent applied for the appellant be committed to prison for contempt of court on the grounds of her failure to comply with the order. On 6 July 2018, in the appellant's absence, the judge committed the appellant for contempt. A bench warrant was executed by the appellant being arrested on the 10 July and she was committed to prison in accordance with the judge's order. On 11 July, the appellant was produced for sentencing, and the judge decided that she should return to prison and be brought back before the court. On 13 July, the judge sentenced the appellant to six months in prison. The appellant appealed.

Appeal allowed.

### **Issues and decisions**

Whether the judge had erred in committing and sentencing the appellant.

The order for committal made on 6 July had been defective because s 14(1) of the Contempt of Court Act 1981 required that any such order should be for a fixed term. That was not a matter of discretion, it was a

mandatory requirement of the statute. The judge would have been justified, subject to the point about 14 days' notice, in issuing a bench warrant, but he should not have made an order for committal for an indefinite period.

Turning to the hearing of 11 July, the judge had clearly been right to advise the appellant to obtain legal representation, but it was unrealistic to have supposed that she could successfully do that from prison in one-and-a-half days. The obligation under CPR PD 81.15.6 was an obligation placed on the court, not on the contemnor's partner or family.

With respect the 13 July hearing, the judge had been wrong to proceed to impose a sentence of immediate custody on an unrepresented appellant. The appellant should not have been the subject of an order for committal, as opposed to the issue of a bench warrant if she had failed to attend court, until she had had a proper opportunity to have a solicitor or barrister make representations on her behalf to the court, or alternatively until she had expressly been given that opportunity with one adjournment and then deliberately failed to take reasonable steps to obtain legal representation.

It followed that the orders for committal of 6 July and 13 July had to be set aside, and the case remitted to the County Court for another circuit judge to determine the application for committal. However, the findings recited in the order of the 6 July were to remain binding.

*Brown v London Borough of Haringey* [2016] 4 All ER 754 applied.

Abid Mahmood (instructed by Reeds Solicitors Ltd) for the appellant.

Alison Meacher (instructed by Machins Solicitors LLP) for the respondent.

Karina Weller - Solicitor (NSW) (non-practising).