

[2023] EWFC 181 (B)

IN THE SLOUGH FAMILY COURT

Case No. RG22P00139

Courtroom No. 1

The Law Courts
Windsor Road
Slough
SL1 2HE

Wednesday, 4th October 2023

Before:
HIS HONOUR JUDGE RICHARD CASE

B E T W E E N:

RAZA

and

GALL

THE APPLICANT appeared In Person with McKenzie Friend
THE RESPONDENT appeared In Person
MS K FERGUSON (instructed by SBS Solicitors) appeared on behalf of the Child through the
Guardian

JUDGMENT

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This judgment was delivered in public.

HHJ CASE:

1. This is a hearing that has been listed to consider if Ms Gall has breached a previous order of the Court. The proceedings were initiated by the Court pursuant to Family Procedure Rule 37.6, namely:
 - (1) If the Court considers that a contempt of court (including a contempt in the face of the Court) may have been committed, the Court on its own initiative shall consider whether to proceed against the defendant in contempt proceedings.
 - (2) ...
 - (3) If the Court proceeds of its own initiative, it shall issue a summons to the defendant which includes the matters set out in rule 37.4(2)(a)-(s) (insofar as applicable) and requires the defendant to attend court for directions to be given.
 - (4) A summons issued under this rule shall be served on the defendant personally and on any other party, unless the Court directs otherwise...
2. The matter was last before the Court on 13 September 2023; a hearing that was listed in part to consider the Guardian's report to the Court that the mother had not complied with the previous order. One of the orders that I made on that occasion was that the allegation should be set out in form N601 and served on the mother.
3. The mother does not have English as a first language and my order included a direction that that document, together with the order I made on 13 September 2023 should be translated into Hungarian. Within the bundle prepared for this hearing, there is a statement of service at page E60 in which it is recorded that a process server served documents personally on the mother on 30 September 2023. Attached to that statement of service were the two documents that I have referred to but in English. The mother has confirmed to me today that at the same time she received the Hungarian translations of those two documents which are also set out in the bundle starting at page E27.
4. It is apparent from what I have said so far, therefore, that the hearing is listed to consider whether or not the mother, Ms Gall, breached a previous order that I made and, in doing so, committed a contempt of court. The other parties before the Court are the father, Mr Raza, assisted by a McKenzie friend, and a Guardian appointed on behalf of the child with whom I am concerned in the substantive proceedings; that is Ms Philips who is represented today by counsel, Ms Ferguson.

5. This hearing has been held in public. At the outset of the hearing, I confirmed that nobody had applied for the hearing to take place in private. I explained to Ms Gall that she has a right to free legal representation. Indeed, I had explained that to her at the previous hearing. She told me that she had not been able to secure such representation and I invited her to consider whether, in the circumstances, she wanted to apply for an adjournment. She told me through the interpreter that she wished to proceed today. I also explained to Ms Gall at the outset of the hearing that she may, if she wished, give oral evidence. She indicated she did not wish to do so. I confirmed with her that I had made a previous order on 13 September, inviting her to file at court a witness statement in response to the application. Again, I explained to her she did not have to do that if she did not wish to do so. I ascertained that she had not done so and did not intend to do so. Accordingly, the evidence before the Court for this hearing is limited to a witness statement prepared by the child's Guardian which is in the bundle at page C1, a statement of Ms Philips originally dated 7 September 2023 and re-dated with the correct statement of truth, 15 September 2023. The mother confirmed that she had a copy of the bundle which includes that statement.
6. The broad background to this committal hearing is as follows: the child with whom I am concerned in the substantive proceedings has been subject to involvement from professionals prior to her birth, including child protection plans, child in need plans, the Public Law Outline, a public law order in the form of a supervision order and these private law proceedings. The father says, and I do not understand this to be in dispute, there has been no contact between him and the child since August 2022.
7. As a result of difficulties with him spending time with the child, he issued private law proceedings seeking a child arrangements order to spend time with the child. That application was listed before District Judge Harrison on 8 June 2022 for a First Hearing Dispute Resolution Appointment. At that hearing, the mother did not attend. District Judge Harrison directed the Local Authority to prepare a section 7 report and made an interim child arrangements order for the child to spend two hours per week with the father.
8. An application for a prohibited steps order was listed on 11 August 2022 before Deputy District Judge Rice. Again, the mother did not attend that hearing. The judge made an order prohibiting the mother from relocating outside her local area with the child.
9. The section 7 report dated 27 September 2022 recommended regular contact between the father and the child. The matter was listed for a Dispute Resolution Appointment before District Judge Ali on 13 October 2022. The mother did not attend. District Judge Ali

adjourned the proceedings to ensure personal service on the mother. The matter was listed back before her on 18 November 2022 and, on that occasion, the first occasion, the mother attended.

10. District Judge Ali made an order for the child to spend time with the father from 2.00pm to 4.00pm on alternate Saturdays. A penal notice was attached to that order. It is recorded on the face of the order, at paragraph five, the following:

“The mother stated to the Court that she will not make the child available to spend time with the father as she considers contact upsets the child. The Court informed the mother if she refused to abide by the terms of the Court [*sic*], she would be subject to enforcement proceedings which may result in a fine, community order and/or a prison sentence”.

11. The matter came back before District Judge Ali on 27 February 2023. The mother did not attend that hearing. She was ordered to attend the next hearing and a penal notice was attached to that order. A Rule 16.4 Guardian was appointed for the child. The matter was listed before me on 3 April 2023. The mother did not attend that hearing. I listed a hearing on 22 May 2023 and, conscious that the mother may have difficulty attending court, gave her permission to attend by video if she wished to do so. I attached a penal notice to that order and warned her that if she failed to attend court, in person or by video, the Court would consider issuing a warrant for her to be arrested and brought to court.
12. The mother did not attend the hearing on 22 May 2023 and I issued a warrant for her arrest. I received an email from the police, the consequence of which was I made an order on 5 June 2023, in these terms:

“Upon the Court having received notification from Thames Valley Police that the mother was arrested pursuant to the warrant dated 22 May 2023 at 18.10 on 4 June 2023, and upon Thames Valley Police having erroneously released the mother on bail on condition she attended the hearing listed on 16 June 2023 (warrant is not backed for bail), and upon the Court notifying Thames Valley Police of the error but considering it is not proportionate to issue a further warrant for the mother’s arrest pending the hearing on 16 June 2023 but will review the same should she not attend on 16 June 2023, it is ordered:

- (1) The arrest warrant dated 22 May 2023 is set aside.
- (2) Any party affected by this order may apply to set it aside or vary it within seven days of receipt”.

13. The matter then came before me on 16 June 2023 and the mother attended. On that occasion, I listed a case management hearing to take place on 20 June 2023 to consider directions to a Dispute Resolution Appointment and the father’s application for a costs order

against the mother relating to her non-attendance on 22 May 2023 and to consider interim contact arrangements until a Dispute Resolution Appointment or final hearing. At the hearing on 20 June 2023, the mother attended in person. I gave directions listing a Dispute Resolution Appointment and I made a costs order against the mother. By way of an interim child arrangements order, I directed that the child was to spend time with the father every two hours at the Wycombe Child Contact Centre starting on 24 June and increasing to three hours after two sessions. The Guardian was to make a referral to the contact centre and a penal notice was attached to that order addressed to the mother.

14. The case returned to court on 21 July 2023 upon the Guardian notifying the Court that the mother had not complied with my order for the child to spend time with the father. That order is at page B124 of the bundle. Paragraph one of that order provided as follows:

“The mother shall attend a preliminary meeting with the Wycombe Child Contact Centre at such time as they reasonably request”.

A penal notice was attached to that paragraph.

15. At paragraph three of the order, I set out the interim child arrangements order. That provided as follows:

“The mother must make sure that the child spends time with the father as follows:

- a) Every other Saturday for two hours at Wycombe Child Contact Centre.
- b) After two sessions, time shall increase from two hours to three hours per session.
- c) The Children’s Guardian shall make the referral to Wycombe Child Contact Centre forthwith and confirm the arrangements to each of the parents if required.
- d) The interim child arrangements shall be reviewed by the Court at the next hearing.
- e) The interim contact shall commence on the first Saturday arranged for by the Wycombe Child Contact Centre.
- f) The mother shall ensure that the child is taken to the Wycombe Child Contact Centre, The Hub, Union Baptist Church, Easton Street, High Wycombe, HP11 1NJ, for the contact sessions once arranged. Mother may appoint a third party to take the child”.

A penal notice was attached to that order addressed to the mother.

16. On 14 August 2023, the Court received an email from the Guardian’s solicitor recording that the mother had failed to attend the contact centre meeting. I made an order on 21 August 2023 in consequence of that email. The order required the Guardian to file a witness statement setting out the full particulars of the alleged non-compliance of the previous order

by the mother and I listed a hearing on 13 September. The matter came before me on 13 September, and as a result of that hearing the allegation was set down in form N601.

17. Insofar as the law is concerned, I have already set out the terms of Family Procedure Rule 37.6 so far as they are relevant. Rule 37.4(2) sets out, at length, what a contempt application must include statements of. All of those matters are covered in Form N601. Rule 37.8 provides as follows:

- (1) All hearings of contempt proceedings shall, irrespective of the parties' consent be listed and heard in public unless the Court otherwise directs, applying the provisions of paragraph four.

Paragraph four then sets out whether the hearing should be in private or not. Nobody has applied for the hearing to be in private.

18. Paragraph 12 requires the Court to inform the defendant of a right of appeal if any findings are made, without permission, the time limit for appealing and the court before which any appeal must be brought. Paragraph 13 requires the judgment to be published on the website of the Judiciary of England and Wales. Rule 37.9 provides as follows:

- (1) If the Court finds the defendant in contempt of court, the Court may impose a period of imprisonment, an order of committal, a fine, confiscation of assets or other punishment permitted under the law.
- (2) Execution of an order of committal requires issue of a warrant of committal. An order of committal and a warrant of committal have immediate effect unless and to the extent that the Court decides to suspend execution of the order or warrant.

19. My task is, firstly, to consider if the alleged breach of the order is proved to the criminal standard; that is, I have to be satisfied beyond reasonable doubt or satisfied so that I am sure, that there has been a breach. The N601 provides as follows: firstly, at E69, paragraph four: "The nature of contempt": "Failure to comply with direction with penal notice attached". Paragraph 7, "Date and terms of the order allegedly breach or disobeyed":

"Failure to comply with direction included in the order of 21 July 2023 that the mother shall attend a preliminary meeting at Wycombe Child Contact Centre at such time as they reasonably request, there being a penal notice attached to the same".

Paragraph 7:

"Date of personal service of the order and, if the order was not personally served, the date and terms of any order dispensing with personal service of the order":

"23 July 2023, paragraph 12, respondent in court when order made".

20. E72, paragraph 11: “Summary of the facts alleged to constitute the contempt”:

- “(1) On 21 July 2023, the Court made an order requiring the mother to attend a preliminary meeting at the Wycombe Child Contact Centre at such time as they reasonably request.
- (2) The mother failed to attend the meeting as directed.
- (3) The mother confirmed with the Guardian on 8 August 2023 that she had the details of the meeting with the contact centre but did not attend”.

21. That allegation is supported by the Guardian’s statement re-dated 15 September 2023. Within that statement, she sets out the terms of the order of 21 July which I have already referred to and then at paragraph four, on page C2, she says as follows: “On 7 August 2023, I received an email from the contact centre stating as follows...”. There is then a heading to the email, and the content reads as follows:

“Dear Isha,
Mum failed to turn up for the pre-visit on Saturday. As you will appreciate, there is nothing further I can do at this stage. Dad is aware of the situation.
Kind regards,
Maureen Rose (Centre Coordinator)”.

Page C3, paragraph five:

“I telephoned the mother on 8 August 2023 and the mother confirmed that she had the details of the meeting with the contact centre. However, she did not attend. The child was on holiday with her family. The mother would not share where and did not know when the child would be coming back. The mother told me that she was not prepared to attend a meeting until the child was back from holiday but she did not know when that would be”.

22. I am satisfied, beyond reasonable doubt, on the basis of that written evidence which has not been in any way undermined by the oral evidence which the Guardian gave to me this morning, that the mother was firstly aware that she should attend a contact meeting at the Wycombe Child Contact Centre and secondly chose not to do so. Accordingly, I am satisfied, beyond reasonable doubt, that she is in breach of the order which I made on 21 July which required her to attend such a meeting, that order having a penal notice attached and personal service having been dispensed with because of her presence in court with an interpreter who explained the order to her in her first language. In those circumstances, I find that the mother has committed a contempt of court. That is the end of the fact-finding element of my judgment.

[Further submissions and adjournment]

23. I turn now to consider the appropriate sanction, having already decided that Ms Gall has breached the terms of a previous order I made and is in contempt of court. Insofar as the law is concerned, I have derived assistance from the decision in *Hale v Tanner* [2000] 1 WLR 2377. The judgment with which the other members of the Court of Appeal agreed, was delivered by Hale LJ, as she was. At page 2380, from paragraph (F), she says as follows:

“...I would not wish to suggest that there should be any general principle that the statutory provisions relating to sentencing in ordinary criminal cases should be applied to sentencing for contempt. The circumstances surrounding contempt cases are much more various and the objectives underlying the court's actions are also much more various. There are, however, some points which it may be worth making.

In making those points I would wish to emphasise that I do so only in the context of family cases. Family cases, it has long been recognised, raise different considerations from those elsewhere in the civil law. The two most obvious are the heightened emotional tensions that arise between family members and often the need for those family members to continue to be in contact with one another because they have children together or the like. Those two factors make the task of the court, in dealing with these issues, quite different from the task when dealing with commercial disputes or other types of case in which sometimes, in fact rarely, sanctions have to be imposed for contempt of court. Having said that:

(1) These cases have to come before the court on an application to commit. That is the only procedure which is available. Not surprisingly, therefore, the court is directing its mind to whether or not committal to prison is the appropriate order. But it does not follow from that that imprisonment is to be regarded as the automatic consequence of the breach of an order. Clearly it is not. There is, however, no principle that imprisonment is not to be imposed at the first occasion: see *Thorpe v. Thorpe* [1998] 2 F.L.R. 127, a decision of this court. Nevertheless, it is a common practice, and usually appropriate in view of the sensitivity of the circumstances of these cases, to take some other course on the first occasion.

(2) There is the difficulty, as Mr. Brett has pointed out, that the alternatives are limited. The full range of sentencing options is not available for contempt of court. Nevertheless, there is a range of things that the court can consider. It may do nothing—make no order. It may adjourn, and in a case where the alleged contemnor has not attended court that may be an appropriate course to take, although I would not say so in every case; it depends on the reasons that may be thought to lie behind the non-attendance. There is a power to fine. There is a power of sequestration of assets and there are mental health orders. All of those may, in an

appropriate case, need consideration, particularly in a case where the court has not found any actual violence proved.

(3) If imprisonment is appropriate, the length of the committal should be decided without reference to whether or not it is to be suspended. A longer period of committal is not justified because its sting is removed by virtue of its suspension.

(4) The length of the committal has to depend upon the court's objectives. There are two objectives always in contempt of court proceedings. One is to mark the court's disapproval of the disobedience to its order. The other is to secure compliance with that order in the future. Thus, the seriousness of what has taken place is to be viewed in that light as well as for its own intrinsic gravity.

(5) The length of the committal has to bear some reasonable relationship to the maximum of two years which is available.

(6) Suspension is possible in a much wider range of circumstances than it is in criminal cases. It does not have to be the exceptional case. Indeed, it is usually the first way of attempting to secure compliance with the court's order.

(7) The length of the suspension requires separate consideration, although it is often appropriate for it to be linked to continued compliance with the order

underlying the committal.

(8) Of course, the court has to bear in mind the context. This may be aggravating or mitigating. The context is often the break-up of an intimate relationship in which emotions run high and people behave in silly ways. The context of having children together, if that be the case, cannot be ignored. Sometimes that means that there is an aggravation of what has taken place, because of the greater fear that is engendered from the circumstances. Sometimes it may be mitigating, because there is reason to suppose that once the immediate emotions have calmed down, the molestation and threats will not continue.

(9) In many cases the court will have to bear in mind that there are concurrent proceedings in another court based on either the same facts, or some of the same facts, which are before the court on the contempt proceedings. The court cannot ignore those parallel proceedings. It may have to take into account their outcome in considering what the practical effect is upon the contempt proceedings. They do have different purposes and often the overlap is not exact, but nevertheless the court will not want, in effect, the contemnor to suffer punishment twice for the same events.

(10) It will usually be desirable for the court to explain very briefly why it has made the choices that it has made in the particular case before it. One understands all the constraints in a busy county court, dealing with large numbers of these cases these days, and one would not wish to impose too

great a burden on the judiciary in this respect. Nevertheless, it would be appropriate in most cases for the contemnor to know why he or she was being sentenced to a period of imprisonment; why it was the length that it was; if it was suspended, why the suspension was as it was, but only very briefly.

An important part of the exercise is that the contemnor should understand the importance of keeping to court orders, of not breaking them and the likely consequences if they are so broken.”

24. I also derive some assistance from the Court of Appeal decision in *Liverpool Victoria Insurance Company Limited v Zafar*, also reported as *Liverpool Victoria Insurance Company v Khan* [2019] EWCA Civ 392, [2019], 1 WLR 3833. Paragraph 65 of that judgment, with which all of the members of the Court of Appeal agreed:

“In determining what is the least period of committal which properly reflects the seriousness of a contempt of court, the Court must of course give due weight to matters of mitigation. An early admission of the conduct constituting the contempt of court, before proceedings are commenced, will provide important mitigation, especially if it is volunteered before any allegation is made.

So too will cooperation with any investigation into contempt of court committed by others involved in the same proceedings or in other fraudulent claims. Where the Court is satisfied that the contemnor has shown genuine remorse for his or her conduct, that will provide mitigation. Serious ill health may be a factor properly taken into account. Previous positive good character, an unblemished professional record and the fact that an expert witness has brought professional and financial ruin upon himself or herself are also matters which can be taken into account in the contemnor’s favour”.

25. Paragraph 66:

“The Court must also give due weight to the impact of committal on persons other than the contemnor. In particular, where the contemnor is the sole or principal carer of children or vulnerable adults, the Court must ensure it is fully informed as to the consequences for those persons of the imprisonment of their carer. In a borderline case, such considerations may enable the court to avoid making an order for committal which would otherwise be made. In a case in which nothing less than an order for committal can be justified, the impact on others may provide a compelling reason to suspend its operation”.

26. Paragraph 69:

“The Court must, finally, consider whether the term of committal can properly be suspended. In this regard, both principle and the case law to which we were referred lead to the conclusion that in the case of an expert witness, the appropriate term will usually have to be served

immediately, and that one or more powerful factors justifying suspension will have to be shown if the term is to be suspended. We do not think that the Court is necessarily precluded from taking into account, at this stage of the process, factors which have already been considered when deciding the appropriate length of the term of committal. Usually, however, the Court in deciding the length of the term will already have given full weight to the mitigation, with the result that there is no powerful factor making it appropriate to suspend the term. If the immediate imprisonment of the contemnor will have a serious adverse effect on others, for example, where the contemnor is the sole or principal carer of children or of vulnerable adults, that may make it appropriate for the term to be suspended; but even then, as *Bashir* [2012] ACD 69 shows, an immediate term, greatly shortened to reflect the personal mitigation, may well be necessary”.

27. Insofar as this case is concerned, non-compliance with an order which was required in order to give effect to an interim child arrangements order is not a trivial matter. It is not a minor procedural breach. It is more serious than a failure to attend court when directed to do so or a failure to file evidence. It is fundamental to the whole nature of this application which is to determine arrangements for this child because the non-compliance with an order to attend at the contact centre for a meeting to arrange interim contact effectively renders the whole purpose of these proceedings pointless. That seriousness must be marked and in my judgment the only appropriate order is a term of imprisonment.
28. I take 14 days as an appropriate starting point. It would give the mother the opportunity to reflect on the seriousness of her breach without being unduly harsh. However, in this case there are very significant aggravating features and no mitigation at all, either advanced or that I can see. The mother has made no admission of her breach at any stage. She has shown no contrition when the Court delivered its judgment as to her breach. In fact, the opposite.
29. After delivering my judgment, and, indeed, on previous occasions, she has said words to the effect, “If you want, arrest me but I am not allowing the father to see my child”. In other words, even in response to my finding that she has committed a contempt of court, the consequence of which may be a term of imprisonment, rather than reflecting on that, inviting the Court to consider a lesser sanction and agreeing to comply with the court order, she has indicated, in terms, that she simply will not comply.
30. The seriousness of the breach also needs to be seen in the context of her repeated non-attendance and non-engagement in these proceedings on previous occasions as set out in the fact-finding element of my judgment. The only mitigation that could reasonably be

advanced is that she is the primary carer of the child. As I understand matters, she cares for the child with the assistance of her wider family, such that she is enabled to go to work. It might be that upon the imposition of a term of imprisonment, the child could be cared for by the wider maternal family.

31. In due course, later today, I will go on to consider whether, as the Guardian invites me to, I should make a section 37 order directing the Local Authority to consider whether public law proceedings should be started. In considering making that order, I am also entitled to take consider whether the threshold for making a public law order has been met. If I consider that it has I may at the same time as directing a section 37 order make an interim supervision or interim care order in respect of the child.
32. Accordingly, even if members of the maternal family are not available to care for the child in the event that the mother is in prison there are other processes in place which will protect, to some extent, the child from the consequences of Ms Gall's actions. Nevertheless, a term of imprisonment, the absence of the mother from the child's life for a period of time is likely to have some emotional effect on the child. In the absence of any real mitigation, I am not satisfied that a term of imprisonment of 14 days sufficiently reflects the seriousness of the breach and the mother's lack of contrition, me having found the breach. I consider that a proportionate period of imprisonment is 28 days.
33. Next, I turn to consider whether the order should be suspended, by which, I mean, for the benefit of Ms Gall, held in abeyance, put to one side, so long as she complies with other terms. The Guardian, through Ms Ferguson, has indicated that the Wycombe Child Contact Centre would be available to arrange an appointment with the mother on 28 October between 10.00am and 3.00pm. I am minded, in the circumstances, to suspend the order of 28 days' imprisonment but only if the mother attends a meeting at the Wycombe Child Contact Centre on that day between those times. I reflect that the purpose of the order I make is not to punish the mother but to ensure her compliance with the order that I have previously made. I also consider that suspending the term of imprisonment will avoid the emotional harm to the child of an immediate term of imprisonment.
34. In the circumstances, therefore, I have decided that the mother must serve a term of imprisonment of 28 days. However, I will suspend that. It will not take effect so long as she attends at the Wycombe Child Contact Centre and engages with the meeting in order to arrange interim contact between the child and the father between 10.00am and 3.00pm on 28 October. I want to make it clear to Ms Gall, if she does not comply with those terms of

suspension, she will go to prison for a period of 14 days which represents 50% of the term of imprisonment that I have imposed today.

35. I conclude my judgment by informing the mother that she has the right of appeal. She does not require permission. Her appeal is to the High Court pursuant to Practice Direction 30A. She has 21 days to lodge her notice of appeal. I will go on, later today, to list a hearing shortly after 28 October 2023 in which I will consider whether she has complied with the terms of the suspension. That is the end of my judgment.

End of Judgment.

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