NC: [2019] EWHC 697 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

No. FD18F00010

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 26 February 2019

Before:

MR. JUSTICE WILLIAMS

(In Private)

B E T W E E N :

LEILA JASSEM HAMMOUD — Applicant

- and -

TALAL QAIS ABDULMUNEM AL ZAWAWI — Respondent

J U D G M E N T

MR. HARVEY (instructed by Payne Hicks Beach Solicitors) appeared on behalf of the Applicant.

THE RESPONDENT was not present and not represented

MR. JUSTICE WILLIAMS:

1 I am dealing with a single application, in effect, for the committal of Mr. Al Zawawi who is the respondent to an application by Leila Hammoud who is represented today by Mr. Harvey of counsel.

2 The principal application which the court has been dealing with for some months now is the application that Mrs. Hammoud issued on 6 February 2018, which was an application for permission to apply under Part III of the Matrimonial and Family Proceedings Act, 1984. That application itself arose out of a petition race, in effect, between Mr. Al Zawawi and Ms. Hammoud.

3 The parties were married in Oman in 2005 and have three children. They have lived, it seems, in England for some years, certainly since around September 2015. In mid-2017 the marriage appears to have broken down for the second time, having followed an earlier separation in 2013, following which the parties reconciled but the wife issued a petition in this jurisdiction on 24 July 2017. At roughly the same time the husband pronounced the Talaq in Oman and on 19 October 2017 the husband obtained an Omani divorce certificate which was presented to the wife the day after she had served her English divorce petition on him.

4 That then led to the hearing on 6 February 2018 before Keehan J by which the Omani divorce certificate was recognised as valid and the wife's divorce petition was dismissed without adjudication as to jurisdiction or the facts pleaded. In tandem with that, the court ordered that the wife be permitted to apply for an order under Part III of the 1984 Act.

5 That Part III application was issued on 7 February 2018 and on 8 March 2018, Cohen J on paper and by consent made directions following receipt of correspondence from the wife's team at Payne Hicks Beach and the husband's team at Vardags. That provided for Forms E to be filed by 27 March 2018 and first appointment documents by 17 April 2018.

6 On 19 April, there was an interim maintenance hearing before Holman J. It appears that the husband was then instructing Vardags and leading counsel. The wife has retained her team at PHB throughout. Holman J who has subsequently had conduct of this application throughout made an order on 19 April dealing with various maintenance linked issues, but on 1 May, he also heard the first appointment.

7 At that hearing, t(he order appears at p.B17 of the bundle) and records that Simon Webster of counsel appeared for the applicant who attended with her solicitors and Charles Hale Queen's Counsel appeared for the respondent who did not attend the hearing but was available to give his counsel instructions over the telephone.

8 The recital to the order records that the respondent husband had failed to provide his Form E, notwithstanding the order of Cohen J of 8 March 2018. The order contains prominently displayed on its front page a penal notice which is in fairly standard form reading:

> "Take notice, if you, the within named Talal Al Zawawi, do not comply with this order and, in particular, paras.1 and 2, you may be held to be in contempt of court and sentenced to a term of imprisonment or fined or your assets may be seized.

It goes on

> It is ordered that –

1. By consent the respondent shall file with the court and serve on the applicant his Form E together with all required ancillary documentation by 4.00 p.m. on 15 May 2018.

2. Without prejudice to the general requirements of Form E, the respondent shall produce the following documentation by 4.00 p.m. on 15 May 2018 –

(a) statements for his Oman Arab bank account ending 300 for the period 1 July 2016 to 7 May 2018

(b) statements for his HSBC account 015 for the period 1 July 2016 to 7 May 2018 and,

(c) the contract or other agreement by which the respondent sold or disposed his interest in Le Petit Bistro Restaurant in London, whether held directly or through a company or other vehicle together with a statement or statements for the bank account or accounts into which the disposal proceeds were deposited, showing the actual receipt of such proceeds into such account or accounts anywhere worldwide."

9 That order also listed a further directions hearing on 24 July to consider how the applications should proceed. On 24 July the matter came again before Holman J; again Simon Webster of counsel appeared for the applicant who attended the hearing and Mr. Hale Queen's Counsel appeared for the respondent who did not attend the hearing. That order at B31 also contained on its face, and prominently displayed a penal notice in the usual form but, in particular, there referring to paras.8 and 9 of the order. The recital records that the respondent had failed to provide his Form E, notwithstanding the order of Cohen J dated 8 March 2018 and notwithstanding the order of Holman J dated 1 May 2018 (the relevant provision being an order made by consent and consequently the respondent is in breach of those orders). In the operative part of the order at para.8 it provided that:

> "The time for compliance by the respondent with paras.1 and 2 of the order of Holman J made on 1 May 2018 is extended to 4.00 p.m. on 17 August 2018."

10 By that time the wife had already issued an application for committal for breach of the order of May and that had been issued initially on 13 July 2018. Paragraph 7 of the order of 24 July provided that:

> "The applicant's application for a committal order, save insofar as it has been disposed of by this order, shall be adjourned generally with liberty to restore on not less than fourteen days' notice."

11 I am not sure what the reference to, "save insofar as it has been disposed of by this order" refers to because it plainly had not been dealt with as a committal application on that day and I cannot discern from the order itself what that is intended to refer to. In any event, as I say, the time was extended to 17 August.

12 The decision of Holman J on that day became the authority now known as *H v Z (Interim Maintenance: Pound for Pound Order)* [2018] EWHC 2436 (Fam) [2018] 4 WLR 135. The judgment that Holman J gave on that day contained these three paragraphs which are relevant for today's purposes:

> "2. The husband was long ago required to file and serve what is called a Form E giving full disclosure of his financial means by 27 March 2018. By a later order made by me on 1 May 2018, the date for filing and serving that Form E was (by consent) extended to 15 May 2018. We are now over two months on from that date and still the husband has not filed and served any Form E at all. There is a witness statement by him signed today, 24 July 2018, in which he says that he has had

various difficulties in assembling the information required to file and serve a Form E and the required disclosure of documents, and says that he will now do so within a further three weeks.

3. In reliance upon that statement, Mr Charles Hale QC, the leading counsel who has appeared on behalf of the husband at most, if not all, previous hearings, and appears on behalf of him today, frankly accepts the breach, but asks for a further three weeks in which to file and serve the Form E.

13 Paragraph 4 identifies that the husband had been represented by Vardags " but on about 24 June he ceased to instruct them and instructed the no less well-known and prestigious firm of Stewarts. They were present at court and they say through Mr. Hale that in the last month or so since Stewarts were first instructed, they have done and are doing a great deal of work in preparation of the required Form E." At para.5, Holman J said that the delay is inexcusable but he at that point accepted that half a loaf is better than no loaf on the renewed promise and said, "It seems to me that in the meantime (and I stress in the meantime) I should not take any steps in the direction of enforcement of the long outstanding Form E."

14 I infer from that, tying it together with what was said within the body of the order that Holman J was not indicating there that the breach or alleged breach of the earlier order was somehow being dealt with at that point with no penalty being imposed or that it was otherwise not being pursued or was being withdrawn, but simply that no steps were being taken to pursue the committal given the husband's statement that he would comply with the order.

15 The matters progressed. In the autumn the husband apparently started to act in person and on 12 October, an application was made by the wife to restore her committal application. On

22 October 2018, the matter came before Holman J and he gave a general permission to the applicant's solicitors to serve the respondent via email at two identified email addresses.

16 On 5 December, the matter came before Theis J when she dealt with timetabling of the renewed application for the respondent's committal and at paras.7, 8, 9, 10 and 11 she case-managed the renewed application, giving permission to amend the application so that it set out in full the grounds of committal and that was directed to be filed and served by 9 January. Paragraph 8 states, "The applicant has permission to refile their witness statement dated 13 July" and the witness statement of Mr. Scarratt dated 19 October in affidavit form by 4.00 p.m. on 9 January. She had permission to attach an amended draft order and at para.10:

> "For the avoidance of doubt, the applicant continues to have permission to serve the respondent via email as per para.3 of the order of Holman J dated 22 October 2018 and such service shall constitute valid and effective service."

17 The application for the respondent's committal was relisted before MacDonald J on 24 January 2019 with a time estimate of one day. However, the main application then came back before Holman J on 19 December 2018. Again the order at B48 contains the usual form of penal notice and a series of recitals and definitions. At that stage, and in contrast to the position previously, the respondent did not attend and Holman J continued with the hearing on the basis that he was satisfied that the respondent had had reasonable notice of the hearing, given that he was represented by leading counsel at the earlier hearing which had provided for the date to be fixed and had continued to be represented by solicitors and had continued to communicate through the email addresses.

18 The order then at para.8 records that the respondent has failed to provide his Form E notwithstanding the order of March 2018, the order of May 2018 and the order of July 2018. Holman J records, as I say in the recitals, that the respondent is in breach of those three orders. He made further orders to timetable the principle application through to a final hearing on 11-15 March and at paragraph14 he provided that the time for compliance by the respondent with paragraph 1 and 2 of the May 2018 order is finally extended to 4.00 p.m. on 1 February 2019.

19 That further order extending time led to a further application to His Honour Judge Richards, I think, on 10 January 2019 because, of course, the extension of time granted by Holman J to 1 February 2019 then ran into conflict with the timetable set out by Theis J and so, on 10 January, His Honour Judge Richards adjusted the timetable set by Theis J and provided for the application to be filed by 4 February and the hearing, which was to take place before MacDonald J on 24 January was rescheduled to the first open date after 22 February. The hearing was subsequently listed for today, 26 February and a notice of hearing was sent out by the court to that effect.

20 Thus, the matter comes before me on three grounds on which the respondent's committal is sought as contained within the amended committal notice at B65. The application itself is in proper form, it sets out the three allegations which are that the respondent has failed to file his Form E and to disclose the various statements which were identified in the May order. That he had failed to file them, first of all, by 15 May as required by 1 May order, that he subsequently had failed to file them by 17 August as required by 24 July order and that he had subsequently failed to file them by 1 February as required by 19 December order.

21 The application was supported by the refiled documents in affidavit form, the first of which was by the applicant herself, an affidavit dated 31 January and an affidavit by Luke Scarratt,

a solicitor with PHB dated 31 January also. The matter came before me and Mr. Harvey provided a comprehensive and very helpful position statement or skeleton together with a chronology and a number of authorities in support. The hearing commenced. The applicant has not been present today, her closest remaining relative and uncle sadly died recently, and his funeral was in Lebanon today and so, understandably, she did not attend. Consideration had been given to adjourning today's hearing in order to allow her to attend the funeral and then subsequently attend this hearing but because of the imminent final hearing commencing on 11 March, it was not possible to reschedule this hearing. Neither was Mr. Scarratt, the deponent of the other affidavit in attendance because unfortunately, he was away on pre-booked annual leave.

22 Consistent with the pattern which appears to have emerged since last summer, the respondent was neither present nor represented as he had not been at the hearing before His Honour Judge Richards, Holman J in December or Theis J in December. Mr. Harvey invited me to proceed with the committal application, notwithstanding the absence of the respondent or the deponents to the affidavits because in the absence of the respondent and any obvious challenge to the evidence contained in their affidavits, it appeared that their evidence could be taken in affidavit form alone, and I agreed to that given the nature of the alleged breaches and the absence of the respondent. Mr Harvey reminded me of the guidance given by Cobb J in *Sanchez v Oboz* [2015] EWHC 235 (Fam), where identified at paragraph 5 of his judgment what he described as a 'useful checklist' when considering whether to proceed in the absence of a respondent to a committal application:

> i. Whether the Respondents have been served with the relevant documents, including the notice of this hearing;
> ii. Whether the Respondents have had sufficient notice to enable them to prepare for the hearing;
> iii. Whether any reason has been advanced for their non-appearance;
> iv. Whether by reference to the nature and circumstances of the Respondents' behaviour, they have waived their right to be present (ie is it reasonable to conclude that the Respondents knew of, or were indifferent to, the consequences of the case proceeding in their absence);

v. Whether an adjournment for would be likely to secure the attendance of the Respondents, or at least facilitate their representation;
vi. The extent of the disadvantage to the Respondents in not being able to present their account of events;
vii. Whether undue prejudice would be caused to the Applicant by any delay;
viii. Whether undue prejudice would be caused to the forensic process if the application was to proceed in the absence of the Respondents;
ix. The terms of the "*overriding objective*" (r 1.1 FPR 2010), including the obligation on the court to deal with the case "justly", including doing so "*expeditiously and fairly*" (*r 1.1(2)*), and taking "*any . . . step or make any . . . order for the purposes of . . . furthering the overriding objective*" (*r 4.1(3)(o)*).

23 Given the situation in terms of the imminence of the final hearing and the history of the case, it seems to me to be in furtherance of the overriding objective to proceed with the matter in the absence of the respondent and on the basis of the written evidence.

24 In respect of the various orders, the 1 May order imposed a clear obligation on the husband to produce very clearly identified documents within a two-week period. It contains the penal notice as required. The order was not personally served on the respondent as required by FPR 37.6 which requires orders to be served personally but 37.8(2) provides:

> "(2) In the case of any judgment or order the court may –
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> (a) dispense with service under rules 37.5 to 37.7 if the court thinks it just to do so; or
>
> (b) make an order in respect of service by an alternative method or at an alternative place."

25 No alternative order was made but Mr. Harvey invited me to dispense with service pursuant to 37.5 and 6 on the basis that it was just to do so. In that respect, he relied upon the fact that at the hearing on 1 May, the respondent was represented by counsel, was in communication with his legal team, that part of the order specifically was dealt with by consent as a result of the communications between the legal team and their client and that it

was, therefore, Mr. Harvey said, inconceivable that he was not aware of the requirement on him to serve those documents by 15 May. Further supporting that submission, he referred me to the part of the judgment of Holman J of 24 July, which I have referred to earlier, in which the husband's team produced to the court a statement and made submissions to the court about the order that had been made on 1 May and the failure to comply with it at that stage. Thus, Mr. Harvey says that it is just to dispense with personal service of the order.

26 I agree with him on that, it is quite plain from the order of 1 May and, indeed, the judgment of 24 July the respondent husband was represented by leading counsel and solicitors who are very well-known in this field, and the indications that were given to the court on 24 July make it quite clear to me that the respondent must have been aware of the requirement on him and the penal consequences of failure to comply. Therefore, it is just in respect of that order to dispense with personal service.

27 In respect of the 24 July order, again, it contains the relevant penal notice. The obligation is clearly set out within it, although it cross-refers back to the 1 May order, the two orders taken in conjunction are clear and are susceptible to committal. In respect of service, it was served by email, albeit after the time for compliance had expired and so, that would not be effective but again, Mr. Harvey invited me to dispense with service pursuant to 37.8.(2)(a) for broadly similar reasons to those which applied to 1 May.

28 In particular, he again relied on the fact that he was represented by the same counsel, a highly specialist and new firm of solicitors both of whom could be expected to have made absolutely clear to the husband the nature of the penal notice and the obligation on him to comply. He, I think, continued to instruct Stewarts for some months after that and it is recorded in the order of Holman J in December that Stewarts had continued to be on the

record for some period thereafter. I am therefore satisfied that in respect of the service of that order, it is just to dispense with service pursuant to 37.8(2).

29 In respect of the 19 December order, it again contains the relevant penal notice. On the front page it contains a clear order requiring the respondent to do an act by an identified date and by this time, the court had made orders which provided for service of any orders by email. An affidavit of Mr. Tose was sworn today and I gave permission to adduce given that it dealt only with service and procedural issues rather than substantive matters; I considered it just to permit for him to rely on that. That affidavit supplements the emails which are at section D of the bundle and which confirm that the order of Holman J was served on the respondent by email and the relevant email attachment identifying the two email addresses authorised by the court for service is at p.2 of that exhibit. "Please find attached by way of service, a sealed copy of the order of Mr. Justice Holman dated 19 December 2018."

30 The committal application, as I have already identified, was actually reissued in amended form on 4 February 2019 and was accompanied by the affidavits of the applicant and Mr. Scarratt. Those documents were served again by the authorised form of email service to the two identified addresses on 4 February, the attachments to it was a letter, the application notice, a draft order, the affidavit of Leila Hammoud, the exhibit, the affidavit of Mr. Scarratt and exhibits. As I say, the affidavit of Mr. Tose makes clear that those were served and also makes clear that the notice of today's hearing had been served via email on 30 January. That email, again, to the two identified email addresses stating:

> "Further to our email below, please find attached by way of service the notice of hearing in respect of the upcoming hearing. As you are aware, our client's application for committal will be heard in open court at the High Court of Justice in London at 10.00 a.m. on 26 February 2019 with a time estimate of half a day."

31 It appears that the committal application and the evidence in support and notice of today's hearing have not been served on the respondent as required by the Family Procedure Rules 37 and the accompanying practice direction. The FPR themselves actually require personal service although under para.37.10(5):

> "(5) The court may –
>
> (a) dispense with service under paragraph (4) if it considers it just to do so; or
>
> (b) make an order in respect of service by an alternative method or at an alternative place."

32 I suppose, to be technically correct, I should dispense with service under para.4. I consider it just to do so, it being clear as Mr. Harvey submits that compliance with the alternative form of service identified by Holman J and Theis J has been complied with. Given the contents of the affidavits of Mr. Tose and Mr. Scarratt which both identify that the evidence demonstrates that the respondent husband has been accessing those email addresses through the latter part of 2018, either because his members of staff have responded to matters or because the respondent himself has referred to having received documents through those routes. I am satisfied that he has been able to receive these documents through those routes and thus, that it is just to dispense with personal service of them on him.

33 That then brings me back to whether the alleged breaches of the orders are established.

34 Of course, these are committal proceedings and I remind myself of the relevant substantive principles dealing with contempt which can be derived from the following cases;

a) *London Borough of Southwark v B* [1993] 2 FLR 55

b) *Mubarak v Mubarak* [2001]1 FLR 698

c) *Re A (Abduction: Contempt)* *[2008] EWCA Civ 1138*, [2009] 1 FLR 1

d) *Re S-C (Contempt)* *[2010] EWCA Civ 21*, [2010] 1 FLR 1478

e) *Re L-W* [2010] EWCA Civ 1253, [2011] 1 FLR 1095.

f) *Re J* (Children) [2015] EWCA Civ 1019

g) *Y v Z* [2016] EWHC 3987 (Fam)

35 The principles are

a) The contempt which has to be established lies in the disobedience to the order.

b) To have penal consequences, an order needs to be clear on its face as to precisely what it means and precisely what it prohibits or requires to be done. Contempt will not be established where the breach is of an order which is ambiguous, or which does not require or forbid the performance of a particular act within a specified timeframe. The person or persons affected must know with complete precision what it is that they are required to do or abstain from doing. It is not possible to imply terms into an injunction. The first task for the judge hearing an application for committal for alleged breach of a mandatory (positive) order is to identify, by reference to the express language of the order, precisely what it is that the order required the defendant to do. That is a question of construction and, thus, a question of law. Ideally the order should be contained in one document but where a subsequent order extends time for compliance it may be acceptable for the obligation to be contained in two orders; the obligation must be clear.

c) Committal proceedings are essentially criminal in nature, even if not classified in our national law as such (see *Benham v United Kingdom* *(1996) 22 EHRR 293* at [56], *Ravnsborg v. Sweden* (1994), Series A no. 283-B);

d) The burden of proof lies at all times on the applicant. The presumption of innocence applies (Article 6(2) ECHR)

e) Contempt of court involves a contumelious that is to say a deliberate, disobedience to the order. If it be the case that the accused cannot comply with order then he is not in contempt of court. It is not enough to suspect recalcitrance. It is for the applicant to establish that it was within the power of the defendant to do what the order required. It is not for the defendant to establish that it was not within his power to do it. That burden remains on the applicant throughout but it does not require the applicant to adduce evidence of a particular means of compliance which was

available to the accused provided the applicant can satisfy the judge so that he is sure that compliance was possible.

f) Contempt of court must be proved to the criminal standard: that is to say, so that the judge is sure. The judge must determine whether he is sure that the defendant has not done what he was required to do and, if he has not, whether it was within his power to do it. Could he do it? Was he able to do it? These are questions of fact.

g) It is necessary that there be a clear finding to the criminal standard of proof of what it is that the alleged contemnor has done that he should not have done or in this case what it is that he has failed to do when he had the ability to do it. The judge must determine whether the defendant has done what he was required to do and, if he has not, whether it was within his power to do it.

h) If the judge finds the defendant guilty the judgment must set out plainly and clearly (a) the judge's finding of what it is that the defendant has failed to do and (b) the judge's finding that he had the ability to do it.

36 In order to satisfy me that contempt is established, I have to be satisfied, so that I am sure, that it was possible for the respondent to comply with the order and that he has not done what he was required to do and that it was within his power to do it. Mr Harvey raised the issue of FPR 37.4(2) and its potential relevance. I do not consider FPR 37.4 (2) to be relevant; and I consider this would apply to a situation where the time for compliance was varied prior to the expiry of the time limit rather than where time was extended after the expiry of the time limit. The contempt crystallises as at the date of the failure to comply and continues until such time as a later order was made. If the alternative were the case each failure to comply would be wiped clean by a variation of time after the event which would have the effect of creating a breach only of the last deadline notwithstanding the fact that earlier failures to comply were also contumelious breaches

37 I have already dealt with the procedural requirements in relation to the applications as we have gone along, so I turn then to looking at whether the applicant has proved that the

respondent is in breach of the orders. The evidence in relation to him being in breach of the 1 May order is principally contained within the affidavit of the applicant and in that, she not only deposes to her solicitors not having received the documents from the respondent or his solicitor, but also produces the correspondence, for instance, at C212, a letter of 25 May from Payne Hicks Beach identifying that the respondent had not filed the Form E or the three items of specific bank statements or proceeds of sale information.

38 The subsequent order and judgment of 24 July go to confirm or corroborate that earlier evidence and so, I am satisfied to the criminal standard so that I am sure that the respondent had not complied with that order and that it had been within his power to do so.

39 I take note of the fact that within the judgment of Holman J of 24 July, it records that the respondent was asserting that it was taking him some time to put the material together and that his new solicitors, instructed on 24 June, had been diligently seeking to put the information together. Notwithstanding that assertion made to Holman J, I am satisfied that it was possible for the respondent to file the information prior to the deadline of 15 May. The subsequent recordings in orders that he has not produced the documents satisfies me that his failure to produce them by 15 May was contumelious and deliberate and so, I find him to be in contempt of court in respect of the order of 1 May.

40 In respect of the 24 July order, it became apparent as I set out in my earlier short judgment that there was no affidavit evidence before the court which confirmed that the respondent was in breach of the later order of 24 July. The same situation applies to the order of 19 December. The application which was made to waive the failure to serve evidence in respect of them and the application by Mr. Harvey to put his solicitor in the witness box to produce evidence of the failure of the husband to comply with those orders I refused for the

reasons set out. In the absence of that affidavit evidence, what other evidence could the court rely upon to find the respondent in contempt of court?

41 I suppose it might be arguable that the subsequent recording in the order of 19 December by Holman J was sufficient to establish beyond reasonable doubt that the respondent was in breach, but I have to confess, it raises some interesting issues as to evidence of proof which we simply have not been able to embark upon within the course of this hearing. What is the status of a recital in an order which records another judge's view that the individual was in breach of the order of 24 July?

42 I am afraid that at 4.24 p.m. within this half-day committal hearing I simply do not have the capacity to embark upon an examination of rules of evidence and the status of a recital in another order which, as I say, reflects a judge's view at that time. On that basis, it seems to me that there is no evidence before the court which complies with the requirements of the Family Procedure Rules and which would enable me to say that I am satisfied that I am sure that he is in breach of that obligation.

43 That, in a sense, is perhaps a technical matter but in relation to criminal matters, it seems to me that matters of admissibility of evidence and the ability to meet the burden and standard of proof are sufficiently important in the context of the administration of justice, that one has to adopt a strict approach to those and for that reason, I am not satisfied so that I am sure that the allegation is made out.

44 The same applies in respect of the alleged non-compliance with the order of 19 December. There is no affidavit evidence which confirms the failure of the respondent to provide the identified information by the 1 February deadline and in the absence of admissible evidence

as to that, I am not satisfied, so that I am sure, that the respondent is in breach of those requirements.

45 That being so, I therefore find that the application to commit the respondent is established in respect of the first ground, I am satisfied to the required standard that the respondent failed to comply with the order of Holman J of 1 May by 15 May. In respect of allegations two and three, I am not satisfied beyond reasonable doubt that those are established.

46 That leads me to turn to the question of sentence in respect of the one count which is established. Mr. Harvey has helpfully provided me with some authorities which go to the issue. In particular, he has directed my attention to the decision of Moor J in *Young v Young* [2013] EWHC 34 (Fam) where Moore J imposed a sentence of six months' imprisonment in respect of a failure by a husband to provide financial information.

47 Mr. Harvey, again, has very helpfully directed me to the decision of the Court of Appeal in *Hart v Hart* [2018] EWCA Civ 1053 where Lord Justice Moylan dealt with a contempt appeal in relation to a similar matter of failure to comply, but on that occasion within an undertaking and a failure to provide documentation to enable the wife, I think, to implement an order. In that decision, the Court of Appeal approved the approach of His Honour Judge Wildblood who had identified that the imposition of a sentence of imprisonment furthered a number of goals within the umbrella of the administration of justice, one of which is to punish an individual for contempt of court and another purpose is to encourage or coerce compliance. In particular, Lord Justice Moylan endorsed the imposition of a sentence which identified which component was that which punished the respondent for failure to comply and that component which was coercive in its intent.

48 The order that the respondent is in breach of was an order which contained penal consequences following on from an earlier order which required him to provide documentation, albeit without penal consequences, so the failure to comply with the earlier order has to be taken into account in looking at the subsequent failure. This was not an individual who was unaware of the need for information to be provided to the court in order to progress the application. The failure to comply with the order at that stage is continuing, as it were, to sound now because the final hearing is upcoming and I know from the material that the evidence is still not available to the court, and so that puts the court in a difficult position. The failure to comply was a failure to produce it by 15 May and, as it were that failure to comply continued through until 24 July when Holman J extended the period in which compliance was required. The husband was therefore in contempt of court for a period of somewhere in the region of two months, ten weeks, something of that nature.

49 Thus, the specific contempt which he is being found guilty of is not at the most serious end of the spectrum in terms of contempt of court. I of course exclude from my consideration the later allegations of contempt and sentence the respondent only in respect of the failure to comply with the order which, as I say, lasted from 15 May through to 24 July.

50 On that basis, it seems to me that a sentence which punishes that, and which seeks to now encourage the husband to comply is an appropriate one. It seems to me that it is too serious to warrant a fine, in any event, from what I know from the husband's financial resources a fine would be unlikely to have any real effect in terms of punishment or in terms of encouraging him to comply with the order. Therefore, it seems to me that it is so serious that a sentence of imprisonment is warranted. The question is whether it is so serious that only an immediate term of imprisonment can be imposed.

51 Given that it is only one count of contempt over a limited period of time, it seems to me that it is not so serious that an immediate term of imprisonment is required but rather, the purposes of punishment and/or encouragement could be met by the imposition of a suspended sentence of imprisonment in the circumstances of this. The term of imprisonment, it seems to me, six months would be too long, but a period of three months' imprisonment suspended is the appropriate term to impose.

52 I will suspend the term of imprisonment for a period of 7 days on the basis that within that time the Respondent produces the documents he has been required to produce.

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