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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2019] EWHC 736 (Fam)



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

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

THE RESPONDENT was not present and not represented.

COMMITTAL JUDGMENT

MR JUSTICE WILLIAMS:

- 1 I am dealing today with an application for the committal of Mr. Talal Al Zawawi for alleged breaches of three orders of the High Court. The first was an order made by Holman J on 1 May of this year which required the respondent to file a Form E and various other documents by 15 May, the second is an order of 24 July when the time limit for complying with the order was extended to 17 August and the third was an order on 19 December which extended time for compliance again to 1 February 2019.
- 2 The application for committal was originally issued back in July but was, I think, not pursued at that stage but was reignited following the order of Holman J and the application itself was issued on 4 February which included the allegations of the breaches of the order of 24 July and 19 December.
- 3 An order had been made by Theis J on 5 December 2018 which case managed the refiling of the amended committal application and it provided for the refiling of witness statement. The matter has come before me on 26 February and at about 3.15 p.m., halfway through the half-day hearing as the case was presented to me, I was inviting Mr. Harvey to show me the proof that the respondent was in breach of the orders of 24 July and 19 December, it became apparent that there was no affidavit evidence which confirmed that the respondent had failed to comply with those orders.
- 4 As a consequence, Mr. Harvey invites me both to waive the defect in respect of the requirement under FPR 37.10 which requires that the evidence in support of a committal application is served with the application and he invites me to permit him to adduce evidence now which is dealt with in FPR 37.27(1) which provides that:

"Unless the court hearing the committal application or application for sequestration otherwise permits, the applicant may not rely on any evidence unless it has been served in accordance with the relevant chapter of this part or the Practice Direction supplementing this part."
- 5 Mr. Harvey invites me to waive the failure to comply with 37.10 and invites me to allow him to rely on evidence notwithstanding the prohibition in 37.27(b) on the basis that the court retains a general power as confirmed in various authorities to waive defects in compliance with the requirement of FPR 37 where it is just to do so, in particular, Lord Woolf in *Nicholls v Nicholls* [1997] 1 F.L.R. 649 said in relation to Order 29 that:

"While these requirements on Order 29 rule 1 are there to be observed, in the absence of authority to the contrary, even though the liberty of the subject is involved, we would not expect the requirements to be mandatory, in the sense that any non-compliance with the rule means that a committal for contempt is irremediably invalid."
- 6 Later Parker J examined the approach of the court, the relevance of FPR 4.6 relief from sanctions and identified the ultimate question as being whether waiver of the defect will cause any injustice to the respondent.
- 7 FPR 4.6, 'relief from sanctions' identifies a variety of factors which the court ought to take account of and, of course, the overriding objective is also relevant. Ultimately, the issue is one of justice.

- 8 It hardly needs to be repeated that committal applications which involve the liberty of the subject are to be taken very seriously indeed and failures to comply with the process which might lead to an injustice should not be waived. Part of the approach under FPR 4.6 is to look whether there is a good explanation for the failure to comply with the requirement and whether the failure to comply was intentional, whether the application for relief had been made promptly, the extent to which the party in default complied with other rules, the interest of the administration of justice, whether the failure to comply was caused by the party or the party's legal representative, whether the hearing date can still be met if relief is granted, the effect which the failure to comply has on each party and the effect which the granting of relief would have on each party or a child, which obviously does not apply here. There are children but this is, primarily, a financial remedy application.
- 9 The failure to serve evidence which proves a breach is a fairly fundamental failure to follow the rules. It essentially invites the court to proceed with a committal of an individual and a committal to prison, as is made clear in Mr. Harvey's submissions, immediate committal to prison, notwithstanding a failure to serve the evidence which proves that the individual is in breach. The interests of the administration of justice where the liberty of the subject is concerned place, of course, very considerable emphasis on the right to a fair hearing and for an individual not to be subject to committal to prison as a result of a defective process. On the other hand, the court has a significant interest in upholding the compliance with orders it has made in order to lead to an effective hearing.
- 10 In this case, the need for relief did not become apparent until midway through submissions. The failure to comply with the FPR 27 was clearly not intentional, it was an omission but in terms of whether there is a good explanation for the failure, I am afraid I do not accept Mr. Harvey's submission that it was as a result of a misinterpretation of the order which Theis J made which allowed an amendment of the application and permission to refile a witness statement. The witness statement plainly only addressed the breach of the May order and it clearly must have been in the contemplation of Theis J that the witness statement would have been amended or supplemented and refiled to include the evidence in support of the alleged breach of the July order and the December order.
- 11 I do not think there is a good explanation for the failure. I frankly cannot understand how a committal application gets to a final hearing without the affidavit evidence proving the breach being expressly dealt with. I suppose it may be that it is thought that it was so obvious that it did not need to be addressed, perhaps that is a more likely explanation.
- 12 In terms of compliance with other rules, the applicant has complied with most of the other rules, although there have been applications made to me to dispense with service of the various orders. The failure to comply was not caused by the applicant but by her legal representatives. If I were to allow further evidence and to allow further opportunity to file that evidence and to have it served within the usual time limits, it would mean that this hearing would have to be adjourned, which cannot take place because of the imminence of the final hearing.
- 13 The effect on the applicant will be that she is unable to pursue two of the grounds which she seeks to rely on and the effect on the respondent will be that he will face committal potentially on three counts rather than one count.
- 14 Putting all of that into the balance, I will not waive the defect in service in relation to the alleged breaches of the 24 July order and 19 December order. In particular, it seems to me that in a process in which a man's liberty is at stake and where the applicant has made clear

that they seek immediate imprisonment in part to punish for the previous breach but in part to act as a coercive measure to ensure compliance, it is basic practice that the rules should be complied with.

- 15 I do not consider that it is in the interest of the administration of justice nor is it just overall to the applicant and respondent to waive the defects in 37.10 and 37.27 or to allow the admission of evidence midway through a committal hearing which arises as a result of an oversight in the preparation of the case.
- 16 I therefore refuse to waive the 37.10 failure and I refuse to admit further evidence.
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