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IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION  
[2021] EWHC 2587 (Fam)



No. FD13D00007

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Friday, 17 September 2021

IN THE MATTER OF THE **MATRIMONIAL CAUSES ACT 1985**  
AND  
IN THE MATTER OF THE **DEBTORS ACT 1869**

Before:

MR JUSTICE HOLMAN  
(sitting throughout in public)

B E T W E E N :

SARAH ANNABEL ROGAN

Applicant

- and -

RICHARD GRANT ROGAN

Respondent

\_\_\_\_\_  
THE APPLICANT appeared as a litigant in person.

\_\_\_\_\_  
THE RESPONDENT appeared as a litigant in person.

J U D G M E N T

( A s a p p r o v e d b y t h e j u d g e )

MR JUSTICE HOLMAN:

1 This is the restored hearing of a judgment summons that was originally issued on 30 May 2018. By that judgment summons a former wife, Sarah Annabel Rogan, seeks that her former husband, Richard Grant Rogan, be committed to prison. This case has been before me on at least two previous occasions, namely 21 September 2018 and 18 March 2019. On each of those occasions I gave public judgments which have been, and remain, publicly available on the BAILII website, and probably other databases, under neutral citation numbers [2018] EWHC 2512 (Fam) and [2019] EWHC 814 (Fam).

2 The present hearing is, indeed, a continuation of those previous hearings, and the present judgment should be read and considered as a continuation of those two judgments. It does not seem to me to be necessary to repeat anything in them. Although it is now many years since they were divorced, and indeed several years since the former husband remarried, I will for convenience continue to refer to the parties as "wife" and "husband" respectively.

3 At the hearing on 18 March 2019, I said at the very end of my judgment at paragraph 14:

"There will have to come a time when the court, and I myself, will not be able to extend any further mercy or indulgence, and Mr Rogan needs to leave here today clearly understanding that the door of the prison is ajar."

I meant those words when I said them, and if the circumstances had remained substantially as they were in March 2019, but the debt had still not been paid, then it is highly likely, if not inevitable, that I would today have imposed a term of imprisonment.

4        However, as the judgment of 18 March 2019 makes clear, the husband had by then issued an application, which he was entitled to do, for a variation of the underlying order. He applied both for a variation of the periodical payments and also for a variation of the outstanding lump sum, which he was entitled to do because the original order was an order for the payment of a lump sum by instalments.

5        The application for a variation was heard over five days by HHJ Hess during June 2020. That was of course at the height of one of the periods of COVID lockdown and, as I understand it, the whole hearing was conducted remotely. It was, however, a very full hearing, and it culminated in a written judgment, which was handed down by HHJ Hess on 19 June 2020. I would like, if I may, to pay a tribute to HHJ Hess for the clarity and thoroughness of his judgment in what is undoubtedly a complicated case.

6        As appears from that judgment, the total indebtedness by the husband to the wife, as at June 2020, was £2,625,593 including some interest and also outstanding costs orders. For reasons very fully explained by HHJ Hess in that judgment, his decision, and the outcome, was to discharge all the subsisting orders in relation to spousal maintenance and the lump sum, and other payments, and to substitute an order for a single composite lump sum of £1,750,000. As he said at paragraph 62(i) of his judgment:

    "... My order will require payment of that lump sum and it will be recorded that the calculation of this figure includes all the interest accrued so far, costs orders made so far including reserved costs, and arrears accruing to date."

That did indeed find expression in the formal order of HHJ Hess, which is dated 17 June 2020. Recital 2 to that order makes clear that the reference to "arrears accruing to date," is a reference to "arrears accruing to date in respect of spousal periodical payments."

7 The previous order had made provision for continuing periodical payments to be paid by the husband to the wife until payment of the then lump sum in full. However, for reasons which he gave in his judgment, HHJ Hess decided that from June 2020 forward there should be no continuing spousal periodical payments at all, and that any delay in paying the new lump sum should be compensated by interest from time to time at the High Court judgment rate. HHJ Hess ordered that the whole lump sum of £1,750,000 should be paid by 31 July 2020, and it has carried interest at the judgment rate ever since then and continues to do so.

8 Consistent with what he had said in his judgment and the recital to his order, paragraph 4 of the order of 17 June 2020 provides that:

"The spousal periodical payments set out at paragraph 4 of the order dated 14 March 2014, as varied by paragraph 22 of the order of 17 December 2015, shall stand discharged and the respondent's claims for periodical payments and secured periodical payments orders shall be dismissed ..."

9 Additionally, HHJ Hess ordered the husband to pay the costs of the wife of and incidental to the actual variation application in the assessed sum of £40,000. So as the case left the court on 17 June 2020, the overall indebtedness of the husband to the wife was crystallised as a total of £1,750,000 plus £40,000; namely £1,790,000. We are now way over a year on from June and July 2020 and the husband has not paid a penny of that sum.

10 HHJ Hess was clearly highly critical of the husband and his financial conduct and presentation. There were many reasons for that. But they include that in proceedings in the Oxford County Court in January 2020 for the possession of the house which the husband was then living in at Larkstoke, he had given an upbeat presentation of his financial circumstances which was completely contradictory to what he had been asserting, and continued to assert, to HHJ Hess. As a result, his HHJ Hess said at paragraph 50(vi) of his judgment on 9 June 2020 that:

"... Since I cannot regard the husband as an honest or reliable witness of his own presentation, I am unable to rule out the possibility that there are significant parts of the picture which remain hidden from view."

At paragraph 61(iii) of his judgment, HHJ Hess clearly referred to the husband not coming to the court with "clean hands." But at all events, that was the decision and order of HHJ Hess.

11 The wife makes the point today, as indeed emerges from the judgment of HHJ Hess, that the figure of £1,750,000 was selected and alighted upon because she, in desperation, had voluntarily proposed during that hearing that there should be an outcome on the basis that if he were to pay £1,750,000 then that would wipe out all his other and greater indebtedness to her. For that reason, at paragraph 10 of a note prepared for this hearing by counsel, Charanjit Batt, dated 15 September 2021, the husband's variation outcome is characterised as "unsuccessful." I, for my part, do not see how one can describe it as having been entirely "unsuccessful." However the figure arose, the plain fact of the matter is that the husband went into court at the beginning of that week owing the wife in excess of £2.6 million plus

continuing spousal maintenance, and he emerged at the end of the week owing her £1.79 million with no continuing liability for spousal maintenance.

12 Having referred to that note of Ms Batt, dated yesterday, I should explain and mention that until yesterday the wife continued to be represented by her lawyers, Hughes Fowler Carruthers. But yesterday a notice of change was lodged, and at the hearing today she acts in person, as does the husband.

13 There has been a further very significant development since I last dealt with this case in March 2019, and referred to the door of the prison being ajar. That is that on 19 February 2021 the husband was declared bankrupt on a petition presented by the wife. By an order that he made only four days beforehand on 15 February 2021, HHJ Hess had clearly cautioned the wife about the wisdom of taking that step. At paragraph 5 of the recitals to the order of 15 February 2021 he had recorded:

"The court takes the view that the respondent [*viz* the wife] needs to think very carefully about the wisdom (as opposed to the entitlement) of pursuing bankruptcy proceedings against the applicant, albeit that he is in substantial debt to the respondent."

Further, at paragraph 7 of the same order, HHJ Hess ordered that:

"In the event that a bankruptcy order is in due course made against the applicant, during the currency of the child periodical payments orders, the said orders (child periodical payments and schools fees orders) shall stand immediately discharged."

Notwithstanding that caution by HHJ Hess, the wife did, as I say, make the husband bankrupt on 19 February 2021.

- 14 I have been told today that there are a number of creditors in the bankruptcy, both corporate and personal, and that altogether the indebtedness, the subject of the bankruptcy, is about £5.2 million. If that is correct, then the amount owing to the wife, although itself very significant, is but a part of a much greater overall indebtedness.
  
- 15 The husband always arrives at court, whether in front of me or in front HHJ Hess, with a story of optimism that money will materialise, just around the corner, if some future deal, or deals, fructifies. The current story is that the husband and his present wife own, through a company, a significant share in some aircraft which should soon be sold and should realise, to him and his wife, about €8.8 million. He says that although part of that would in law belong to his wife, she intends to make her share available in satisfaction of his debts. In other words, the current story is that if those aircraft are sold, then the husband, assisted by his present wife, will be in a position fully to discharge his debts and obtain his release from bankruptcy, including the total indebtedness to the former wife.
  
- 16 The plain fact of the matter is, however, that today, 17 September 2021, the husband is bankrupt. Being bankrupt, he has lost control of his assets and any capacity to spend or disburse money, save as permitted by the trustee in bankruptcy, or ultimately the bankruptcy court. The former wife is not a preferred creditor in the bankruptcy, although her own debt will survive the bankruptcy. That means that at the moment nothing can be paid out to her by either the husband or indeed the trustee in bankruptcy in priority to, or in preference to, the claims of all the other creditors.

17 A judgment summons is founded upon section 5 of the Debtors Act 1869. That provides that:

" ... any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court."

18 It is crystal clear from that wording that the purpose and focus of a judgment summons is to enforce the required payment and to procure it. Although section 5 does not expressly contain within it the words "whichever is the earlier", it is clearly implicit that any term of imprisonment must be discharged as soon as the sum due has been paid. In other words, if a judgment debtor is imprisoned for, say, four weeks, but procures that the sum due is paid on the first day, then he must be, and will be, released from prison at once. So although section 5 of the Debtors Act is concerned with debts due in pursuance of an order or judgment of a court, and therefore engages contempt of court, it is not primarily directed to abstract punishment for the contempt. It is directed to enforcement.

19 In my judgment of 21 September 2018, I said at paragraph 21, at the very end, that:

"He has refused or neglected to pay it, and that refusal or neglect has been deliberate and wilful and is culpable, being in contempt of court."



Even so, on the judgment summons I am not, at least primarily, concerned with abstract punishment for the contempt. I am concerned with trying to procure payment to the wife of the sum due.

20 Here, however, insuperable difficulties arise today. As is quite clear from my judgment of 21 September 2018, and indeed from the terms of the formal order made on that date, the finding as to indebtedness and arrears related specifically to arrears as at that date of spousal periodical payments totalling £55,000.

21 The first difficulty is that the whole underlying order for spousal periodical payments was subsequently discharged by HHJ Hess by his order of 17 June 2020, as I have explained. The plain, inescapable fact is that I am now being asked to commit the husband to prison for non-payment and arrears of an order which has since been completely discharged.

22 The second difficulty is that the husband is now bankrupt. As I have just explained, the purpose of an order for committal under a judgment summons is to seek to procure payment of the sum due. There is, of course, no doubt that there was a very long period of time during which the husband could have paid the sum due and refused, or neglected, to do so, as I explained in my judgment of 21 September 2018. He had, amongst other matters, prioritised paying £72,000 upon two wedding ceremonies to his current wife, at the same time as getting into debt to his former wife. But I now have to consider whether or not he should be sent to prison today, or made subject to a suspended sentence, imposed today.

23 The plain fact is that today the husband is not able to pay a penny to the wife because he is bankrupt and is not in control of his finances or expenditure. I do not say that there is any absolute rule of law to the effect that an order for committal cannot be made against a bankrupt, for there may be other special circumstances in which it may yet be lawful, and

justifiable, and appropriate to do so. But at all events on the facts and in the circumstances of this case, it seems to me that it would be a misuse of the purpose of a judgment summons to impose any abstract sentence of imprisonment upon the husband, at a time when I know that he cannot pay any part of the sum in question.

24 This judgment summons was originally issued on 30 May 2018, now well over three years ago. It is not right that it should hang over the head of the husband indefinitely, and indeed, as I have already explained, it now relates to a debt which has itself been permanently discharged by the order of HHJ Hess of 17 June 2020. For those reasons, the upshot of the present hearing, and indeed the whole proceedings upon the judgment summons issued on 30 May 2018, must be that it is finally dismissed.

25 I wish to make plain, however, that I do not thereby in any way whatsoever condone the approach of the husband to these proceedings, or to his obligations to his wife. It remains a fact that he prioritised wedding ceremonies over paying court ordered maintenance to his former wife. It remains a fact that he reached a state of indebtedness to her of about £2.6 million. It remains a fact that he is currently indebted to her under a subsisting order in the sum of £1,790,000, plus continuing interest. Frankly, he has not been straight with courts. It is impossible to reconcile what he told the Oxford County Court in the possession proceedings with what he has been telling this court.

26 Further, HHJ Hess was shown, and I have been shown, an email which the husband sent to a bank on 13 May 2020, shortly before the hearing of the variation application before HHJ Hess. In that email he said:

"My application to vary is critically important given the earlier court proceedings and the straight jacket I am currently in

financially. If I am seen to raise monies for yourselves, for instance, but claim I am unable to satisfy her demands they will file again for a final determination of their judgment summons, filed back on May, 30 2018. All of that has been adjourned pending the outcome of the 1-3 June hearings, where if I am successful and able to show there is no cash to support her and she holds in any event the level of money she has declared, her need will fall away and she will be liable to reimburse me for all monies ... This will allow me to move forward, where I have been severely hampered for these past two plus years in many a way."

The clear implication from that email is that the husband was presenting one financial picture to his bankers and a completely different one to the court in these matrimonial financial proceedings.

27 So I remain highly critical of the husband. I am deeply sympathetic to the wife in her prolonged quest to obtain money that should have been paid to her long ago. But for the reasons I have given, I must, as I do, finally dismiss the present judgment summons today.

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