



Neutral Citation Number: [2022] EWHC 2529 (Fam)

Case No: DH22F00021

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
NEWCASTLE DISTRICT REGISTRY

Civil and Family Court and Tribunal Centre
Barras Bridge
Newcastle-Upon-Tyne

Date: 07/10/2022

Before:

THE HONOURABLE MR JUSTICE COBB

Re: DAVID DUGGAN
(Contempt in the face of the Court)

Chris Noon (from **Cooper Stott, solicitors**) for the applicant in the substantive proceedings
The Defendant was unrepresented

Hearing date: 7 October 2022

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in public.

THE HONOURABLE MR JUSTICE COBB:

The Summons

1. By notice dated 31 August 2022, the Defendant, David Duggan, was summoned to attend the High Court, Family Division, sitting at the Civil and Family Court & Tribunal Centre, Newcastle, to respond to allegations that at a case management hearing within proceedings under the *Family Law Act 1996*, conducted by telephone on 27th of May 2022, he was, by virtue of his conduct during the hearing, in contempt of court.
2. The summons was issued by the court of its own motion; it was drafted by the Family Division Liaison Judge for the North Eastern Circuit, Mr Justice Poole.
3. For the purposes of determining this summons, I have:
 - i) listened to the audio recording of the hearing on 27 May 2022 in which it is alleged that Mr Duggan acted in contempt; I have read the transcript of the audio recording;
 - ii) read the witness statement of the judge who presided over that hearing, District Judge Keating; her statement is dated 17 August 2022;
 - iii) considered the trial bundle in the substantive proceedings;
 - iv) read the statement of service provided by Mr. S. Watson, the Bailiff Team Manager for Cleveland & Durham and dated 5 October 2022. This statement recorded a number of difficulties in effecting personal service on Mr. Duggan, and the steps then taken to execute the order for substituted service. In view of the fact that Mr Duggan attended the hearing and had read the documents served, I do not need to address these issues further.
4. Mr Duggan attended the hearing accompanied by a mental health worker (Mr Jason Corbett) from 'If U Care Share'.
5. Mr Chris Noon, solicitor, also attended this hearing on behalf of the applicant in the substantive proceedings, pursuant to my request issued under *rule 37.6(2) FPR 2010* on the basis that it was possible that he may have been required to give such "assistance to the court as is proportionate and reasonable".

Procedural issues

6. The summons has been determined in accordance with *Part 37 FPR 2010* (as amended), notably *Part 37.4* and *Part 37.6* and *Practice Direction 37A*.
7. At the outset of the hearing, I explained to Mr Duggan the implications of the summons, and the issues which the court would need to consider; I emphasized the gravity of the issues. I gave him advice about the availability of publicly funded legal advice and representation, and offered him the opportunity to instruct a lawyer; he told me that he wished to proceed unrepresented. I advised him of his right to silence, and that he was not required to say anything in his 'defence'. I am satisfied that he understood these issues, and this indeed was confirmed by his support worker.

The allegations

8. The summons contains four main allegations against Mr Duggan. It is alleged that at the hearing on 27 May 2022, conducted by telephone by District Judge Keating in the Family Court at Durham:
 - i) After introductory comments from the judge about the conduct of the hearing, he directed abuse at the judge, saying “Who the fuck do you think you are speaking to me like that?”;
 - ii) Having repeatedly spoken over and interrupted District Judge Keating, the District Judge asked Mr Duggan “Will you focus for one minute on what I am saying,” he replied, “No. You listen to me, what I’m saying for one minute, mate”;
 - iii) After District Judge Keating had placed Mr Duggan ‘on mute’ so that she could announce her case management directions uninterrupted, upon un-muting Mr Duggan, he directed further abuse at District Judge Keating, saying, “Get fucked ... I’m done with this me, mate”;
 - iv) Having told District Judge Keating that he was recording the hearing for himself and was going to put it “in public”, and the Judge having warned him that to do so could be a contempt of court, he replied, “Mate, I’m not bothered what you say”.
9. It is alleged that Mr Duggan had conducted himself in this way, notwithstanding that District Judge Keating had warned him that swearing and abusive behaviour from him was unacceptable.
10. Contempt in the face of the court is alleged to have been established because Mr Duggan:
 - i) insulted the judge;
 - ii) was abusive to the judge;
 - iii) disrupted the proceedings;
 - iv) showed himself unwilling to recognise the authority of the court.

Findings of fact

11. As I have earlier said (§3(i) above) I have listened to the tape recording of the 27 May 2022 hearing and have read the transcript. I note that the Judge herself reported that she “was extremely shaken by [Mr Duggan’s] aggression and abusive language”.
12. Mr Duggan chose to address me on the issues arising, and told me at the hearing that he admits the assertions of fact set out above. He told me that his “head was gone” and that he recognises that he did not behave himself in the hearing. He told me that having listened to the audio recording, he was “disgusted” by his conduct and sent an e-mail of apology to the Judge. I asked to see the message. I do not propose to reproduce the totality of the message, but it includes the following:

“Dear Judge, I write to you with a sincere apology for my behaviour within previous proceedings, my attitude and vile language. I’m very sorry and will conduct myself in an appropriate manner in the future. I hope that when I return to Durham family court, it is you whom is the judge so I can show and prove this to you... hearing the recording and myself behave in such a way makes me very sad and disappointed with myself. However its made me extremely determined to turn things around. ... I hope you can accept my apology but I totally understand if not. I can't change what has happened in the past but I can do better and make sure the same doesn't happen in the future.”

13. It follows that I am entirely satisfied, to the required standard (i.e., beyond reasonable doubt) that, as a matter of fact, Mr Duggan did indeed address the judge as has been alleged in §8(i)-(iv) above. I find that Mr Duggan spoke with great anger and aggression. His language and tone throughout the hearing was inappropriate at times escalating in both intensity and abuse. He was disrespectful to the judge and was also disrespectful to the applicant, referring at one time to her as: “... still fucking doing shit”.
14. I am satisfied that the judge had, more than once during the hearing, given Mr Duggan proper warning of the need to control his language and temper.
15. During the hearing on 27 May 2022, in between his abusive outbursts, Mr Duggan made a number of references to his mental ill-health; he referred to the fact that he himself was “suffering”. He referred to his reliance on his suicide prevent support worker. He spoke of his anxiety at leaving his house; I note that he said he was away from his home when participating in the hearing. He said that he was “suffering from many, many ... mental disorders”. At one point he said “I’m sorry for swearing but this is how I am. I can’t help how I am”, adding “if I could I wouldn’t even be speaking like this? I’d be speaking nicely”. He referred in the hearing to a number of mental health organisations which had ‘let him down’.
16. It is obvious from previous orders in the substantive proceedings that Mr Duggan’s mental health was, or may have been, an issue. On 23 March 2022 (i.e., long before the incident complained of), it was recorded as a recital that:

“Mr Duggan indicated that he suffers from mental health problems and may require assistance in these proceedings. The court invited Mr Duggan to make an application to appoint a McKenzie friend”.

In the same order, the Judge directed that Mr Duggan was to “file documentary evidence from a medical professional setting out any medical conditions for which he is suffering which may impact upon his ability to participate in these proceedings”. In fact, no such evidence was, to my understanding, filed.

Did the conduct amount to contempt in the face of the court?

17. At the hearing this morning, Mr Duggan accepted that his behaviour was insulting to the Judge and disruptive of the court process.
18. While Judges have a degree of tolerance towards emotional displays of frustration or anger in court, and are aware of the problem of stress for parties in family (and other) proceedings, there is no excuse for insulting a judge or repeatedly disrupting a court hearing with outbursts of abuse. This has been recognised from early times to qualify as contempt of court (Arlidge at 10-34 and 10-102).
19. Conscious that Mr Duggan suffers from a degree of mental illness, I need to satisfy myself that he could form the required '*mens rea*' to be guilty of a contempt in the face of the court (see on this issue *R v Butler (Paul)* [2005] EWCA 2708). I am satisfied, having regard to the totality of the discourse in the court hearing on 27 May 2022, and on what Mr Duggan has said to me today, that he intended to disrupt, or create a real risk of prejudicing, the administration of justice on 27 May 2022 (see *Att-Gen v Sport Newspapers Ltd* [1991] 1 W.L.R. 1194 at 1200; [1992] 1 All E.R 503 per Bingham LJ) and/or that this was a foreseeable consequence of his verbal abuse directed at the Judge.
20. In all the circumstances, I am satisfied that Mr Duggan's conduct was both insulting and disrespectful to the judge, offensive to the applicant, undermining of the dignity and authority of the court, and disruptive to the due administration of justice. I find that it was a contempt in the face of the court.
21. Having announced my decision on the facts/contempt, I invited Mr Duggan to address me on the issue of sentence.

Sentence

22. Judges fulfil a vitally important public duty; they preside over and decide cases 'without fear or favour, affection or ill-will'. It should not have to be spelled out, but I do so here, that judges are entitled to expect that they can undertake their challenging role, to conduct court hearings, and in the Family Court to make important – sometimes life-changing – decisions for children and their families, without being subjected to abuse either in or out of the court room.
23. The fact that a court hearing takes place on the telephone, or by video-link, makes it no less a court hearing. The judge conducting a hearing is no less a judge. The same respect for the process and the dignity of the court is expected from all participants, whether they are participating by telephone, video, or physically sitting in a court room.
24. As I have already indicated, District Judge Keating was very shaken by Mr Duggan's conduct. She was also very evidently concerned for the welfare of the applicant who had filed a statement complaining of similar conduct towards her, and who "was present and listening to his aggressive behaviour in a court hearing". I note that the District Judge was "... concerned that a court environment was being used by [Mr Duggan] to air his grievances and to expose a vulnerable applicant to further unacceptable conduct."
25. I have, today, been advised by Mr Corbett that Mr Duggan was referred earlier this year to the charity for whom he works by the local secondary mental health services. This charity provides Mr Duggan with emotional and practical support; Mr Corbett is his

suicide prevention officer. Mr Duggan receives sickness benefits, and for the last few months has been in receipt of the state-funded Personal Independence Payment (available for those with a long-term physical or mental health condition or disability, and difficulty undertaking certain everyday tasks as a consequence). Therefore, although I have no expert medical evidence before me, I accept – by reason of the above – that Mr Duggan has a relevant history of mental ill-health, and that this may have contributed to his uninhibited behaviour at the hearing.

26. The proceedings under the *Family Law Act 1996* had been brought by a former partner of Mr Duggan, and the mother of his child. He has not seen his child for some months, a source of obvious distress to him. He lives alone; he does not work.
27. Mr Duggan apologised to this court; he told me that he now sees his behaviour as having been “disgusting”.
28. There is no doubt, in my judgment, that Mr Duggan’s abusive behaviour at the hearing on 27 May 2022 caused a very significant disruption to the proceedings; it caused the judge understandable distress. The only appropriate punishment for such a serious contempt is, in my judgment, a term of imprisonment.
29. However, I accept that Mr Duggan was at the time of the hearing suffering from a degree of mental ill-health, which is continuing, and while this does not account for his behaviour, I am satisfied that it exacerbated his stress and anxiety and possibly contributed to his lack of control. I am satisfied that he is truly contrite, and I take into account that he sent an apology direct to the District Judge before this hearing.
30. I shall impose a term of imprisonment of 14 days for each of the four proven allegations of contempt, the four terms shall run concurrently. Were it not for the mitigating factors outlined in §25-27 above, I would have imposed an immediate term of imprisonment. However, having regard to Mr Duggan’s particular situation, his contrition, and his acceptance of the inappropriateness of his behaviour, I am able to suspend that sentence for a period of 12 months, until 6 October 2023, on condition that he does not conduct himself in any court proceedings in that period in such a way as to be found to be in further contempt of court.
31. That is my judgment.