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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

[2022] EWHC 3607 (Fam)



No. FD19P00568

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 19 October 2022

Before:

MRS JUSTICE MORGAN

(In Private)

B E T W E E N :

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Applicant

- and -

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Respondent

MR A PERKINS appeared on behalf of the Applicant.

MR B JUBB appeared on behalf of the Respondent.

J U D G M E N T

MRS JUSTICE MORGAN:

- 1 This matter comes before me today for sentence in relation to the respondent to committal proceedings. The respondent is the father. The committal proceedings are brought by the mother of three children those parties have together. I do not intend, in this short judgment, to set out the sorry and sad history which causes the mother of three children to be applying to a judge of this division to send the father of those three children to prison. It comes about in circumstances where children have been taken to another jurisdiction and not returned to this jurisdiction, which is the jurisdiction of their habitual residence, notwithstanding many orders of this court.
- 2 It so happens that the mother, through her own efforts and with absolutely no help from the father, far less any inclination demonstrated by the father to obey orders of this court, has managed to achieve the return of the two younger children to her care. They remain in her care and pursuant to orders made by Williams J on 6 October 2022 following lengthy proceedings in wardship before him and they are not to be removed from her care or this jurisdiction.
- 3 The eldest of their children, in circumstances where great efforts have been made to extract him, to borrow the phrase of Williams J, from the country where he is now living has not been returned. The mother has not been able to retrieve him; the father has failed to comply with directions to bring him back. I recall when I heard this matter in May the very affecting way in which the mother described to me bringing two of her children home and having to leave the third behind. So it is that unhappy situation remains.
- 4 I do not set out all of the conclusions I reached in May because in due course the judgment I gave on 27 May, when suitably anonymised by counsel, will be published and can be read alongside those in the substantive proceedings before Williams J. Suffice it to say that I was satisfied to the criminal standard of proof in May that on the matters properly to be determined by me the father had wilfully failed to comply with court orders and I was satisfied to the criminal standard of proof that that was the case.
- 5 Immediately before that matter came on before me in May, those who act for the mother had made it explicitly clear that in the event that the father returned the eldest child of the family to this jurisdiction she would not seek to pursue these committal proceedings and she said to me several times during the course of her evidence that she had no interest in the father of their children being sent to prison, her interest was only to have her children back.
- 6 In like form, I, in adjourning the sentencing part of this hearing to be heard after two sets of hearings, one for a conclusion of hearings then undergoing in the country to which the children were taken and, two, the conclusion of wardship proceedings before Williams J listed, I think, in June, for which a judgment was given in July and a further hearing has taken place on 6 October. Having adjourned matters in that way, I again indicated clearly in the course of the judgment I gave on 27 May and conveyed via Mr Jubb, who has so ably represented the father in the face of very significant difficulty throughout, that were the eldest child to have been returned by the time that matter came back before me that would represent very powerful mitigation in terms of any sanction I might be invited to consider imposing today.
- 7 It appears that my words to that end had no effect whatsoever on the father of the children. I notice that in the most recent order made by Williams J in the substantive proceedings he has directed, yet again, that the child concerned should be brought back by midnight

yesterday, that is to say the night tipping over into the day of today's hearing. I interpret that as something that he had intended to tie in with my entreaty to the father via Mr Jubb to return the child in good time for this hearing.

- 8 For the avoidance of doubt, I do not, in considering the sanction to impose upon the father, treat him as being in breach of the order of Williams J since there is no committal application in respect of that direction before me today. I observe it only because it reassures me that the father will have been reminded in the directions of Williams J of the importance of returning that child before I move on to sentence today and I am not relying only on him having been sufficiently informed by my own remarks in the judgment at the conclusion of the hearing of 27 May.
- 9 At the hearing on 27 May, where I concluded as I did, I, of course, am reassured that the father participated in that hearing, came before me on a video link and gave evidence and will, therefore, I am entirely confident, have been very clear as to the need to return the eldest child in not only child welfare terms but also litigation terms for him.
- 1 0 He has today elected not to attend, either in person or on the link or to play any part in these proceedings other than to be, once again, ably represented by Mr Jubb. I do not factor into my sentence of him today the fact that he has chosen not to have the courtesy to take part in these proceedings or to appear in person. He has, of course, given instructions and been represented.
- 1 1 I take note of the fact that Mr Jubb advances by way of mitigation that, unlike some, until today the father has taken part in these proceedings. I need not revisit that which I said in my earlier judgment as to the utility of a committal application in the particular circumstances of this case, because I have already expressed the view that there is, as I see it, utility to it. Added to the view which I formed in May, I accept Mr Perkins' submission today that there may be utility additionally in the sense that were I to give permission, which I will, for the mother to disclose to any ongoing proceedings in the jurisdiction to which the child has been taken, the fact of the committal application, the fact of the sentence, any order and judgment, as translated, that that will assist her that jurisdiction, that adds a layer of utility which was not apparent in May.
- 1 2 I do give the father credit, as Mr Jubb invites me to, for his participation in the proceedings to date, both before me and to the extent that it is appropriate for me to have an eye on the proceedings before Williams J. So far as the proceedings before me, of course, the credit to which he is entitled for having participated in the proceedings is somewhat diminished by the findings I made as to his credibility and truthfulness in those proceedings and the findings which ultimately, I made against him. Nevertheless, credit he shall have for it. I do not make any observation adverse or positive for the participation he took in the proceedings of William J and explicitly having been invited to take this course by Mr Jubb I note that Williams J has observed his own view that the father has demonstrated continuing and complete contempt of the jurisdiction of this court and the orders of this court, I leave the view of Williams J out of account in my own approach to the father. I note only that he has demonstrated a continuing failure to obey orders within the committal proceedings with which I am concerned.
- 1 3 I accept Mr Jubb's well-pitched, moderate and realistic submissions that whilst I have a wide discretion in this case and notwithstanding the failure of the father to obey orders of this court I should not go so far as to impose upon him the maximum sentence which my wide discretion permits of 2 years.

- 1 4** I also recognise that the fact of any sanction is probably likely to have as much effect as to the extent of the sanction. It is not, however, a small or a trivial breach, but a continuing and significant breach. Mr Jubb is, therefore, right to anticipate that there is no prospect of anything other than an immediate sentence to be imposed.
- 1 5** Having regard to all the circumstances of this case, reminding myself of all of those matters which I set out in the document of 27 May which will, in due course, be available to be read with this short ruling, the sentence I impose today is one of 6 months.
- 1 6** I will give permission, as Mr Perkins invites me to, to the mother's solicitors for onward disclosure and transmission of both the sentence of the order of committal and of the translated judgment to other proceedings outwith this jurisdiction and, in the circumstances of this case, I conclude my sentencing remarks with that.
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CERTIFICATE

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This transcript has been approved by the Judge.