Neutral Citation Number: [2024] EWHC 2703 (Fam)

Case No: FD22P00373

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 October 2024

Before :

MR JUSTICE PEEL

- -

Between :

Samira Addou	**Applicant**
- and -	
Sidali Bennabi	**Respondent**

- -
- -

Mani Singh Basi (instructed by **Dawson Cornwell LLP**) for the **Applicant**
Maria Scotland (instructed by **TV Edwards LLP**) for the **Respondent**

Hearing date: 23 October 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 25 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE PEEL

Mr Justice Peel :

1. I shall continue to refer to the child as Z and the parents as M and F.

2. I have found the contempt application proved as follows:

   i) F is in breach of para 3 of the order of Sir Jonathan Cohen dated 11 May 2023 which required him to "by 23.59pm on 07 June 2023 cause the return of the child [Z] to the jurisdiction of England and Wales".

   ii) F is in breach of para 12 of the order of Francis J dated 29 March 2024 which required him to "by 23.59pm on 29 March 2024 return or cause the return to England and Wales of the child and ward of the High Court [Z]".

   iii) F is in breach of para 6 of the order of Poole J dated 23 September 2024 which required him "by 23.59pm on 30th September 2024 to return or cause the return to England and Wales of the child and ward of the High Court [Z]".

3. I heard mitigation by counsel on behalf of F. No more could have been said on his behalf.

Sentencing

4. I have wide powers of sanction **(FPR 2010 r.37.9)**. Principally, I may impose a sentence of up to two years imprisonment **(Contempt of Court Act 1981, s.14(1))**, or a fine of an unlimited amount, or make a confiscation order. I may make no order. If I impose a sentence of imprisonment, it is open to me to order that execution of the committal order can be suspended for such period or on such terms as I consider appropriate **(FPR 2010 37.9(2))**.

5. In considering the powers, and approach to be taken on sentencing, I have reminded myself of **Hale v Tanner [2000] EWCA Civ 5570** in which Hale LJ (as she then was) considered the principles to apply when sentencing for committal in a family law case:

> "25. In making those points I would wish to emphasise that I do so only in the context of family cases. Family cases, it has long been recognised, raise different considerations from those elsewhere in the civil law. The two most obvious are the heightened emotional tensions that arise between family members and often the need for those family members to continue to be in contact with one another because they have children together or the like. Those two factors make the task of the court, in dealing with these issues, quite different from the task when dealing with commercial disputes or other types of case in which sometimes, in fact rarely, sanctions have to be imposed for contempt of court.
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> 26. Having said that, firstly, these cases have to come before the court on an application to commit. That is the only procedure which is available. Not surprisingly, therefore, the court is directing its mind to whether or not committal to prison is the appropriate order. But it does not follow from that that imprisonment is to be regarded as the automatic consequence of the breach of an order. Clearly it is not. There is, however, no principle that imprisonment is not to be imposed at the first occasion: see *Thorpe v Thorpe* [1998] 2 FLR 127, a decision

of this court. Nevertheless, it is a common practice, and usually appropriate in view of the sensitivity of the circumstances of these cases, to take some other course on the first occasion.

27. Secondly, there is the difficulty, as Mr Brett has pointed out, that the alternatives are limited. The full range of sentencing options is not available for contempt of court. Nevertheless, there is a range of things that the court can consider. It may do nothing, make no order. It may adjourn, and in a case where the alleged contemnor has not attended court, that may be an appropriate course to take, although I would not say so in every case. It depends on the reasons that may be thought to lie behind the non-attendance. There is a power to fine. There is a power of requisition of assets and there are mental health orders. All of those may, in an appropriate case, need consideration, particularly in a case where the court has not found any actual violence proved.

28. Thirdly, if imprisonment is appropriate, the length of the committal should be decided without reference to whether or not it is to be suspended. A longer period of committal is not justified because its sting is removed by virtue of its suspension.

29. Fourthly, the length of the committal has to depend upon the court's objectives. There are two objectives always in contempt of court proceedings. One is to mark the court's disapproval of the disobedience to its order. The other is to secure compliance with that order in the future. Thus, the seriousness of what has taken place is to be viewed in that light as well as for its own intrinsic gravity.

30. Fifthly, the length of the committal has to bear some reasonable relationship to the maximum of two years which is available.

31. Sixthly, suspension is possible in a much wider range of circumstances than it is in criminal cases. It does not have to be the exceptional case. Indeed, it is usually the first way of attempting to secure compliance with the court's order.

32. Seventhly, the length of the suspension requires separate consideration, although it is often appropriate for it to be linked to continued compliance with the order underlying the committal.

33. Eighthly, of course, the court has to bear in mind the context. This may be aggravating or mitigating. The context is often the break-up of an intimate relationship in which emotions run high and people behave in silly ways. The context of having children together, if that be the case, cannot be ignored. Sometimes that means that there is an aggravation of what has taken place, because of the greater fear that is engendered from the circumstances. Sometimes it may be mitigating, because there is reason to suppose that once the immediate emotions have calmed down, the molestation and threats will not continue.

34. Ninthly, in many cases, the court will have to bear in mind that there are concurrent proceedings in another court based on either the same facts or some of the same facts, which are before the court on the contempt proceedings. The court cannot ignore those parallel proceedings. It may have to take into account their outcome in considering what the practical effect is upon the contempt proceedings.

> They do have different purposes and often the overlap is not exact, but nevertheless the court will not want, in effect, the contender to suffer punishment twice for the same events.
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> 35. Tenthly, it will usually be desirable for the court to explain very briefly why it has made the choices that it has made in the particular case before it. One understands all the constraints in a busy county court, dealing with large numbers of these cases these days, and one would not wish to impose too great a burden on the judiciary in this respect. Nevertheless, it would be appropriate in most cases for the contemnor to know why he or she was being sentenced to a period of imprisonment; why it was the length that it was; if it was suspended, why the suspension was as it was, but only very briefly."

6. I have in mind also the words of Nicklin J in **Oliver v Shaikh [2020] EWHC 2658 (QB)** at para 18:

> "If a contemnor, even belatedly, demonstrates a genuine insight into the seriousness of his prior conduct and its unlawfulness, then the Court may well be able to conclude that the contemnor has 'learned his lesson' and the risk of future breach is thereby diminished."

7. I have taken into account other authorities relied upon by F.

8. On F's behalf in mitigation, it is said that Z is settled and happy with him and his family in Algeria, and will be distressed at being separated from him; so, it is submitted, the welfare of Z is a relevant factor. It is submitted that the sequestration order potentially deprives him of his half share of the former matrimonial home which he suggests could be about £51,000 (half of £102,000), and his bank accounts have been frozen (although it has not been suggested that they contain substantial sums). His counsel also points out that he has some health issues, including diabetes and high blood pressure.

9. Against that, F has repeatedly disobeyed orders which have been welfare based; that is to say, the orders for return have been made in order to meet the needs of Z. Those orders were pursuant to a finding by Moor J, in July 2022, after a contested hearing, that F stranded M and Z in Algeria. F shows no respect for the court process and in my judgment the court is entitled to, and should, express its disapproval of F's wilful disobedience of multiple orders. He shows no insight into the emotional and psychological impact on Z and M of them being separated for two years, as noted by Francis J; it seems to me that it is his breaches which have compromised Z's welfare. He has chosen for the most part not to participate in the proceedings. He took the extraordinary step of misleading the Master in the King's Bench Division so as to secure a Recognition Order which was wholly unwarranted. He found a way to leave the jurisdiction clandestinely in 2022, knowing that there were ongoing proceedings here. There is no sign of remorse. He has made it clear that he will not return Z despite the judgments and orders of this court, although he will need to reflect upon that in the light of the sentence I intend to impose.

10. Having considered matters carefully, and given the gravity of F's conduct and the impact upon both M and Z of being separated from each other, I am of the view that the breaches merit sentences of imprisonment towards the upper end of the scale. However, in my view there is some force in the submission that the sequestration order (akin to

confiscation) has already operated as a measure of punishment, and I shall alight upon a sentence which is a little below what might otherwise have been ordered. Looking at all matters in the round, I shall impose a prison sentence of 16 months for each of the three breaches, to run concurrently. In my judgment this is proportionate to the seriousness of the breaches as found.

11. F has already been held in custody for 32 days since arriving in this country on 21 September (the equivalent of 64 days of imprisonment reduced by 50% for good behaviour, or 80 days of imprisonment reduced by 60%), which needs to be factored in: **R (on the application of James) v HM Prison Birmingham [2015] 1 WLR 4210**. I will therefore reduce the sentence from 16 months to 13 months (erring on F's side) to take account of time already served.

12. I have considered whether the terms of imprisonment should be suspended on condition that F returns Z by a specified date. However, it seems to me that an immediate custodial sentence is warranted. The breaches are very grave and F has given no indication that he would comply even if imprisonment is suspended to allow him a period of time to remedy his default. He has said clearly that he has no intention of returning Z to this country. All the evidence is that he will continue to disregard orders. He has been in breach of multiple orders for over two years. A suspension is unlikely to lead to return of the child which would be the principal reason for suspending the order.

13. On balance, in my judgment, the concurrent custodial sentences for the three breaches should be activated immediately. I encourage F to reflect upon this judgment. His expressed determination not to comply with court orders now collides with the reality of a prison sentence. If he procures the return of Z to this country, and particularly if he does so promptly, it will be open to him to apply to the court to purge his contempt and it is likely that the court, in those circumstances, would look favourably upon such an application.

14. I propose therefore to activate the 13 month concurrent sentences immediately.