

IN THE PORTSMOUTH FAMILY COURT

Case No. P024C50110

Neutral Citation Number [2024] EWFC 143 (B)

Courtroom No. 5

The Courts of Justice
Winston Churchill Avenue
Portsmouth
PO1 2EB

Friday, 26th April 2024

Before:

HER HONOUR JUDGE ELLIS

B E T W E E N:

A LOCAL AUTHORITY

and

AB & CD

MS KENISTON & the LOCAL AUTHORITY SOLICITOR appeared on behalf of the
APPLICANT

NO APPEARANCE by or on behalf of the RESPONDENT MOTHER

MS HENSTOCK-TURNER appeared on behalf of the RESPONDENT FATHER

MS LUSH appeared on behalf of the CHILD through the GUARDIAN

JUDGMENT
(Approved)

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All

persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court..

HHJ ELLIS:

1. This is my judgment in relation to this application which arises in connection with proceedings brought by a Local Authority in relation to a young girl, EF, born on 24 July 2021. She is the child of the first respondent mother, AB, and the second respondent father, CD, and is being represented in these proceedings by her Guardian.
2. It is relevant to say that there have been two earlier sets of proceedings in relation to EF and her older sister and in both of those proceedings, Her Honour Judge Harvey was the allocated judge.
3. In case number P022C50307, a final order was made on 15 March 2023 providing for both girls to live with their respective fathers under child arrangements orders and subject to 12-month supervision orders.
4. The Local Authority then issued separate proceedings under case number P024C50085 to extend the supervision order in relation to EF.
5. A hearing took place on 11 March 2024 at which CD said that he would not continue to work with the Local Authority and the Local Authority had therefore indicated that it would issue care proceedings.
6. The Local Authority therefore commenced these proceedings on 15 March 2024, and on 22 March 2024 an order was made for EF to move to the care of the father of her half-sister.
7. AB was not accepting of that decision, but has not engaged fully in the court process. For example, she has disinstructed her solicitors, has not engaged alternative legal representation and has failed to attend recent court hearings. Instead, she has elected to express her dissatisfaction by posting information about the case on social media.
8. The Local Authority have therefore made this application dated 27 March 2024 to commit the mother, AB, for contempt of court pursuant to rule 37.3 and 37.4 of the Family Procedure Rules.
9. The Local Authority say that the mother has breached the terms of orders dated 11 and 22 March 2024 which ordered her not to publish any material intended to or likely to identify the child who is the subject of proceedings and not to publish information relating to these proceedings, including extracts, quotations or summaries of documents filed in the proceedings. Both those orders contained warnings about the consequences of breaching the prohibitions.

10. This application has been listed for hearing before me because one of the postings, the subject of this application, is of Her Honour Judge Harvey and includes a photograph of her. The main care proceedings remain allocated to Her Honour Judge Harvey.
11. Today I have heard from Ms Keniston on behalf of the Local Authority with the instructing solicitor and members of the Social Work team in attendance, from Ms Henstock-Turner on behalf of CD, who is not here, and from Ms Lush on behalf of the Guardian who is present here in court. Once again, there has been no attendance by or on behalf of the mother.
12. Before this hearing, I had read all the documents available to me in these proceedings. The Guardian and the Local Authority have been given permission to rely on a position statement and case summary from the last hearing, although I have received an updated statement from the Local Authority. However, there has been nothing from the mother.
13. In this judgment I am going to set out the background to this matter; I am going to summarise the submissions I have heard here today; I am going to run through the legal principles that apply to cases of this kind; and then I am going to make a decision both on whether I consider these offences have been committed and if so, on the appropriate sanction
14. To begin with the background, on 6 March 2024 the case-holding solicitor, GH, for the Local Authority emailed AB advising her that she was aware that she had posted the social worker's statement on TikTok, advising her that she was not to post court documents on social media and asking her to remove the statement.
15. There was then a court hearing on 11 March 2024 and during the course of that hearing Her Honour Judge Harvey asked AB if she understood the warnings and AB said that she did understand the prohibitions and the consequences for breaching them, and that of course was confirmed in the order subsequently drawn up after the hearing.
16. On 13 March 2024, the orders were served on the mother by email and within the body of the covering email the Local Authority solicitor, GH, again set out: "Please can I remind you what Her Honour Judge Harvey said in the hearing, which is that it is contempt of court to publicise information about the proceedings or post this order or any court documents onto social media".
17. AB replied, saying that she wanted to know when court proceedings were issued and went on to say that "I am in contact with Gary Waterman who is exposing the corrupt fraudulent system, and I will be posting all details to him straight away. What solicitor company are you from? Does it have a name? I also don't believe these proceedings are legitimate, which I will uncover very soon. I will check the order and be back to you by the end of today". Later that day, AB did confirm that she had reviewed the order and that "it all looks good to me".
18. There was then the court hearing to which I have already referred on 22 March 2024, and AB was present at the start of that hearing. The Local Authority says that although AB did

not remain in court until the conclusion of the hearing to hear all the representations made by the Local Authority in relation to her posting on TikTok, and the judge's agreement to a specific recital in that regard, she was present at the beginning of the hearing when the judge reminded her of the fact that these were confidential proceedings and drew her attention to the confidentiality warning set out on the face of the order. That order was also served on her by email and she confirmed receipt of it.

19. AB did email GH later that day saying, "Could you please update me on the court hearing, I wasn't staying and listening to any more lies. My daughter didn't say those things. She has had those things put into her head". GH replied, advising her of the outcome of the hearing and once again saying, "The judge wanted us to remind you not to post anything onto social media, including TikTok, about these proceedings".
20. Later that same evening, AB sent an email to various Local Authority managers. She accused them of being monsters, and wrote: "I'm going to make sure that everyone is aware of the sort of things you do, such as this, and discussing my case with others from different councils. I will take each and every one of you down, one by one".
21. On 26 March 2024, the Local Authority emailed the court to advise that AB had posted onto TikTok an update about that hearing as well as photographs of the judge and other people at court that day. The Local Authority said it was considering how to address that and whether they would be making an application for contempt of court.
22. The following day, GH emailed AB with a copy of the order and once again reminded her of the prohibitions about disclosing information. She also advised AB that the Local Authority was making an application for contempt of court and would be seeking an urgent hearing on 28 March 2024. She reminded AB that imprisonment was a possible penalty the Court would have to consider. The contempt application was duly issued later that same day.
23. The Local Authority requested an urgent hearing for this matter. AB emailed GH asking to see a copy of the application and saying that GH was lying when she said that AB was present when the judge made the order, and saying that she did not hear any of this being said so she was not in breach of any order.
24. The Local Authority emailed AB on 27 March 2024, advising her that the Local Authority was intending to arrange for her to be personally served with the application, and repeated that AB had been warned many times by her, personally, through email and at court, not to publish information about the proceedings.
25. AB responded by saying, "I did not hear her say it on the 22nd, so that needs removing from the order. You are committing fraud by saying I heard her say it. I'm in the process of ringing Stoke Courts in order to find out whether any fee was paid, so until I get this information, which I've requested from the council with no joy, I will have no other choice but to believe these are counterfeit court proceedings and that they aren't worth the paper they are wrote on".

26. The Local Authority say that when they tried to serve the order personally on AB associates of AB intimidated the process server and made him fear for his safety, and AB subsequently posted a video and photos about him and his licence plate on TikTok.
27. When the hearing on 28 March 2024 took place before me, AB did not attend although clearly she was aware of that hearing because she posted on TikTok that afternoon around three o'clock, "They're going to imprison me. They want to kidnap my baby".
28. The Guardian expressed particular concern about the safety and wellbeing of the nursery workers identified in the TikTok posts, and said that the mother should not be able to put them in fear.
29. However, in view of the mother's non-attendance, the short notice and concerns that she should be fully aware of the allegations against her, in view of the serious nature of them, the matter was adjourned to a further hearing on 15 April 2024.
30. On 10 April 2024, AB emailed the court to request an adjournment of that hearing, saying that she wanted more time to consider her response. Neither the Local Authority nor the Guardian opposed a short adjournment to give her more time to respond. Again, this was a clear indication that AB is aware of these proceedings, but has elected not to engage.
31. A consent order was therefore drawn up on 11 April 2024, vacating the hearing on 15 April 2024 and relisting it before me on 23 April 2024, giving AB an extension of time in which to respond.
32. The consent order drawn up contained a specific provision, in red and underlined, advising AB of the seriousness of the application, recommending that she should take legal advice and advising her that because of the nature of the application being made she would be entitled to legal aid in relation to these applications.
33. The mother did not file any form of position statement before the adjourned hearing on 23 April 2024, and she did not attend at that hearing although clearly she was aware of it because it was at her request it had been listed that day.
34. However, bearing in mind that this further hearing had been listed today, and bearing in mind the hope that the mother might attend today to consider issues relating to her child, I did once again adjourn the matter with an order being drawn up to make it quite clear to the mother that determinations would be made today if she failed to attend. We are now at the hearing on 26 April 2024 and the mother has not attended either the case management hearing relating to her child, or this application.
35. Today I have heard on behalf of the Local Authority saying that the Local Authority's position is that the mother has clearly breached the orders in this case. There can be no question but that she has disclosed information which leads to the identification of the child. In view of the terms of the orders, the indications given to the mother at the court hearings

and the subsequent numerous repetitions of those provisions in email exchanges, the mother can have no doubt that she is in breach and has completely failed to engage with the court process or to remove the postings which are objected to.

36. The Local Authority wanted to make it clear that they have no wish to punish this mother, but these are children who are being placed at risk and the mother must understand that doing what she has done is wrong, that it is a flagrant disregard of the Court's authority.
37. The Local Authority does not want to make any submissions in relation to the appropriate penalty for the mother in this case, but it must demonstrate the severity of the concerns before the Court.
38. The Local Authority is aware that the mother is currently 20 weeks pregnant, but this of course is no barrier to a prison sentence being imposed. Although the probation officer has expressed concerns about the mother's health, this is a mother who does engage when she chooses to do so, and indeed it appears she is in contact with EF's father.
39. Ms Henstock-Turner, on behalf of CD, the Father, did not wish to make any submissions in this matter, but on behalf of the Guardian, Ms Lush said that the Guardian supported the Local Authority's application in this case.
40. The Guardian is particularly concerned about the safety and wellbeing of all those involved, not just the child but also the social worker and the nursery workers whose rights are being infringed in this way. Ms Lush repeated the comments made by Ms Keniston that no-one has any wish to punish this mother, but the priority is the safeguarding of the child and the ability of the Court to achieve this in whatever ways are available.
41. I want to run through the legal principles that apply to the decisions that I have to make and these are set out in section 97 of the Children Act, and section 12 of the Administration of Justice Act.
42. Section 97 of the Children Act says that:

"No person shall publish to the public at large or any section of the public any material which is intended, or likely, to identify:

- (a) any child as being involved in any proceedings before the High Court or the family court in which any power under this Act or the Adoption and Children Act might be exercised with respect to that child or any other child; or*
- (b) any an address or school as being that of a child involved in any such proceedings".*

43. Section 97(3) says that there is a defence in any proceedings for an offence under this section

“it shall be a defence for the accused to prove that he did not know and had no reason to suspect that the published material was intended or likely to identify the child”.

44. Section 97(6) sets out:

“Any person who contravenes this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale”.

45. Section 12 of the Administration of Justice Act relates to publication of information relating to proceedings held in private:

“The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say:

(a) where the proceedings:

(ii) are brought under the Children Act 1989 or the Adoption and Children Act 2002;

or

(iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor”.

46. The Court also has to have regard to the provisions of Part 37 of the Family Procedure Rules in determining applications of this kind.

47. These statutory provisions were recently considered by Cobb J in *HM Solicitor General v Wong* [2023] EWHC 2966 (Fam), a case where the defendant had acted in contempt of court by making a covert audio recording of a court hearing in adoption proceedings and then disposing of the recording to another person with a view to their publication on YouTube.

48. In that case, Cobb J found that the prohibitions on recording family proceedings and publishing certain information relating to family proceedings was vital to their integrity. The deliberate defiance of those prohibitions had to result in substantial punishment. The punishment had to reflect the Court’s profound disapproval when the child was named.

49. In that case, JS had acted throughout with no regard to the welfare of the child, scant, if any, regard to the child’s mother and no respect for the professionals who ran the family justice system with great care. He knew he was not permitted to audio-record the proceedings and also dispose of it, and he knew when he did so that it would be published in a particular style.

50. Cobb J concluded that having regard to the gravity of the contempt and the extent of the Court’s powers overall, the shortest possible sentence in that case was four months’ imprisonment for the making of the recording and four months’ imprisonment for disposing

of the recording with a view to their publication. The contempt was so serious that it had to be met by an immediate rather than a suspended custodial term.

51. If I apply these legal principles to the facts of this case, it is clear that I must follow a two-stage process. Firstly, I must be satisfied that the Local Authority has proved to the criminal standard of proof the contempts alleged in this case. Secondly, if I find those contempts proved, I need to consider what sanction should be imposed.
52. I start with the first issue and I have already referred to the Local Authority's application which is for a finding that the mother has breached the terms of the orders dated 11 and 22 March 2024 which ordered her not to publish any material intended to or likely to identify the child, the subject of these proceedings.
53. The Local Authority allege that on or before 23 March 2024, AB breached the orders by publishing on her TikTok account: firstly, a picture of EF; secondly, the names and photographs of the judge, the parties' legal representatives, save for counsel for the Local Authority, who were present at court on 22 March, the allocated social worker and her manager, the solicitor for the child, the Guardian and workers from EF's nursery; and thirdly, an extract from a statement dated 13 March 2024 written by the allocated social worker.
54. The issues I need to determine are: firstly, did such publication take place; secondly, if so, was it in breach of the orders; thirdly, am I satisfied on the criminal burden of proof that AB was aware of the terms of those orders; and fourthly, does AB have any defence that she did not know or have any reason to suspect that the published material was intended or likely to identify the child.
55. I will consider each of those issues in turn, starting with whether such publication took place. The evidence before the Court is attached to a statement from the Local Authority which includes screenshots of the TikTok account. I was advised at the hearing on 23 April 2024 that that TikTok account was still showing these items. Today there is no challenge on behalf of the mother to the evidence presented and, in light of this, I find that AB did publish this material.
56. Secondly, I need to consider whether this was in breach of the orders. The Local Authority and the Guardian both say that this was a serious breach of the orders. The Guardian is particularly concerned that this will undermine and jeopardise the child's safety, especially through identification of nursery staff which may make them concerned about reporting further concerns.
57. There has been no response from the mother or any challenge to the Local Authority's case that this was in breach of the orders. I therefore find this proved. I am satisfied that this is information which gives the name of the child and the nursery which she attended, and that this is sufficient to identify the child and that this publication is exactly the kind which the orders were designed to prevent.

58. Thirdly, am I satisfied on the criminal burden of proof that AB was aware of the terms of the orders? Again, both the Local Authority and the Guardian say that AB was aware. She was present in court for the whole of the hearing when the first order was made and the terms were explained to her, and she was present for at least the beginning of the hearing when the second order was made and confidentiality provisions were explained to her. The order setting out these provisions was served on her and she has confirmed receipt of them, and the terms of those orders had been repeated to her on numerous occasions.
59. AB has not provided any statement of her position and she has not attended today. I will repeat that she has been given so many opportunities to present her case because the Court has tried, as much as it can, to persuade her to engage in this process.
60. I am aware that AB said in her emails of 27 March 2024 that she was not present in Court when the judge gave the warnings on 22 March 2024 and that therefore she was not in breach of the order. However, the evidence before me, which is not challenged by the mother, is that the judge did say this to her at the outset of the hearing when she was present.
61. Secondly, the order of 22 March 2024 simply repeated a warning already given on 11 March 2024. The mother may say that she thought this applied only to the extension of supervision orders proceedings, but I do not accept this argument. If this were a genuine belief, then the mother would have acted to take down the posts as soon as she was aware of the terms of the second order.
62. I do rely on the fact that AB has failed to take down these postings, even after having been told repeatedly of the orders that have been made by the Court.
63. AB did raise in arguments in emails to the Local Authority concerns about whether these proceedings have been properly constituted but, again, these have not been put before the Court in any formal way and I am satisfied on the evidence before me that there is no substance to this argument and that these proceedings are properly brought by the Local Authority.
64. The final issue I want to consider on the question of these offences is whether AB has any defence on the grounds that she did not know and had no reason to suspect that the published material was intended or likely to identify the child. This is not an argument raised by her or on her behalf and indeed it is impossible to see how this could be maintained in circumstances where she goes so far as to name the child.
65. Taking account of all these matters, I find it proved on the criminal standard of proof that AB was aware of the terms of the orders; that the publication was in breach; that she has deliberately flouted the provisions; and that she has not made out the statutory defence.
66. I move on, then, to the question of sanction and I echo what is said by both the Local Authority and the Guardian that this Court has no wish to punish AB. All the Court wants to achieve is protection of the child which involves the existing postings being taken down and

no further postings being made. However, unfortunately, in the absence of any engagement by AB to secure this end, I must go on to consider the question of the appropriate sanction.

67. I have considered whether it would be appropriate to adjourn this hearing to allow AB to make representations about the appropriate sanction in the light of the findings that I have made on liability, but I see no benefit in doing this. There have already been three court hearings listed in this matter. Every opportunity has been given to AB to engage, and I can only assume that she has deliberately chosen not to do so.
68. I therefore see no point in adjourning as I have no confidence that AB will attend. This is a case where she is clearly aware of the range of possible sanctions open to the Court because she has talked on a number of occasions about the possibility of imprisonment.
69. I move on to the applicable sanction. Both the Local Authority and the Guardian say that this is a serious breach. It involves a deliberate flouting of court orders. It includes sensitive information, publication of which may harm the child. The mother's objective in making these posts is to undermine the administration of justice and its integrity.
70. This is a case where AB has failed to remove the posts, despite repeated requests and she has made allegations about these proceedings being fraudulent. Finally, she appears completely unrepentant.
71. There is nothing before the Court by way of mitigation despite AB having been given every opportunity to put forward her case, and despite her being warned of the possible sanctions and, indeed, that it appears from her own postings that she is aware of them.
72. In reaching my decision in this case, I follow the guidance on Cobb J in the case I have already referred to where he said:

“As I have said earlier, almost all hearings in the Family Court involving children are heard in private; the privacy law is designed for ‘the protection of the interests of the minor in question, not the adjudication without interference of the issues arising for decision’. As Laws LJ observed in Pelling, ‘It is an affront to justice that a judgment or proceeding should be publicised which, in the interests of the child, the Court has advisedly determined should be kept private’. This principle is enshrined in both primary and secondary legislation”.

73. Cobb J went on to highlight that the penalty in such cases is in the judge's discretion. He referred to the Supreme Court case of *HM Attorney General v Crosland* [2021] UKSC 15 where judges were directed to adopt this approach:

“The Court should adopt an approach analogous to that in criminal cases where the Sentencing Council's Guidelines require the Court to assess the seriousness of the conduct by reference to the offender's culpability and the harm caused, intended or likely to be caused.

In the light of its determination of seriousness, the Court must first consider whether a fine would be a sufficient penalty. If the contempt is so serious that only a custodial penalty will suffice, the Court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt.

Due weight should be given to matters of mitigation such as genuine remorse, previous positive character and similar matters. Due weight should also be given to the impact of committal on persons other than the contemnor, such as children of vulnerable adults in their care. There should be a reduction for an early admission of the contempt to be calculated consistently with the approach set out in the Sentencing Council's Guidelines on Reduction in Sentence for a Guilty Plea.

Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. Usually, the Court will already have taken into account mitigating factors when setting the appropriate term such that there is no powerful factor making suspension appropriate, but a serious effect on others, such as children or vulnerable adults in the contemnor's care, may justify suspension”.

74. In *Hale v Tanner* [2000] EWCA Civ 5570, Hale LJ listed the following points relevant to committals in family cases:

“It is a common practice, and usually appropriate in view of the sensitivity of the circumstances of these cases, to take some other course other than imprisonment on the first occasion.

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.

Thirdly, 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.

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

Finally, the Court has to bear in mind the context. This may be aggravating or mitigating”.

75. In this case, I do consider that there are a number of features relating to AB's culpability and the harm caused which should impact on the sanction: firstly, the deliberate flouting of court orders; secondly, the risk to the child; thirdly, the continued failure to remove the postings despite repeated requests; fourthly, the deliberate non-engagement by the mother in the court process and apparent non-acceptance of the authority of the Court; fifthly, the fact that I am satisfied that these postings have been made to undermine administration of justice and its

integrity; and finally, the fact that there is no evidence that AB is repentant or remorseful or has any intention of abiding by court orders.

76. There are no mitigating factors put forward on behalf of the mother. On her behalf, I can say that I have no evidence before me of any other offences of a similar kind. Secondly, I take due account of the distressing nature of care proceedings, although I will comment that neither of those features differs greatly from other care cases before the Court.
77. I have also taken account of the fact that this mother is some 20 or 21 weeks pregnant although, as Ms Keniston pointed out, this is no bar to a sentence of imprisonment being made.
78. I also take account of the concerns expressed by the probation officer in relation to the mother's mental health, although I do have some concerns about accepting that as presented because it appears that this is a mother who can engage when she wants to. I am told during the course of submissions that she has had email contact with the father about these proceedings.
79. In the light of all these factors, I adopt what is said by Cobb J in the case which I have already referred:

“The prohibition on recording family proceedings and on publishing certain information relating to family proceedings is vital to the integrity of family proceedings. The deliberate defiance of the law prohibiting recording and publication of family proceedings involving children must therefore result in substantial punishment. The defendant, and those who support him (some of whom are observing this hearing on video-link), or who otherwise come to know of these proceedings and outcome, should be under no delusion in relation to this”.
80. I accept what was said by Hale LJ that it is unusual to impose a sentence of imprisonment on the first occasion, but it is also very unusual to have a case like this where the contemnor has completely failed to engage with the court process and has put forward no kind of defence or argument in mitigation.
81. I have considered in this case whether a fine would be a sufficient sanction, but I do not consider it would be. I have no information available to me about what level of fine might amount to any appropriate sanction in this case and I am not satisfied that imposing a fine would achieve the dual purposes identified by Hale LJ of marking disapproval or securing compliance in the future.
82. Sadly, because of AB's conduct in this case, I consider I have no alternative but to impose a custodial sentence. Had AB engaged, had she taken down the posts, had she displayed any remorse or had she unequivocally accepted the authority of this Court, I might have considered that a lesser sanction such as a fine or a suspension of a sentence might be effective in ensuring the aims of these proceedings.

83. However, in this case, I am satisfied that only an immediate custodial sentence will do. The sentence I am imposing is the shortest possible, bearing in mind the seriousness of the contempt and the extent of my powers.

84. For the finding that she breached the terms of the orders dated 11 and 22 March 2024 which ordered her not to publish any material intended to or likely to identify the child the subject of these proceedings, and has published such information, the sentence I am imposing is one of two months' imprisonment. I am satisfied that this sentence is just and proportionate in the circumstances of this case.

End of Judgment.

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This transcript has been approved by the judge.

