IN THE READING FAMILY COURT

Case No. BV19D06471

Neutral Citation Number: [2024] EWFC 285 (B)

Courtroom No. 2

160-163 Friar Street
Reading
RG1 1HE

Tuesday, 27th August 2024

Before:
HIS HONOUR JUDGE SWEENEY

B E T W E E N:

DICKASON

and

DICKASON

MS CORRIGAN (Solicitor) appeared on behalf of the Applicant
NO APPEARANCE by or on behalf of the Respondent

JUDGMENT

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 SWEENEY:

Introduction

1. I am dealing today with an application for a judgment summons in the case of *Dickason v Dickason*. Mrs Dickason attends before me with Ms Corrigan and Mr Dickason is not here for reasons I will explain in a moment. This is an oral judgment and necessarily, in those circumstances, does not carry with it the craft, precision and clarity that would (I hope) apply if it were a reserved judgment. I am nonetheless clear as to the conclusions that I reach, however imperfectly expressed.

2. The first question is whether the hearing today should proceed in Mr Dickason's absence or should be adjourned. In order to address that question, it is important to go through the fairly lengthy history of this matter to explain why the Court takes the course it does.

Background

3. I start with the final hearing in the financial remedy proceedings which took place in December 2021 before me. On that occasion, as I recorded in the recitals to the order (p4), Mr Dickason did not attend this hearing. I also noted that, similarly, he had not complied with any directions in preparation for that hearing. As Mrs Dickason notes in one of her subsequent affidavits that I will come to, Mr Dickason consistently failed to comply with orders in those proceedings, including orders with a penal notice attached to them, as the final order that I made in those financial remedy proceedings itself did.

4. Accordingly, the first point of note is the non-engagement by Mr Dickason in the financial remedy proceedings, which, as the history in my view demonstrates, is a theme that runs throughout these proceedings and one that Mrs Dickason, through Ms Corrigan, says, and I accept, that if the Court does nothing, the reality is Mr Dickason is never going to turn up before the Court and thus the orders I made will thus never bear fruit going forward.

5. I record that I have never seen Mr Dickason despite having had this case before me on a number of occasions. I am doubtful that I ever will. There will always, in my experience, be a reason for his non-attendance.

6. The second relevant part of my order of 6 December 2021 is that Mr Dickason made an application to adjourn the hearing by an email from his partner, Ms Farmer, sent at 7.15am on 2 December 2021 (recital number 9). That was sent on the second day of the final hearing; my recollection is that it was a medical reason although it is a long time ago now so I would not, to use a colloquialism, "bet my life on it". However, the Court did not accede to the application, drew adverse inferences against Mr Dickason and made an order, amongst other things, for him to pay periodical payments at a rate of £1,500 per month, payable monthly, in advance, by standing order - paragraph 15 of the order. I am told that a standing order has never been set up and I accept that.

7. I move on from that order to 17 February 2022 when there was an application by Mrs Dickason for the forms which were required to be completed to progress the sale of the former matrimonial home forms to be signed by the Court as, again, as Mr Dickason had failed to engage with completing those forms. There was a hearing before Deputy District Judge Child which Mr Dickason failed to attend and Deputy District Judge Child made an order that Ms Corrigan could sign the forms on Mr Dickason's behalf. That is dated 16 March 2022 (page 14).

8. I come next to 11 January 2023 when Mrs Dickason made an application for enforcement due to non-payment of the spousal maintenance (page 17). On 20 March 2023, that application was struck out for the reasons that Mrs Dickason explains in her witness statement (page 88) - essentially, Mr Dickason was not attending and Mrs Dickason was advised, in the circumstances, innocently and erroneously I accept, that she did not need to attend. As nobody attended, the Court struck the enforcement application out.

9. Mrs Dickason recounts in a later witness statement that I will come to that in May 2023, Mr Dickason stopped paying maintenance and has paid nothing since,. On 4 July 2023, Mrs Dickason issued a second application for enforcement (page 29), the arrears at that stage being £4,500. Payments for May, June and July were then outstanding.

10. That resulted, in due course, in an interim third-party debt order being made by HHJ Gibbons which was subsequently listed for hearing as to whether the interim order should become a final third-party debt order. In fact, at the hearing of the final third-party debt order on 14 March 2024, HHJ Gibbons was erroneously informed by Investec that Mr

Dickason's account with them was in debit balance and, in those circumstances, HHJ Gibbons understandably discharged the interim third-party debt order.

11. The Court received an email on 12 August 2024 advising that the information received by the court from Investec was in error and, in fact, a payment had been made into Mr Dickason's account on 12 February 2024 which caused it to have a positive balance of £4,676.51, which credit balance, I understand, remains intact having been frozen by Investec.

12. No doubt, had HHJ Gibbons known that in fact there was a credit rather than a negative balance on Mr Dickason's account, that would have influenced her decision to discharge the interim third-party debt order and it seems to me, would have been likely to have resulted in her making a final third-party debt order. Certainly, in any event, the decision to discharge it would have required more serious consideration than HHJ Gibbons understandably gave on that occasion on the information then before her.

13. Given the erroneous information supplied by Investec, and I accept that that was an innocent mistake on their part, it seems to me that the interim third-party debt order, effectively, needs to be revived so that the question of what should happen to those funds held by Investec and whether they should be paid to Mrs Dickason in partial satisfaction of the sum owed to her is an issue that needs to be considered. I will therefore today make an interim third-party debt order on Mrs Corrigan's undertaking to forthwith issue an application for a third-party debt order.

14. It seems to me that it would be wholly wrong, particularly given his approach to these proceedings, to provide Mr Dickason with the opportunity to seek to defeat any such application by speedily withdrawing those monies pending Ms Dickason issuing an application and an order being made and served upon the bank. That would, in my view, be wholly inappropriate, particularly when the error is Investec's, not Mrs Dickason's. Accordingly, I have no doubt that at least preserving the position by making an interim third-party debt order is appropriate. However, that is an aside for present purposes.

15. Accordingly, I come back to 10 January 2024 when Mrs Dickason issued an application for, I think then, Mr Dickason's committal for contempt of Court (page 36). In her affidavit in

support of the same (page 59), Mrs Dickason, as I earlier drew brief attention to, pointed out that Mr Dickason did not attend the final hearing of the financial remedy proceedings; that numerous orders were made by the Court with penal notices attached, all of which were ignored by Mr Dickason and also made reference to the final order on 6 December 2021 which bore a penal notice.

16. She then set out the payments made by Mr Dickason and that the payments had stopped on 14 April 2023. Accordingly, that was, by my calculation, some 9 months before that witness statement was served. Mrs Dickason also drew attention in her affidavit to various correspondence having been sent by her solicitor, Ms Corrigan, to Mr Dickason all of which, she said, had been ignored by Mr Dickason, again demonstrating a theme of his ignoring the proceedings, failing to engage and, it seems to me, doing all he can to evade the Court taking action against him. Accordingly, that was how matters were at that time.

17. On 11 January 2024, the process server (his statement at paragraph 6), noted that on 10 January 2024, he had attended at Mr Dickason's home address. There was no car there at that time. He went to the next-door neighbour who confirmed that "If the car's not there, they're not there". The process server then returned later that day when a vehicle was there. He records at paragraph 7 that he met with an adult female whom he knew from past service attempts cohabited at the property with Mr Dickason and so, I'm sure, was Ms Farmer. He noted that Ms Farmer in what appeared to him to be an evasive manner stated that Mr Dickason was not present and was not expected to return until very late that same evening or, perhaps, even the next day. The process server records at paragraph 8 that he suspected that the respondent was present but was possibly avoiding service, particularly because he had only ever seen one car parked at the property before when Mr Dickason had been present and that was the same vehicle parked, to the best of his recollection, on that occasion.

18. Then we come next, chronologically, to HHJ Gibbon's order made on 12 January 2024, when she recorded that she was satisfied the respondent was served with the order of District Judge Ali dated 7 December compelling his attendance at the court on 12 January. She noted that he had not attended court on 7 December 2023 or on 12 January 2024, again, demonstrating the theme of Mr Dickason failing to attend at court. There is no record of any

explanation offered by him for his non-attendance on that occasion and so HHJ Gibbons made the interim third-party debt order I have referred to.

19. On 16 January 2024, Mrs Dickason issued her application for a judgment summons and filed a witness statement in support which noted (page 88) the final order made, that Mr Dickason had not sought to appeal or vary the same and confirms that the last payment received was on 14 April 2023. She notes, again, correspondence had been sent by her solicitors to Mr Dickason and he had failed to respond on every occasion. She also notes at paragraph nine that Mr Dickason had been making payments to their son who was studying veterinary medicine at the University of Liverpool and had recently told their son that he would shortly pay the next year's tuition fees in full.

20. Mrs Dickason goes on to note, at paragraph 11, that during the financial remedy proceedings, Mr Dickason's bank statements showed he transferred £165,000 to Ms Farmer's account. She also noted, again, Mr Dickason's offer to meet the parties' son's tuition fees in one lump sum and expressed the view that it was her firm belief that Mr Dickason's income remained the same as at the final hearing when I concluded that his net income was £154,000 per annum: £13,000 per month or £7,500 per month without taking account of bonuses. On any view, a significant sum.

21. Mrs Dickason noted that Mr Dickason was self-employed and had for several years been living with Ms Farmer in a property owned by her and so other avenues for enforcement were not open to Mrs Dickason which is why she was bringing the application for a judgment summons. What she seeks, understandably, is ultimately not Mr Dickason's imprisonment but simply his payment of the monies that he has been ordered to pay to her.

22. On 16 May 2024, the matter came before me (page 53) when, again, Mr Dickason did not appear but, as I noted in the order, emailed the Court at 08:41 on 16 May, the morning of the hearing, advising that he was unable to attend. The hearing could not have proceeded as, it had been listed erroneously by CVP but, I'm sure, Mr Dickason did not know that. He simply said that he was unable to attend the hearing by CVP but gave no reason why he was unable to attend. The Court's email asking him to advise why he was unable to attend was not replied to at the time nor, indeed, has it ever been replied to subsequently so far as I am aware, having looked at the Court file.

23. Accordingly, the matter was adjourned to 26 June 2024. Before then, there was an attempt at service by a process server. At paragraph three his witness statement of 24 June 2024, the process server notes meeting with a lady whom he describes as "Mr Dickason's wife" - again I'm sure Ms Farmer - "who stated he's away saying 'You'll just have to come back another day', whilst shrugging her shoulders. I tried to engage with her but she was not forthcoming and was very unhelpful".

24. That is, in my view, consistent with the theme of Mr Dickason and those he is close to not being cooperative with these proceedings. The matter then came before me on 26 June (pages 56 and 57) which was the last hearing before today's.

25. On that occasion, again, as I recorded at length in the recitals so as to set out the history (I note Mr Dickason is erroneously referred to as the applicant in the third recital), I accepted that Mr Dickason had been emailed on 5 June with notice of the hearing on 26 June to an email address that was known to be used by him because it was the same email address from which he emailed the Court.

26. Mr Dickason, I noted, had emailed the court on 26 June, the morning of the hearing, saying that he had returned from South Africa some 11 days before the hearing and was currently travelling. He did not say where he had been travelling. He said that he had not received any paperwork and, therefore, had been unable to arrange representation or make arrangements with the Court and said that he would "…secure representation next week and be in touch with the Court to resolve the matter as soon as possible". That is what he told the Court on that occasion.

27. I note that I did not accept his account that he had not received the paperwork. I did not accept that he had not had sufficient opportunity to arrange representation and noted his history of repeated non-attendance, his late notification of the same to the Court which, again, is relevant to today, and the apparent attempt to evade attendance at court. I, therefore, said that I had adjourned the hearing that day providing Mr Dickason with what, in my mind, was a final chance to enable him to fulfil his expressed intention to resolve the matter as soon as possible, and made clear that it would necessitate his immediate and, thereafter, prompt engagement with Mrs Dickason's solicitors and said that he "MUST"

attend the next hearing and, in the event that he failed to, the court would proceed with the matter and make such orders as it thought appropriate. Accordingly, I directed that he must attend in person today (pages 56 and 57).

28. I note that my order was personally served upon Mr Dickason on 1 August 2024 and there is a certificate of personal service in the bundle from a process server.

29. Against that background and the history of Mr Dickason's repeated non-attendance and repeated late notification of reasons for his non-attendance, shortly before this hearing was due to commence at 10.00am, I enquired of my clerk as to whether any emails had been received from Mr Dickason as I anticipated one would come from him setting out that he was not present here today and a reason for his non-attendance, that being entirely consistent with the history. I noted, having read the bundle, that his expressed intention to communicate with Mrs Dickason's solicitors to resolve matters had not come to fruition. Mrs Corrigan had had no communications from Mr Dickason herself, she had advised in her position statement, nor had any lawyers been in contact with her or any payments made.

30. Therefore, Mr Dickason's apology for his non-attendance in June and his expressed intention to arrange representation and resolve the matter had not come to fruition; a theme that was, perhaps, not unexpected but sad and regrettable.

31. As noted above, just before the hearing was due to commence, there was no email, but at 10.05am, probably, given the history of this matter, to no one's surprise, an email was received from Ms Farmer in which she said: "Good morning. Steve fell and hit his head this morning and has been taken into Swindon Hospital by ambulance. I do not have the contact details of his solicitor and so could you please let them know too".

32. It is worthy of note in that regard that Ms Farmer does not attach any confirming details that Mr Dickason has been taken to hospital and I have some concerns as to the veracity of that because she refers to contact details of his solicitor. There is no solicitor in attendance before me today. Mr Dickason is aware of the hearing, of course, because he has been personally served with notice of it and one would reasonably anticipate that any lawyer instructed by him would attend in these circumstances. Nor has Mrs Corrigan received any such contact from a solicitor instructed on his behalf. Accordingly, in my judgment, it is

extremely unlikely that, in fact, he has any solicitor and the suggestion or implication that he has a solicitor is, I am satisfied, untrue.

33. As to whether Mr Dickason has been taken to Swindon Hospital by ambulance - I accept it is possible but certainly, I am extremely sceptical that this is other than an engineered attempt by Mr Dickason, given the history of this matter, to put forward a reason why he cannot attend today.

34. He has seen my last order, knows that he has not done as he said he would do in his email of 26 June sent in relation to the hearing that day (paragraph 26 above), knows that I have said he must attend the hearing and that I will proceed with the matter and has recognised realistically that if he simply does not attend and says he is travelling or a similar excuse to those he has used before, the likelihood is that the Court will proceed. Instead, he has to use another colloquialism, "ramped matters up" and calculated that saying that he has gone to hospital by ambulance will compel the Court to adjourn the matter.

35. However, I ask myself, firstly, am I satisfied that he cannot attend the court today? There is no evidence beyond Ms Farmer's assertion that he has hit his head this morning. Of course, this morning technically commences at 00:01. I have no information as to what time he went to hospital, when he was released, what was found and no medical confirmation that he has gone there; no medical confirmation that he is not fit to attend subsequently.

36. Secondly, I ask myself, given the history, if I were to adjourn the matter today - and I of course remind myself of the overriding objective and the obligation on the Court to consider the allocation of court resources - will that be productive and result in Mr Dickason attending the next hearing before me.

37. Each time this matter is listed for a hearing, it of course uses court resources and means that those resources are not, therefore, allocated to other deserving cases because they are spent on this case, only for Mr Dickason not to attend. I am as certain as I can be that if were to adjourn this matter to another date for Mr Dickason to attend that hearing, he will not attend. The history of this matter makes it abundantly clear he does not attend hearings. He does not engage with correspondence. He says he will do so and he does not.

38. Accordingly, I am entirely sure that if I were to adjourn the matter he will not attend. To adjourn again would thus simply be a yet further waste of court resources to no one's benefit at all. There will always be another excuse, another reason for his non-attendance. The court is effectively faced with a choice which Mr Dickason has presented to it. It goes ahead in Mr Dickason's absence or it adjourns the hearing confidently knowing that it will have to do do so the next time too and so it will continue, a stance which is akin to the court throwing its hands in the air and giving up. On this scenario, the court will effectively have acceded to Mr Dickason's evasion of its processes and allowed them to succeed, That cannot, in my view, be an appropriate exercise of the court's powers.

39. That being so, in my view, the appropriate course is to proceed with Mrs Dickason's application for a judgement summons today.

40. If, of course, Mr Dickason did attend hospital and was, in consequence, unable to come before me today, he can apply to set aside my order. That will necessarily require his attendance before the Court in order to pursue that application, a course which will not only enable the Court to hear any application to set aside the order that I will, in due course, make today, but also, given his attendance, post setting aside such an order if appropriate to proceed with the substantive application.

41. It therefore seems to me that it is appropriate to proceed on that basis, whilst, of course, making clear that Mr Dickason has liberty to apply to set aside the orders I make today if there is a good reason for his non-attendance, He will, of course, have to provide documentation in support if he asserts that he was, indeed, unable to attend today for a good reason.

The application

42. Accordingly, that being so, I ask myself what is the appropriate course to take. Before me is the application for the judgment summons. It seems to me, as I have indicated, that it is appropriate for me to proceed today, rather than adjourning this matter and that is what I am going to do. In order to make an order against Mr Dickason, I must be satisfied, beyond reasonable doubt, that the relevant elements are proved.

43. The first is that Mr Dickason was required to pay a sum to the applicant under a Court order which is of a type that may be enforced by a judgment summons. An order for periodical payments is such an order and I am satisfied beyond reasonable doubt that Mr Dickason was, indeed, required to pay that sum in my order made on 6 December 2021. He was ordered to pay £1,500 per calendar month and I am satisfied, beyond reasonable doubt, that such an order is capable of enforcement by judgment summons.

44. Secondly, I have to be satisfied that he has defaulted in his obligations under the Court order and remains in default. Again, Mrs Dickason has produced a sworn statement that Mr Dickason has, indeed, not paid since April 2023 and confirms that to be the case and I accept her evidence in that regard. I remind myself that the Court of Appeal in *Haskell v Haskell* [2021] EWCA Civ 1295 confirmed that there is no rule requiring the applicant to provide further explicit evidence at the time of the committal hearing that the position had not changed since the judgment summons was issued. The Court was entitled to proceed on the basis that the position remained the same unless there was reason to believe to the contrary. There is no reason to believe to the contrary in this case and I am satisfied that Mr Dickason remains in default under the Court order.

45. The third question is whether I am satisfied that Mr Dickason has, since the date of the relevant judgment or order, had the means to pay the sum due. In this regard, it is relevant, firstly, that Mr Dickason was found by me to have an income, with bonuses, of £13,500 per month and without bonuses of £7,500 per month at the time of the financial remedies order. I am satisfied, beyond reasonable doubt that he did, indeed, have that income. I am fortified in that conclusion by the fact that he did not seek to challenge that conclusion by attending the final financial remedy hearing, by subsequently seeking to set aside that order or appealing that order. Accordingly, I am sure that he had the means to pay the sum awarded at the time I made the final financial remedy order.

46. Mrs Dickason has told me in her witness statement in support of her application for a judgment summons that during the final financial remedy proceedings, Mr Dickason had paid some £165,000 into Ms Farmer's account (a transaction which gave rise to many unanswered questions given Mr Dickason's non-attendance at the final hearing), indicating he had substantial monies available to him. She made reference to Mr Dickason having indicated, at the time of her witness statement, that he would shortly pay a lump sum to clear

the parties' son's tuition fees for the next year of his University veterinary medicine course again indicating that he had the means to do. She also expressed the firm belief that Mr Dickason's income remained as I had previously found it to be per above.

47. Since the making of that final order, Mr Dickason has again made no attempts to apply to the court to vary the order for periodical payments on the basis that his income has changed or indeed to enter into correspondence with Mrs Corrigan, Mrs Dickason's solicitor, to say that the reason for non-payment is because of a change of financial circumstances.

48. It seems to me that in those circumstances, against a background of his financial circumstances as they were during the financial remedy proceedings, as they are demonstrated by his willingness to pay sums to satisfy the parties' son's university tuition fees, in circumstances where Mr Dickason has made no application to vary the periodical payments order and has not entered into any correspondence with Mrs Dickason's solicitor sums suggesting an inability to pay the sums ordered, that the Court is entitled to conclude that Mr Dickason has the means to pay the monthly periodical payments due to Mrs Dickason, particularly given that he was doing so until April 2023 and there is no indication of any change in his circumstances since then.

49. Further or alternatively, I also ask myself whether, against the background of his having consistently failed to attend at court and endeavoured to evade the court process, as I'm satisfied he has, in circumstances where has made no application to vary the court's order or entered into correspondence regarding the same, indeed, has remained silent save for communicating an inability to attend court on each occasion, that it is appropriate to draw an adverse inference and to conclude that he continues to have the ability to do so, and the reason he has not attended before the Court is because he has no answer to the application that he has means to make the payment but is simply wilfully refusing to do so.

50. I am conscious that there is a conflict in the authorities as to whether, essentially, once a case to answer is established, an evidential burden is cast upon a debtor to provide evidence that they do not have the means or whether that is not the case, as the Court of Appeal suggested in *Prest v Prest* [2015] EWCA Civ 714. It seems to me that it is not strictly necessary for me to resolve that conflict (I am of course conscious that the decisions in question are those of the higher courts) because it is, in my judgement, appropriate to draw

an adverse inference in this case against Mr Dickason. That is what I do in the circumstances.

51. Accordingly, I am satisfied that that third limb is made out, namely Mr Dickason has had the means to pay the maintenance due and has neglected or refused to pay the sum due. I accept Mrs Dickason's evidence that he has, indeed, refused to pay those sums.

52. Accordingly, the elements necessary to establish the power to make an order for a judgment summons are, in my judgement, satisfied in this case. I make clear that I am satisfied to the criminal standard, beyond reasonable doubt, that all those necessary elements are proved.

53. I therefore ask myself what is the appropriate order to make in those circumstances. I am conscious that given Mr Dickason is not before the Court, the maximum penalty the Court can impose is a sentence of imprisonment of 14 days. That can be immediate imprisonment or there can be an order for his suspended committal. Given the circumstances in which he does not appear before me today and, ultimately, what Mrs Dickason's seeks is not Mr Dickason's imprisonment but payment of the sums due to her, it seems to me the appropriate course is to make an order for his suspended committal to prison, to be suspended on condition that he pays the outstanding sum due to Mrs Dickason of £24,163 by 28 days from today, 24 September by my calculation.

54. That, it seems to me, has two advantages: firstly, if Mr Dickason complies, then Mrs Dickason will receive her monies which is ultimately what she wants. Secondly, if there is, indeed, a good reason for Mr Dickason's non-attendance before me today - and I have already indicated that I am not satisfied there is on the evidence before me - he can apply to set aside my order. Of course, if he produces good reason for his non-attendance, then the Court will listen to that and consider whether, indeed, my order should be set aside. As I have noted above, if he pursues that course, that will necessitate his attendance before the Court so that will help the Court in dealing with the substantive matter in any event. Accordingly, it seems to me that is an appropriate course.

55. Accordingly, I will make an order for Mr Dickason's suspended committal to prison for a period of 14 days, suspended on condition that he pays the outstanding sum due to Mrs Dickason of £24,163 on or before 4.00pm on 24 September 2024. If he does not pay that

sum then, of course, in the usual way, Mrs Dickason will have to apply if she deems it appropriate to do so for the suspension to be lifted and the committal to become effective.

56. I also make an interim third-party debt order against Investec on Mrs Corrigan's undertaking to issue an application for such an order forthwith.

57. That is my judgment today.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
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Acolad UK Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.