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IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION



[2023] EWHC 3509 (Fam)

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Monday, 21 August 2023

Before:

HER HONOUR JUDGE HARRIS

**(In Public)**

BETWEEN:

FLORA ABDUL SATER

Applicant

- and -

SAMER ABDUL SATER

Respondent

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MR M BASI (instructed by Dawson Cornwell) appeared on behalf of the Applicant.

THE RESPONDENT did not appear and was not represented.

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**J U D G M E N T**

HER HONOUR JUDGE HARRIS:

- 1 This is the matter of Abdul Sater v Abdul Sater. By way of background to these proceedings there are three children who are the subject of the mother's applications; William who is aged seven, Alexander aged five, and Jasmine aged three.
- 2 Their mother is Mrs Flora Abdul Sater who is present in court and represented today by counsel, Mr Basi.
- 3 Their father is the respondent to the applications, Mr Samer Abdul Sater. He is not present physically in court despite having been ordered so to attend. A link has been sent to him to facilitate remote attendance. He has not joined that link either. He is not legally represented before me.
- 4 By way of background, the application for determination today is for committal on the alleged breach of five return orders, whereby the respondent father is alleged to have failed to return the three children, who are the subject of the application, to this jurisdiction as ordered on five occasions by the High Court from where they are currently residing in Lebanon.
- 5 The proceedings before the High Court were issued on 6 October of last year. That followed the children being wrongfully removed from this jurisdiction to the Lebanon on 17 June 2022, when the mother was temporarily out of this jurisdiction on a work commitment.
- 6 As noted, proceedings were issued on 6 October 2022. There was an urgent without notice hearing the same day before (inaudible) J. The children were made wards of the court. There was a provisional finding that the children were habitually resident in this jurisdiction at the date of removal.
- 7 On 18 November of last year permission was granted generally to serve the father by way of email and WhatsApp, rather than by way of personal service. The father was served with the substantive proceedings on 29 November and he did attend a hearing before Russell J on 9 December, when the first return order was made. The father in preparation for that hearing had filed a very brief statement in which he put his position that he believed the mother to have consented to the children's removal. Russell J made a return order which was served on the father on 14 December.
- 8 In the meantime it is understood that on 21 November the father has issued proceedings in Lebanon seeking custody of the children and for them to be placed in his sole care.
- 9 There was then a number of subsequent hearings before various High Court judges. There was a further hearing before Russell J on 20 December of last year. The father did not attend. A further return order was made providing that the father was to immediately return the children, but in any event no later than 6 January. The father was served with that order on 22 December.
- 10 The father did attend again a hearing before Russell J on 10 January. At that hearing he indicated by way of recital that he would be able to return the children by 26 January. A further return order was made reflecting that recital that the children were to be returned immediately, but in any event no later than 26 January 2023. The father was served with that order on 13 January. Again the children were not returned.

- 11 There was a further hearing in March of this year. The father did not attend at that hearing. Again a further order was made by Russell J that the children were to be returned immediately, but in any event no later than 28 March. The father was served with that order on 21 March.
- 12 Again in the meantime the father, it is understood, had acquired a temporary custody order in Lebanon on 26 January of this year.
- 13 There was then a further hearing before Francis J on 12 May of this year. Again the children have not been returned. A further return order was made, the order making clear that there was an ongoing and continuing obligation on the father to return the children to this jurisdiction, with a return order that they be returned no later than 19 May 2023. Again the children have not been returned.
- 14 Committal proceedings were issued by the mother, after careful consideration, on 14 June 2023. There was a significant hearing before Peel J on 5 July. There was a further return order made, again with clear provision that that was an ongoing obligation on the respondent father with a return date specified of 12 July 2023. Again that has not been complied with.
- 15 I say that was a significant hearing because at that hearing Peel J dealt in detail with the committal application and the various procedural requirements.
- 16 In terms of those procedural requirements, provision was made before Peel J, explicitly on the face of the order, that rather than the usual requirement of personal service, that the committal application, particulars of breach, supporting affidavit and the relevant court orders, including notice of today's hearing, could be served by way of email.
- 17 An amended application was served by email on 19 July. Relevant court orders had been served on 6 July and the bundle for today's hearing before me was served by email on 14 August. The solicitors instructing Mr Basi were able to evidence that bundle having been accessed by the respondent father the same day.
- 18 On the face of the order of Peel J he also sets out various advice to the respondent father in terms of his rights within any committal application. That includes his entitlement, but not requirement, to file written evidence in response, reminding him of his right to remain silent, advising him of the importance of seeking legal advice and his entitlement to legal aid, given the quasi-criminal nature of these proceedings and their complexity. All of those matters are set out on the face of the order to assist the father.
- 19 The first matter today, which calls for the court's determination, is whether or not this court should proceed in the absence of the respondent father. I am urged on behalf of the applicant mother to proceed in his absence, applying the relevant factors and considerations set out in the 2015 authority of *Sanchez v Pawel Oboz & Anor* [2015] EWHC 235 (Fam).
- 20 The father, as I have said, was ordered to attend in person. He has failed to do so. He has already been sent a hearing link, which has remained live throughout this hearing, and he has failed to join that hearing link remotely from Lebanon.
- 21 I am satisfied that he has been served properly in accordance with the order of Peel J with notice of today's hearing, is aware of the seriousness of today's hearing and has been warned, again explicitly on the face of the order, that the court may proceed in his absence.

- 22 In determining whether to proceed today, I remind myself of the very serious nature of committal proceedings, being quasi criminal in nature, and the respondent facing a potential sentence of imprisonment if he is proved to have breached the court's orders. Therefore I remind myself that the court must proceed with the utmost caution before proceeding in the absence of the respondent, who is of course in quasi criminal proceedings of this nature entitled to a fair and public hearing.
- 23 However, I have to weigh against those matters, the behaviours of the respondent in terms of his disrespect and non-compliance, which are now persistent in nature, with the orders of this court.
- 24 As I have noted I am satisfied that he has been served, not just with the application for committal and supporting papers, but the particulars of breach, the affidavit in support and the order of Peel J.
- 25 I am satisfied that he has been facilitated in his attendance today by way of a remote hearing link and therefore that he has chosen not to engage with this process.
- 26 The court has been provided with no reason or explanation for his non-attendance before me today. I also have to weigh the persistent history now of non-engagement by Mr Abdul Sater with these court proceedings. He has attended just two hearings before the High Court, the last of which I understand was in January of this year.
- 27 I therefore have to weigh in terms of the overriding objective what purpose there would be today in adjourning to provide a further opportunity for Mr Abdul Sater to attend. I am satisfied that there is no realistic prospect if I were to adjourn that Mr Abdul Sater would attend and engage in this process on any adjourned hearing date.
- 28 Furthermore, I have to consider within the overriding objective not just, of course, the need to ensure a fair and just process for Mr Abdul Sater but the impact of further delay on the children, who are the subject of this application and for whom proceedings before this court have now been ongoing for some ten months without any clear outcome in terms of their welfare.
- 29 I also have to weigh and balance within the overriding objective the impact on the applicant mother who has now been seeking the return of these children before the High Court since October of last year. Again despite her best efforts she is no further forward in achieving their return to this jurisdiction and therefore is driven to seeking all possible avenues, including within the Lebanon. Further delay is further compromising her access to justice.
- 30 So bearing in mind all of those matters and weighing those considerations I am satisfied, in accordance with Part 1 of the Family Procedure Rules and the overriding objective, that this court should proceed in the absence of Mr Abdul Sater this morning.
- 31 I am satisfied that he has chosen to absent himself from these proceedings and therefore there is no prejudice or compromise in terms of his access to justice.
- 32 I therefore turn to the evidence which is before the court in support of the mother's application for committal for breach.
- 33 I have had before me, and have considered of course, the particulars of breach and the applicant's detailed affidavit in support. I have also had before me a full court bundle in which is evidenced such matters as good service on the respondent, as well as

correspondence between himself and those who the mother instructs – again which bear upon important matters of service – demonstrating his knowledge of these orders which he is alleged to have breached.

- 34 In the absence of Mr Abdul Sater, I have not heard any oral evidence today. The mother pursues her application on the basis of the written evidence and submissions, which have been made by counsel on her part.
- 35 I turn to the relevant law and the legal framework. This court must proceed in accordance with the detailed process set out in Part 37 of the Family Procedure Rules on an application for committal.
- 36 I remind myself that any alleged breach must be proved to the criminal standard of proof. This court must be sure beyond reasonable doubt of the breaches alleged, and I remind myself that the burden at all times rests upon the applicant to prove those breaches.
- 37 The father as respondent is under no legal obligation to file any evidence in response, having the right to silence. But as I have noted he has, in any event, failed to respond to the committal application. Nothing has been filed in response to it and no defence has been placed before the Court.
- 38 In approaching each alleged breach I remind myself that it is for the applicant to prove the deliberate disobedience with the court orders. I must be satisfied that Mr Abdul Sater knows the terms of each order, knowing precisely what was required of him, that he has acted in breach of those orders and he has been in knowledge of the facts which make his actions a breach. It is for the applicant to establish that he was able to comply with the court's orders.
- 39 I therefore turn to each of the particular allegations of breach as set out by the applicant in her evidence.
- 40 The first allegation of breach is that Mr Abdul Sater has breached the order of 9 December 2022 of Russell J. On that order of 9 December the children are clearly and unequivocally identified and a clear order is made that the children are to be returned to this jurisdiction by no later than 19 December 2022.
- 41 Permission to serve that order by email is again contained within the order of Russell J. It was served by way of email on 14 December 2022 and carries the clear penal notice setting out the potential consequences of breach.
- 42 The children were not returned to this jurisdiction.
- 43 I am therefore satisfied on the evidence before me on the criminal standard of proof beyond all reasonable doubt that that order has been breached by the respondent, Mr Abdul Sater, and he is in contempt of court. I make that finding against him.
- 44 I turn to the second allegation of breach, this being the order of 20 December 2022, again an order of Russell J. Again I am satisfied that that order sets out clearly and unequivocally the three children who are the subject of the return order and that the order sets out in clear and unequivocal terms that they must be returned to the jurisdiction of England and Wales by no later than 23.59 p.m. on 6 January 2023.

- 45 Again I am satisfied that that order was served on the respondent by way of email on 22 December 2022, and again I am satisfied that the children have not been returned to this jurisdiction.
- 46 Again I am therefore satisfied to the criminal standard of proof, I am sure beyond all reasonable doubt, that the father knowing the terms of that order has breached that order and I therefore find him to be in contempt of court.
- 47 I turn to the third allegation of breach, this being a breach of the order again of Russell J of 11 January 2023. Again I am satisfied that that order sets out clearly the subject children, who are the subject of the order, and the date by which they must be returned to this jurisdiction of England and Wales; that being 23.59 p.m. on 25 January 2023.
- 48 That order also provides on its face and in clear terms that it is for the respondent father to effect the return of the children in accordance with the order at para.10.
- 49 Again I am satisfied that that order was served via email on the respondent father on 13 January 2023. Again I am satisfied that he has not complied with that order and the children have not been returned to this jurisdiction. I therefore find that the civil standard of proof has shown beyond reasonable doubt that the father has breached that order and is therefore in contempt of court.
- 50 I turn to the fourth allegation of breach, the order of Russell J of 7 March 2023. Again I am satisfied that the three children are clearly and unequivocally identified on the face of that order. I am satisfied that it provides clearly that they are to be returned forthwith and, in any event, no later than 23.59 p.m. on 28 March 2023, and that the respondent must effect that immediate return himself.
- 51 Again I am satisfied that he has been served by email with that order, which again carries a penal notice with a warning of consequence of breach, on 21 March 2023.
- 52 Again I am satisfied to the criminal standard of proof that the children, having not been returned to the jurisdiction of England and Wales, that the respondent is in breach of that order and has therefore committed a contempt of court.
- 53 I note, by way of completeness, that the father, shortly prior to the hearing on 7 March 2023, emailed the mother's solicitors, from the email address where service is being effected, with a custody order from the courts in Lebanon. I am therefore satisfied that very shortly before that hearing before Russell J he was clearly actively using the email address by which service is being effected.
- 54 I turn to the fifth allegation of breach, that being an order of Francis J of 12 May 2023. Again that order clearly identifies the children and provides a clear date and time by which the children are to be returned to this jurisdiction of 19 May 2023. Again that order of Francis J sets out in very clear terms that the father is under a continuing obligation to return the children.
- 55 Again I am satisfied that that order was served by way of email on the father on 23 May, with a sealed copy.
- 56 Again I am satisfied that the father has failed to comply with the terms of that order to the criminal standard of proof, having not returned the children to this jurisdiction, and I therefore find he has breached the order and is in contempt of court.

- 57 Finally, there is a further alleged breach of the order of Peel J of 5 July of this year. That order again clearly sets out that the children are to be returned to this jurisdiction by 12 July 2023, and that the father remains under a continuing obligation to return the children.
- 58 Again I am satisfied that that order has been served on the father by way of email on 6 July 2023, that he has failed to comply with that order in that the children have not been returned to this jurisdiction. I therefore find to the criminal standard of proof that he has breached that order and is in contempt of court.
- 59 I therefore find that the respondent, Mr Abdul Sater, has breached six orders of the High Court and is in contempt of court on six separate occasions.
- 60 In the light of the Court's findings that Mr Abdul Sater is in contempt of this Court, the High Court of England and Wales, and that these children remain wards of this court, I therefore turn to the question of sentence.
- 61 I remind myself that the powers of this court, for a proven contempt, are up to a maximum of two years imprisonment and/or a limited fine. I remind myself of my powers to suspend any sentence that this court may pass.
- 62 In exercising those sentencing powers I remind myself of the purpose of a sentence for committal. It serves two core purposes; to emphasise the seriousness of the flouting of court orders and to indicate this court's significant disapproval of such contempt and disrespect for this court. Secondly, it is with the clear purpose to seek to secure the compliance of the individual in breach of these court's orders.
- 63 This court considers the conduct of the respondent father, Mr Abdul Sater, to be particularly serious. He is now, as I have found, in breach of six orders of this High Court with respect to children who have been wards of this court since October of last year. He has persistently failed to comply with orders for the return of the children to their habitual residence of England and Wales, and moreover, save for two hearings, has persistently failed to attend at hearings before the High Court.
- 64 I am therefore satisfied that the six breaches that I have found within that context are particularly serious and represent a deliberate flouting of this court's orders.
- 65 I am also of course in terms of his compliance with future orders anxious to make clear to the respondent father, Mr Abdul Sater, the importance of future compliance with this court's orders.
- 66 I am therefore going to sentence him for those six breaches towards the upper end of my powers and I sentence him to a period of imprisonment of 18 months.
- 67 I do, however, pursuant to my powers, suspend that order for imprisonment. I do so for a period of six months and if Mr Abdul Sater complies now with the return order that I am to make he will of course not face serving that sentence of imprisonment.
- 68 I therefore suspend it for six months.
- 69 I make a further return order that the three children, William, Alexander and Jasmine, are to be returned to this jurisdiction of England and Wales by 23.59 p.m. in a period of no less

than eight weeks. Although the order I make will be for immediate return and a continuing order beyond that eight-week deadline.

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**CERTIFICATE**

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This transcript has been approved by the Judge.