Neutral Citation Number: [2024] EWHC 2440 (Fam)

Case No: FD23P00126

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/09/2024

Before :

MR JUSTICE PEEL

- -

Between :

CHAIMAE CHAT KAHA	**Applicant**
- and -	
ADIL LAHMER	**Respondent**

- -
- -

Liz Andrews (instructed by **Duncan Lewis Solicitors**) for the **Applicant**
Gemma Lindfield (instructed by **Anthony Louca Solicitors**) for the **Respondent**

Hearing date: 25 September 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 27 September 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 :

1. I have found F to be in breach of the order of Sir Jonathan Cohen dated 15 April 2024 as follows:

   i) Para 17 in that he did not procure V's return to this jurisdiction by 7 May 2024.

   ii) The first sentence of para 18 in that he did not purchase flight tickets and send copies to M's solicitors by 29 April 2024.

   iii) Para 21 in that he did not arrange indirect contact three times per week.

2. My judgment on the committal application was sent in draft form to the parties on Friday 20 September after a hearing on 17 September. I indicated to the parties that at today's hearing (on 25 September 2024) I would hear mitigation before considering sentence.

3. I have wide powers of sanction **(FPR r.37.4 & r.37.9(1) FPR 2010**); the precise form of sanction is within the discretion of the court. 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. 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 37.28 FPR 2010).**

4. 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.
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> 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.

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."

5. I have in mind also the helpful guidance given by Nicklin J in **Oliver v Shaikh [2020] EWHC 2658 (QB)** (at [14]-[21]), wherein he referred to the objects of the sanction being: (1) to punish the historic breach of the court's order by the contemnor; and (2) to secure future compliance with the order. He added at [17](iii):

> "As with any sentence of imprisonment, that sanction should only be imposed where the Court is satisfied that the contemnor's conduct is so serious that no other penalty is

> appropriate. It is a measure of last resort. A suspended prison sentence, equally, is still a prison sentence. It is not to be regarded as a lesser form of punishment. A sentence of imprisonment must not be imposed because the circumstances of the contemnor mean that he will be unable to pay a fine. A sentence of imprisonment may well be appropriate where there has been a serious and deliberate flouting of the Court's order".

And later at [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."

6. Finally, I have been referred to **Slade v Slade [2009] EWCA Civ 748** as authority for the proposition that it is good practice for the court which imposes a sentence of imprisonment for contempt always expressly to ask itself in judgment whether the sentence might properly be suspended, and that the court should take into account other proceedings arising out of the same conduct (for example in the criminal courts) which might lead to separate punishment.

7. I consider there is very little mitigation to be said for F. This is, as his counsel rightly submitted, the first time he has been found in contempt of court. On the other hand, F has resolutely refused to comply with court orders, and has made it clear throughout that he would not comply with any order requiring him to return V to this country. The proceedings have been lengthy and, for M, draining and stressful. She has not seen V in person since he was wrongfully removed two and a half years ago. V is not being brought up by either of his parents due to F's actions in stranding him in Algeria. F's evidence to judges of this Division has been held to be unsatisfactory. He shows no remorse for his actions, or insight into the impact upon V who has been deprived of the society of his parents. He makes no proposals as to how V might be returned. He continues to say, even today, that he cannot procure V's return, although the court has found to the contrary. He has enlisted members of his family to assist him in his determination to thwart M. I take into account that he has recently been charged with child abduction but in my judgment I should (whilst not ignoring the criminal proceedings) make a determination in this contempt application which reflects (a) his failure to comply with court orders and (b) the desirability of securing the return of V to this country.

8. Having considered matters carefully, and given the gravity of F's conduct, and the impact upon both M and V, I am of the view that a sentence of imprisonment is warranted for all breaches, of which the most serious breach is the failure to return. The terms of imprisonment for the breaches shall be as follows:

   i) Breach of para 17: 12 months.

   ii) Breach of the first sentence of para 18: 6 weeks.

   iii) Breach of para 21: 6 weeks.

   These terms of imprisonment shall all run concurrently. The total to be served is therefore 12 months.

9. I have considered whether the sentence of imprisonment should be suspended. However, it seems to me that an immediate custodial sentence is warranted. The breaches are 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. In the past, he has said clearly that he has no intention of returning V to this country. All the evidence is that he will continue to disregard orders. He has been in breach of multiple orders over a year and a half. His counsel realistically had to accept that a suspension is unlikely to lead to return of the child which would by the principal reason for suspending the order.

10. On balance, in my judgment, the custodial sentences should be activated immediately. If F procures the return of V 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.