IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2015] EWHC 2324 (Fam)

No. FD15F00019

Royal Courts of Justice

Wednesday, 22nd July 2015

Before:

THE RT. HON. SIR JAMES MUNBY

(President of the Family Division)

(**In Public**)

IN THE MATTER OF :

KAINE HANCOCK

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MR. M. LIEBRECHT (instructed by Legal Services, Suffolk County Council) appeared on behalf of the Applicant.

MR. A. TEAR (Solicitor with Duncan Lewis) appeared on behalf of the Respondent.

J U D G M E N T

(As approved by the Judge)

THE PRESIDENT:

1 I have before me an application by Suffolk County Council for the committal to prison for alleged contempt of court of Kaine Hancock. The allegations arise in the context of an order made on 3 April 2014 by Eleanor King J, as she then was.

2 The background, which is uncontroversial, is that on 20 August 2013 His Honour Judge Newton, as he then was, sitting at Ipswich County Court, as it then was, made final care and placement orders in relation to Mr. Hancock's son. Mr. Hancock's attempts to challenge those orders foundered when, on 12 December 2013, Moore-Bick LJ refused him permission to appeal. Thereafter, Mr. Hancock appears to have mounted a campaign of complaint about what had happened in the proceedings. Specifically, on or about 27 or 28 February 2014 Mr. Hancock sent copies of a DVD to the local authority's offices. I shall refer to that as "the DVD". No doubt as a consequence of that, Eleanor King J made the order to which I have referred. For the purposes of the application which I am considering at this stage in the proceedings, it suffices to indicate that para.2(b) of that order, referring to the DVD, prohibited Mr. Hancock from making the DVD, or anything on it, public in any way.

3 It is not in dispute for present purposes that in or about the middle part of February 2015 a link to a YouTube video was posted on the Facebook page of a Member of Parliament. The local authority's case is that that link was posted by Mr. Hancock and that the material he posted comprised, if not the DVD, then material on the DVD, sufficient in either case to constitute breach of para.2(b) of the injunction.

4 In his most helpful defence statement, his client having, as he is entitled to, not thus far given any evidence, whether written or oral, Mr. Hancock's solicitor, Mr. Tear, has identified his client's answer to this part of the claim:

> "The Respondent puts the Prosecutor to proof, beyond all reasonable doubt that on a date on or before the 13 February 2015, the Respondent personally did post on specific Facebook page, a link to a YouTube video containing material in breach of the Order of the Honourable Mrs. Justice King sealed on 7 April 2014".

In other words, there is put in issue both the assertion that the link contained material in breach of the order and also the assertion that it was Mr. Hancock, the respondent, who personally posted the link on the Facebook page.

5 The evidence by the local authority in relation to this and other aspects of this application comes from a senior social work manager, Mr. David Francis Jacobs. For present purposes, it is relevant to note that he has sworn two affidavits, the first on 6 March 2015 and the second on 4 June 2015. In the first of those affidavits Mr. Jacobs, basing himself, as he told me in his oral evidence this morning, on notes he made at the time, and at a time when events were fresh in his mind, summarised what it was that he saw when he viewed the videolink on 14 February 2015. In his second affidavit he contrasts that note of what he says he saw when he viewed the videolink with the DVD. The reason for the exercise taking that form is that whereas the DVD is still in existence, the link has been removed.

6 In the course of his cross-examination of Mr. Jacobs, Mr. Tear has demonstrated that in certain respects Mr. Jacobs' recollection may be faulty. He has identified that in certain, as it seems to me minor, respects there may be discrepancies in relation to the fine detail of Mr. Jacobs' evidence. But as to the substance, and taking at its highest in favour of Mr. Hancock the matters in relation to which Mr. Jacobs' evidence could be criticised, the fact remains that as to the substance, even if not in every point of fine detail, Mr. Jacobs' evidence seems to me at this stage to stand largely unaffected. As to the substance, his comparison of the link and the DVD has survived the attack made upon his recollection. The consequence is that since, in accordance with the relevant paragraph of the order, it is not necessary for the local authority to prove complete identity between the DVD and the videolink but only to prove that the videolink contained material on the DVD (see the words, "He shall not make the DVD, or anything on it"), the substance of the local authority's case remains unaffected.

7 Mr. Tear, as is his right in a matter of contempt, has at the conclusion of the local authority's case made a submission that in relation to this part of its case there is no case to answer, that there is, to use the language which would be used if this criminal matter were proceeding in the Crown Court before a jury, no case fit to go to the jury, there being, as he would say, no realistic prospect in the light of the evidence as matters stand at present of the court being able to conclude to the criminal standard of proof that the local authority has made good its case.

8 Mr. Tear has focused his submission on the assertion that the local authority cannot establish to the criminal standard of proof the necessary content linkage, if I can put it that way, between the DVD and the videolink. He has not specifically addressed me in relation to the second part of the defence on this count, namely, that there is no evidence linking Mr. Hancock with the person, whoever it may be, who put the videolink up. However, the two are connected in this way. Part of the local authority's case that Mr. Hancock is

the person responsible for putting the videolink on the Facebook page is based upon the fact, as it would have it, that the link bears a striking similarity, in substance if not in every minute particular, with the DVD.

9 Despite the fact that, as I say, Mr. Tear has demonstrated that in some respects, albeit, as it seems to me, comparatively minor respects, Mr. Jacobs' evidence is open to challenge, he has not persuaded me that it would be right to stop the case on this particular point at halftime. What my conclusion will be at the end of the case is, of course, entirely a different matter. At present I am simply concerned with the question, "Is there a case fit to go to a trial?" Recognising, as I do, the high standard proof required, the criminal standard of proof required, is this a case which unchallenged would entitle me as the fact-finder to find the local authority's case proved? In my judgment, for the reasons I have explained, Mr. Tear has not satisfied me that the case suffers such defects as would entitle me to stop the matter at this stage. Accordingly, we will proceed.

LATER

10 Mr. Hancock had pleaded guilty at an earlier stage to four of the five matters of contempt alleged against him and, following the failure of a submission of no case earlier this morning, has pleaded guilty to the fifth charge of contempt.

11 The matters arise, as I noted in my earlier judgment this morning, out of an order made by Eleanor King J, as she then was, on 3 April 2014. Para.2(a) and (b) of that order contained injunctions in substance prohibiting Mr. Hancock from showing or making public a certain DVD or anything on it and, more particularly, from making public either papers relating to or the identity of his son, the subject of the underlying proceedings. Paras.2(c) and 2(d) of that order restrained him from assaulting, threatening, intimidating, harassing or pestering employees of Suffolk County Council.

12 The five charges against him are, first, that he made certain comments on the public Facebook page of a Member of Parliament which identified his son by name. The second allegation is that in breach of para.2(b) of the order he posted on the public Facebook page of the same MP, and thereby made public, a publically accessible link to the contents of the DVD. The third allegation arises out of an outburst which took place immediately after I had left this court on the occasion of the last hearing on 20 May 2015. I had no sooner left the court than Mr. Hancock started verbally abusing Mr. David Jacobs, the local authority's senior manager, who is the primary witness against him, that being, it is asserted and accepted, a breach of paras.2(c) and 2(d) of the order. The fourth complaint charges precisely the same conduct as being in any event a contempt of court irrespective of whether it was a breach of the order. The fifth complaint relates to, as it were, a prolongation of that particular outburst

when, having left the court room, Mr. Hancock, in the court corridor outside, used threatening language to the MP's assistant. That is not alleged to be, and is not, a breach of Eleanor King J's order. But it is as a matter of principle plainly capable of being contempt of court. She was vilified because she had given evidence in the case and a threat was made that, "I'm going to get a man to come to your office and sort you out".

13 I have had the benefit of reading an insightful psychiatric report prepared in relation to Mr. Hancock by Dr. Shamir Patel, a consultant in forensic and adult psychiatry who, amongst other qualifications, is approved by the Secretary of State for the purpose of s.12(2) of the Mental Health Act 1983. I do not propose to go into certain historical details set out in that report. No purpose would be served by my doing so, nor is there any need for public knowledge or understanding of those parts of the report.

14 I propose to read only two sentences from the report, which accord with my own appraisal of Mr. Hancock, based upon my reading of the papers and my observation of him on this and the previous occasion:

> "His disregard for social norms, low tolerance to frustration and low threshold for discharge of aggression and readiness to blame others or to offer plausible rationalisations for the behaviour that has brought him into conflict with society, are likely to represent anti-social personality traits.
>
> Further, his tendency to act impulsively without consideration of the consequences, affective instability (fluctuations in mood) and history of recurrent self-harm are likely to represent traits of an emotionally unstable personality disorder".

15 Mr. Tear on behalf of Mr. Hancock has suggested that in certain aspects, paras.2(a) and 2(b) of the relevant order are expressed more widely than is perhaps appropriate in the light of certain authorities. Whether or not that is the case, Mr. Tear, of course, has to accept that it cannot amount to any defence, nor indeed, as it seems to me, more than fleetingly to any mitigation for a contempt of court. The rule of law and civilised behaviour requires that there be, as the authorities make clear there is, an absolute unqualified obligation on everybody to obey an order of the court even if the order was wrongly made, the remedy being to apply to have the order varied or discharged.

16 It is an aggravating feature of this case that this is not the first occasion upon which Mr. Hancock finds himself convicted of contempt. On 8 July 2014, Moor J found Mr. Hancock guilty of various contempts of a nature not dissimilar to those with which I am concerned today, in relation to which Moor

J imposed an immediate custodial sentence, which in the aggregate amounted to a sentence of three months. After approximately five weeks Mr. Hancock applied successfully to purge his contempt. He described to the psychiatrist the unpleasantness of his experience on that occasion.

17 I can understand that Mr. Hancock, as indeed would many parents in the situation in which he finds himself, feels very strongly and very passionately indeed about what he sees as the injustice inflicted upon him and his son and by the Family Court process. That may in part explain but it cannot mitigate his behaviour.

18 The placing on the MP's public Facebook page of the material I have referred to, which he now admits, is a serious matter, a very serious matter. However, it can be said by way of mitigation that it has not been asserted by the local authority that any of that material has come to the attention of his son or that it has in any other way had a discernible impact upon his son. That may be Mr. Hancock's good fortune but it is a powerful mitigating feature. It applies to each of the first two charges.

19 In relation to the third and fourth charges, they are simply different legal ways of putting the same point. It would plainly be wholly wrong to sentence Mr. Hancock separately on each of those two matters, and since in relation to each of them the maximum sentence is the same, it is largely a matter of indifference whether he is sentenced on the one or the other. So I treat those as being a single matter. That single matter relating to Mr. Jacobs is, of course, closely linked both in time and place with the final matter, which is the verbal attack on the MP's assistant.

20 So far as those matters are concerned, the aggravating feature in relation to the verbal attack on Mr. Jacobs is that it was, as Mr. Hancock accepts, a plain breach of the order and, in any event, an outrageous way to behave in a court, whether or not the judge is still in the courtroom. In a sense, the matter in relation to the MP's assistant is even worse because – and there has been no challenge to her evidence – it was not merely vilification of somebody because she was a witness, it was the uttering of a threat by way of trying to intimidate the witness, the threat being, "I'm going to get a man to come to your office and sort you out". On the other hand, it is the fact, as I find, readily explicable in the light of the psychiatrist's report, that these were unplanned, unpremeditated, impromptu outbursts in relation to which, as I also find, Mr. Hancock very promptly made apologies, both to the court and to his victims, the following day. It may be no thanks to him, and on the contrary, an indication of their magnanimity, that those apologies have to a significant extent been accepted by his victims.

21 I am proposing, as I have said, to adopt a merciful course. I do not want that to be misunderstood. People have to obey the law, people have to comply with orders of the court, and if they do not do so, particularly in relation to breaches as serious as these, they can expect, especially if, as in the present case, it is the second time that the court has had to consider such breaches, not merely a custodial sentence but a custodial sentence which is immediately put into execution.

22 In relation to Mr. Hancock's behaviour in the courtroom and outside the courtroom, it was outrageous. People who are lawfully in courts doing their jobs, as in the case of Mr. Jacobs, or attending the court as a witness, as in the case of the MP's assistant, are entitled to do so without fearing that they may be the subject of some verbal or other assault. If that outburst had involved physical violence, Mr. Hancock needs to be in no doubt at all that I would be adopting a more stringent and less merciful approach. The fact is it was, as I have said, unplanned and unpremeditated. It was, albeit a very unpleasant and deeply offensive verbal attack, only a verbal attack, it did not involve physical violence, and there was a very prompt and, so far as I can see, and this would accord with my reading of the psychiatric report, a genuine apology.

23 In the circumstances, it seems to me that, although Mr. Tear has done his best to persuade me that this is not a case for a custodial sentence (he has, for example, pointed me to the definitive guideline produced by the Sentencing Guidelines Council in relation to breach of protective orders, suggesting that custodial sentences are reserved for matters more serious than these) this is plainly a case for a custodial order. It is a fact that there are not available to the civil courts the community orders which I see might be appropriate for lower range breaches of protective orders in the criminal jurisdiction. Be that as it may, this is not the first time. These are significant breaches. They are of their nature directed in their potential impact to a child, and they are aggravated in relation to the third, fourth and fifth by the fact that they were taking place in a court building. It seems to me that a custodial sentence is unavoidable, both to bring home to Mr. Hancock the seriousness of his conduct and to make clear to others who may be tempted to behave in the same way that behaviour of this sort will not be tolerated.

24 Mr. Tear has very helpfully taken me to the classic summary of principles in *Hale v Tanner* [2000] EWCA Civ 5570, para.26 et seq., and also to the sentence of nine months suspended for 15 months which was imposed in the case of *Her Majesty's Attorney General v Harkins* [2013] EWHC 1455. He has also pointed out that, of course, as a general principle of sentencing, one reserves the maximum sentence, which in this case is two years, for the worst conceivable kind of offence and that correspondingly one reserves sentences approaching the maximum for cases of very considerable gravity. It is Mr.

Hancock's good fortune that my sentencing powers are limited to two years, not merely two years per count but two years in the aggregate, because I cannot on one occasion impose an aggregate sentence amounting to more than two years. So two years sets the upper limit of the bracket.

25 In the circumstances, I have come to the conclusion that the appropriate sentences in relation to the publications on Facebook, that is to say, the sentences on the first and second counts, should in each case be six months to run concurrently. I do not propose to sentence, for the reasons I have given, in relation to count 3. In relation to counts 4 and 5, the appropriate sentence is in each case three months' imprisonment, those sentences to run concurrently with each other and with the sentences on the first and second counts. It seems to me that a sentence of less than three months for behaviour of this kind would send completely the wrong message to Mr. Hancock and others tempted to behave in a similar way.

26 However, and as I have made clear, being merciful, I am prepared to suspend each of those sentences and I propose to suspend them for a period of 15 months. My reason for doing so in part is this. It seems to me that the imperative objective which the court should be striving for in this kind of situation is to ensure as best it can that there is no repetition in future of the unacceptable behaviour. That particular requirement in a case involving a child comes, if anything, ahead of the obligation of the court simply to uphold the rule of law. Not least in the light of what I read in the psychiatric report, I have a real concern that if Mr. Hancock was to go immediately to prison, although that would no doubt, to use the common vernacular, put him out of circulation for a while, it would do little, if anything, to lead to a change in behaviour on his part in the future.

27 On the other hand, if the sentence is suspended, that, in a sense, maximises the incentive on Mr. Hancock to behave himself in the future. To that extent, I adopt the same kind of approach as I did in the *Gloucestershire* case. So the sentence will be six months and six months concurrent with each other, three months and three months concurrent with each other and concurrent with the two sets of six months, all of those being suspended for 15 months.

28 It is very important, Mr. Hancock, that you appreciate the consequence of my having suspended those sentences. They will be suspended on terms, on condition that there is no further breach. The consequence is twofold. If there is a further breach, if there is further misbehaviour, whether breach of the order or further contempts of court of the kind which we saw on the last occasion here, then there will be two consequences. If a further breach or breaches are proved, you will be punished for those breaches. You will in addition find the suspended sentence being activated. If I can spell out the practical realities, I have quite deliberately taken what I have deliberately described as a merciful

course on this occasion. If there is any repetition, you should not expect that on the next occasion a judge will be persuaded to take the same merciful course. And therefore your expectation must be that if there is *any* further repetition of this during the course of the next 15 months, however seemingly trivial, you will immediately go to prison for the six months I have ordered, and, in addition, and probably consecutive to that, you will be sentenced, probably to an immediate custodial sentence for a further period.

29 I will add only this. I appreciate that there may be funding and other difficulties in your way of obtaining the further assistance which you have already, as I accept, derived from your meeting with the psychiatrist. The psychiatric report, as I say, is insightful. Some of it, I suspect, makes very painful reading for you, but it does seem to me, as I have said, to put its finger on important aspects of your character and personality which go to the question of can you behave yourself in future. It is very much in your interest that, if you can access professional help to assist you with those matters, you do so.

30 For those reasons, I make the order I have set out but suspended on the terms I have indicated.