



Neutral Citation Number: [2013] EWHC 34 (Fam)

Case No: FD 07 D 02865

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/01/2013

Before :

MR JUSTICE MOOR

Between :

Michelle Danique Young

**Applicant/
Petitioner**

- and -

Scot Gordon Young

Respondent

**Mr Edward Fitzgerald QC, Mr Joe Middleton and Mr James Bailey (instructed by
Winckworth Sherwood) for the Applicant**
The Respondent appeared in person

Hearing dates: 15th and 16th January 2013

JUDGMENT

1. I have been dealing with two applications dated 17th and 19th December 2012 by the Petitioner, Mrs Michelle Young. The first, dated 17th December, is to commit the Respondent, Mr Scot Young, to prison for contempt of court of my order made on 12th November 2012. The second, dated 19th December, is to activate a suspended committal order made by Parker J on 29th June 2009.
2. I have decided that the correct approach is to deal solely with the committal summons dated 17th December and to decide whether or not the Respondent is in breach of the order I made on 12th November. If he is in breach of that order, it is not necessary to deal with the breach of the earlier order. The earlier breach does, however, remain relevant as to sentence if I find the recent contempt proved. It is also relevant in relation to applications to adjourn the matter further, given the length of time which the Respondent has already had to cure any deficiencies that remain.
3. I will call the parties respectively the wife and the husband. The wife has been represented in these applications by Mr Edward Fitzgerald QC and Mr Joe Middleton, with Mr James Bailey representing her in relation to the bankruptcy side of the case. The husband has appeared as a self-represented litigant.
4. My first task is to decide whether or not the husband is in contempt of court. I remind myself that the burden of proof is on the wife as applicant for the committal. The standard of proof is the criminal standard. I have to be satisfied beyond reasonable doubt. This means that I have to be sure.
5. The husband does not have to prove anything. He did not give evidence on oath which was his absolute right and which I do not in any way hold against him. He did, however, make oral submissions to me.
6. The matter has had a very long history. In essence, the husband says he is penniless and bankrupt. The wife, on the other hand, contends that he is a very wealthy man worth up to £400 million. She says he has hidden his entire resources to avoid his legitimate obligations towards her and the children.

7. I make it clear that I am not deciding that dispute today. It is, however, equally clear that, to be able to decide where the truth lies, it is vitally important that the husband provides full and frank disclosure of his financial circumstances, to include the relevant documentation to support his contentions.
8. On 24th June 2008, Moylan J gave the wife permission to serve a further questionnaire on the husband to obtain that evidence. She served the questionnaire on 25th July 2008. There was no response. On 24th October 2008, Pauffley J ordered the husband to respond by 7th November 2008 and attached a penal notice.
9. On 27th March 2009, Coleridge J made a further order that the husband provide the documentation sought in the questionnaire by 1st May 2009. The husband provided some answers on 1st May 2009, including a significant number of letters of authority to various third parties. The wife was not satisfied either with the answers or the letters of authority and, on 18th May 2009, she issued a committal summons.
10. Charles J adjourned the summons on 20th May 2009 on the basis that the husband should do his utmost to provide the answers. A further questionnaire was served by the wife on 3rd June 2009. It included a question as to how the husband was maintaining himself and, in particular, seeking documentary evidence of all payments alleged to have been made for his benefit by third parties. This is extremely important as it is alleged by the wife that the husband has been making these payments himself from undisclosed financial resources and that it is simply untrue that he is being funded by third parties.
11. On 29th June 2009, Parker J committed the husband to prison for six months for contempt of both the orders of Pauffley J and Coleridge J but she suspended the term of imprisonment for 92 days on terms that the husband provide the answers and documents sought by 7th September. It follows that there has already been a finding to the criminal standard of proof that the husband was in contempt of court in failing to answer the earlier questionnaires.
12. The husband did not comply with the order that he provide further answers by 7th September 2009. His case is that he was detained under the Mental Health Act (for 13 days from 28th August to 10th September). I will return to this in due course.
13. On 28th September 2009, Parker J extended his time for serving his replies to 9th November 2009. The husband then instructed solicitors, namely Mr Philip McGurk of Payne Hicks Beach. He served replies two days late on 11th November 2009 along with 50/51 lever arch files of documents. He also served an Affidavit setting out his business dealings. The wife's case is that the replies did not purge the contempt and that there remained numerous questions where the answers were either inadequate or insufficient. Indeed, on 14th April 2012, the alleged deficiencies and some further supplementary

questions were combined into one document by her then forensic accountants, FTI Consulting.

14. Prior thereto, on 13th November 2009, Bennett J further adjourned the question as to whether or not the committal order should be activated. On 19th November 2009, the wife sent a letter setting out the alleged deficiencies in the replies. On 16th December 2009, the husband responded that he would “...use his best endeavours to answer...” but nothing was received.
15. In December 2009, Black J heard an application for maintenance pending suit. She ordered that the husband should pay the wife’s rent, the children’s school fees and the sum of £27,500 pm. The husband did not appeal but he has paid nothing or next to nothing and the arrears are now close to £1 million. I do however remind myself that there has not been a Judgment Summons. There is therefore no finding of fact to the criminal standard that the husband has had the means to pay and has deliberately refused or neglected to do so. It follows that I should not take this default into account in relation to this application.
16. For a number of reasons, the matter then went cold. The reasons included the ill-health of Parker J and difficulties the wife was having in funding the litigation.
17. In January 2011, Mostyn J made an order that there should be no further application to activate the committal without prior permission of the court. It was agreed on the last occasion that this was not as a result of the alleged ill-health of the husband but rather because Mostyn J took the view that the case should be heard on the basis of the evidence before the court and, if appropriate, adverse inferences then be drawn as to the husband’s financial position.
18. However, in October 2012, the wife applied to me to adjourn the final hearing from its listing in November 2012. Despite my considerable reluctance, I agreed that the case had to be adjourned as it simply was not ready for trial and the time estimate was quite inadequate. As a result, the wife applied to me in November 2012 for permission to activate the committal. I granted her permission. I also made a detailed order dated 12th November 2012. It provided at Paragraph 5 that the husband shall produce by 4pm on 10th December 2012:-
 - (a) answers to FTI’s request for disclosure;
 - (b) full answers to question 13 of the Wife’s questionnaire dated 3rd June 2009 (namely the sources of the husband’s funding from March 2006 to 10th December 2012 to include documentary evidence in support); and
 - (c) a witness statement in response to the witness statement of Mr Hebron dated 7th November 2012.
19. At Paragraph 7, I also ordered the husband to produce copies of his tax returns for the years 2004/5 and 2005/6. A Penal Notice was attached to both paragraphs. I made it very clear to him in court that the situation was serious

and that if he did not comply, there would be an application to send him to prison for contempt. He left court under no illusions as to the serious situation he faced.

20. There is no doubt that the husband did not comply with the order by 10th December. It follows that there is therefore no question other than that he was in contempt of court. However, he did purport to answer both paragraphs on the afternoon of 14th January, namely the day before the committal application. I take the view that, if in doing so, he has remedied entirely all the deficiencies in his disclosure, it would not be appropriate to commit him to prison now for being late as the main objective, namely to prove his current financial position, would have been satisfied. I therefore take the view that I must examine his answers to see whether or not he remains in contempt.
21. Before doing so, it is, in my view, important to note that he only finally went to see a solicitor, namely Mr Raymond Tooth of Sears Tooth on 6th December having contacted him on 5th December. This was over three weeks after I made my order. Moreover, the meeting took place only four days before he was due to comply. The wife says, and I accept, that this was exactly what had happened in 2009, when he finally went to see solicitors at the very last moment when he came to realise the seriousness of the situation he faced.
22. He also says that he then became ill. I have seen a medical report but he indicated to me that he did not want me to refer to the detail of it in open court. I will not therefore do so although he said in his oral submissions that he had been an inpatient in hospital from 21st December 2012 to 10th January 2013. The wife reminds me that the day he sought medical treatment was the day after her enquiry agent attempted to serve him with the application for his committal. I am satisfied that he knew the nature of the application the enquiry agent was attempting to serve upon him.
23. I note from the medical report that he made a good response to the treatment he was given such that he could be discharged, although he will need to take medication and require continuing medical follow up. I am satisfied that he is in a position to deal with this application and that there is no unfairness to him in proceeding with it.
24. The wife says that his admission to hospital is exactly what happened in 2009 when he faced prison. I agree but in this regard I am not prepared to find that this is contrived. It may be that the imminent threat of prison has made him unwell. That is, however, no excuse for contempt of court. There would not have been a threat of imprisonment if he had complied fully with the court orders.
25. He also complains about alleged harassment and possible criminal offences committed against him by private investigators instructed by the wife. He says this has made him unwell. I do not intend to make any findings in this regard. I am solely concerned with the issue of whether or not he has complied with my orders. I am satisfied that any such harassment is not a legitimate defence to failure to comply with a court order. He did not raise

such matters with me when I made the order on 12th November. The health difficulties he raised then related to an unpleasant virus he had. He did not, however, contend that the virus would prevent him complying with my order.

26. As I have noted, it was not until the afternoon of the 14th January that he served his answers to Paragraph 5 of my earlier order. Has he now fully complied with that order? I am satisfied beyond reasonable doubt that in certain very important respects he has not done so.
27. I will, however, deal first with Paragraph 7 of the order, namely that he provide his tax returns for 2004/2005 and 2005/6. I am satisfied that he has complied with that obligation. The wife complains that he has only produced part of the returns but I am not satisfied that there is anything material that has not been included. It is a great shame that he did not do produce these documents long ago but he has now done so and that part of the application is dismissed.
28. I am also satisfied that he has complied with Paragraph 5(c) of my order, namely he has filed a reply to the witness statement of Mr Hebron. The wife may think that it does not answer all the points raised but that will be a matter for cross examination at the final hearing. The committal application is dismissed in this regard as well.
29. I now turn to Paragraph 5(b), where he is required to provide full answers to question 13 of the Wife's questionnaire dated 3rd June 2009 (namely to set out the sources of the husband's funding from March 2006 to 10th December 2012 to include documentary evidence in support).
30. As I have already indicated, this is a vital part of the case. His answer sets out total funding that he says he has had. He produces again an earlier schedule entitled "*The Young Family and its assistance from friends*" for the period 2006 to 2009 in the sum of £1,175,599. In his answer, he produces a table of gifts he has received since then for rent, living expenses and the like. The total is approximately £315,000. The vital issue, however, is the documentation to show where this money came from. He produced nothing. He says he does not have any documents in his possession, power or control as he does not have the bank statements of his friends. He adds that "*due to the negative press generated by this case, none of these third parties will provide the Respondent with any details of the payments they made.*"
31. I reject this contention completely. It is absurd to say that these friends are prepared to support him financially to such a huge extent but that not one of them is prepared to produce any documentary evidence that the money came from them. There is no evidence whatsoever that he has tried to obtain such information from them. He knew what was required. I conclude that he has deliberately failed to comply. I am sure to the criminal standard that he is in breach of my order.
32. I now turn to his response to Paragraph 5(a) namely the FTI Consulting questionnaire. The issue here is also fundamental to this case. The husband

says that he has been the victim of financial meltdown and is now hopelessly insolvent. The wife's response is to ask him to prove this assertion by the production of documentation to verify his financial losses.

33. I have read with care the husband's response. I regret to say that the document does not advance the position at all. Almost every reply is the same. The husband says he does not know; he does not have the documentation but he believes it will be in the custody and possession of others, particularly Fox Williams, Beller & Co and Jirehouse Capital. He suggests the wife's advisors examine the files of these entities. His solicitors sent some letters to these and other entities although all were sent after the date which I set for compliance. No substantive responses have been received.
34. I am satisfied that there has been a wholesale failure to comply with the court order. The husband has simply not produced the documentation to verify his financial losses.
35. I can give one particularly significant example of how important this is. The husband completed the sale of a property at 111/112 Eaton Square on 1st November 2005 for £24,000,000. On 12th September 2005, he received the 10% deposit, namely £2.4 million. The completion statement shows the money being transferred to the First Curacao International Bank. The husband was asked to provide documentation to show where this money had gone. The question specifically says that it is for him to provide evidence that he was not the ultimate beneficiary of those funds.
36. His response is next to useless. He says that "*he cannot produce documentation to support the payment of £2,400,000 to First Curacao International Bank on 12 September 2005 insofar as it is not an account in which he is the legal or beneficial owner either by himself or a nominee company/entity. The Respondent has requested that Fox Williams produce any documentary evidence they may have in relation thereto which may be of assistance and if the Applicant, through her advisors is able to inspect the files she should endeavour to obtain this information herself.*" It might be said that the completion of the sale took place was some time ago, but I remind myself that the wife has been seeking this information since at least 2008.
37. It was only in court when I asked him about this that he said, for the first time, that the payment was a contribution to Project Moscow. I do not know whether or not this is consistent with his previous explanations for the financing of Project Moscow. It does, however, clearly show that he has not got close to answering this question properly. It would have been easy to have given this explanation and support it with documentary evidence that the money was paid in relation to Project Moscow. He has not done so. I am sure to the criminal standard that this he has not complied with my order in this regard.
38. It follows that I find beyond reasonable doubt that the Respondent is also in contempt in relation to Paragraph 5(a) of my order dated 12th November.

Sentence

39. I have considered carefully the appropriate sentence for the two contempts. I consider both the contempts are serious. They are so serious that a fine (which would be useless as I am satisfied you would not pay) cannot be justified.
40. I also take the view that a suspended sentence of committal cannot be justified either. There has already been a suspended sentence to enable you to comply. You did not do so. The matter was then further adjourned to give you another opportunity. Again, you did not take that opportunity. Finally, I gave you a further opportunity in November. Again, you did not comply.
41. You raised the question of my adjourning sentence for 28 days to enable you to comply. I reject this submission as you have had more than enough opportunities to do so already.
42. You also asked me to adjourn for you to have legal representation. I have decided that it would not be right to do so. You could have been legally represented on this occasion. I reject any suggestion that you would have been legally represented on this occasion had it not been for your health difficulties. You have had plenty of opportunity to arrange the funding for legal representation. Indeed, your case was that Mr Tooth was doing you a favour not that you ran out of funds to pay him. Second, I am quite satisfied that there is nothing that a lawyer could say to change the outcome of the case. There has been a flagrant and deliberate contempt over a very long period of time.
43. I have dealt with your ill-health in my main judgment. I reject it as a reason for not passing an immediate custodial sentence now for the reasons I have already given.
44. I am therefore going to deal with the matter today and pass a sentence of imprisonment. This will be the shortest which in my opinion matches the seriousness of your contempt whilst taking into account the mitigating factors you raised before me.
45. Parker J imposed a sentence of six months in prison, which was not appealed. As I am sentencing you for, in effect, the same contempt, I take the view that the sentence should be the same as that imposed by Parker J. There will not however be double jeopardy and I will not be activating the previous suspended committal.
46. The sentence is therefore one of six months imprisonment. You will serve one half of the sentence in custody.
47. You are, at any stage, entitled to apply to me to purge your contempt. This will involve you finally complying with the orders for disclosure. If you do now comply, I would be very sympathetic to any application you make to purge your contempt. Whilst I recognise that this is more difficult to do so once you are in prison, you have brought this entirely upon yourself. You

have had more than sufficient opportunity to comply with the various court orders. The court cannot go on giving further opportunities indefinitely.