

First Avenue House
42-49 High Holborn, WC1

Tuesday, 25th August 2015

Before:

HER HONOUR JUDGE HARRIS
(In Open Court)

BETWEEN :

W
Applicant

- and -

S
Respondent

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J U D G M E N T

JUDGE HARRIS:

- 1 I am dealing with an application for committal today, brought by the applicant, W, against the respondent, S. Although the application was heard in open court, I am anonymising this judgment as a young child is involved. The proceedings concern an application under schedule 1 to the Children Act 1989, relating to the daughter of the parties, A, who was born on 11th December 2009. The alleged breach is a failure to comply with orders to complete properly, and in accordance with the rules, a Form E in these proceedings. The applicant is represented by counsel, the respondent appears in person.

- 2 The particular orders to which I need to make reference are, firstly, an order of 21st May, which is an order made by Deputy District Judge Morris. On that occasion, she ordered, at para.11 of the order, that the respondent father shall file and serve by 4.00 p.m. on 18th June 2015 a fully completed Form E with all relevant documents attached. What happened thereafter was that the respondent produced an unsigned Form E on 18th June which was a partial Form E, in that only pp.1 to 11 were provided, and also inadequate in that it did

not append to it the various documents which were required by the rules to be appended to it, for example, 12 months' bank statements. There was then a back sheet provided, duly signed by the respondent, and that was on 29th June and he stated: "The information I have provided is more than adequate." There was then some further documentation provided but, again, not in any way meeting the requirements of the Form E.

- 3 The matter then came before the court again, on 10th July, before Deputy District Judge Glasner, on a first appointment and also to consider the applicant's application for a legal services payment order. That hearing had to be adjourned because, as it records at para.5 of the recitals, "of failure by the respondent to comply with the court's order to file and serve a fully completed Form E with all relevant documents attached". The recitals go on to say:

"And, upon the court reiterating to the respondent the need for him fully to complete his Form E with all required attachments (including, for the avoidance of doubt, unredacted bank statements)."

The application for committal was listed for hearing today before a circuit judge and it has now come before me. The first appointment had to be adjourned, together with the application for the legal fees payment order, and that has now been listed on 23rd September, before a district judge of this

court, with a time estimate of two hours.

4 The court has spelt out unequivocally what is required from the respondent. I am also satisfied, from the correspondence which I have seen, that the applicant's solicitors have been at pains to avoid an application of this sort and to spell out precisely what is required from the respondent and to give him the opportunity to produce it. In particular, they have now produced a schedule of alleged breaches, which is at E.56 of the bundle, which sets out in terms the ways in which it is said that the Form E is deficient. The response which the respondent provided to the schedule of alleged breaches, by way of an email, was: "Hi, Joe, Tell carpetbagger no.1, Wilburn, that I will see him in court." "Wilburn" is a misspelling for "Milburn", who is the applicant's solicitor with conduct of this matter. The respondent, plainly, is an intelligent man, and a man who has been operating at a high level in terms of his business life for many years and I have no doubt whatsoever that he understands precisely what is required of him.

5 He has told me, as he has gone into print before, that he will not be blackmailed, in effect, by the procedure and that he is not going to throw his friends, family and associates to the wolves, to paraphrase what he said, by revealing their identities in, for example, bank statements. In making that statement, he is relying upon a very unfortunate message from the applicant at a time when he had ceased to provide for the child, saying, effectively, that she

would go to the Prime Minister and to the investors of the respondent's company to show them his level of indebtedness with the intention of damaging his standing. She has since accepted that that was entirely inappropriate.

- 6 As I said, one has to view it in context, and I have no doubt that she was very distressed at that time. The order made on 21st May makes explicit what is implicit in all these applications for financial remedies for a child, or after divorce, namely, that the documents are confidential and they must not be disclosed outside of the proceedings, and I have reiterated that again today and explained to the respondent that the applicant would be in breach of her implied undertaking if it were shown that she had disclosed confidential documents to third parties. I am looking at para.10 of the order of 10th July where it is spelt out what, as I have said, is implicit:

"Any information or documents disclosed within these proceedings shall, unless otherwise ordered by the court or permitted by the Family Procedure Rules 2010, be kept confidential by the parties and may only disclosed to their legal, or other professional, advisors."

That really addresses the concerns set out in the respondent's statements and his strong views about his family, friends or associates being compromised in some way.

7 I explained to him, I hope, carefully this morning that this committal application is primarily a matter between him and the court. It is not for the applicant to advocate for any particular outcome. It is primarily a matter for the court to decide how the breach should be marked. I also explained to him, I hope, again, carefully, that the purpose of proceedings such as these was not to punish an individual before the court, but rather to secure compliance with court orders, the purpose of the court order being to ensure that there could be a fair hearing and an outcome which was fair and which took into account the child's interests. The child is at the centre of the proceedings and, as I have said, it is obvious that the court needs proper information to make a reasoned and fair decision.

8 The respondent has said - and I am again paraphrasing his words – that he has no intention whatsoever of providing any further information than he has already done. He draws to my attention that this is not a case of complete non-engagement with the proceedings, which one sometimes sees, because he has provided documentation and it is right that he has provided certain documentation. I would not describe it as in any way extensive. He has provided some tax returns and some company accounts to support his case that he says that he has no resources and that his business is in difficulties.

9 I should record that he deals in commodities, metals, in particular, and, according to the note prepared on behalf of the applicant, he is the managing

director of a hedge-fund firm specialising in commodities. He has also produced documents showing that the firm is being sued by another company. So, yes, he has provided some documents but they in no way meet the requirements of the Form E as spelt out to him.

- 10 I have also been referred to the case of *Hale v Tanner* [2000] 2FLR 879 and which gives well-known guidelines as to how the court should exercise its powers.
- 11 In this case, there is a clear breach; that is not disputed by the respondent. His attitude throughout the proceedings has been what I think I can fairly describe as extremely arrogant. He seems to take the view that it is for him to decide what should be produced to the court and not for the court to decide. He is displaying a completely wilful refusal to comply with very clear orders which have been made.
- 12 I am entirely satisfied, and I must be satisfied to the criminal standard, so that I am sure that there has been a breach, I am also sure that there has been a wilful breach and I am also believe - I hope I am wrong about this - that because of the respondent's very arrogant attitude, there is unlikely to be a change of mind. However, this is a first breach, although he has been given ample opportunities to comply, and it seems to me that I should give him one final opportunity to comply with orders of the court, which is, as I have said, the underlying purpose of this exercise.

13 In the circumstances, I am, given the wilfulness of the breach, even though it is a first breach, going to sentence him to a period of imprisonment, but I am going to suspend it to give him a final opportunity to produce what is required. So what I am going to do is to order that he provide a fully compliant Form E dealing with the matters set out in the schedule of breaches. The next hearing is on 23rd September, so I am going to order that he provide that by 9th September, which is two weeks before that hearing, and, in particular, that must have all the relevant documents appended to it.

14 If he does not comply with the order to file and serve it by 4.00 p.m. on 9th September, then he will serve a sentence of imprisonment of 14 days. I hope that will not be necessary. As I said, it is not the court's wish or desire to send people to prison; it is the court's wish and desire to see its orders complied with in the interests of the child, in this case.
