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IN THE FAMILY COURT
(Sitting at Middlesbrough)

No. MB19P01248

The Law Courts
Russell Street
Middlesbrough
Cleveland, TS1 2AE

Tuesday, 17 December 2019

Before:

HER HONOUR JUDGE MATTHEWS QC

B E T W E E N :

MGJ Applicant

- and -

JASON RHYS EVANS

Respondent

ANONYMISATION APPLIES

THE APPLICANT appeared in Person.

THE RESPONDENT did not appear and was not represented.

J U D G M E N T

HHJ MATTHEWS QC:

- 1 The court is concerned with an application for committal in respect of breach of Family Court orders. The application is brought by MGJ in respect of orders made by this Family Court against Jason Rhys Evans. MGJ and Mr Evans are the parents to three boys, who I do not propose to name for the purposes of this ruling, but they range in age from 14 years, 13 years and ten years of age.
- 2 There have been a number of private law proceedings passing through this court in respect of the three boys, five in number, largely as a result of father's unhappiness that he does not have the possession of the children. The court has gradually had to restrict father's contact with the children because of his total inability to comply with court orders. By that, I mean retaining the children after contact in the Neath area where he lives. The parents and the children lived in Wales many years ago, but post-separation mother has lived in the locality of this court. It would seem that father has never accepted that mother is the main carer of the children and has sought to wrest control back from her with or without the sanction of the court.
- 3 The application before the court today is in respect of alleged breaches of court orders relating to a Prohibited Steps Order made by District Judge Sendall on 11 February 2019, and also a Child Arrangements Order made by District Judge Capstick on 29 April 2019.
- 4 MGJ is not bent on getting Mr Evans sent to prison. What she wants is for him to stop distressing the children by taking them away from her care and control. MGJ seeks a finding to the criminal standard, beyond reasonable doubt, that Mr Evans is in breach of the orders which I have just identified. The relevant orders are encapsulated within a later order of District Judge Capstick from 21 August of this year, to which a penal order is attached. The allegation is that on 25 October of this year, father took R away from the area in his car and had to be apprehended by the police and R had to be recovered home to this area in the early hours of the morning.
- 5 It is noticeable that father, although he has disputed the living arrangements for the children, when court orders have been made, has not actually appealed the making of any of those orders. He has vacillated between failing to accept the jurisdiction of the English court, albeit it has been pointed out to him, that the jurisdiction lies in the court of England and Wales. At times father has failed to co-operate: he has failed to come into the court room whilst standing outside, or has failed to attend scheduled hearings.
- 6 Indeed today, although he has attended court this morning and has spoken to me in the courtroom, when I adjourned the matter to secure legal representation for him, given the seriousness of the allegation and the potential sanction, he absented himself over the short adjournment having been told not to go outside the court building but to wait whilst we secured a barrister or solicitor to assist him. He has now left the court building. He has not communicated with any of the court staff to indicate where he has gone, he is not answering his telephone, and I find that he has deliberately absented himself because he is now aware of the seriousness of these proceedings and the potential sanction of imprisonment.
- 7 I asked him to come into court this morning because I was concerned that he did not understand how serious the situation was, and I wanted him to understand the procedure. I had advised him in advance of the hearing in my order listing the case today, to secure legal representation. He had not done so and he indicated to my usher this morning that he did not see the need for such representation. I asked him to come in to the courtroom initially, as he sent an email to the court this morning to say that he would be late for what he termed as "a meeting with Miss Matthews" (being me).

- 8 I advised him in open court that this was not a meeting but it was a very serious and significant court hearing at which, if breach was proven, one of the sanctions that the court could impose was immediate imprisonment. He asked me how long a sentence may be imposed, and I indicated to him that it was not appropriate to discuss such matters as the breach had not yet been established, and that it was important that the court first heard evidence and his position in response, before determining whether the breach had been proven to the criminal standard. Had Mr.Evans remained and the hearing had taken place with him participating, I would have advised father of his right to silence and his privilege in respect of self-incrimination. However, he has not remained for me to take those steps, despite experienced counsel having been secured to attend this afternoon and represent him. She has waited in the court room to assist Mr.Evans but he has not been available to take advantage of that assistance.
- 9 The situation in terms of the alleged breach is that on 11 February 2019, District Judge Sendall made an order preventing the father from removing any of the children from the care of their mother, except for the purpose of contact agreed in writing between the parties or ordered by the court, and the order also prevented him from removing them from their current school. Father was represented by counsel at that hearing and a penal notice was attached to the prohibited steps order directed to the father. That prohibited steps order remains in force from 11 February 2019. Mr.Evans was reminded that it remained in force by the order of District Judge Capstick of 21 August, and the order remains in force today.
- 10 The order made by District Judge Capstick on 29 April 2019 also remains in force and directs that all three children shall live with their mother until further order and that the father should only have indirect contact with the children, which may include telephone contact, but that is the only contact which is to take place, until further order.
- 11 Father attended at that hearing, but refused however, to come into the court room and waited outside. He indicated that he understood that the court could proceed in his absence, but that he “just wanted his order”, and he was handed the court order at the conclusion of the hearing by the court usher.
- 12 I am satisfied that father fully knew the terms of the order made on 11 February 2019 and subsequently the order made on 29 April 2019. In any event, father subsequently issued applications in respect of the children in order to change their living arrangements to reside with him. Those applications were dealt with at a final hearing before District Judge Capstick on 21 August 2019. At the conclusion of that hearing, which father participated in via the link from Wales, he was clearly made aware that his applications were dismissed by the court, and further that the district judge made an order under s.91(14) restricting him from making further applications in respect of the children without having obtained the prior leave of District Judge Capstick or, in default, my leave as DFJ. The order of 21 August 2019 clearly re-states the fact that, the prohibited steps order from February 2019 and the child arrangements order from April 2019 remain in force.
- 13 All orders of this court have been repeatedly sent to the respondent at his home address, which has remained consistent throughout the period. They have also been sent to him by email. Father has at times stated that he has not received orders. I do not accept that contention, as I consider this is one of the tactics that father employs to avoid the powers of this court, which he clearly does not recognise. He has been reminded of the power and jurisdiction of the Family Court in England and Wales, as established by s.31A of Matrimonial and Family Proceedings Act 1984.

- 14 I made directions for this committal application to be dealt with in my order of 31 October 2019 and I invited father to attend a hearing on 12 November, either in person or via live link from Wales. Father failed to attend the scheduled hearing on 12 November or make any contact with the court. The applicant mother attended that hearing. The police provided me with statements dealing with the incident on 25 October. As I set out in my order of 12 November, the court has been, and remains satisfied that it has jurisdiction in respect of all three children. The court was also satisfied that the father had notice of the hearing on 12 November, as the order of 31 October was sent to him by email and by first class post at his home address. The same methods of service have been used for the purpose of this hearing, and clearly father has attended today and was aware of the hearing.
- 15 He has received all of the documentation, which I have caused to be sent to him: the previous orders of the court establishing the Prohibited Steps Order and the Child Arrangements Order, my orders of 31 October and 12 November, the police evidence, the mother's statement, the mother's notice to show cause, and it is clear that he has those documents and had them when he attended court this morning.
- 16 I invited father to attend this hearing. I set out that he was strongly encouraged to secure legal representation to assist him in advance of and at this trial, and he was warned that absenting himself was not appropriate as the court could proceed to determine whether the alleged breaches were proven, even if he failed to attend the hearing and if the breaches were proven, the court could proceed to sentence. Therefore, father had a clear warning in my order of 12 November of the way in which the court may proceed. I find that he has deliberately absented himself this afternoon because he feared imprisonment. It is perhaps heartening to the court that he appears to fear that, as he has acted wilfully, in terms of his conduct thus far in response to these legal proceedings.
- 17 I invited father to file a statement, containing a statement of the truth by 10 December. He has failed to do that. I invited father to indicate whether he challenged the police evidence which has been served upon him. He failed to do that. I set out the alleged breaches in my order of 12 November 2019 in respect of 25 October by taking R, the eldest child, away from the care of his mother and transporting him to Wales, necessitating the involvement of the police to secure the child's return. Father's actions were not taken in pursuance of a contact arrangement and were in breach of the court's restrictive contact order as he is only allowed to have contact in an indirect form, which may include telephone contact.
- 18 In addition to the mother's statement and her evidence on oath which I have heard today, I have read the police documentation, but most particularly that of Police Constable Neil Barker of Gwent Police. In his statement dealing with this incident, he sets out the following: that he was notified on 25 October 2019, while on duty in full uniform in company with PC John Davies, driving a marked police vehicle, about a child who had been abducted. They were alerted to look out for father's vehicle, a black Mercedes, registration number EV03 JAS. The control room operator informed him that the male driver of the vehicle was a Jason Evans, and that he was wanted for child abduction in respect of his eldest son, and it was strongly believed that R was inside the vehicle. At approximately 22.46 that day the vehicle was cited at junction 25 of the M4 motorway on the westbound carriageway.
- 19 The police officers illuminated the emergency lighting on their vehicle and indicated for the Mercedes to pull over. The officer activated his body-worn camera and alighted from the police vehicle and approached the Mercedes which was now stationary. He opened the driver's side door and observed a male he now identifies as Jason Evans, removed Evans from the front of the vehicle, and took him to a safe area behind the vehicle. As he entered the vehicle, he noticed a young male lying in the front passenger seat, who appeared to be asleep.

At 22.50 PC Barker arrested Evans saying, "I am arresting you on suspicion of child abduction", he cautioned Evans, and father stated, "How can I abduct my own child?" Mr Evans was then placed in handcuffs in the rear back to back position in a marked police vehicle.

- 20 The child who was lying in the front seat was identified as the eldest son of Mr Evans, who was taken to Newport Central Custody Unit, where he was informed that the necessity of the arrest was in order to protect the child, this child being his eldest son, and the son of MGJ.
- 21 I accept the evidence of the mother given on oath, and also the police officer's evidence. I note that Mr Evans has not actually challenged the evidence of the police officer. He has not denied these actions on 25 October 2019. It seemed to me in my discussion with him this morning that he realised that the court was taking his actions seriously. I am most concerned at the previous actions of Mr Evans in repeatedly withholding the children after agreed periods of contact, which drove the district judge to make the orders set out above, limiting father's contact with the children.
- 22 Therefore, having found that father has deliberately absented himself this afternoon, and also finding that it is appropriate for the court to proceed to deal with this matter in his absence, as, I am not satisfied that, even if I adjourned the case, Mr Evans would attend on another occasion. I also bear in mind the pressure that his actions have caused on the mother and the children. It is important, in fact vital, that Family Court orders mean what they say and are enforced. Having heard mother's evidence and read the evidence from the police I make a finding to the criminal standard that Mr Evans has breached the orders of District Judge Sendall and District Judge Capstick, by removing R from this area and taking him to Wales, and that was a wilful and intentional breach on the part of the father who is very clearly aware that this is something which he should not do.
- 23 I also note that father has made numerous threats to CAFCASS and also to this court that he would remove the children from the care of mother if he did not receive the paperwork demanded. In my judgment, he has always had the requisite paperwork in his possession. He uses this as an excuse to attempt to justify his wilful actions in refusing to accept court orders and the fact of the mother's care and control of the children.
- 24 I find that father is in breach of the orders having applied the criminal standard of proof, albeit in his absence, and the only issue is whether I should proceed to sentence him today, also in his absence.

SENTENCING REMARKS

(Transcript prepared without access to all documentation)

(Transcript prepared from poor quality audio in part)

Tuesday, 17 December 2019

(4.33 p.m.)

THE JUDGE: Having this afternoon heard evidence and considered the papers, and having found the breach of a Child Arrangements Order and a Prohibited Steps Order proven against Jason Rees Evans in his absence, I consider that it is appropriate to pass on to deal with sentence, also in his absence. He has been warned that the court may do that, and he has deliberately absented himself from the hearing this afternoon, as I have indicated.

There is very little mitigation that Mr Evans could advance in all the circumstances, as he is clearly aware that his actions have been prohibited by the court, but he has pursued a wilful breach. Therefore, the sentence that I pass is one of nine months' imprisonment immediate.

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Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital

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