Neutral Citation Number: [2020] EWHC 3539 (Fam)

Case No: 2018/0037; 2018/0038; 2018/0039; 2018/0040; 2018/41; 2018/0053; 2018/0085

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2020

Before :

MRS JUSTICE KNOWLES

- -

Between:

AEY	**Applicant**
- and -	
AL	**Respondent**

(Family Proceedings: Extension of Civil Restraint Order)

- -

- -

This application was determined on the papers.

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Knowles:

1. On 26 November 2018 I made an Extended Civil Restraint Order ["ECRO"] with respect to the appellant father, AEY. My decision with neutral citation [2018] EWHC 3253 (Fam) should be read alongside this ruling. During 2018, AEY had made seven applications for permission to appeal a variety of decisions made with respect to his two younger daughters, S now aged 20 years and N now aged 14 years. I refused all those applications as being totally without merit and decided that, in the circumstances, the making of an ECRO was the only way in which this court could control AEY's litigation conduct. I am the judge to whom any application made by AEY to bring proceedings in any court concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order was made – namely, family proceedings - must be made.

2. The ECRO was due to expire on 25 November 2020. Accordingly, and of my own motion, I issued directions on 19 October 2020 inviting AEY to provide written submissions by 6 November 2020 as to whether I should extend the term of the ECRO and, if so, for how long. I issued those directions as, since the making of the ECRO in November 2018, AEY had made seven applications which fell within the remit of the ECRO. All those applications had been refused and at least three of them had been determined as being totally without merit.

3. On 23 November 2020, when reviewing AEY's file, I ascertained that the directions order I made on 19 October 2020 had been posted to an address different from the one at which AEY was now residing. I issued a fresh set of directions on that date in similar terms to those issued on 19 October 2020, inviting AEY to respond in writing by 4 pm on 11 December 2020. I also extended the ECRO until 31 December 2020 as a holding position so that a decision could properly be made as to whether or not a more significant extension of the ECRO was warranted. I directed that both orders should be posted to AEY's most recent address and also emailed to him at the email address appearing on his most recent correspondence with the Family Division Appeals Office.

4. On 26 November 2020, AEY submitted documents in response to my earlier directions order. Staff drew his attention to my directions order dated 23 November 2020 and he confirmed to them that he would check its receipt. To date he has not provided any response to those later directions. The documents submitted by him on 26 November 2020 referred to my directions order dated 19 October 2020 but did not address in any way whether or not the ECRO should be extended and, if so, for how long. The material submitted by him was in connection with an application made by him on 17 March 2020 for permission to appeal an order made by HHJ Tolson QC on 8 January 2018. That application had already been determined by me on 23 September 2020 as being totally without merit.

5. I have not sought the views of the Respondent, AL, who is AEY's former partner. In paragraph 71 of my 2018 judgment, I commented that the material before me at that time suggested that both AL and N, who lives with her, were likely to be worried and anxious if not distressed about further proceedings if they were given information about those proceedings prior to any judicial decision as to the merits of any application made by AEY. I saw no reason to alter that view, having reviewed the seven applications made by AEY since November 2018.

6. Since November 2018, AEY has made seven applications for permission to bring proceedings with respect to his family. The first was made on 13 December 2018 and I deemed this to be an application to discharge the ECRO. I refused that application as the material submitted by AEY filed to explain why he said the order should be discharged or amended. Most of the material submitted by him at that time comprised a repetition of the allegations he made during the protracted litigation which I dealt with in my 2018 judgment.

7. The second application was made on 21 January 2019 for permission to make an application to prevent HHJ Tolson QC from determining an application brought by AL for the transfer of the tenancy of the former matrimonial home into her name. AEY also asked that this application should be heard by a High Court Judge sitting in the Family Division. I refused that application as these matters were case management decisions which were properly for the judge allocated to determine AY's application to decide.

8. The third application was made on 4 February 2019 seeking permission to appeal not only an order made by HHJ Tolson QC on 28 June 2016, but all orders made by HHJ Tolson QC up to and including an order made on 30 January 2019. That latter order was the subject of a separate application by AEY for permission to make an application for permission to appeal. I refused permission as there was nothing new or persuasive in the material submitted and matters had been litigated extensively in the past. All the orders, excluding that of 30 January 2019, about which AEY complained had been the subject of my 2018 decision.

9. AEY's application for permission to bring an application for permission to appeal the order made by HHJ Tolson on 30 January 2019 was determined by Mr Justice Williams on 17 April 2019 as I was on sick leave. He refused it as being hopeless and certified it as totally without merit.

10. The fifth application was made on 13 June 2019 and sought permission to make an application for permission to appeal an order made on 9 May 2018. That latter order had already been the subject of an application for permission to appeal by AEY which I had refused in 2018 and certified as being totally without merit. The material submitted by AEY disclosed no grounds which would stand any realistic prospect of success and so I refused the application and certified it as totally without merit.

11. The sixth application was made on 10 July 2019 and sought permission to bring proceedings with respect to N so that AEY could be permitted to remove her from the jurisdiction to visit relatives abroad. I note that, in January 2018, an order had been made in children proceedings that AEY should have no contact with N. The application disclosed no grounds which would stand any realistic prospect of success in persuading a court to reinvestigate the issue of contact between N and her father let alone to investigate whether she should be permitted to go abroad with him. I refused the application and certified it as being totally without merit.

12. The seventh application was made in March 2020 and sought permission to make an application for permission to appeal an order made by HHJ Tolson QC on 8 January 2018. Regrettably, this application was not referred to me by the appeals office until September 2020 as it had been mislaid. The application consisted of over 85 pages of material which was dated and familiar to me from my dealings with AEY's earlier

applications to the court. AEY repeated allegations that HHJ Tolson QC and social workers had conspired and were continuing to conspire (a) to keep AEY from seeing N and (b) to cover up crimes allegedly committed by AL against N and S, her older sister. None of the material disclosed any grounds which would stand any realistic prospect of success and the order in question had already been the subject of an unsuccessful application for permission to appeal. I refused the application and certified it as being totally without merit.

13. The law relevant to extending the life of an ECRO is set out in a decision of HHJ Matthews sitting as a judge of the High Court in Ashcroft and Another v Webster [2017] EWHC 887 (Ch). Practice Direction 4B of the Family Procedure Rules 2010 ["the FPR"] provides in paragraph 3.10 that: *"The court may extend the duration of an extended civil restraint order, if it considers it appropriate to do so, but it must not be extended for a period greater than two years on any given occasion"*. In Ashcroft, HHJ Matthews reviewed the pertinent authorities and held as follows in paragraphs 38-39:

"38. From these authorities it is clear that, in considering whether it is appropriate to extend the ECRO, I cannot go back to the beginning and ask whether the court would now be justified in imposing a further ECRO. For one thing, that would be to give double credit for the applications or claims held to be "totally without merit" that justified the order in the first place. For another, the filter mechanism means that there are not inherently likely to be many further applications anyway, much less many which are "totally without merit". Third, the test for an extension is simply whether the court considers that it is "appropriate" to do so. It is quite different from the test for the first ECRO.

39. On the other hand, in considering whether it is "appropriate", all the circumstances must be taken into account. Here, the Defendant's conduct leading to the ECRO is still relevant, not least as setting the scene: cf Noel v Society of Lloyd's [2010] EWHC 360, [38]-[46]. Normal people do not behave in this way. They eventually accept that they have lost, and move on. For such persons, not subject to an ECRO, the subsequent conduct on its own might be more susceptible of an innocent, non-vexatious explanation. But where an ECRO has properly been made, what comes afterwards is seen through the prism of the earlier conduct. In such a case it is easier to see the likelihood of further vexatious conduct. This is not double-counting, but rather better understanding a person's motivation in acting in a particular way".

14. It is clear that there is no presumption of continuance of an expiring ECRO. There must be evidence that it is" *"appropriate* to extend its life. In this case is there good reason to apprehend persistent vexatiousness by AEY in the future?

15. On the material before me, AEY has failed to make any progress. He still believes that the orders made with respect to his children are fundamentally wrong and that the judge and the professionals involved at that time were conspiring against him and covering up bad behaviour by his former partner, AY. From the material I have read and the number of applications made, I see no prospect that, in the foreseeable future, he will cease to make applications which lack any merit whatsoever and which are attempts to relitigate matters which have already been extensively litigated in the recent past. AEY persists in an irrational refusal to take "no" for an answer.

16. In my judgment, AEY's behaviour since the making of the ECRO in November 2018 shows that there remains a clear and serious risk of distress being caused by these applications not only to AL and their daughters but also and importantly, a risk to the administration of public justice which is simply too great to allow the first ECRO not to be continued. Unless restrained, AEY's unmeritorious applications are likely to consume administrative resource and judicial time at the expense of other applications in the family justice system.

17. I have considered whether it would be safe to extend the ECRO for a short period so that the restraint can be limited in time as far as possible. Sadly, I have concluded that this would not suffice. Nearly 3 years has passed since HHJ Tolson QC made an order for no contact between AEY and N and, if he can, AEY still wishes to overturn that order and others made in the family court. I see no sign that six months' or a year's further lapse of time would cause the risk of vexatious behaviour on AEY's part to diminish sufficiently.

18. I therefore extend the ECRO until midnight on 22 November 2022. I will continue to be the judge to whom AEY should make any application falling within the scope of the ECRO.

19. That is my decision.