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

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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2022] EWHC 3119 (Fam)

No. FD19P00568

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 27 May 2022

Before:

MRS JUSTICE MORGAN

(In Private)

B E T W E E N :

XYZ

Applicant

- and -

HOCINE SOLTANI

Respondent

MR A. PERKINS (instructed by Wilson Solicitors LLP) appeared on behalf of the Applicant Mother.

MR B. JUBB (instructed by Freemans Solicitors) appeared on behalf of the Respondent Father.

J U D G M E N T

(Hybrid Hearing)

MRS JUSTICE MORGAN:

1 This is the judgment in case number FD19P00568 XYZ v Soltani committal. This application is brought by XYZ ("the mother") and it is for committal of Hocine Soltani ("the father") to prison for breaches of a number of orders of this court.

2 In the present circumstances where there is to be a final hearing of ongoing proceedings in the North African country from which the parents were originated in relation to the parties' eldest child, on 29 May and a further three day hearing before the English High Court in respect of all three children of the family commencing 16 June, the mother proposes, and counsel for the father, as I understand it, agrees, that I should determine in a way characterised as "factfinding" at this hearing the allegations in relation to breaches. Should I find them proved, Counsel propose that I should not move on to consider the appropriate consequences by way of imposition of sanctions at this hearing but I should adjourn that to some later date.

3 It is the third time that the application for committal has been listed for final hearing. In June 2021, it had to be vacated for want of judicial availability. In October of last year, the applicant found herself with an embargo on her public funding certificate and her application to adjourn on that occasion was successful. It comes before me almost a year after it was expected to be heard. The application is made within the context of long running and continuing proceedings in wardship. Those wardship proceedings are ones about which I have, by design rather than oversight, had only the most limited information before me at this hearing. The next hearing, I have already said, is 16 June. I have not been provided at this hearing with a bundle of papers for the wardship hearing, although I have been provided with a statement in relation to wardship matters because of some cross examination Mr Jubb put to the mother.

4 It was necessary for me to determine as a preliminary matter at the start of this hearing a pleading point. Mr Jubb raised objection to those parts of the mother's schedule of breaches which relate to breaches of the order of English High Court dated 18 December 2020. Paragraph 15 of the order of 18 December read as follows:

> "Any application by the mother to amend her Part 18 application notice dated 14 January 2020 so as to supplement the same by way of a separate schedule setting out in full, separately and numerically, each alleged act of contempt and the date of each of the alleged acts on which it is asserted the respondent father has breached the orders of the Honourable English High Court made on 14 July, 16 October and 19 November 2020, shall be filed and served no later than 4 o'clock on Tuesday, 12 January 2020."

From the context, that is plainly a typographical error, even in the context of the strict requirements for observance of the detailed committal application is neither here nor there and, plainly, should be read as 2021.

5 The specificity and care with which the judge directed the orders which were to form part of the pleaded application for committal is such that, so Mr Jubb submits, had he intended to encompass any breach of the order he was making that day on 18 December (i.e. anticipating breaches) he would have done so. The point, Mr Jubb makes clear, is not one which is taken in an academic way but is one which has real relevance to and impact upon the father's situation. These are proceedings where what is at stake is the liberty of the

subject and if at this hearing breaches are made out, then, at what it is agreed should be a later hearing, the question of how the father's contempt will be punished falls to be considered. The greater the contempt, the more serious is likely to be the sanction it attracts. It is well recognised that in relation to applications for committal there is a particular need for close attention to be paid to ensure that which is sought is properly and accurately pleaded, in compliance with both the procedural rules and the orders of the court considering matters before it.

6 Mr Perkins submits that the fact that the 18 December 2020 order was not included at para.15 was an oversight, essentially, of drafting. Had it been included it would have been approved. He further submits that he need not have asked English High Court, in any event, for permission to amend his schedule and so the fact that he did ask for permission and that these amendments are not in the form reflected in the order should not be, as it were, held against the mother now. He further submits that the extent to which the Court of Appeal may or may not have emphasised in past cases the need for precision and accuracy in applications for committal is really directed towards situations where the defects complained of have been such that they led to a situation where what is pleaded cannot be understood and there is a lack of clarity resulting in unfairness. This, he says, is not that. His submission is that, by proper application of the overriding objective, I should permit him to proceed on the allegations of breaches in relation to the 18 December order also. The father, he says, and makes the fair point, suffers no prejudice as he has been aware from the documents served that that is what he had to face.

7 I rejected Mr Perkins' submission on this point. I accept what Mr Jubb says and my own view of the Court of Appeal approach is that it is reflective of an expectation for accuracy of detail and compliance with procedural requirements and with directions of the court. I agreed that it would have involved there being an anticipation of a further breach (which the judge might well have anticipated in this case), but it was not recorded at para.15 and so it seems to me safer and more appropriate, and I ruled at the time, that at this hearing I would consider only the allegations of breaches in the mother's schedule served in conjunction with her application notice under Part 18 of the Family Procedure Rules, which preceded that part of the schedule setting out breaches of the order of 18 December. I have, accordingly, at this hearing, been considering those matters which relate to the schedule which appears at B61 of my bundle onwards and, at the conclusion, I will return to those breaches which I do or do not find proven.

8 By order of the 25 May 2021, and so, I observe in passing, exactly one year before the hearing the Judge was then case managing ultimately came on for hearing before (as it turns out) me, he directed the following as falling to be considered at this hearing: (a) the validity, purpose and utility of the committal proceedings; (b) whether any of the alleged breaches particularised in the applicant's schedule would have caused the respondent to have been in breach of an existing extant court order in the North African state referred to above and impacted on or prevented compliance with any of this court's orders; and (c) any submissions in relation to no case to answer. Following discussion between counsel, I was told, first of all, helpfully, that (c) is no longer pursued and that, rather than considering (a) and (b), as was expressed in that order by the Judge as "preliminary issues", they would be addressed as part of submission at the conclusion of the evidence I heard.

A Little of the Background

"14. The material context is set out as follows:

12.10.19 Father removes the children from England to the North African state referred to above.

22.10.19 English High Court **order**:- C8/119

penal notice on the 1st page of the order

1. forthwith return (paragraph 3)

2. service by email providing all reasonable attempts are made to effect personal service (paragraph 13)

5.11.19 English High Court 22.10.19 **order** amended under the slip rule C8

1. hearing date of 19.11.20 amended to 2.12.19

10.11.19 The father lodges application for temporary custody for the children in the court local to where he had taken the children (the father's local court)

11.11.19 **Order** of the father's local court 345

temporary custody awarded to father "until final judgement"

20.11.19 The father was served by email with the sealed order of 22.10.19 children are not returned as directed pursuant to 22.10.19 of Francis J order. C42

2.12.19 English High Court **order**:- C87/198

penal notice on the 1st page of the order

1. return by 11 December 2019 (paragraph 3)

2. service by email providing all reasonable attempts are made to effect personal service (paragraph 12)

Order of the father's local court

custody of the children granted to the father

5.12.19 father lodges a complaint for adultery and marital infidelity with the prosecuting authority in the North African state referred to above C352

father applies to the father's local court for a complaint in relation to "marital infidelity" which according to the father "did not proceed because there was no record of the divorce been registered in." C336

The North African state referred to above. C336

10.12.19 The father was served with an unsealed copy of the order of English High Court made on 2.12.19, by email.	C110
11.12.19 Children are not returned pursuant to 2.12.19 English High Court order	
12.12.19 English High Court **order**:-	C124/235
penal notice on the 1st page of the order	
1. return by 10 January 2020	C128
2. service by email providing all reasonable attempts are made to effect personal service (paragraph 9)	C130
17.12.19 Father was served with an unsealed copy of the orders	C110
1. made 12.12.19	C122
2. made 2.12.19 (for the 2nd time) by email	C110
8.1.20 Father's brother emails mother's solicitors confirming he has spoken with the father to "reiterate" the court message to return the children urgently	C134
10.1.20 Children are not returned return pursuant to 12.12.19 English High Court Order	
13.1.20 The father was served by email with:-	C140
1. the sealed 12.12.19 order	
2. the amended sealed 22.10.19 Francis J order	
2.2.20 Father fails to handover the children pursuant to English High Court 18.12.20 order	
18.2.20 Mother arrives in the North African state referred to above	C168
14.7.20 English High Court **order**	C266/377
1. handover the children to mother by 4.8.20	
2. father to take all necessary steps to cause the children return by 11.8.20	
4.8.20 Father fails to handover the children pursuant to 14.7.20 English High Court order	
11.8.20 Father fails to return children pursuant to English High Court 14 .7 .20 order	
21.8.20 Father instructs Freemans	
14.9.20 Mother commences divorce proceedings in the court local to her in the North African state referred to above (the mother's local court)	C356

23.09.20 the mother's local court **order**

temporary custody order to mother in relation to the children

7.10.20 the mother's local court **order** re-mother's divorce petition

16.10.20 English High Court **order** C256/367

The children to be returned to England accompanied by the father by 7.11.20

7.11.20 Father fails to return children pursuant to English High Court 16.10.20 order

19.11.20 English High Court **order** C295/406

recital both parents agreeing that it is in the best interests of the children "are returned as soon as arrangements can be put in place to secure their return forthwith"

1. The children to be returned to England accompanied by the father by 7.12.20
2. The children to be returned forthwith to England detailed arrangements recorded at paragraph 3

2.12.20 the mother's local court order re-mother's divorce petition father cross petitions on the basis of adultery

7.12.20 father fails to board the flight/return the children pursuant to English High Court 19 .11 .20

8.12.20 Freemans email setting out why father did not return C312/423

18.12.20 English High Court order C315/426

1. father to handover the children forthwith

2. the children to be returned forthwith to England

19.12.20 Father fails to handover the children forthwith or at all

20.12.20 the mother's local court order mother granted temporary custody of the children

10.1.21 the appeal Court judgement & **order** C361

mother granted custody and legal guardianship of the children

10.01.21 Father concedes "the final grant a divorce and custody of the children" was made by the court of the North African state referred to above C337

11.01.21 father asserts youngest child handed to mother, but eldest children stated that they wish to live with their father "for now" and return to his care	C337 B56/87
Mother's amended **part 18 Application Notice** Amended Committal Schedule"	B60/91

Evidence

9 At this hearing I have had a discrete committal bundle running some 615 pages which is separate and distinct from the wardship bundle. I have read as pre-reading the helpful essential reading list which I was sent. I have read, also, in the course of this hearing some matters which my attention has been directed to which were not on the reading list. But, most particularly, I have read in detail and with care all of those statements of the parties set out at section C of the bundle and those statements filed within that part, with exhibits as well, relating to service of the father.

10 As to oral evidence at this hearing, I have had heard evidence from the mother present in the courtroom with me and from the father by remote link from the North African state referred to above. Each of the parents were assisted by interpreters to a greater or lesser extent. Each of them spoke (and speaks) good English, but, as is unsurprising in the stressful situation of giving evidence in a second language, from time to time they needed the assistance of the interpreters. It is also the case that, from time to time, so that I could be clear that he had understood over the link what was being asked and I had understood what was being responded, I have asked for the father's evidence to be given in his own language and translated to me even though he had first sought to give his answer in English. I will not recite all of the oral evidence that I have heard, still less all of that which I have read, but I have held it firmly in my mind when considering the helpful oral and written submissions counsel have made to me.

11 The mother is now in this country with the two youngest children finally in her care. She told me that she had gone to the North African state referred to above and tried many times to get the children returned to her, that she had fought in those courts for them and that she had ultimately returned with two of them. She explained to me in the witness box most affectingly that, first of all, it was only her youngest child who had been returned to her and she explained how "good it felt" (to use her words) to be holding them after so long without them. So, she eventually left with two, but still awaits of return of her eldest child. She has her own passport and got a new passport for the other children from the authorities in that state once they had been restored to her care over the period which appears from the background above. Having obtained two new passports from the North African state referred to above for those children, she was able readily to leave the country, going to the airport and checking in with no difficulty. The relevance of that evidence that she gave me will become clear later, but the point is she was able to leave without there being any problem for the father, which she says would be reflected were the father to return with the eldest child, should he comply with the orders.

12 There had been ongoing hearings in the North African state also, notwithstanding the fact that this court is the court seized of jurisdiction for the children, it being the country, so it has been determined, of their habitual residence. Those hearings in the other jurisdiction, the mother says in relation to the divorce, she had attended only at one and her nonattendance, she told me in evidence, at the other hearings was because she thought there was no point: she knew what the outcome would be. Her nonattendance at those hearings did not attract any adverse consequence or sanction. It is not the case, on her evidence to

me, that her failure to attend at those hearings has led to her being in jeopardy of, for example, a bench warrant or the equivalent in those courts.

13 In her evidence in chief, she told me that no one at those hearings had told her that the children could not leave the other jurisdiction and that is reflective of the position set out in her written statements of the evidence. By contrast, when cross-examined by Mr Jubb, she conceded that she had been told at some point during one of the divorce proceedings that no one could leave that jurisdiction with the children during the lifetime of those divorce proceedings. She said that was on one occasion only and she did not accept that she had been told that in the children proceedings. She confined that to divorce proceedings.

14 The mother, in the course of her evidence, told me that she had tried many times to secure the return of the children to this country. She did not accept that she was responsible for a number of the summonses which, I have been shown at this hearing, require the father to attend the police station in the North African state and, on one occasion, to attend the police station for an offence of retaining a child. But what she did say to me is that the father often did not go when there were summonses and that there was, in fact, nothing that could be done about that. Asked by Mr Jubb whether she personally, as opposed to what he put as a public policy reason, saw, any reason why she would wish to commit the father and bring these committal proceedings, she told me that she simply wanted the children returned and that was all she wanted. She reiterated that, on leaving the country to return to England, she had no difficulty at all in doing so.

15 The father, who also gave his evidence with some of the, I regret to say, usual difficulties of connectivity, was able to tell me at the beginning of his evidence, when we were able to connect him to this hearing, that he understood and had had explained through counsel that he did not have to say anything at this hearing. It was his own choice to give evidence. He understood the consequences that might flow from that. He had made, and again it was his choice to make, statements written in these proceedings. Mr Jubb, who had heralded this matter with me perfectly properly, confirmed with the father that he wished those statements to come into evidence before me for me to consider, and I have, of course, read them. The reason Mr Jubb makes that point is because the statements are now deployed in these proceedings. It is, I think, akin to the essential difference between statements and affidavit, that an affidavit is sworn evidence from the moment it is sworn and these statements are filed in a slightly different form. But it matters not. The key point is the one that Mr Jubb concedes that the father, of his own choice, deploys that evidence before me.

16 He told me that he had received all of the orders of the court which had been made in this jurisdiction. He knew that there were orders to return the children and he knew that they were orders made by a judge of this court. He told me that he had not returned to the United Kingdom with the children for a number of reasons. He had been very unwell, he told me; even when leaving with them on a plane to travel out of the jurisdiction he had been unwell. It was put to him that that was the first time he had said that to this court, which he appeared to accept. He told me that he was frightened about what would happen were he to return; that he did not wish to be here with no home, no job and unable to live properly with the children. He was, he told me, scared of what he said was the North African state court prohibition on leaving the country with the children, as to which more later. That prohibition, he accepted when asked, had never been on the face of any document or any court order from that jurisdiction, but he said he had been told on a number of occasions by what were variously described as "prosecutors" or "officers of the court. He also said before me for the first time, this not appearing in his own written evidence, that the children, who I remind myself were all of primary school age at the time of removal, did not wish to return and he was strongly influenced by their wishes.

17 He was clear with me at least that he did not feel he was able to leave the North Africans state. He accepted that his own brothers had sought to persuade him, having appeared themselves in this court before the judge dealing with the matter, to return the children, and he did not deny that they had made it clear to him that was the expectation and had sought to persuade him to do so. What he said to me was that, of course, his brothers did not understand the full circumstance and had they done so they might have had a rather different view on whether he should come back. But, in any event, he did not return for the reasons that he had articulated.

18 It was his firm evidence to me that both he and the mother had been warned on a number of occasions within the other jurisdiction's proceedings that they must not leave the jurisdiction with the children until completion of those proceedings. He told me that he had indeed been summonsed by the police to attend the police station in his home country. His case, as he put it to me, was that the mother had caused those summonses because she had been unhappy when, in the course of, as is clear from the summary which will have been read out earlier by me into the transcript, there had come a time when there was a temporary order within the other states proceeding for the eldest to remain with his father. As to that aspect, the mother was clear with me that she took the view the father had poisoned the child's mind against her. The father, by contrast, in his evidence told me that the child had run away many times, did not wish to return to his mother's care, and the judge at the court (the mother not attending) had recognised the reality of the child's situation and made the temporary order. I will examine more features of the evidence given in the course of my consideration of the position.

The Parties' Positions

19 The father, through Mr Jubb, does not dispute that in this case the relevant orders were made, were clearly understood, were lawfully served and served in accordance with directions for that service. The father, through Mr Jubb, denies any wilful breach of those orders and Mr Jubb invites me to accept the father's evidence as to why he failed to comply with them, notwithstanding the fact that he knew they were in existence. Essentially, the father's case centres on restrictions on removing from the North African State the children so that compliance with these orders would have been put him in jeopardy of that. For that he relies on: his own evidence, to which I will return, and a concession by the mother; secondly, by reason of effluxion of time since the proceedings were brought and the oppression that comes from that; and, thirdly, an argument which essentially amounts to utility and purpose.

Discussion

20 Mr Jubb's argument that so stale are these proceedings that they should not be permitted to continue is, at first blush, an attractive one. I have already observed the startling situation when in committal proceedings I find myself hearing it a year to the day after the judge case managing it was making case management directions for what has become this hearing. He is quite right to remind me that committal applications, once made, should be dealt with expeditiously. They are serious matters in which the liberty of those who are complained to be in breach are in jeopardy. There is, however, as I see it, almost immediately, ways in which the attractive quality and seemingly good sense of that submission does not survive any lingering scrutiny.

21 Some of the time which has passed before the application has come on for hearing is because the father himself has, on my reading of the papers, on at least two occasions, agreed to bring the children back and/or to hold them over in compliance with orders, with

the effect that, in this jurisdiction, proceedings were stayed; stayed because it was anticipated that he would comply. He did not. It cannot be that he can then seek to benefit from an effluxion of time caused at least in part by the court having relied upon his assurance of compliance which is then unforthcoming.

22 A significant part of the delay, it is right also, was caused by the mother. The mother, having initially sought to achieve the children's return to this jurisdiction (i.e. the country of their habitual residence, as now found by the court) was compelled, effectively, to try to enforce this court's orders, in the face of father's lack of compliance, by travelling to and litigating in the North African state referred to above. I pause there of course to say that this case, like so many, has also been affected by the intervening event of the pandemic restriction on travelling, which makes a long delay caused by other reasons even longer.

23 The mother's absence from the United Kingdom in North Africa had the consequence for her public funding which further delayed the process when an embargo was placed on it. I accept, however, Mr Perkins' submission that the fact that she had to go to North Africa to engage in proceedings there at all is consequent upon the father's own actions. Neither Mr Soltani nor, for that matter, any other person from whom compliance with orders of this court is expected, can take the approach that if they can, as it were, run down the clock, they will escape the sanctions for contempt that would either otherwise follow. Accordingly, I do not find as attractive as might be thought at first blush the argument that might otherwise have significant force, that these proceedings are so stale they should not be allowed to continue. I recognise that Mr Jubb, to his great credit, has not sought to engage in any previously heralded application to strike out proceedings in the conventionally understood meaning of that phrase.

24 The second matter that Mr Jubb relies very heavily on is his client's assertion that there were restrictions placed on his removal of the children by the North African authorities and so it was not possible really, ultimately, for the father to comply with the orders of this court, at least not without putting himself in significant jeopardy in that country of being prevented from breaching the removal restrictions. It is accepted by the father that there is no document before me which makes reference to any such restriction and so there is not, as might be in this jurisdiction, the familiar wording on the face of a document preventing the removal from England and Wales. There is not such a document from the North African state. But that is not the basis on which the case is put for the father. The father's case is there appears to have been a prosecutor who acts as a court official presenting the case before the North African state's court and, to a degree, becomes a facilitator also of information (to borrow Mr Jubb's phrase and submissions).

25 So, it may well be, submits Mr Jubb, that a warning given by such a court official is taken by the participants to proceedings to have the force of law and it is, thus, not unreasonable for the father to work on the basis that that is something which prevents him leaving. Mr Jubb accepts that I have only his client's oral evidence on that, but he submits with some force that there is, of course, weight to be given both to the evidence of the father and also to the fact that the mother, in the course of her evidence, made a very clear indication that there was at least one occasion when a warning was given to her, she says within the divorce proceedings and confined to those. I note that that was a significant departure from either of her statements filed in these proceedings and also from her evidence in chief and elicited by Mr Jubb in cross-examination.

26 I, of course, also take very seriously that these are *quasi* criminal proceedings and that it is the mother who bears the burden of proof to the standard beyond (as it used to be) reasonable doubt, now (as it is,) satisfied so that I am sure. Of course, the father himself

does not have to prove anything. I am, however, entitled to consider the evidence before me and, in particular, Mr Perkins' well pitched submission that the mother's concession, such as it is, about a warning is not only confined, on her own evidence, to the divorce proceedings, but can only have been on an occasion when she was in North Africa, and so does not provide the father with any defence then, up to about, February. Nor, as he points out, does it provide a defence to the occasions when there were directions to hand over the children or to take all necessary steps before those courts to ensure that they could be returned. What follows from that is that, if it were the case that there were any kind of warning given, one might reasonably expect the father to have responded by seeking to be released from that obligation so as to be able to comply with the orders of this court.

27 Mr Perkins also makes two powerful points in respect of this aspect. The first is that one reason why there could have been no such warning is that when in the proceedings in this court I cast my eye forward in the section of the bundle where the orders are contained to November 2020, I see that, by that time, the father was represented, not just represented by somebody with limited familiarity with these proceedings, but represented by specialist and expert solicitors well known to this court who had instructed counsel to appear for him. So represented, he offered a proposal to bring back the children by 7 December. He could not, I accept Mr Perkins' submissions, have put forward that proposal if it were the case that some warnings, as the father invites me to conclude, had been given to both mother and father in North Africa. The father, so says Mr Perkins, and I accept, would have been in a position where he could not possibly say he would be doing that because he knew there was a prohibition on him so doing.

28 The father, in that context, accepts, as he told me in the course of his oral evidence, went as far as going to the airport, getting airline tickets and waiting there, he told me, so that the mother could accompany him back with the children. That makes no sense at all for him to have gone to the time and expense of doing that if it was correct that he had been warned that he must not take the children out of North Africa and he was acting at a time when there was a prohibition on so doing and he was prohibited from travelling with them.

29 So I accept that first powerful point made by Mr Perkins runs entirely contrary to such evidence as there is from the father, i.e. his own evidence, which of course I weigh heavily in the balance, to an extent corroborated by the mother's confession that on one occasion within the divorce (as distinct from the children) proceedings she was told she could not leave with the children there. In relation to that concession of the mother, I also reflect hard, when balancing all of these matters, on Mr Jubb's submission that it might not make any sense for there to be that prohibition to the mother in those proceedings and not otherwise. I will factor that in.

30 The second powerful point made by Mr Perkins is that if it really is part of his defence that an North African prosecutor had said to him, or to the mother, or both of them, that there was a prohibition on removing any of the children, that has never appeared in any document in these, or, I am told and accept, the wardship proceedings, including when represented by the experienced specialist solicitors to whom I have already made reference. It follows, submits Mr Perkins, that this is simply a fabrication by this father to bolster his defence for noncompliance with serious and clear orders properly served of this court. I accept that second point as well.

31 Further support for the proposition that there was no restriction operating on the children leaving North Africa comes from the fact that the mother, as described already, had no difficulty at all leaving with the younger children when she finally had them back in her care. She did that by taking the perfectly straightforward method of buying some airline

tickets, going to the airport and getting on a plane with them. Even if there were a restriction on the father leaving North Africa with the children, which I do not find that there was, it would have come about because he has caused there to be the need for ongoing proceedings in that country when the court with jurisdiction are these courts of England and Wales which have already determined they have habitual residence for the children. So, there is an echo there of the way in which the father seeks to rely on the effluxion of time when he has been instrumental in causing the delays. So, too, he seeks to rely on matters in the North African courts when he is the cause of there being the need for that litigation in the first place.

32 In any event, I am told at this hearing that, on 29 May, Sunday being a working day in the court system there, there is to be what is expressed as the "final hearing" of those proceedings in those courts in any event. What I can take from that is that, even if I were to have accepted the father's evidence that there is a prohibition on him removing the children from North Africa during the lifetime of proceedings, his own evidence is that that is for the whole of the time that those proceedings are operative and his evidence before me is that those proceedings will come to an end on 29 May; and he accepted in cross-examination to Mr Perkins that that would, therefore, no longer be a problem. I regret to say that, in relation to the prohibitions, I found the father's evidence on that aspect wholly unconvincing. I was especially unimpressed by the two (perhaps three) occasions on which he sought to emphasise to me that it would be a very serious thing indeed to be disobeying such a prohibition of the North African court. Given that he seems to have no such qualms about being in breach of orders of this court, I found that evidence particularly unattractive.

33 I move now to consider the question of utility which Mr Jubb has most effectively argued in this court, utility, as distinct from, as I understand it, public policy. Public policy he wisely does not the argue with, and, in reality, how could one? There are strong public policy reasons for the message to be clearly understood that when a High Court Judge of the Family Division makes orders, she or he does so, expecting (a) that they will be obeyed and (b) that those who elect to treat those orders with contempt do so at their peril and can expect to suffer the consequences.

34 Mr Jubb's utility argument, though, has been put with some grace and care before me. I do not repeat that which is in his written document, but he amplified orally that which he had already set out. It is, however, when stripped down to the essentials, less attractive than it appears at first. Some of the children have been, he points out, now returned to this jurisdiction, which was, after all, the objective of the orders made in the first place, and he reminds me that the point of the committal was to achieve the objective which the judges making the orders for return had intended. Strength for that is to be found that, apart from the mother's first statement where in terms she says the father needs to be punished for what he has done, she has nevertheless, since then, consistently said that her only objective is to have the children back. She said that again before me in oral evidence, she set it out in a number of documents and, as recently as the directions for this case before Arbuthnot J, she was explicit, through her counsel, in saying that, had the father returned the eldest child before this hearing, she would seek to withdraw her application before we even started on Wednesday.

35 So that is, of course, right and Mr Jubb is right to remind me that it is important that there is a point to committal proceedings. But, in reality, the children who have returned have only returned because the mother ultimately went out to North Africa and took steps to get them back, not because the father obeyed the orders of this court to return them forthwith, or the subsequent orders to bring them back or to hand them over. Furthermore, the father should not understand this court as regarding the ultimate recovery, by whatever method, of the

younger children, who should never have been removed in the first place, as in some sense being good enough. It is not. There is utility, as I see it, to the proceedings in the particular circumstances of this family continuing and to the proceedings for committal if they serve to secure the return the eldest child to this jurisdiction, the jurisdiction in which welfare decisions should be made for that child.

36 Within the wardship proceedings, of which I know little but can imagine sufficient, there is a guardian who should have the opportunity to ascertain the eldest child's wishes and feelings. Before me, I have heard both parents express their own views as to how he comes to hold the position he does at the moment which has resulted in, even when the mother briefly had him in her care in North Africa, he ran away, either once and with some involvement of the father, as the mother tells me, or four times and under his their own volition, as the father tells me. It will be important within the wardship proceedings for the guardian who is appointed for him to have the opportunity to discover independently the eldest child's wishes and feelings and how he comes to hold such views as he has unfettered by the evidence of either his father or his mother to the judge in those proceedings.

37 The eldest child is a young teenager, I think. No doubt it would be said within the wardship proceedings that he can vote with his feet now. To the extent that it may well be being said he can vote with his feet, there will be, at the very least, utility to there being the opportunity for there to be independent investigation as to how it is his feet come to be taking the direction they now are. I reject the argument that, either in the wider sense or in the particular circumstances of this case, there is no utility in the committal proceedings. As I raised with Mr Jubb in the course of his submissions, much of what is expressed as being argued as relevant to the utility point has much more the feel to me of matters which might well be raised in mitigation were I moving to consider sanction or sentence at a later stage. It is worth observing at this point, so that the father may understand it, that, were I moving to consider sanction or sentence at a later stage, one of the matters which might very well mitigate to a very considerable degree those consequences would be if the eldest child had been returned to this jurisdiction by the time this court came to consider those matters, as he should have been returned when Francis J made the forthwith order on 22 October 2019.

38 It follows that I find to the criminal standard of proof, having conducted this factfinding hearing, each of the breaches in respect of which the mother has proceeded at this hearing. To the extent that father has asserted in respect of each or any of them that he has not wilfully failed to comply but has been prevented from so doing and/or that there is no utility in continuing the proceedings, I am satisfied again to the criminal standard of proof that that is not so.

39 Thus, I turn back to the mother’s amended Part 18 schedule. I pause here to say to counsel that I will, of course, tidy up any typographical errors and inaccuracies of this in the transcript. In relation to the first breach complained of, the 22 October forthwith order of Francis J that the respondent father shall return all the children forthwith, I find that the father is in breach of that. Those children are not returned by the date then set for 20 November. In relation to pleaded item 3, the order of the English High Court of 2 December requiring return, following service, by 23.59 on Wednesday, 11 December 2019, I find that the respondent is in breach and the committal is made out in respect of that. Likewise, in relation to the next complained date on the schedule at item 6, 12 December, which there is no return by 10 January, 2020, and, in relation to the order for handover pursuant to the 14 July order of the English High Court to hand over by 4 August, I find that the father is in breach of that and in breach of the accompanying return date by 11 August of that year.

40 In relation to the 16 October order of the English High Court requiring the return by 7 November, there is on 7 November no return and the breach is made out. Similarly, by reference to the schedule on 19 November, the order of the English High Court for a return by Monday, 7 December 2020, that, too, is made out.

41 That is the point in the schedule at which I then disallowed the other allegations which Mr Perkins sought to pursue. In relation to those matters which I did not disallow, I find each of those breaches proved to the criminal standard on the evidence before me.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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