Neutral Citation Number: [2024] EWCA Civ 118

Case No: CA 2022 000966

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM the County Court sitting at Swansea
His Honour Judge Beard
E36YJ705

Swansea Civil Justice Centre
Caravella House
Quay West, Quay Parade
Swansea SA1 1SP

Date: 14/02/2024

Before :

LORD JUSTICE STUART SMITH
LORD JUSTICE BIRSS
and
LORD JUSTICE SNOWDEN

- -

Between :

Andrew Paul Roberts	**Appellant**
- and -	
Kathryn Jayne Jones	**Respondent**

- -
- -

Simon Butler and **Anirudh Mandagere** (instructed by **Advocate**) for the **Appellant**
The Respondent did not appear and was not represented

Hearing date: 12 December 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 14 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Birss:

1. This appeal is about the operation of the regime in CPR Part 71 which relates to obtaining information from judgment debtors and in particular to the operation of the provisions about contempt of court and failures to comply.

2. The relevant procedural history in this matter is lengthy, and some of it will need to be considered in more detail below. However the focus of the appeal relates to an order made by HHJ Beard on 5 April 2022 at a hearing in Part 71 proceedings at which the judgment debtor Ms Jones was present but the judgment creditor Mr Roberts was not present. Ms Jones was there because she had been arrested and brought to court pursuant to a bench warrant. Ms Jones had failed to attend on previous occasions and a suspended committal order under Part 71 had been made. Mr Roberts was not present because, since this hearing arose as a result of the arrest, he had had no notice of it. At the hearing Ms Jones admitted her previous failures to attend, apologised and offered her explanations why that had occurred (see below). At the judge's suggestion, Ms Jones undertook an oral examination before a court officer and signed the record of her examination. The judge sentenced Ms Jones to 14 days imprisonment suspended for six months. After it was made the order was amended under CPR r40.12 (the slip rule) to add a reference to parallel family contempt proceedings.

3. Mr Roberts, who was unrepresented, sought permission to appeal to the Court of Appeal on wide ranging grounds. At an oral hearing of the application Snowden LJ and Falk LJ gave permission to appeal on four grounds distilled by the court from the material provided and gave directions designed to facilitate the orderly management of the appeal. In particular the Court of Appeal Case Management Section prepared bundles from the various documents available.

4. The four grounds were: first that the judge was wrong to permit questioning of Ms Jones by a court officer, he ought to have adjourned the matter so that Mr Roberts could be given notice and the questioning would be before a judge; second that the judge was wrong to order a suspended sentence, given there was a previous suspended committal order and so he should have activated that order and passed an immediate custodial sentence; third that the sentence was unduly lenient because the judge failed to take account of the full history of non-compliance and wrongly accepted Ms Jones' explanation for her non-attendance; and fourth the amendment under the slip rule was wrongly made.

5. The matter was listed to be heard in Swansea, and the hearing took place on 12 December 2023. At the hearing Mr Roberts was represented by counsel Mr Simon Butler and Mr Anirudh Mandagere appearing via "Advocate", the Bar pro bono scheme.

6. I wish to pay tribute to Mr Butler and Mr Mandagere. They have been of considerable assistance to Mr Roberts in presenting his case clearly and of considerable assistance to the court.

7. Ms Jones had taken no part in the progress of the appeal, did not file a skeleton argument and did not appear at the hearing; nor was she represented.

8. At the outset of the hearing counsel raised for the first time the question of whether this appeal was properly before the Court of Appeal or ought to have been an appeal to the High Court. No authority on the point could be identified. Having got this far

we decided to proceed to hear the matter in any event on the basis that we would either hear it as the Court of Appeal or reconstitute ourselves as the High Court. Our ruling on that issue is below.

9. By the conclusion of the hearing the focus of the appeal was on Mr Roberts' first and fourth grounds. After a careful review of what had taken place and the circumstances as they were, it was accepted on Mr Roberts' behalf that the sentence passed by the judge was within the ambit of sentences properly open to the judge on that occasion and so the third ground and aspects of the second ground fall away.

10. After the hearing, on 22 December 2023, the judgment of the Court of Appeal (Lewison, Moylan and Coulson LJJ) in *Westrop v Harrath* [2023] EWCA Civ 1566 was handed down. That judgment is also concerned with a suspended committal order made under Part 71. The issues addressed in that appeal are different from the ones arising in the present case. Nevertheless the whole of the summary of the law set out by Coulson LJ in *Westrop* from paragraph 16 on to paragraph 25 is relevant to the present case. It deals with the rules themselves and considers some authorities (which were not cited to us). No purpose would be served in repeating the whole of that summary for the present appeal, beyond the following.

11. CPR rule 71.2 provides that a judgment creditor may apply for an order requiring the judgment debtor to attend court to answer questions and to produce documents. By r71.2(6) a person served with such an order must attend court at the time and date specified, produce the documents required and answer questions on oath. By r71.5 the judgment creditor must file an affidavit of service and by r71.6(2) the questioning will be carried out by a court officer unless the court has ordered that the hearing will be before a judge. By r71.6(3) the judgment creditor or his representative may attend if the questioning is by a court officer but must attend, and conduct the questioning, if the hearing is before a judge. Rule 71.8 deals with failure to comply with the order. It is worth setting out in full:

> Rule 71.8
>
> (1) If a person against whom an order has been made under rule 71.2 –
>
> (a) fails to attend court;
>
> (b) refuses at the hearing to take the oath or to answer any question; or
>
> (c) otherwise fails to comply with the order,
>
> the court will refer the matter to a High Court judge or Circuit Judge.
>
> (2) That judge may, provided the judgment creditor has complied with rules 71.4 and 71.5, hold the person in contempt of court and make an order punishing them by a fine, imprisonment, confiscation of assets or other punishment under the law.
>
> (3) If such an order is made, the judge will direct that—
>
> (a) the order shall be suspended, provided that the person—

(i) attends court at a time and place specified in the order; and

(ii) complies with all the terms of that order and the original order; and

(b) if the person fails to comply with any term on which the order is suspended, they shall be brought before a judge to consider whether the order should be discharged.

12. A particularly relevant passage in *Westrop* is paragraph 21, as follows:

> "21. In the general run of cases, given the automatic nature of the Part 71 process, as opposed to the process under Part 81 (where contempt proceedings are either expressly instigated by one party or by the court itself), I would respectfully suggest that Part 71 will be both the starting point, and the end point too, for any consideration of the validity of a suspended committal order made under r.71.8. After all, what judgment creditors want – *[...]*– is information about the debtor's means; by using Part 71, the judgment creditor has not instigated contempt proceedings, and usually has no real interest in the outcome of any such proceedings. He just wants the financial information, and it has been shown that the making of a suspended committal order under r.71.8 can be a very effective way of ensuring that a recalcitrant debtor attends court to provide it."

13. Further aspects of *Westrop* which are relevant in the present case are the explanation that the scheme under Part 71 is distinct from and does not supplant Part 81, and that although one can think of the Part 71 process as relatively automatic, routine or "somewhat summary" in nature, that does not alter the fact that making a committal order is too serious a step to be undertaken as a matter of routine without enquiring into the nature of the contempt and the circumstances and without giving reasons, at any rate briefly.

The facts

14. To understand the context of order of 5 April 2022 it is necessary to summarise the procedural history. The appellant Mr Roberts brought a civil claim in 2018 against his ex-partner Ms Jones for his share of money earned from jointly renting out their caravan in Burnham-on-Sea. By an order dated 6 March 2019 he obtained default judgment against Ms Jones for just under £12,000. Not long after that Mr Roberts obtained at least one third party debt order relating to this claim but to no avail. Also in May 2019 Mr Roberts made his first application for an order for Ms Jones to attend court to provide information about her means. That application sought an order that she be questioned before a judge. In January 2020 that matter was referred to HHJ Vosper on the ground that Ms Jones had failed to attend court but he made no order on that occasion because the judgment creditor Mr Roberts had failed to comply with r71.5. A fresh application was made by Mr Roberts in 2020 and orders were made, culminating in an order for Ms Jones to attend to be questioned by a judge on 23 December 2020. However on that occasion neither Ms Jones nor Mr Roberts attended court. Therefore DDJ Gwilym adjourned the application generally on terms that the application would be struck out unless the application was restored by 23 March

2021. Mr Roberts did restore the application and the order of 5 May 2021 which leads to the present appeal was made.

15. The order made on 5 May 2021 required Ms Jones, as a judgment debtor, to attend court in Llanelli on 12 July before a judge to provide information about her means and to produce relevant documents. On 12 July Mr Roberts attended court in Llanelli but Ms Jones did not. DDJ Evans directed that the matter be transferred to Swansea to be heard by a circuit judge pursuant to r71.8. The Swansea hearing was to be at the same time as a committal hearing between the same parties in the Family Court. The civil and family matters were heard at the same occasion on 13 August 2021. In the family case, for reasons specific to that case, HHJ Garland-Thomas issued a warrant for Ms Jones' committal. It was warrant number 1A344150. In the civil case HHJ Garland-Thomas made a separate order also dated 13 August 2021 adjourning the matter to a face to face hearing on 15 October 2021. That civil order provided that Mr Roberts should arrange personal service of various relevant orders. An affidavit of a process server dated 8 September 2021 confirming personal service was filed and the matter came before HHJ Beard on 15 October 2021. In its original form the order made by HHJ Beard on that occasion stated that he was satisfied the debtor was served with an order to attend but was not satisfied of the matters necessary for making a suspended committal order. This order provided that further consideration of a suspended committal order was adjourned to a hearing on 20 October 2021 which the debtor was required to attend.

16. It appears that the next thing to happen was that a hearing took place on 5 November 2021 (rather than 20 October) before HHJ Beard at which Mr Roberts appeared but Ms Jones did not. The operative parts of the order of 5 November 2021 are:

> "The Order of 15 October 2021 is corrected as follows:
>
> IT IS ORDERED THAT
>
> 1. I am satisfied that the defendant/debtor was served with the order to attend and I am satisfied that the failure to attend is deliberate and amounts to a contempt of court.
>
> 2. I make a suspended committal order.
>
> 3. The claimant shall arrange personal service (by way of process server) of this order on the defendant/debtor of the following documents:
>
>   (a) This order
>
>   (b) The orders dated 19 August, 12 July, 5 May, 15 March 2021
>
>   (c) The contempt advice document annexed to this order
>
> 4. The debtor is ordered to attend court on etc.
>
> 5. Notice of hearing shall also be served on the claimant/creditor who may attend court if they so wish.
>
> 6. The hearing will take place on 24 November 2021 at 10:00 at Swansea Civil Justice Centre time estimate 1 hour shall be face to face."

17. What appears to be the text of the contempt advice document referred to at 3(c) then appears. The text explains that the defendant has a right to legal representation, strongly recommends getting legal advice and ends with these words in this form: "**GET LEGAL ADVICE, GET IT NOW**".

18. Despite the commendably clear text at the end, there are a number of problems with this order. The term "corrected" is an odd one to use in this context, and it is not clear on what basis the court was acting, however nothing turns on that now. The serious error is paragraph 2 which despite what it says, does not in fact make a suspended committal order at all since it contains no sentence. Less significant but unwelcome is the text of paragraph 4, which should not have been allowed to be sent out. Presumably the judge expected the staff drawing up this order to fill in further details – which in effect appeared in paragraph 6 – before the order was sealed, but that was not done. The reference to the claimant/creditor attending court if they wish is also puzzling since the still uncomplied with order to attend for questioning (of 5 May 2021) was an order for the questioning to be before a judge, at which the creditor or his representative needed to attend.

19. In any case the order was served personally (there is a process server's affidavit on file dated 12 November 2021) and on 24 November 2021, on Ms Jones' non-attendance, an arrest warrant was issued by HHJ Beard. It is warrant number 1A352080. This warrant is based on form N40A but it has not been filled in correctly. The result is a document which does not make sense. One aspect of the form is that it has parts to fill in which would have set out the period of committal which had been suspended. But since no period had been set by the 5 November 2021 order, none was put in this warrant.

20. Reconstructing what then happened is not totally clear, but from the court file it appears that Ms Jones was arrested under warrant number 1A352080 and brought before HHJ Beard on 25 January 2022. One puzzle at the hearing of the appeal in December 2023 was what had happened to the family committal warrant. From examining the file after the hearing it appears that when they received warrant number 1A352080 issued by the civil court, the bailiffs took the view that the new warrant issued by the civil court superseded the older warrant number 1A344150 issued by the family court and returned that older warrant to the court office, unexecuted. Nothing in this appeal turns on whether that was the right thing to do at the time.

21. At the 25 January 2022 hearing HHJ Beard decided that Ms Jones should have the opportunity to obtain legal advice. The order which he made adjourned the hearing of the contempt proceedings to 11 March 2022, recorded that "the suspended committal order" remained in operation, required the debtor Ms Jones to attend court on 11 March 2022 and also provided that the judgment creditor might attend if so advised.

22. As best we can tell, what then happened was that on 11 March 2022 Mr Roberts attended court before HHJ Beard but Ms Jones did not. HHJ Beard issued another bench warrant (warrant 1A361613) to arrest Ms Jones and bring her before the court. The copy of that warrant on the court file has a bailiff's certificate recording that Ms Jones was arrested and brought to court on 5 April 2022. The order of 5 April 2022 is the subject of this appeal.

23. However before we can consider the grounds of appeal we need to deal with the matter of jurisdiction.

24. The question whether this appeal ought to have been brought to the Court of Appeal at all turns out to be a difficult one. The normal route of appeal for an order made by

a circuit judge in the county court would be to the High Court. That is because a circuit judge is a judge specified in s5(1)(a) of the County Courts Act 1984, and by paragraph 5(1) of the Access to Justice Act 1999 (Destination of Appeals) Order 2016 (SI 2016/917), the route of appeal from a decision of a judge specified in s5(1)(a) of that Act is to the High Court.

25. In addition there is a distinct alternative route of appeal, direct to the Court of Appeal, which is applicable in many contempt proceedings (see ***Hurst v Barnet*** [2002] 4 All ER 457). As a result defendants found to be in contempt in the county court will sometimes bring their appeal to the Court of Appeal. This is provided for by s13 of the Administration of Justice Act 1960. The relevant words are:

> "13 Appeal in cases of contempt of court.
>
> (1) Subject to the provisions of this section, an appeal shall lie under this section from any order or decision of a court in the exercise of jurisdiction to punish for contempt of court (including criminal contempt); and in relation to any such order or decision the provisions of this section shall have effect in substitution for any other enactment relating to appeals in civil or criminal proceedings.
>
> (2) An appeal under this section shall lie in any case at the instance of the defendant and, in the case of an application for committal or attachment, at the instance of the applicant; and the appeal shall lie—
>
> *[…]*
>
> (b) from an order or decision of the county court … to the Court of Appeal;"

26. The Court of Appeal office is used to dealing with committal appeals from the county court which are brought under this section, which is no doubt why the point was not picked up. However it is not obvious that the present appeal falls within the terms of s13(2). The appellant Mr Roberts is not the defendant who has been punished for contempt of court and so for this appeal to fall within the section would require the order punishing the defendant for contempt to have involved "an application for committal". However there is no such application. This appeal relates to a committal arising under the Part 71 procedure. That involves an application for an order to attend court for questioning under CPR 71.2, but that is not an application for committal. A finding of contempt and the making of a suspended order for committal under CPR 71.8(2) follows on a referral by the court following a judgment debtor's non-attendance. Mr Roberts is therefore not the applicant in an application for committal and in my judgment the section does not apply to his appeal. This would not have prevented Ms Jones from appealing to the Court to Appeal as the defendant in this case, just as it did not prevent Mr Westrop from doing so in *Westrop v Harrath* but it seems to me that s13 of the 1960 Act cannot be read as giving the judgment creditor in a Part 71 case a right to a first appeal to the Court of Appeal.

27. The question therefore is what is to happen next. *Chadwick v Hollingsworth* [2010] EWCA Civ 1210 (Rix, Moore-Bick, Patten LJJ) is authority for the point that the Court of Appeal has no jurisdiction to hear an appeal for which the route of appeal is to the High Court. In that case the matter simply had to be remitted to the High Court. However a problem similar to the one in this case arose in *Massie v H and M* [2011]

EWCA Civ 115 (Maurice Kay, Thomas and Etherton LJJ). There a jurisdictional issue arose relatively late in proceedings. The Court of Appeal concluded that the route of appeal in that matter was to the High Court and not the Court of Appeal. The question then was what to do. Maurice Kay LJ, with whom Thomas and Etherton LJJ agreed, said this:

> "11. The question then arises as to what should happen next. Orthodoxy might result in our abandoning the matter at this stage, or at least simply transferring it to the High Court and not addressing it further today. However, in view of the passage of time and the costs involved, the pragmatic solution, and one favoured by Mr Stockwell, would be for one of us to sit as a High Court judge here and now and to consider the question of permission to appeal. What we shall do, therefore, is to declare our lack of jurisdiction and the fact of nullity of the consent order, transfer the matter to the High Court and one of us will then continue to deal with it in that capacity, if my Lords are content with such a course."

28. We will take the same course. The judgment of Birss LJ dealing with this matter sitting as a High Court judge (neutral citation [2024] EWHC 290 (KB)) will be handed down at the same time as this judgment, and a copy of it will be appended to this judgment starting over the page.

Lord Justice Snowden:

29. I agree.

Lord Justice Stuart-Smith:

30. I also agree.

Neutral Citation Number: [2024] EWHC 290 (KB)

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Swansea Civil Justice Centre
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Date: 14/02/2024

Before :

LORD JUSTICE BIRSS

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Between :

Andrew Paul Roberts	**Appellant**
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Approved Judgment

This judgment was handed down remotely at 10.30am on 14 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Birss:

31. This appeal arises from a hearing in the Court of Appeal in a case in which at a late stage it was appreciated that the route of appeal was to the High Court and not the Court of Appeal and on the application of the approach in *Massie v H and M* [2011] EWCA Civ 115. The full background of this appeal is set out in the judgment of the Court of Appeal (neutral citation [2024] EWCA Civ 118) given at the same date as

this judgment. There is no need to repeat it. This judgment is written to be read following on from that judgment. It picks up the paragraph numbering accordingly.

Ground 1

32. This ground arises because on 5 April 2022 HHJ Beard suggested to Ms Jones that she answer questions by a court officer, which is what she did, whereas the underlying order of 5 May 2021 provided that the judgment debtor was to be questioned before a judge, with the consequence under CPR 71.6(3) that the questions were required to be asked by the judgment creditor or his representative.

33. Mr Roberts also makes two further points about what happened when Mr Jones was questioned by the court officer. The 5 May 2021 order required all documents relevant to her means to be produced but Ms Jones produced no documents at all, as the record of her examination records. Mr Roberts also challenges the accuracy of the answers Ms Jones gave. On this appeal there is no evidence or ground on which the accuracy of the answers could be challenged. However Mr Roberts' point on the absence of documents is an important one.

34. The reasons for inviting Ms Jones to be questioned by a court officer can be seen from the transcript of the hearing. The judge asked Ms Jones what her reasons for not attending on the previous occasion were. She apologised, explaining that she had heard that her ex-partner (Mr Roberts) was attending, and said "it's not a very nice relationship and I don't want to be in the same area as him." Ms Jones also explained that she had had severe depression, sometimes struggled to leave the house unless she was with her mother, and was on medication for that. The judge's questions showed that he thought that the original order was for Ms Jones to attend to answer questions before a proper officer. He also asked why she had not attended to answer questions before a proper officer. At that point, having observed understandably that the matter had gone on for far too long, the judge asked Ms Jones if she would be prepared to answer questions before the proper officer today, she agreed and the matter proceeded that way.

35. The first difficulty is that it was a mistake to have assumed that the relevant order was for Ms Jones to attend and be questioned by a court officer. The original 5 May 2021 order was quite clear that questioning was to be before a judge. So the premise of the approach taken was wrong and in effect what was done amounted to a variation of the original order on no notice to the other party.

36. The second difficulty is the absence of documents. Again the original 5 May 2021 order was quite clear that Ms Jones was to produce relevant documents when she attended for questioning. Ms Jones was not asked by the judge whether she had any of the relevant documents with her to facilitate the process. No doubt she did not have any since she had been brought to court under an arrest warrant.

37. One possible course available on 5 April 2022, given Ms Jones' explanation why she had not attended before, was to consider a way forward by exercising the wide powers available in the case of a vulnerable party under CPR Part 1 PD 1A. The special measures include the use of screens, remote attendance and questioning through an intermediary. No doubt there are many other options but one possibility might have been for a hearing to be arranged whereby Ms Jones – with her documents – attended court in person to be questioned before a judge, but with Mr Roberts attending remotely.

38. If the court thought that the right thing to do was for the judgment debtor to attend before a court officer, directions could have been given for that to take place at a date in the future, with the debtor producing relevant documents, and giving the judgment creditor Mr Roberts notice of that variation of the order (made of the court's own motion and without notice) and an opportunity to apply to set it aside. If he had done so then the court could rule on what the best approach was in the presence of both parties.

39. These possibilities are more involved as a way forward than what in fact happened but they would have avoided the problems inherent in the short cut which was taken on 5 April 2022.

40. A more difficult question is what should be done about this now. I believe the answer is that this court should allow Mr Roberts' appeal from what was in effect a variation of the original 5 May 2021 order which had required Ms Jones to attend before a judge, producing relevant documents. The matter should be remitted to the county court sitting at Swansea for further directions as to how to proceed. The judge giving directions may take the view that for Ms Jones to be required to attend and produce documents may require an order for some appropriate special measures under PD1A.

Ground 2

41. The thrust of ground 2 was that an immediate custodial sentence should have been passed and it was wrong to order a suspended sentence, given there was a previous suspended committal order. The submissions viewed this ground as another way of putting the case that the order was too lenient. On that basis this aspect has fallen away as explained in paragraph 9 of the judgment of the Court of Appeal. However the ground also involves the contention that the court ought to have activated the suspended sentence, and therefore raises the question of what basis there was to impose any sentence at all (although since Ms. Jones did not appear nor appeal, there was no-one before the court to take that point).

42. The matter was approached on the basis that the defendant's admitted failure to attend court on the previous occasion of 11 March 2022 was a contempt. There was also a reference to a suspended committal order as if it had been issued on that occasion whereas as best one can tell the only suspended committal order made before 5 April 2022 was the defective order of 5 November 2021. On the basis that the matter was being approached as a breach of the conditions of suspension of the 5 November 2021 committal order, that raises the question of what options are available to a judge where the debtor does not comply with the conditions on which a properly drafted suspended committal order under Part 71 is made. Rule 71.8(3)(b) indicates that the judge in such a case can consider whether to discharge the order. That necessarily suggests that they are not bound to activate it. I would hold that the court therefore does have a discretion to make other orders, on proper grounds, aside from simply having a binary choice between activating the suspended committal and discharging it altogether, but that is a provisional view having not heard full argument on the point. On that basis, if the order of 5 November 2021 had not been defective, then the judge would have had power to pass a custodial sentence on 5 April 2022. He would also have had the power to suspend that sentence.

43. However, the 5 November 2021 order was defective as a suspended committal order because it did not specify a sentence of imprisonment to be served (see paragraphs 16-18 of the Court of Appeal judgment in this case). The question then is what if any consequences flow from this. Although Ms Jones did not appear, and the order is

spent, I would nevertheless quash the suspended sentence of 14 days imprisonment passed on 5 April 2022. It could only have been made as a consequence of a failure to comply with the conditions of suspension in the 5 November 2021 order, but that order was fundamentally flawed.

Ground 4

44. Ground 4 relates to the amendment to the order of 5 April 2022 made under r40.12. By this amendment a new recital was added to the order, purportedly under the "slip rule" CPR 40.12, which provided:

> "AND UPON HHJ Garland-Thomas ordering the contempt issues in Family proceedings, case number SA19P50901, be considered at the hearing of civil case E36YJ705 on 15th October 2021 and that matter having been adjourned and heard 5th April 2022, and all matters in both cases being before the court."

45. Recall that when the civil case was sent to Swansea there was a direction that it be heard on the same occasion as family proceedings between the same parties. The family proceedings referred to in this recital are those proceedings.

46. There is nothing on the face of the order to explain why this amendment was made but it appears to have taken place as follows. After the 5 April 2022 order was made Mr Roberts queried it with the court. There was a question whether the court on 5 April 2022 had had just the civil matter before it or the family contempt proceedings too. The order was amended by the court apparently so as to indicate that the family contempt proceedings had been before the court on 5 April 2022 and so the order made had taken that into account as well.

47. This amendment ought not to have been made. There is simply no basis in the papers we have seen to support the idea that the family contempt proceedings were before the civil court on 5 April 2022. The existence of the parallel family proceedings was referred to briefly and in passing at the hearing but there is nothing to suggest they played any part in the decision about what order to make. The date when both the civil and the family proceedings were heard together on the same occasion was 13 August 2021 before HHJ Garland-Thomas. On that date the judge made two distinct orders: one in the family proceedings SA19P50901, to issue the committal warrant against Ms Jones; and the other in the civil proceedings, to adjourn the civil proceedings E36YJ705 to a hearing on 15 October 2021. The family order does not mention the hearing of civil case E36YJ705 on 15 October 2021 and makes no direction that contempt issues in relation to the family proceedings be considered at that or any other hearing. The civil order of 13 August 2021 does not do this either and there is nothing in the papers to show that HHJ Garland-Thomas made another order of the kind referred to in the recital. In addition, neither the original form of the order made in the civil proceedings on 15 October 2021 nor the variation of it made on 5 November 2021 say anything about the family contempt proceedings.

48. I would allow the appeal on this ground and direct the amendment to the order of 5 April 2022 purportedly made under CPR 40.12 be struck out. It is, however, not obvious what practical consequence this will have in the civil proceedings.

Conclusion

49. The suspended sentence of imprisonment passed on Ms Jones on 5 April 2022 will be quashed. The amendment to the order of 5 April 2022 will be struck out. The civil proceedings under CPR 71 will be remitted to the County Court sitting in Swansea for further directions.