

**IN THE CENTRAL FAMILY COURT**

**BETWEEN:-**

**LUCY ANNE MARGARET O'DONNELL**

**Applicant**

**-and-**

**CHARLES OLIVER O'DONNELL**

**Respondent**

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**Lauren Lanson (instructed by Hunters Law LLP) for the Applicant  
Richard Buswell (instructed on a direct access basis) for the respondent who did not  
attend**

**Hearing date: 3 May 2022**

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His Honour Judge Hess:

1. In this case, I have before me an application by Lucy O'Donnell to whom I shall refer as the wife, against Charles O'Donnell, to whom I shall refer to as the husband.
2. This is a committal application arising out of a number of alleged breaches of an order which I made on 1 March 2022.
3. The background of this application is as follows. The parties were married, went through divorce proceedings and eventually went through financial remedy proceedings which culminated in an order made by HHJ Evans-Gordon on 27 November 2020. There were a number of features of that order but for present purposes, it is relevant for me to note that there was an issue which surrounded the husband's share of the beneficial interest under a Will Trust, the Marian O'Donnell Will Trust, which was an asset thought to be of substance and under the order, the wife was to get 82.5% of such amounts as were distributed to the husband as and when that distribution took place.
4. At that stage, it was thought that this was conditional upon a life interest of the husband's father. In due course it emerged that it was expected that interest would be paid out at a date which has now passed and it is fair to say we do not know for sure whether it has been paid out or not. What we do know for sure is that the husband has not paid the wife anything. Insofar as he has received anything; he has not paid anything to the wife.
5. The wife, believing that the husband has been paid out, has pursued enforcement proceedings. The difficulty is that the trust is held in the USA and so, in geographical terms, it is distant and perhaps difficult for her to engage in direct enforcement proceedings. Thus the wife's decision to engage in enforcement proceedings in the UK, in particular two committal applications.

6. I dealt with the first committal application on 1 March 2022, and under that application, the wife sought to commit the husband to prison for failing to comply with an earlier enforcement order and at the end of that hearing, I reached the conclusion that the wording of the order was not clear enough to warrant a finding that there had been a breach of the enforcement order. I gave a judgment explaining that at the time, but I made it clear to the husband, who did attend the hearing on a video link from the Bahamas, that that did not absolve him from his need to account for what had happened to his trust interest. Counsel for the wife sought to tighten up the wording of the order requiring the husband to say what was happening. That led to an order which I made on the same day, 1 March 2022 and that order required, in paragraph 8, a number of things from the husband.
7. The first of those things was paragraph 8(i). The question was, it seems to me, perfectly clear. Has the Marian O'Donnell Will Trust paid or transferred any money or assets to the respondent from August 2020 to date and if so, on what date? And then various other questions flowed on from that question in the sense that if the answer was 'yes', that some money had been transferred, he had to give details about that. If the answer was 'no', he had to give certain other details. This is a summary of what paragraphs 8(i) to 8(ix) say. I should say that Mr Buswell, who appears today for the husband, was present on 1 March 2022 and he was certainly involved in, although it wasn't ultimately for him to agree the wording, but he was involved in the production of the order and didn't raise any suggestion that these questions were ambiguous in any way.
8. I made that order and, as a result of that order, the husband made a reply of sorts which is dated 15 March 2022 and I take no issue that it was after the hours of when the order required his statement to be made; the complaint made about it was not it was not filed on time but that he has not answered the questions.
9. Particularly, his answer to question 8(i) was; "Concerning such interest as I have under the Marian O'Donnell Will Trust dated 14 December 1972, I consider this question is not applicable to my circumstances". Similar answers were given to quite a few of the other questions, and a slightly different answer to question 8(vii) and 8(ix).
10. The wife's solicitors were not happy with those answers and issued a committal application on 24 March 2022 and that was supported by an affidavit from Mr Henry Hood, who works for the wife's solicitors, dated 22 March 2022 and a further statement of Ms Eri Horrocks, who also works for the wife's solicitors, dated 13 April 2022. They in essence say that the answers I have just referred to do not comply with my order and they see it as part of a deliberate attempt by the husband to avoid compliance with the order. And so they bring this committal application. I listed this matter today before me. I indicated I would deal with the hearing and ensured the husband was aware of the hearing, that he didn't need to say anything if he didn't wish to, was eligible for legal aid etc but that he was expected to attend.
11. He hasn't attended himself today. He has instructed Mr Buswell to represent him on a direct access basis. Mr Buswell has appeared today. Ms Lanson has appeared on behalf of the applicant wife. I have heard arguments from both parties.
12. First of all, I want to say this. I gave Mr Buswell the opportunity to apply for an order that I shouldn't deal with this in the absence of the husband not attending and gave him a specific chance to take instructions. It was made clear to me that he was not seeking an adjournment and Mr Buswell was content that it should proceed in the absence of the husband. I have decided that it is appropriate for me to do that not only because both parties have invited me to do so, but also because on the case law, thinking of Mr Justice Peel in *Bailey v Bailey (Committal)* (Rev1) [2022] EWFC 5 and Mr Justice Cobb

in *Sanchez v Pawell Oboz and Jolant Oboz* [2015] EWHC 235 (Fam) to the effect that in the right circumstances, it is appropriate to proceed in the absence of the respondent. I am satisfied that he knows all about the hearing and was given a chance to attend. He has also instructed a barrister to attend. He has chosen not to physically attend himself. For those reasons I have decided to proceed with the application.

13. In dealing with the substantive application, I remind myself of the various provisions that Mr Justice Peel referred to in *Bailey v Bailey*, the citation for which I have just given. He reminds himself of the essential provisions of a contempt committal application. These proceedings are (i) criminal in nature (ii) the burden of proof is on the applicant and the presumption of innocence applies (iii) the contempt needs to be proved to a criminal standard, so as to be sure (iv) there needs to be a contumelious, deliberate breach and the breach must be precisely identified (v) it is not enough to suspect there has been a breach but it must be proved, and it must be within the power of the defendant to comply with the order and (vi) the defendant can apply to purge their contempt. I would add to that that these hearings should be in open court. This hearing is advertised as an open court case and counsel and I are robed. In due course, I will ensure that this judgment is published as required by rule 37 of the Family Procedure Rules.
14. So against those tests, has the applicant proved her case so that I am sure that the defendant has breached the order in a contumelious way?
15. In answering that question, I think it is most helpful to turn to question 8(i), the first of the things the defendant was obliged to do. In some ways, it is the most important one because the other questions flow from it. He had to say whether or not there were transfers from the trust to himself or someone else on his behalf. Did he answer that question? In my view, he did not answer that question. The answer that he relies upon is his answer in paragraph 2(i) of his statement at page 167 of the bundle, which is simply to say 'I consider this question is not applicable to my circumstances'. In my judgment that is definitely not an answer to the question that was asked. Of course the question was applicable to his circumstances. It required an answer because the answer was essential to know where to go next. I do not accept Mr Buswell's interpretation of that answer as being 'no'. If the husband's answer was that there had not been transfers out of the trust, he should have said no. I am satisfied so I am sure on the criminal standard of proof that the defendant has breached question 8(i). It follows that we do not know which of the other questions he should have answered. If the answer is 'yes' he should have given details of what the transfer of assets was - he has not done that. If the answer was 'no' he had to give some other answers. In my judgment, the answers to 8(vi), 8(viii) and 8(ix) fall well short of being answers to the questions which I ordered him to answer.
16. 8(vi), 8(viii) and 8(ix) required him, if the answer was no, to give full details so that the wife could make an assessment of what to do next. The answers he has given fall well short of that. Mr Buswell has accepted this, certainly in relation to 8(viii).
17. The long and the short of this is that this document, dated 15 March 2022 is, it seems to me, a carefully designed attempt to fail to comply with the court order, to answer the questions in a tangential way, perhaps to give Mr Buswell a chance to obfuscate this question and buy more time for the defendant. It seems to me that the defendant has very clearly not answered 8(i) and either if the answer is 'yes', 8(ii), 8(iii), 8(iv) , 8(v) and 8(vi) and if 'no', he has not answered 8(vi), 8(viii) and 8(ix).
18. Therefore in my view, he is in breach of my order.

19. I should move to one other thing before I finish on the question of proof of allegation, and that is that I was handed a letter by Mr Buswell which was apparently sent to the court by email, but it has not arrived in my inbox. This is not, however, an issue because I have been handed a paper copy. The letter is dated 1 May, which was Saturday. It bears a heading of Nassau in the Bahamas. It purports to either exculpate the defendant from the committal application or alternatively provide some mitigation by asserting that he has made offers on a without prejudice basis to the wife to settle this matter. He may have done, he may not have done, I do not think it is relevant to the issue of this committal application. It goes one step further than that and although carefully worded to avoid answering the question of whether he has received money from the trust, the paragraph in the middle of the letter says he has been helping his mother with various property developments in relation to her home and he has the opportunity, he says, to help ensure the project is successfully completed on the terms of the November 2020 court order. He says, "On the terms of the November 2020 court order, my share of the Trust interest, after deduction of the element ordered to be paid to Lucy, would be an insufficient contribution to the funding of my mother's development to have any financial significant or be of value to help this project succeed and enable my full payment to Lucy, as she expects, and I intend to do". It seems to me a threat to what the wife wishes (i.e. to receive the sums she is due), to enable him to complete the development of his mother's project. It seems to me that it is an inappropriate thing for him to say. If the wife had received an offer she was minded to agree, it would be different, but that is not what has happened here. The husband's plan, regardless of the court order, to proceed with the development rather confirms the overall picture that this is a man who does not wish to assist the court in enforcing the order of HHJ Evans-Gordon of November 2020.
20. That sets, perhaps, the context in which I make a clear finding that the husband is in breach of the court order which I made on 1 March. I now go on to consider what the appropriate penalty is.
21. In strict terms, he is in contempt of paragraph 8(i), but it is slightly difficult to know which of the other paragraphs he is in breach of because some of them relate to breaches if the answer was 'yes' and others if the answer was 'no' and I cannot be certain. I am going to say this penalty is in relation to the breach of paragraph 8(i). It is an important breach because of what seems to be happening here, and I make that judgment from looking at the order itself, the various documents in the bundle which explain the genesis of this, the deliberate breach which I have now found, and the threat in the letter of 1 May 2022 to carry on with investing the money in his mother's project.
22. It seems to me that he witnessed what happened on 1 March and was absolutely perfectly well aware of what this was about. The wife was entitled to a substantial amount of money worth several hundred thousand pounds. The husband is not assisting the court in enforcing that, and in my interpretation, deliberately blocking the enforcement of the order. The wife has not had what HHJ Evans-Gordon thought she should have. The husband is perfectly well aware what this is about. He should have, very long ago, done much more to explain what was going on and to make sure that the wife got what she was entitled to.
23. I regard this as a serious contempt and can see no purpose in a suspended prison sentence because the husband has already demonstrated what he thinks about complying with this order, and having done what he has since 1 March, it is clear this is someone who will not be moved by suspended order. A prison sentence should be passed. How long should it be? In calculating that, I bear in mind that maximum sentence is 2 years and what I pass has to be in that context. I remind myself of some of the case law on sentencing *Hale v Tanner* [2000] EWCA Civ 5570, *Hart v Hart* [2018]

EWHC 548 (Fam) and of course Bailey v Bailey which has a passage that deals with that as well.

24. I have decided in the light of all of that that the right sentence is one of 6 months immediate imprisonment but I want to include in my order that should he wish to do so, the husband can apply to purge his contempt at any time. If he answers fully all of those questions and cooperates with the enforcement process, this may be a case for purging of contempt but that awaits his application. I am going to pass an immediate custodial sentence of 6 months in prison.
25. The simple fact is he is not here in court to be taken to prison and I have not investigated whether he is in this country or elsewhere. Either way, it seems to me that it is appropriate that my order includes a warrant for the husband's arrest so that if he is discovered in this country at any time, he can be detained in custody.

HHJ Hess  
3<sup>rd</sup> May 2022