

[2022] EWFC 122 (B)

1. IN THE FAMILY COURT AT EXETER
2. IN THE MATTER OF THE FAMILY LAW ACT 1996
3. Between
4. Abigail Lee Hammond
5. Applicant
6. and
7. David Frederick Downing
8. Respondent

BEFORE DEPUTY DISTRICT JUDGE FOWELL ON 5TH OCTOBER 2022

JUDGMENT

Representation – Applicant - Galina Labworth

Respondent – Ryan Morgan (C)

Background

1. On 29 November 2021 Ms Hammond obtained a non-molestation order against Mr Downing. No findings of fact were made, but Mr Hammond agreed to abide by number of orders. Those which are alleged to have been breached are as follows:
 - “16. The respondent, David Frederick Downing, must not intimidate, harass or pester the applicant, Abigail Lee Hammond, and must not instruct, encourage or in any way suggest that any other person should do so.
...
 - “18. The respondent, David Frederick Downing, must not damage, attempt to damage or threaten to damage any property owned by or in the possession or control of the applicant, Abigail Lee Hammond, and must not instruct, encourage or in any way suggest that any other person should do so.
...
 - “22. The respondent, David Frederick Downing must not use or threaten violence against the relevant children, and must not instruct, encourage or in any way suggest that any other person should do so.”
2. The application by Ms Hammond to commit Mr Downing for contempt of court was

made on 22 June 2022. Those were the three orders identified. It has not been suggested that Mr Downing has instructed or encouraged others to breach those orders, nor that he has actually damaged any property, so the applicable wording is that he is alleged to have:

- a. intimidated, harassed or pestered Ms Hammond,
 - b. attempted or threatened to damage her property, and
 - c. used or threatened violence against the relevant children
3. The last allegation is surprising. There have been no threats of violence against the children of the family, let alone acts of violence, and so the third allegation is simply misconceived. Ms Hammond may have meant to rely on paragraph 23 of the original order, which prevents him from intimidating, harassing or pestering the children but that was not specified in the application, and the allegations have to be accurately identified. I therefore find at the outset that there has been no breach of paragraph 22. Given my findings below however, the difference is not material.
 4. The application also relied on breach of an undertaking for financial payments to Ms Hammond, requiring Mr Downing to pay half of the mortgage and half of the home insurance by the 3rd and 6th day of each month respectively. Mr Downing fell into arrears with those payments but has now brought them up to date and no issue remains regarding that alleged contempt.
 5. Ms Hammond says that Mr Downing has breached the *order* by following her in his van when she or her children were in her car, driving around Exeter. She alleges this has happened four times, once on 24 January 2022 and then three more times in fairly close succession – on 4 April, 8 April and 14 April 2022.
 6. Mr Downing denies any wrongdoing, and says that he happened upon Ms Hammond, or, on one occasion, her father, by accident and was driving normally, keeping his distance.
 7. The alleged breaches were reported to the police each time. After the first two incidents they recommended that Ms Hammond install a dashcam so that she could prove that Mr Hammond was at fault. She took footage of the next two times when Mr Downing's van was spotted, but the police took the view that there was not enough evidence to convict Mr Downing of a breach of the order, hence this private application to commit him for contempt of court.
 8. The burden of proving these breaches is on Ms Hammond, and the standard of proof is the normal criminal standard. I must be satisfied in each case beyond reasonable doubt that Mr Hammond has breached the terms of the order.
 9. In deciding whether that is the case it is not necessary for me to go back over the events leading to the grant of the non-molestation order, but by way of brief background Miss Hammond has four children; the eldest is Louie Green, who is now 18, and gave evidence at this hearing; she has two other daughters from the same relationship, now 13 and 14, and a son with Mr Downing, now aged four. They live

together at De La Rue Way, in Pinhoe, Exeter, and the non-molestation order also ordered that Mr Downing was not to enter their schools or nursery. A zonal exclusion was also placed around the family home.

10. I heard evidence from Ms Hammond, supported by her son, Louie Green, who was in the car on the first occasion; a friend of hers, Mr Peter Lauchlan, who came out to the house after the first incident; and her father, Kevin Hammond, who was driving on the last occasion with the children in the car. I also heard from Mr Downing and from his partner, Ms Natasha Milum, who was with him on that last occasion. There was a bundle of 163 pages, including various plans and photographs of the scenes and routes in question, supplemented by the dashcam and some CCTV footage, which I viewed with the representatives. Having heard and seen that evidence, I make the following findings of fact. I will not deal with every point raised in evidence, only those necessary to support my conclusions.

Findings of Fact

11. Ms Hammond and Mr Downing split up in November 2021, shortly before the non-molestation order. He ran a business as a dog walker, so he needed to drive around the Exeter area, collecting and returning dogs. His evidence was that he was effectively made homeless by the separation, and I accept that sometimes he was sleeping in his van. He had three vehicles in all, a Land Rover and two vans, both converted ambulances, and had the use of a storage unit or garage on Chancel Road, very close to the family home.
12. He was of course familiar with the family routine and had done the school run on occasion for the children. He was very familiar with the family car, a silver Vauxhall Zafira, which he had driven, insured and cleaned over a period of about nine years. He also knew that Louie had a job in a bar on the Exeter University campus on Monday evenings. This is about a ten minute drive from home and because he did not finish until about 9.50 pm, Ms Hammond used to pick him up and drive him home.
13. So, she was driving home with him at about 10 o'clock on Monday 24 January 2022, headed east, away from the University and the city centre. As she crossed from Prince of Wales Road into Union Road she saw Mr Downing's van in her rear view mirror. It is a distinctive vehicle, with a big logo on the bonnet and covered in stickers advertising his dog walking business. She says she tried speeding up, but the van stayed close behind her. It had its headlights on full beam. It followed her as far as the zonal area around her house prescribed in the non-molestation order, a distance of about three miles, at which point the van turned away, into Chancel Road.
14. Mr Downing does not dispute that he was behind her, or that he followed her the whole way from the university campus, but he disputes driving close behind her or having his headlights on full beam. He says that this was a chance encounter.
15. I prefer Ms Hammond's evidence on this point. Firstly, I accept that she was extremely distressed by the incident. That is supported by her own account, the

evidence of her son and by Mr Lauchlan, who she called when she got home. He is her line manager, and a friend. He described her as scared and upset when she rang him, crying on the telephone and unable to catch her breath. Because she was so upset, he agreed to go round straight away, even though it was after 10 o'clock at night. When he arrived he found her shaking uncontrollably, afraid that Mr Downing might come back to the house. He persuaded her to call the police, which she did, at about 11.30 pm, dialling 999.

16. The police records of that conversation agreed closely with her account at this hearing, including her attempts to speed up to get away from the van and Mr Downing catching up with her. This is therefore a consistent body of evidence, which I accept, about Ms Hammond's reaction and response.
17. The police made arrangements to come out to see Ms Hammond to take a statement later that week, and to obtain CCTV footage from the University. That footage showed Mr Downing's van following the Vauxhall Zafira from the university campus, with two cars in between them. The two cars then turn off, leaving Mr Downing's van directly behind Ms Hammond. It does not show Mr Downing driving close behind her and it is not clear whether it had its headlights on full beam, although that would be unlikely with other cars in between them. But that is not at odds with Ms Hammond's account. She says she was not aware of Mr Downing following her until some time later. What is clear beyond doubt is that he followed her from the university all the way home, a distance of about three miles.
18. Although there is no obligation on Mr Downing to disprove the allegations, I am entitled to take into account the explanations he has given about that evening, which was in fact his birthday. He has provided social media posts showing that he was sending messages to a friend of his that evening, trying to persuade his friend come out with him. According to Mr Downing's affidavit, he then went down to the pub by himself, the Imperial, not far away from the University. It states that he ordered food at about 9.30 pm and spent at least an hour eating and having a pint of coke. However, the police obtained CCTV footage from the pub car park showing that he was actually there for 29 minutes from 21.24 to 21.53. He was therefore in the pub, alone, for less than 30 minutes, before leaving at the time when Ms Hammond would be nearby collecting Louie. Those circumstances point strongly towards this being a deliberate encounter.
19. That view is supported by the fact that he followed the Zafira for so long, until the last possible moment, before entering the exclusion zone around the family home. It is difficult to see what other purpose could have been served by following the car so far unless it was to intimidate the occupants.
20. Mr Downing's account of his movements after leaving the pub is also unreliable. In his affidavit he does not say expressly where he was heading that evening but he made mention of the lock-up or storage unit on Chancel Lane.
 - "6. As I noticed the Zafira, I did not want to take any risks, and having been advised by my legal representatives to stay as far away from Ms Hammond as I could, as soon

as I reached Chancel Lane, which leads to my storage unit, which is based at the bottom of Chancel Lane. I took the opportunity to leave the area and turned right.”

21. However, in response to questions as to why he would be going there so late at night, he denied that was going to the storage unit and said that he was heading out in the Exmouth direction or perhaps elsewhere, to park his van for the night. In short, he was simply driving without knowing where he was going.
22. It is clear from the passage quoted that Mr Downing knew he was following Ms Hammond’s car. He also accepted in connection with the last incident (below) that when he pulled up behind it at a set of traffic lights he remarked to his partner, Ms Milum, that it was Ms Hammond’s car. He suggested at one point that he would not be able to recognise the car from the number plate as he is dyslexic, it is clear that he did recognise the car, and for the reasons already given I do not accept that this was a chance encounter.
23. That means that I do not accept his evidence about his actions or intentions that evening. Nevertheless, just because a person’s evidence is not accepted on one point does not mean that it should be rejected on all points, and the account has to be seen in light of the other evidence available and all the circumstances of the case.
24. Given my view that this was a deliberate act on his part, I see no reason to doubt the evidence of Ms Hammond and her son that Mr Downing was following close behind, speeding up as required, or that he had his headlights on full beam. It is relatively easy to see if a car behind has its headlights on full beam, rather than the occasional flash caused by going over a bump, and this was a journey of at least ten minutes. That too is consistent with the account given to Mr Lauchlan shortly afterwards, and to the police.
25. It was suggested that no real weight should be given to Louie’s evidence as he had discussed it with his mother. Clearly there is a risk of them simply presenting an agreed view, but that is no reason to discount his evidence, and it has to be viewed against the surrounding circumstances, including the fairly prompt and consistent account given to the police.
26. It was suggested that the incident cannot have been too bad because no one phoned the police from the car. I do not regard that as significant. Ms Hammond also gave evidence that she was concerned about possible repercussions if she did so, and so had to be persuaded, which is entirely plausible.
27. Overall, I am satisfied beyond reasonable doubt that in acting as he did on 24 January 2022, Mr Downing was harassing and intimidating Ms Hammond, and that it was his intention to do so.
28. The second allegation concerns events on 4 April 2022, at just after 2 pm. This time, Ms Hammond was not following any sort of regular routine. She simply encountered Mr Downing in his van as she was driving along on a road called Beacon Heath. Aerial photographs show that there is a single carriage way in both directions but at

one point it narrows to a single, joint carriage way. She was heading east and had right of way. There is a give-way point for drivers coming in the other direction, where they can wait until oncoming cars have gone past and the road ahead is clear. Ms Hammond says that Mr Downing recognised her vehicle and then accelerated forwards, approaching her at speed, and coming so close that she thought he was going to clip her vehicle. That is the basis of the allegation that he attempted to cause damage to her property.

29. This time the only supporting evidence is in the form of the notes taken by the police when she reported this further incident, which do not take matters much further. It rests entirely on her account of a very brief incident. Mr Downing says he has no recollection of the incident at all.
30. I accept that Ms Hammond was alarmed and shaken at seeing Mr Downing again, but this is not a satisfactory basis to conclude, beyond reasonable doubt, that he attempted to collide with her or otherwise alarm her. There is nothing on this occasion to suggest that this was anything other than a chance encounter. The photographs of the scene show that there is only room for one car at a time to pass. Even two very small cars could not squeeze through the gap in question. There is even a post in place to ensure that only one car at a time can get through. And there are perhaps two car lengths between the give-way point and the post, so there is very little distance over which Mr Downing could speed up towards her. There is also nothing in any of the other incidents to suggest that Mr Downing, on seeing Ms Hammond in her car, has deviated from his route or attempted to collide with her. I cannot be satisfied that any breach occurred on this occasion.
31. After that incident, Ms Hammond, at the suggestion of the police, decided to install a dashcam to her vehicle. This was fitted facing forwards, and so picked up the next encounter. This occurred only four days later, this time on Ms Hammond's regular school run. It was about 8.20 am, and she was returning home, on her own. The footage shows her heading north and approaching a mini roundabout. Immediately after that roundabout, there is another one, but she was intending to turn right at the first one. Mr Downing can be seen approaching in his van from the left hand side of the second roundabout. He turned right, coming towards Ms Hammond, so they were both approaching the same mini roundabout at the same time. She turned right, directly in front of the van. In fact, she seems to turn sharply right, across the front of the van and over the middle of the mini roundabout. Mr Downing has started to move forward but then stops. It may be that he wasn't expecting her to turn right at the roundabout. The footage does not show whether Ms Hammond was indicating to turn right or not. In my view there is nothing in the footage to suggest anything out of the ordinary by Mr Downing. He did not take the same exit as her, they could see each other for a few seconds, and that was the end of the matter.
32. Although the timing, and the fact that Ms Hammond was on the school run, might suggest that this was a deliberate encounter, there is also the fact that they were going in opposite directions. A few seconds later and they would not have seen

each other at all, so I cannot be satisfied that this was a deliberate encounter.

33. The last incident does not involve Ms Hammond at all. Her father, Mr Kevin Hammond, was driving the three younger children towards the city centre in the Zafira. By this time, the car had been fitted with a rear dashcam, and there is some sound available, although it is difficult to hear. At about halfway through the journey Mr Hammond is parked at a set of traffic lights. He is there for some time, sitting in the right hand of two lanes. Eventually another vehicle pulls up behind them. It is Mr Downing in his van. They proceed together through the lights along the main road. Traffic is quite heavy so the van pulls up behind them and stops a few times. It does not appear to be unduly close for two vehicles in a queue. Mr Downing can be seen, or at least his hand is on the wheel. Ms Milum was also in the van with him. Their evidence was that he was taking her to work, which began at 3 pm. The route and timing matches that account. So again, there is no reason to conclude that this was anything other than a chance encounter.
34. The van follows behind for a while. When the Zafira pulls away, the van waits for an appropriate time before moving forward. At one point, one of the children notices the van behind and makes a comment that Mr Downing does not know that they have a camera. However, she does not sound at all distressed and the conversation moved to other things. Mr Hammond was concerned, given the previous incidents, but it does not appear that any concern was transmitted to the children. Miss Hammond's evidence was that they were frightened when she saw them later, although she was not present and so I can place no real weight on that, particularly given her very acute concern about any contact with Mr Downing.
35. At one point a motorbike joins the queue of traffic in front of the van, and shortly afterwards the motorbike comes to a stop at another set of traffic lights, leaving Mr. Hammond on the Zafira to go through. That is the end of the incident.
36. It follows that I can see no breach of the non-molestation order in respect of the second, third or fourth incident.
37. Miss Labworth, for Ms Hammond, invited me to find that this was a course of conduct on his part, and the coincidence of these encounters over a relatively short period of time shows that they must have been intentional. That view is reinforced by the fact that the encounters then stopped. She says that this timing is not coincidental and is due to the fact that Mr Downing had started proceedings to spend time with his son and that Cafcass had been in contact, from which point on his behaviour changed. That is a plausible hypothesis but falls very far short of demonstrating beyond reasonable doubt these were deliberate encounters and that any breach then occurred. There is no obligation in the non-molestation order on Mr Downing to avoid any contact with Ms Hammond if they happen to see each other while driving, although that would of course be prudent on his part, but even if these encounters in April were deliberate, I cannot see that any breach occurred. That is not to say that Ms Hammond was not very alarmed or that Mr Hammond was not concerned, but a clear breach has to be shown to the criminal standard before any

penalty can be imposed.

38. That conclude my findings on liability. Mr Downing has the right to appeal this decision within three weeks, and does not need my permission to do so.
39. The questions of costs and sentence are adjourned to Thursday 27 October 2022 at 10 am.
40. Any written submissions from Mr Downing on sentence and/or costs must be filed and served by 4 pm on 22 October 2022.
41. Any written response on behalf of Ms Hammond should respect the convention that it is not for the prosecution to contend for a particular sentence, and should be filed and served at least 24 hours before the adjourned hearing.