

TRANSCRIPT OF PROCEEDINGS

NEUTRAL CITATION NUMBER: [2018] EWHC 1109 (Fam)

Ref. FD09D01481

**IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION**

The Royal Courts of Justice
Strand
London

Before THE HONOURABLE MR JUSTICE MOSTYN

IN THE MATTER OF

ET (Applicant)

- v -

ST (Respondent)

**MR JOSHUA VINEY appeared on behalf of the Applicant
THE RESPONDENT appeared in person**

**JUDGMENT
13th APRIL 2018
(AS APPROVED)**

The Judge gives permission for this judgment to be reported in this anonymised form. The parties and their children may not be identified in any report. Failure to observe this prohibition will amount to a contempt of court

MR JUSTICE MOSTYN:

1. By a consent order made by District Judge Bowman on 20 July 2011, it was provided that the Applicant, (who I will refer to in this judgment as “the husband”) should retain the

contents of a property in Chiswick. Those contents included a painting by Caziell. The painting was not delivered up to the husband and, on 30 October 2017, he commenced enforcement proceedings.

2. Prior to that, at a hearing before District Judge Jenkins on 10 May 2017, the respondent wife had given evidence on oath that she had stated that she had last seen the painting a few years ago and implied that the husband had taken it because he had access to the house.

3. Following the issue of the application for enforcement to which I have referred, there was a hearing before Judge Hess at which the wife again gave oral evidence on oath and, on that occasion, the wife stated that she had last seen the painting in the first quarter of 2015 and again implied that the husband had taken it because he had keys and access to the house at all material times.

4. The day after she gave that oral evidence to Judge Hess, the wife made a witness statement - not an affidavit but a witness statement - endorsed with a statement of truth, in which she stated in paragraph 10:

“I do not have the Caziell painting in my possession. It last hung in the house in about the first quarter of 2015. I have not seen it since. I certainly have not sold it or disposed of it in any other way.”

5. These three pieces of evidence - the first two on oath from the witness box, the second in a witness statement - were not true. This is confirmed by the wife's witness statement dated 26 January 2018 where she stated that it was an apology to the court and she stated in paragraph 3 that the evidence that she gave to Judge Hess on 10 November about not knowing the whereabouts of the painting was untrue and that what she said in her witness statement on 11 December 2017 was also untrue.

6. The admissions made in that witness statement demonstrate or confirm that what she had said to District Judge Jenkins on 10 May 2017 were also untrue. Although the witness statement was replete with apology to the court, it did not explicitly offer an apology to the husband and, indeed one view of what the wife said in paragraph 7 was that she was declining to apologise to the husband. However, before me she has confirmed, with sincerity, in my judgment, that her apology extends to the husband also.

7. Since that witness statement was made on 26 January 2018, the painting has been recovered by the husband, so the objective that he set out to achieve in his enforcement application has been achieved, subject to the question of costs. The costs he has incurred have been the costs of and incidental to the enforcement application and also the costs of and incidental to the committal application which he launched on 28 January 2018.

8. At that time, the painting had not been returned to him and so, in the usual way, the committal application contained a major coercive element and that coercive element has had the desired effect because, as I say, the painting has been returned to the husband. I think Mr Viney is, therefore, right to say that the costs that the husband has incurred in recovering the painting extends to the committal application, although whether he should recover all of his costs of the committal application given that he has, so it seems to me, obtained full and just satisfaction in the objective that he has set out to achieve is something that I will decide later.

9. Notwithstanding that he has, as I say, obtained fully the objectives he set out to achieve, the husband now applies to the High Court, as he must, for permission to proceed with committal proceedings against the wife in respect of, first, her false witness statement and, second, her lies on oath.

10. There is no doubt that permission of the court is needed in respect of a false statement. This is provided in Family Procedure Rules, 17.6(1), which provides that:

“Proceedings for contempt of court may be brought against a person who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.”

However, by virtue of subparagraph (2):

“Proceedings under this rule may be brought only [either] (a) by the Attorney General; or (b) with the permission of the court.”

11. The proceedings under that rule are not brought by the Attorney General and, therefore, require the permission of the court. The husband also avers that the wife has committed contempt of court by lying on oath. How lies on oath should be characterised in the contempt jurisprudence is a matter which is not free from ambiguity.

12. Family Procedure Rules 37.13 provides that chapter 4 of that part:

“... Regulates committal proceedings in relation to interference with the due administration of justice in connection with family proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court.”

And rule 37.13(2), says that:

“A committal application under this chapter may not be made without the permission of the court.”

13. Is perjury interference with the due administration of justice or is it a contempt committed in the face of the court? In the decision of *Re L (A Child)* [2016] EWCA 173 at paragraph 50, the President opined that telling lies on oath was a contempt in the face of the court. If that analysis be right, then the wife’s perjury - which seems to me to be admitted perjury - would not carry it with a permission requirement pursuant to rule 37.13(2).

14. However, Mr Viney argues, with the greatest of respect - as counsel in his position traditionally say - that perhaps the President is mistaken and that the contempts committed in the face of the court are confined to unruly behaviour such as throwing a brickbat at the judge, as happened in the famous case referred to in Sir Robert Megarry’s *Miscellany-at-Law*, which resulted in the perpetrator being immediately hanged in the face of the court.

15. More recent examples of contempt in the face of the court of this nature include the famous laughing gas escapade in *St Albans Crown Court v Balogh*, and other occasions where objects have been thrown at judges or judges have been sworn at.
16. There has never, apart from the case of *Re L*, been a case where lies on oath have been characterised as contempts in the face of the court. For this reason, Mr Viney says that a more accurate characterisation of lies on oath within the contempt jurisprudence is that they are interferences with the due administration of justice. They are literally to be so described and are of a piece with, for example, forging court documents or seeking to bribe judges or misconduct of that nature.
17. I will proceed on the basis that Mr Viney may well be correct and I will, therefore, consider whether, in relation to the wife's lies on oath, permission should be granted under rule 37.13(2).
18. In my judgment, where contempt proceedings which are subject to a permission requirement are brought in relation to alleged lies on oath where there is no deterrent or coercive facet to the application in the manner of which I have described, but where the objective of the exercise is to mete out pure punishment to the alleged contemnor, the court, in my judgment, has to consider very carefully whether the resources of the court should be deployed for this exercise to take place when there exists, established over centuries, the alternative procedure of criminal proceedings.
19. Perjury is a very serious offence and it carries with it a maximum prison sentence of seven years. If perjury has been committed, in my judgment, the most suitable route and the most normal route that should be adopted is that permission should be sought from the court to release the transcripts to the Police and for the Crown Prosecution Service to decide, applying the usual test, whether it is in the public interest to prosecute and, if so, whether there is a more than evens chance of securing a conviction.
20. If the decision to prosecute is made, then the alleged perjurer will be entitled to receive legal aid and will be entitled to be judged by a jury of his or her peers. The alleged perjurer will have the full protection of the criminal law in a forum which is designed specifically for the purpose of investigating what the law has characterised as a serious crime.
21. In my judgment, that is the appropriate approach that should be taken in this case. If the husband is determined to pursue his wife in the way in which I have described and to seek that punishment is meted out to her, then he should approach, respectively, District Judge Jenkins and Judge Hess and ask for their permission either for him to be able to use the transcripts and other documents in a report to the police, or to invite those judges to refer the material to the police themselves.
22. And so, therefore, in relation to the wife's alleged perjury and the application for permission under rule 37.13(2), I refuse permission on the grounds that the better route is that, if the husband is so minded, criminal proceedings should be sought to be initiated. Having dealt with the principal lies told by the wife, it seems that the lies in the witness statement made by her on 11 December 2017, which Parliament has not sought to characterise as a criminal act, is a minor addendum to what is certainly the major part of the obloquy that attaches to her.

23. In my judgment, it would not be proportionate, nor in the interests of justice, nor would it be a reasonable use of the resources of the court for her false witness statement to be subject of contempt proceedings in circumstances where it is open to the husband to pursue the much more serious matter of perjury. In those circumstances, I decline to grant permission under rule 17.6(2)(b).

24. That leaves the question of costs of the husband's enforcement application and of his committal application. In relation to his enforcement application, it seems to me to be unarguable that he should recover his costs on an indemnity basis - so it is costs of and incidental to his application for enforcement on 30 October 2017 on the indemnity basis. Indemnity costs under the rules should be awarded where there has been conduct which takes the case out of the ordinary and the cases repeatedly state that demonstration of dishonesty is such a ground.

25. In relation to the husband's application for committal, it was issued with a motive, perhaps the primary motive to recover the painting, so it had a significant coercive element which was successful. However, since the painting has been recovered, the husband has pursued in a very single-minded way the application for committal, notwithstanding that he has achieved everything he has set out to achieve.

26. In those circumstances, I am not satisfied he should recover all of his costs of the committal proceedings. In relation to the committal application, I order that he recovers 50% of his costs of and incidental to that application to be assessed on the standard basis.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

This transcript has been approved by the Judge