

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2019] EWHC 3112 (Fam)

Case No: FD19P00079

Royal Courts of Justice
Strand
London
WC2A 2LL

Monday, 28th October 2019

Before:
THE HONOURABLE MR JUSTICE HOLMAN
(sitting in public)

B E T W E E N:

AIFRIC CLARE REILLY

Applicant

and

SHAKIB SHAMREZ

Respondent

MR N ANDERSON (instructed by FREEMANS) appeared on behalf of the applicant
NO APPEARANCE by or on behalf of the respondent

JUDGMENT
(As approved by the judge)

This Transcript is Crown Copyright. It may not be reproduced in whole or in part, other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

MR JUSTICE HOLMAN:

1. This is the substantive hearing of an application by a mother, Aifric Clare Reilly, to commit a father, Shakib Shamrez, to prison for contempt of court. The mother, as I will call her, is present and represented today. The father, as I will call Shakib Shamrez, is not present or represented today.
2. The case was listed for hearing in public at 10.30am this morning, Monday 28 October 2019. At that time, the father was not present in, or in the vicinity of, the court room, nor any representative on his behalf. I began the hearing at about 11.05am. At that time, as a public act, the usher went out into the corridor and loudly called out the name Shakib Shamrez, but there was still no appearance by him or on his behalf. As I speak these words, it is now about 12.10pm and still there has been no appearance by Shakib Shamrez or anyone on his behalf.
3. I will refer a little later in this judgment to service of the present application and other relevant documents upon the father, and the reasons why I am satisfied to the criminal standard that he has been served with notice of these proceedings in accordance with the relevant rules and also a specific order made by Francis J on 23 September 2019, and why I am satisfied to the criminal standard that he knows perfectly well that this application to commit him to prison for contempt of court is being heard here today.
4. First, however, I will briefly summarise the relevant history. The mother originates from the Republic of Ireland. The father originates from Pakistan. He is, however, also a British citizen. The parties met in 2008 here in England. They married in 2011, also here in England. From their marriage (which subsists) they have two children. The elder is a daughter, Sophia Shamrez, who was born on 16 January 2014. She is now therefore about five and three-quarters. The younger is a son, Zakariya Shakib Shamrez, who was born on 31 July 2017, so he is now about two years and three months old.
5. Following the birth of each of the children, the parties continued to live here in England and Wales. In late 2018 they travelled to Saudi Arabia together. It is the case of the mother that

she understood that that was intended to be for a relatively short period before they would resume living here in England and Wales. However, she says that after they arrived in Saudi Arabia the father became very controlling of her and said that he intended that they would now remain in Saudi Arabia.

6. In December 2018 the father and mother and two children travelled to Pakistan for a family wedding there. Whilst in Pakistan, the mother made arrangements to travel with the children back to England and Wales. She got as far as Dubai, where the father involved the Dubai authorities and police. It suffices to say for the purposes of the present judgment, that in the end the mother was permitted to travel onwards to England and Wales with the son, but not permitted to bring the daughter with her. That must have been an agonising dilemma for this mother as to what she should next do, but at all events, and in the upshot, she did return to England and Wales where she has lived ever since with the parties' son. The father appears to have returned to Saudi Arabia, together with the parties' daughter. The mother commenced proceedings here in England and Wales for an order for the return of the daughter to England and Wales. She founded those proceedings on the jurisdictional basis that at that time the daughter remained habitually resident here in England and Wales.
7. There was a two-day hearing before Mr Nicholas Goodwin QC sitting as a Deputy High Court Judge on 16 and 17 April 2019. Both parents were represented at that hearing. The father did not personally attend the hearing, but he filed written evidence and also gave oral evidence to the court by video link from, I presume, Saudi Arabia. At that hearing the father was in that way a fully participating party.
8. At the conclusion of the hearing on 17 April 2019 Mr Goodwin announced his decision and made an order for reasons which he later handed down in writing in a reserved judgment on 3 May 2019. The written judgment is lengthy and extends to about 25 closely typed pages and 117 paragraphs. Of course, it sets out the history and his findings of fact in far greater detail than I have summarised for the purposes of this hearing today. He concluded that both children, and specifically the daughter, remained at all material times habitually resident in England and Wales. He made a very clear order dated 17 April 2019 which required the father, in summary, "to return or cause the return of the daughter, Sophia, to

England and Wales by no later than 12 noon on 24 May 2019” and which at paragraph 17 required the father, by no later than 2pm on 18 May 2019, to provide to the mother full details and documentary evidence of the flights that had been booked for the return of the daughter to England and Wales by 24 May 2019.

9. That order clearly contains a penal notice in the prescribed standard form on the face of the order warning Shakib Shamrez that if he disobeys specified paragraphs of the order, including paragraph 11 which required the return of the child by 24 May, and paragraph 17 which required notification of the flight details, “he may be held to be in contempt of court and may be imprisoned, fined or have his assets seized.”
10. The father did not return or cause the return of the child by 24 May, nor did he notify the mother of any flight details as required by paragraph 17. Instead, he gave notice of appeal to the Court of Appeal from the making of that order and sought the permission of the Court of Appeal to appeal. Permission to appeal was refused by Moylan LJ on 11 July 2019. Whilst pursuing his application for permission to appeal, I understand that the father continued to instruct his well-known and prestigious solicitors, Dawson Cornwell, and not only the well-known junior counsel, Miss Ruth Kirby, who had appeared on his behalf at the hearing on 16 and 17 April 2019, but also very senior Queen’s Counsel, Mr Henry Setright QC.
11. It seems that there is absolutely no doubt that throughout the hearing in April and by his process of seeking to appeal from that order, this father was fully involved and engaged, and clearly knew exactly what was going on. However, by a notice of acting, dated 23 May 2019, he gave notice that he was then intending to act in person in place of his solicitors Messrs Dawson Cornwell. He gave an address for service in Saudi Arabia, the precise details of which are set out at some length, but I will call it “Villa No.17”, and he gave as an address for email use a specified Gmail address.
12. As I have said, the father did not return or cause the return of the child as ordered during May, or indeed at all. There was accordingly a further hearing, again before Mr Nicholas Goodwin QC sitting as a Deputy High Court Judge, on 18 July 2019. The order of that date

recites, “and after the father, who is acting as a litigant in person, did not attend the hearing, having emailed the court indicating that he was unable to attend for medical reasons”. However, the order goes on to recite, “and after the court determined that the case could be heard in the father’s absence.” In effect, Mr Goodwin repeated his earlier order, but substituting a new date for the return of the daughter by 12 noon on 25 July 2019.

13. Paragraph 6 of the order of 18 July 2019 also provided that, “the father shall file and serve evidence of Sophia Shamrez’s whereabouts forthwith and in any event by no later than 4pm on 22 July 2019.” That order, too, clearly has a penal notice prominently displayed on the front page of the order specifying, amongst others, paragraph 4, which required the return of the child by 25 July, and paragraph 6, which required the father to file and serve evidence of the child’s whereabouts.
14. Despite that further order, the father has still not returned or caused the return of the child to England and Wales, and I am satisfied, on the basis of the mother’s evidence, that he has not disclosed to her the whereabouts of the child, nor has he filed and served evidence of the child’s whereabouts as the order requires. The mother has given oral evidence to me today. I asked her about Villa No.17 which the father gave as his address for service in May. She says she is very familiar with that address and residence, for it was there that she, together with the father and the children, were residing in the period when she was in Saudi Arabia with them late in 2018. She says that that in fact is a property which is available to the father of the children through his own father, who rents it from, or is provided with it by, the company for which he, the father’s father, works. I asked the mother whether there was any reason to suppose that the father and daughter are not, themselves, now residing at that address. She said that during her numerous visual electronic communications by Skype or WhatsApp and similar means with both the father and indeed the daughter, it is quite clear to her that the place where they are located is not Villa No.17 with which, as I have said, she is very familiar.
15. In these circumstances, the mother issued an application for the committal to prison of the father for contempt of court. A first application came before Francis J on 23 September 2019. The father did not attend and was not represented. The order of Francis J of 23

September 2019 recites that at that hearing the court was informed about, and shown, a copy of a letter sent by the father to the mother's solicitors and received by them on or about 20 September 2019 in which he said that he had had no notice of the hearing on 23 September 2019. There was also at that time a letter received by the court directly from the father, and the order of Francis J recites that a copy of that letter was given to the mother's representatives. Those two letters are now in the bundles before me today at, respectively, pages C412 and C416. They both date from September 2019 and necessarily earlier than 23 September 2019, since they are referred to in the order of that date.

16. The order of Francis J of 23 September 2019 records:

“for the avoidance of any doubt that i) in the event that the father does not attend the next or any subsequent hearings of the mother's application, the court may proceed to hear the father's committal application in his absence; ii) in the event that the mother's committal application is successful, the court may make an order for his committal to prison in his absence; iii) the father may be entitled to representation by way of public funding, in the form of criminal legal aid, for the purpose of the mother's committal application.”
17. On the basis of that and other recitals, the order went on, by paragraph 10, very clearly to fix the hearing date for the mother's application for committal as today, 28 October 2019 at 10.30am here at the Royal Courts of Justice, of which the full address and postcode was given. The order permitted the mother to file and serve an amended application for committal, together with further evidence, by 7 October 2019, and permitted the father to file and serve evidence in response, if he chose to do so, by 21 October 2019. The order provides in paragraph 13 that “the father shall attend personally the hearing listed on 28 October 2019. If he does not attend the court may consider whether to proceed in his absence.”
18. At paragraph 14 the order makes detailed provision for the mother to serve her notice of application, her evidence, and a copy of that order, by electronic means to two specified email addresses, one of which is the Gmail address which the father had specified in his notice of acting dated 23 May 2019. The other is a Yahoo email address in essentially the same name, save that it gives a Yahoo rather than a Gmail server.

19. Finally, at paragraph 15, the order made provision requiring the mother to serve the application, evidence, and a copy of the order, upon the father also by DHL or any other postal or delivery service.

20. There is a witness statement by the mother's solicitor, Mosope Elizabeth Osibona, dated 25 October 2019 which testifies that the mother's solicitors, Messrs Freemans, did indeed serve the mother's fresh notice of application to commit the father to prison in the prescribed Form D11, and the order of Francis J of 21 September 2019, and the formal notice of proceedings in form MM2G, which specifies today's date and the full address of the Royal Courts of Justice, and the mother's supporting evidence, all upon the father by emails sent to each of the email addresses which Francis J had prescribed. Those emails were sent on 7 October 2019, and copies of the covering letters are exhibited to the statement of Mosope Osibona. Further, Mosope Osibona testifies that all the specified documents were sent to the father at Villa No.17 by DHL. There is a document from DHL which evidences that the documents were indeed delivered to the addressee, Shakib Shamrez, at an address in Saudi Arabia on 11 October 2019. The document from DHL does not in fact set out the whole of the address that the father has given in his notice of acting, but only a summary of the address, but that summary does include the words Al Khobar in Saudi Arabia which is indeed part of the address in which Villa No.17 is located.

21. As well as that evidence from Mosope Osibona dealing with formal service in compliance with the order of Francis J, I have heard oral evidence from the mother this morning upon an oath sworn on the Koran, as she is now of the Islamic faith. She told me that she continues to have communications with the father by Skype, both in text form and also in visual form. She said that during the week before last they communicated by Skype and she could see him. She said that he wanted to discuss the case with her, although she was reluctant to do so. He asked her if she had sent to her solicitors any screenshots of messages which he, the father, had sent to her. She said that during that Skype communication he took out his other mobile phone and showed her, on that phone, that he had seen a screenshot sent to him by her lawyers of a message that he had originally sent to the mother. That screenshot is of a message that forms part of the mother's evidence in these proceedings, and accordingly the fact that the father was able to assert to her, and showed her, that he had seen the screenshot from her lawyers is indicative that he has

indeed received the relevant documents in this application. Further, the mother told me that the father told her that he was aware that there was a committal hearing approaching and he threatened her that if she went ahead with it, he would cut off all contact altogether between her and their daughter.

22. On the basis of all that evidence and material which I have now summarised, I am satisfied so that I am sure, first, that the father was fully engaged in these proceedings in April and July; second, that he was, and remains, fully aware of the precise terms of the order of Mr Nicholas Goodwin QC and of the dates by which he was required to return or cause the return of this child to England and Wales; and third, that he has been properly served with notice of the present application and all the necessary supporting documents in accordance with the order of Francis J made on 23 September 2019, and he is perfectly well aware that this application is being heard here today. I have obtained the whole of the court file and personally checked it. So far as I am aware, there is no further communication from the father to this court now on the file of the court, subsequent to the letter which he had sent to the court which was already before Francis J on 23 September 2019 and is referred to in paragraph 6 of the order of Francis J and now in the present bundle at page C417. In short, there is no recent or up-to-date communication from the father to the court giving the least reason why he is unable to be present or represented here today.
23. It is thus open to me to proceed with this substantive application for committal notwithstanding that the father is neither present nor represented. The propriety of that course has been fully considered by Cobb J in a case called *Sanchez v Oboz (Committal Proceedings in Absence of Respondents)* [2015] EWHC 235 (Fam) decided on 6 February 2015. In his judgment Cobb J helpfully identified a range of factors to which a court should have regard in circumstances when a respondent does not attend committal proceedings. Those factors are helpfully listed in the headnote of the report of the case at [2016] 1FLR 897 and I have them all firmly in mind.
24. It is quite clear to me, so that I am sure, that this father is deliberately keeping this child in Saudi Arabia in defiance of the orders made by Mr Goodwin, first on 17 April, and again on 18 July 2019.

25. I am satisfied so that I am sure of the following matters. First, in breach of paragraph 11 of the order of Mr Nicholas Goodwin QC dated 17 April 2019 the father, Shakib Shamrez, failed to return, or cause the return of, Sophia Shamrez to England and Wales by 24 May 2019 or indeed at all. Second, in breach of paragraph 17 of that order, the father failed to provide the mother, via her solicitors, with full details and documentary evidence of flights booked for Sophia Shamrez to travel to England on or before 24 May 2019. Third, in breach of paragraph 4 of the order of Mr Nicholas Goodwin QC dated 18 July 2019, the father failed to return, or cause the return of, Sophia Shamrez to England and Wales by 25 July 2019 or at all. Fourth and finally, I am sure that in breach of paragraph 6 of the order of Mr Nicholas Goodwin dated 18 July 2019 the father failed to file and serve evidence of the whereabouts of Sophia Shamrez by 22 July 2019 or at all. In all those four respects, he is in breach of the respective orders and is in contempt of this court.
26. The starting point when a person is deliberately in contempt of court is that the court will normally punish that person for his wilful disobedience of the order of the court. However, at the request of the mother herself, I will not today impose any sanction at all for those contempts. The mother has made very plain that so far as she is concerned, she has only one overwhelming desire and objective, and that is to achieve the return of her daughter here to England and Wales. She, for her part, does not wish that her husband, the father, should have to serve any sentence of imprisonment. Of course, it is ultimately a matter for the decision and discretion of the court, since contempt does not simply engage the parties to the proceedings but does involve the administration of justice itself. However, at the request of the mother, I will not, today, impose any sanction at all. Rather, I will adjourn the whole question of sanction and sentence to a date to be fixed before myself in not less than six weeks from today.
27. If the father does return, or cause the return of, the child to England and Wales before the date fixed for consideration of sanction and sentence, he will not be in any way arrested or imprisoned upon his arrival, provided only that at the port of entry he hands over all the travel documents of himself and the child in obedience to particular passport orders which have already been made. He must understand that if he, or the child, do return to England and Wales their respective passports and travel documents will be removed from them. But

provided he duly hands those documents over, he himself will not be arrested and will not serve any term of imprisonment or other sanction for the contempts of court which he has committed. Indeed, he cannot at that stage serve any sentence or sanction for, as I have said, I am not currently imposing any upon him.

28. It is my earnest hope that, in the light of the decision and order today, and the very fact that the order today does not impose a sanction, this father will at last see sense and will return, or cause the return of, his daughter to England and Wales, so that this court, which is fully seized of the welfare of these children, can decide what steps should next be taken.
29. In that regard, I specifically refer to paragraph 12 of the order made by Mr Nicholas Goodwin on 17 April 2019 which provides as follows:

“Upon Sophia’s return to the jurisdiction of England and Wales, the father shall forthwith return her, or cause her to be returned, to her mother’s care. Sophia shall be brought to the Cafcass room [here] or such other venue as is recommended by Cafcass who shall see her with her father before returning her to the care of the mother.”
30. I say nothing as to the appropriateness or otherwise of that paragraph of that order on the date that it was made, namely 17 April 2019. We are, however, now a further six months further on. Throughout those six months this child appears to have lived exclusively under the care of her father, and save for Skype or similar communication, has not seen her mother at all. Frankly, it is no longer self-evident that it is in the overall best interests of this child that she should simply be handed over to her mother, either in the long term or even in the short term. What is required is that this child returns here to England and Wales so that she can be rapidly seen and assessed by an officer of Cafcass and the court can then make appropriate interim decisions in relation to her. I today expressly set aside entirely paragraph 12 of the order of 17 April 2019 and the consequential paragraphs 15 and 19.
31. Provided the father returns, or causes the return of, this child to England and Wales, he will be completely free, so far as this court is concerned, to continue looking after her at some address in England and Wales until, at a hearing at which both the parents are present and represented and after due enquiry by Cafcass, this court makes further decisions as to her future.

Transcript from a recording by Ubiquis
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com