

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2021] EWHC 1867 (fam)



No. ZC16D00299

Royal Courts of Justice
Strand
London, WC2A 2LL

Monday 17 May 2021

Before:

MR JUSTICE MOOR

B E T W E E N :

ALESIA VLADIMIROVNA HASKELL

Applicant

- and -

PRESTON HAMPTON HASKELL IV

Respondent

MS LISTER (Counsel) appeared on behalf of the Applicant.

MR TEAR (Solicitor Advocate) appeared on behalf of the Respondent in relation to the Judgment Summons.

MR CHAPMAN (Counsel) appeared on behalf of the Respondent in the enforcement application.

J U D G M E N T

MR JUSTICE MOOR:

- 1 I am dealing today with two judgment summonses issued against the husband in this case, Mr Preston Hampton Haskell. The applicant is his former wife, Mrs Alesia Vladimirovna Haskell. I must give some background to the case. The parties married in December 2008. There are three minor children. Although this judgment is given in Open Court, there is to be no reference to the names and ages of the three children in any reporting of this judgment.
- 2 Unfortunately, the marriage broke down. There was some attempt at reconciliation which failed. Mrs Haskell's application for financial provision was listed before Mostyn J for a fully contested final hearing commencing on 28 January 2020 over six days. His judgment was handed down on 19 February 2020 but there had been an earlier draft sent to the parties, in relation to which Mr Haskell had made written observations and criticisms on 12 February 2020.
- 3 The order flowing from the judgment provided for a number of payments from Mr Haskell to Mrs Haskell. He was to pay a lump sum by instalments of £5,878,732. The first instalment was for £50,000 which was to be paid by 4pm on 20 February 2020, in other words, the next day. The second instalment was in the sum of £647,732 to be paid by 2 March 2020. The remaining sum of £5,181,000 is to be paid by 2 March 2022. It is, therefore, obvious that the final very significant instalment has not yet fallen due. Mr Haskell was also directed to pay £20,000 per annum periodical payments per child, making a total of £60,000. The payments were to commence on 19 February 2020, payable in advance. Mr Haskell was also ordered to pay the children's school fees. An application that he made to Mostyn J for permission to appeal was refused and he did not renew it before the Court of Appeal.
- 4 Mr Haskell did not pay. Decree absolute was pronounced on 20 February 2020 and, of course, the first lump sum of £50,000 fell due that very day. As it had not been paid and the first payment under the periodical payments order for the children had also not been paid, on 26 February 2020, Mrs Haskell requested the first judgment summons, which we have called "JS1", in the sum of £78,788.79. There are issues as to the amounts that Mr Haskell has paid thereafter that I will deal with in due course. On 11 March 2020, she requested a further judgment summons, which we have called "JS2", in the sum of £819,979.30. That, of course, included the second instalment of the lump sum in the sum of £647,732 that fell due on 2 March 2020 but was also not paid.
- 5 The case has been adjourned on a number of occasions, primarily due to Covid-19. Mrs Haskell has throughout insisted that Mr Haskell be present for the hearing of the judgment summonses. Every judge that heard the case agreed with her and directed that he should attend in person. The case then had to be adjourned due to his inability to do so because of Covid travel restrictions. Indeed, I adjourned the case myself in February 2021 and directed the matter be heard by me today.
- 6 Again, Mr Haskell has not attended. His reasons for not attending are irrelevant to the judgment summons that I have to determine and I do not, therefore, intend to go into the background as to why he is not here. Suffice it to say that neither party asked for a further adjournment. In an earlier judgment this morning, I abridged time for personal service of the notice of hearing on him to six days on the basis that he was well aware of this date and it has caused him no prejudice. The judgment summons has, therefore, proceeded.
- 7 The power to commit to prison pursuant to a judgment summons is to be found in s.5 of the Debtors Act 1869. The jurisdiction to commit to prison is to be found at s5(2) and:-

“...shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had, since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same”.

- 8 The burden of proof rests solely on the applicant wife. The respondent has to prove absolutely nothing. The standard of proof is the criminal standard of proof. She has to prove that s.5 is satisfied beyond reasonable doubt or, to use the more modern wording, so that I am sure. I have already made it quite clear that Mr Haskell has to prove nothing. He does not have to give any evidence. If he had been here, I would have told him that. There is no obligation whatsoever on him to file documentation in answer to the judgment summons or to step into the witness box and I, therefore, do not, in any way, criticise him or draw inferences from the fact that he has not done so. That is his right. It is up to Mrs Haskell to prove the two judgment summonses to the requisite standard.
- 9 The second judgment summons is for a very considerable sum of money. It basically relies on findings of fact made by Mostyn J that Mr Haskell’s finances are opaque; that he has not been clear and full and frank with the court; and that he has resources available to him. The judge drew inferences and went on to make orders. Indeed, the judge was clear that the problem for Mr Haskell was not that he did not have assets. The issue was his liquidity and, therefore, the judge gave him time to pay the vast majority of what was, overall, a significant lump sum.
- 10 I understand all of that. I see why Mostyn J came to the conclusions that he did, but I am quite clear that they were conclusions that he reached on the balance of probabilities. It follows that Mrs Haskell is unable to satisfy me beyond reasonable doubt, on the evidence that she has put before this court, that s.5 of the Act is satisfied in relation to the second judgment summons. The second judgment summons is, therefore, dismissed.
- 11 The first judgment summons is very different. It relates to the first instalment of the lump sum in the amount of £50,000 which was due on 20 February 2020, as well as arrears of periodical payments for the children, which also fell due on that date. I take the view that this judgment summons comes into a very different category indeed. Mostyn J in his order recited the following:
“The respondent informed the court during the hearing that, as at 31 January 2020, there was a sum of over £50,000 remaining in an account from funds emanating from the grandchildren’s trust, and I have seen the documentation that Mr Haskell himself relied upon.”
- 12 On 31 January 2020, Mr Haskell had sent an email to Mrs Haskell’s then solicitors under the subject heading “US\$100k”. It said that *“the remaining amount is £50,411.38.”* Mr Haskell then sets out a schedule of items of expenditure from the original amount that was made available to him by the trustees in the sterling equivalent of US\$100,000, which was £76,300. He says that, between 30 December 2019 and 31 January 2020, he had spent £25,888.62 on the children, leaving the sum of £50,411.38p.
- 13 It is clear that the sums he had paid included school fees for two of the children paid on 7 January 2020 in the amounts of £6,740 and £6,854. There would, therefore, have been no further school fees due until after the Easter vacation. He says he paid £4,000 to Mrs Haskell, being her February 2020 maintenance and a further sum of £1,579.21 for a month’s care for their third child. In reliance on that, Mostyn J made the recital that he did.

- 14 When Mr Haskell obtained the draft judgment which said that this money was available, Mr Haskell said that this was incorrect. He said that £20,000 had been held in the account for Mrs Haskell, but I think that he was actually referring to something completely different, namely money that was in an HSBC account. He then said that he had to pay, on 3 February 2020, the sum of £18,288 to HMRC, leaving a balance, according to him, of £1,590. He cannot possibly have made the payment to HMRC from the remaining sum of £50,411.38p. This was trust money. It was for the benefit of the children. Mr Tear in his able submissions to me made it very clear that this money cannot be used for any other purpose and, therefore, a payment to HMRC cannot have come out of that account.
- 15 Mr Haskell then said there was a balance available of £16,818 remaining from the distribution from the grandchildren's trust. He gave absolutely no explanation as to how he could conceivably have spent £34,000 on the children between 31 January 2020 and 12 February 2020 when he had already paid their school fees and there was no obvious other liability to pay, given that he had paid Mrs Haskell's February maintenance on 31 January 2020. Mostyn J, therefore, made the recital that I have quoted. Mr Haskell indicated a wish to appeal, but did not pursue it with the Court of Appeal. The order therefore remains in place.
- 16 I am, therefore, satisfied beyond reasonable doubt that, on 31 January 2020, Mr Haskell had £50,411 that was available to deal with the orders that were going to be made in this case. I am equally satisfied so that I am sure that this money remained available to him on 20 February 2020 and could have been paid over to satisfy the first instalment of the lump sum.
- 17 I am, therefore, entirely satisfied that, pursuant to s.5, the respondent had, since the date of the order, namely on 20 February 2020, the means to pay that first instalment due under the order and has refused or neglected to pay it. He simply did not pay and, if I needed any support for my conclusion, it would be the fact that he himself said that there was a balance available of £16,818 from the distribution from the grandchildren's trust but he did not even pay that sum on 20 February 2020.
- 18 I now turn to the second part of the judgment summons, and that is the payment of the children's maintenance due on 20 February. In relation to this, the evidence is different again. I am satisfied that, at the hearing before Mostyn J, Mr Haskell had told the court that he had around £26,000 available to him in a number of accounts, including, in particular, an HSBC account. It may well be that that is the account from which he paid the HMRC payment. I know not. It does not matter.
- 19 It is quite clear that, from that account, on 6 March 2020, he paid to Mrs Haskell "*kids' allowance*", in the sum of £15,950.78. On 13 March 2020, he paid "*kid's allowance*", of £1,711.14 and, during the early part of March 2020, he made a number of payments by way of either direct debit or standing order, to the London Borough of Kensington and Chelsea for council tax, to EDF Energy, to Thames Water Utilities and to British Gas. I am satisfied that all of these related to Mrs Haskell's property. Ms Lister, who appears on her behalf, calculated that these came in total to a further sum of around £860.
- 20 Mr Tear, who appears on behalf of Mr Haskell, submits to me that credit has to be given for payments that have been made, regardless of when they have been paid. In relation to the child maintenance, I accept that submission. Mrs Haskell, because she had not been asked for the information, was quite unable to tell me in the witness box how much she has received over the period since March 2020 from Mr Haskell, but I am satisfied that, insofar as he has paid, it has related not to the lump sum, but to the ongoing child periodical payments order. Indeed, the references on the HSBC bank account make that abundantly clear.

- 21 I am, therefore, clear that, at some point, it is highly likely that he has paid the £28,000-odd that is the other part of the first judgment summons. It is therefore impossible to say that he has refused or neglected to pay that sum since the order was made. That part of the first judgment summons is, therefore, dismissed. I am, however, quite clear that he has had, since the date of the order, the means to pay the £50,000 as the first instalment of the lump sum and that he has refused or neglected to do so. I, therefore, find the judgment summons proved in relation to the sum of £50,000.

SENTENCE

- 22 I now proceed to sentence. Mr Tear makes the point that six out of the seven allegations have been dismissed and that of course is correct but the vast majority of the money due has remained unpaid. The amount actually paid is the relatively small sum of £28,000, plus, perhaps, some further child maintenance thereafter. £50,000 is a large sum of money. It is a significant sum of money. It is far more than, for example, a judgment summons that relates solely to periodical payments, where the arrears are generally in relatively modest amounts. I am quite clear that Mr Haskell has entirely set his heart against complying with these court orders other than on his terms.
- 23 I am therefore satisfied that the appropriate length of the sentence should be the maximum of six weeks. Although I believe that, in fact, he will only serve three weeks due to the terms of imprisonment in this jurisdiction. However, I do not want him to go to prison. I want Mrs Haskell to be paid the money which she is due. I am therefore going to give him 14 days to pay the sum of £50,000. If he pays that sum in full by then, that will be the end of it. If he does not, he will go to prison for six weeks.
- 24 The Bench Warrant will be reactivated and the Port Alert will be put in place.

LATER

- 25 I now have to deal with how the enforcement application is to proceed. I indicated during submissions to me by counsel that I did think that Mrs Haskell's position in this regard is an important one. After all, it is her application to get evidence on oath from Mr Haskell as to his finances and she does not wish to proceed tomorrow morning, which would be 2.30am for Mr Haskell in California. We do not know whether he has access to a computer that has MS Teams or Zoom available. We do not know whether he would have access to the bundle.
- 26 On three previous occasions, it has been decided by judges, I accept in the context of judgment summonses being heard at the same time, that Mr Haskell should attend in person to give his evidence. I remain of that view. He should be giving evidence on oath in this important matter from a witness box in a court. I am, therefore, going to adjourn tomorrow's hearing. I am going to reserve it to myself. This case is now well-known to me.
- 27 There is a second reason for that. Mr Chapman, who appears for Mr Haskell on the enforcement application alone, has indicated to me his client's concern that, when he comes to court, he will give some evidence that Mrs Haskell's advisers consider shows a lack of *bona fides* on his behalf and that an application will immediately be made to the judge to seize his passport and stop him leaving the jurisdiction. I have never been keen on that approach as I view it as a form of ambush. A litigant needs to know exactly where he stands. I make it clear that I do not intend to take away his passport if he attends here and gives his oral evidence to me in a proper and dignified manner.

28 For those reasons, I have decided to adjourn tomorrow's hearing to a date to be fixed, with a one day time estimate before me, fit for vacation business, because it should be heard as soon as practicable. By doing so, it will enable me to hear it during the vacation if necessary.

LATER

29 I now have to deal with the costs of this judgment summons process. Ms Lister seeks the costs of the hearing on 1 February 2021 before me in the sum of £14,358 when I directed costs in the application. She seeks the costs of 7 May 2021 and 11 May 2021, which was when Mr Haskell applied to have the case dealt with remotely and failed, those costs amounting to £8,160. Finally, she seeks the costs of today, 17 May 2021, in the sum of £15,852.

30 Mr Tear, entirely understandably, submits to me that his client succeeded on, he says, seven out of the eight heads of claim. I suppose another way of looking at it would be to say that he succeeded on one of the judgment summonses and he lost on the other. Does that in any way affect my thinking?

31 This was a judgment summons brought in circumstances where the respondent is in flagrant breach of a number of un-appealed court orders. The amount that he has paid to Mrs Haskell, although it may be in dispute, over the past year and three months has been very modest compared to the total that he was ordered to pay and, for these purposes, I am satisfied that it has given her very significant financial difficulties. It has, for example, resulted in the children's home being threatened. She has succeeded on a judgment summons to the tune of £50,000. I have committed the respondent to prison for the maximum sentence of six weeks unless he pays within 14 days, which I very much hope he does. I, therefore, take the view that she has essentially succeeded and she should have her costs.

32 Does the fact that the second judgment summons failed make a significant difference? I do not think it makes a huge difference. I take the view that the costs would have been very similar to the £38,000-odd, even if that judgment summons had never been issued. But I do accept Mr Tear's point that there are some costs in relation to it. I also accept his points that he has had to get the bundle reduced to remove inappropriate material and he has made some points about failure to comply with directions from my February 2021 order, although I have to say that I think that those pale into insignificance compared to his client's failure to attend today.

33 I take the view that this is a case where, all other things being equal, Mrs Haskell is entitled to an indemnity costs order, given that Mr Haskell is in such flagrant breach of Mostyn's J orders. However, I do think that judgment summons two, the various points that Mr Tear had to make about the evidence in the bundle and the breaches of my previous order justify me in reducing the sum from £38,000 to £30,000. I order that Mr Haskell pay Mrs Haskell's costs of these applications in the sum of £30,000 inclusive of VAT.

CERTIFICATE

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This transcript has been approved by the Judge.