IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

No.FD22P00373

NCN: [2023] EWHC 2469 (Fam)

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 11 May 2023

Before:

SIR JONATHAN COHEN
(Sitting as a Judge of the High Court)

B E T W E E N :

Samira Addou

Applicant

- and -

Sidali Bannabi

Respondent

MR M GRATION KC and MR M BASI (instructed by Dawson Cornwell LLP) appeared on behalf of the Applicant Mother.

THE RESPONDENT did not appear and was not represented.

J U D G M E N T

SIR JONATHAN COHEN:

1 I am dealing today with applications for orders made on behalf of the mother of a child whom I will call C, and who is now aged two. He is the son of Samira Addou, the mother, and Sidali (Sidali sometimes being spelt as one word and sometimes two words) Bennabi, the father. These proceedings have a very long history. C lived with his parents in the London area until 30 November 2021 when the mother, the father and C travelled to Algeria. Whilst in Algeria, the father instituted divorce proceedings and removed the travel documents relating to the mother and to C. The mother found herself effectively stranded in Algeria. Needless to say, that was against her will.

2 On 1 February 2022, with assistance from the British consular authorities, the mother was able to return to England but, very sadly from her point of view, without C. The mother came back to England in order to pursue remedies in England, and the father took advantage of her absence, on 4 March 2022, to remove C from the care of the mother's family where she had left him. The history of this is fully set out in the judgment of Francis J, given on 2 December 2022, which I have read, and which I believe is available in the national archives, and which I fully adopt.

3 The father returned from Algeria to England on 30 April, having left C in Algeria. A series of hearings took place in which orders were made requiring the father to cause C's return. All those orders were ignored and at least in some of the hearings the father's behaviour was defiant and outrageous – I remember vividly the first hearing which took place in front of me, the details of which are referred to in the judgment of Francis J.

4 Very unfortunately, on 16 September 2022, notwithstanding the existence of the tipstaff location order, the seizure of the father's travel documents, and a port alert being in place, the father managed to leave England and Wales. It appears (but it is, I think, not established beyond any doubt) that by splitting his first name into two and by obtaining travel documents, he managed to avoid the port alert. So the mother now finds herself in the position where she is the only member of the family who is in England.

5 I can jump through the history to 2 December 2022 when Francis J found the father to be in contempt of court and sentenced him to a term of imprisonment of 18 months, suspended for 24 months, and not to be enforced if C returned to England by 16 December 2022.

6 I have to consider, applying the criminal standard of proof, whether or not the father is in breach of that order, a subsequent order made by Mr Verdan KC, sitting as a Deputy Judge of the High Court, on 20 January 2023 requiring the father to return C by 3 February 2023, and the order of Judd J of 28 February requiring the return by no later than 10 March 2023. I have to consider whether the father is in breach of those three orders.

7 The father is not present. He has been sent the link but has not joined. That does not come as a great surprise, for the reasons that I will come on to in a moment. Let me deal first with the orders in respect of which the father is alleged to be in breach.

8 The order of Francis J had a penal notice clearly displayed on the first page of the order. It included permission to serve the order on the father by email to his email address, and the orders (because there were more than one) were sent to the father by email on 14 December 2022. It is known, because the mother's solicitors had the appropriate software on their system, that he downloaded the documents on the same day that they were sent to him, namely 14 December, at 1453. On 16 December sealed orders were sent to him and they too were downloaded on the same day. In anticipation of the hearing to take place on 20

January, those orders were included in the court bundle that was sent to the father on 19 January, and which were again downloaded by him on the same day.

9 The order of Francis J, which the father had downloaded, included notice that the next hearing was to take place on 20 January. So the father was fully aware of that hearing, which took place before Mr Verdan. He did not attend that hearing. The judge made a further order for return and a direction that the father had to attend the hearing.

10 It was self-evident that the judge was satisfied that the father was aware of the hearing on 20 January, as he recites that the father had access to the documents to which I have referred. The judge on 20 January ordered the return by midnight on 3 February 2023. There was a penal notice clearly displayed on the first page of the order, and reference made to it within the body of the order. The order was sent to the father on 25 January 2023 and was downloaded by him on the same day. The order also of course contained provision for the next hearing to take place on 28 February 2023, so the father was likewise aware of that hearing.

11 The father responded to what he had received by an email that was sent to the mother's solicitors and to the court. The father made it absolutely clear that he did not accept that the UK court (his expression) had jurisdiction over the case, since at no time during its existence had all the respondents (namely, the mother, the father and the son) been present on UK land, and he said the case in respect of his son continued lawfully in Algeria. He concluded by saying:

> "Due to some personal matter I chose to live in Algeria. If you would like my virtual presence in the UK court, please in future facilitate my access via online services.".

That having been done in respect of both of the hearings that have taken place since that communication was received, the father has chosen not to participate. That email of 8 February is the last communication that the father has had with the court or with the mother's solicitors.

12 On 24 February, a few days prior to the hearing before Judd J, the father was served with what is described as the mother's second application for sequestration, and the lengthy affidavit in support. That document was sent to the father, and the receipt shows that he accessed the files on 24 February at 7.00 p.m. The documents attached to the email were the application for permission to apply for sequestration, and the affidavit in support. He therefore could have been in no doubt whatsoever as to what it is that he was facing.

13 The matter came before Judd J on 28 February. Her order recites the email of 8 February to which I have already referred. It recites that the court emailed him a link for the hearing, and that a court-appointed interpreter was at court. It recites that the mother had made an application for a sequestration order, and that the court was satisfied that the father had been served with notice of this hearing and the court paperwork, including the bundle, which included the sequestration material. The order then went on (in bold) to inform the father that he was entitled to, but not obliged to, file evidence in his defence, and that he had the right not to respond to any question he answered which might incriminate him, and it set out the burden imposed on the mother in support of her application. It warned him that if the court was satisfied that he had breached the orders – and that is referring back to the orders of Francis J and Mr Verdan – the court has the option of sequestrating his property, and he was advised to get legal advice. At paragraph 12 provision was made for the filing of evidence by him. Suffice it to say that no evidence was filed by him. The matter was listed

for a hearing in open court today, 11 May 2023, at which his attendance was required, and he was warned that the court would proceed in his absence if he did not attend.

14 The orders were served on the father in draft on 9 March 2023, and the father downloaded them on the same day. The draft order contained all the relevant material to which I have referred. The sealed orders were served on the father on 15 March 2023. There is no evidence that the father downloaded the sealed order, and it might be (but this is surmise) that he has ceased downloading documents, having read the judgment of Francis J, which had also been sent to him, which made reference to proof of the matters which led to the committal being established by showing that he had downloaded and received documents. Since the documents were all being sent to the same email address on which he is known to have downloaded documents, it seems to me a proper inference that I can draw that he received the sealed orders, even though there is no definitive proof that he has downloaded them. Exactly the same situation arises in respect of the position statement and draft orders which Mr Gration KC and Mr Basi sent to him by email yesterday.

15 It is obviously relatively unusual for committal proceedings to take place in the absence of the respondent. These are criminal proceedings in nature, even if not so classified, and a court will only proceed in the absence of a respondent with caution and with close regard to the fairness of the proceedings. I take these principles from the judgment of Cobb J in *Sanchez v Pawel Oboz* [2015] EWHC 235 (Fam) where he collects various judgments on this issue. I have of course to apply the presumption of innocence, and I have to make sure that the hearing is a fair and public hearing. I have to consider the following specific issues:

(1) Has the respondent been served with the relevant documents, including notice of this hearing? The answer to that is plainly yes.

(2) Has he had sufficient notice to enable him to prepare for this hearing? Yes.

(3) Has any reason been advanced for his non-appearance? Well, the answer to that is that he has chosen not to engage in these proceedings, saying that he maintains that jurisdiction lies with the courts of Algeria. That is not, in my judgment, a good reason for his non-appearance.

(4) Has he either waived his right to be present, or is he indifferent to the consequences of the case proceeding in his absence? I much prefer the formulation of indifference, and there is absolutely no doubt that the father is fully aware that this case is going to go ahead in his absence, and he is indifferent to his attendance.

(5) Will an adjournment be likely to secure his attendance? To that the answer is plainly no, it will not secure his attendance. He has chosen not to engage in these proceedings for many months. And nor is it likely to facilitate his representation.

(6) Does it disadvantage him in not being able to present his account of events? In some circumstances, that might be the case, but plainly not here.

(7) Would undue prejudice be caused to the applicant by any delay? Yes, she has been deprived of the company of her child for over a year.

(8) Would undue prejudice be caused to the process if the application was to proceed in the absence of the respondent? In my judgment, no.

(9) Finally, looking at the terms of the overriding objective, would it be justified to continue with this hearing? And the answer is yes.

16 So having taken the decision to continue this hearing, I have to consider whether or not the father is in breach of those three orders to return C to the jurisdiction of England and Wales. To that the answer can be given very clearly and very emphatically. It is absolutely clear beyond all reasonable doubt that the father has not returned C to England and Wales, and that he is, accordingly, in breach and contempt of those orders. I now have to consider what orders I should make in respect of those breaches.

LATER

17 I make clear, as is apparent by the fact that we are having this debate, that it seems to me that the making of a sequestration order in this case is the right and proper order to be made in circumstances where the father has repeatedly breached the order and refused to return C to this jurisdiction, and where his bank accounts have been frozen for some six or seven months now, with no discernible effect on him whatsoever, which is hardly surprising since the sum contained in those accounts is nominal. Therefore it seems to me that this is an entirely proper order to be made.

18 If the father wishes to apply to set aside or vary this order, then of course he has the right to do so, and that too must be spelt out in the order. The aim of the order of course is to secure his involvement and participation in the proceedings and, it is hoped, C's return. If the father wishes to engage in this part of the proceedings, then that would be a welcome development.

CERTIFICATE

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