Neutral Citation Number: [2022] EWCA Civ 1301

Case No: CA-2022-000061

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE CENTRAL FAMILY COURT
(HHJ HUGHES)

The Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday, 23 February 2022

Before:

LORD JUSTICE PETER JACKSON
LADY JUSTICE ELISABETH LAING

Between:

CAROLINE BRADY

Respondent

- and –

PAUL JACKSON

Appellant

Transcript of Epiq Europe Ltd, Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Tel No: 020 7404 1400 Email: civil@epiqglobal.co.uk (Official Shorthand Writers to the Court)

The Appellant, Paul Jackson, appeared in person
Gwynfor Evans (instructed by Advocate, pro bono) appeared on behalf of the **Respondent**

Approved Judgment

LORD JUSTICE PETER JACKSON:

1. This is an appeal from a committal order made in the Family Court on 26 February 2021 by HHJ Hughes QC sitting at the Central Family Court. On that occasion she heard a judgment summons issued by Caroline Brady ("the respondent") again her former husband, Paul Jackson ("the appellant"). The judge committed the appellant to prison for six weeks, suspended for 12 months upon payment of current maintenance and the clearing of arrears of £29,500 within one year, a period that ends this Friday. The obligations leading to that order arose under an order made on 22 March 2018 by HHJ Wright.

2. The background is that financial orders have been made since 2015 for the support of the respondent and the three children of the family. The appellant has been in continuous default leading to apparently over 30 court hearings.

3. At the hearing, the judge had a statement from the respondent and heard oral submissions from the parties, who were both unrepresented. She reviewed briefly the history leading to the issuing of the judgment summons in July 2020. On 25 August an order was made for the parties to file statements. The respondent did. The appellant who had until late September did not. Instead, he produced statements made in the days leading up to the hearing which the judge declined to accept.

4. The judge received in the course of the hearing from the respondent some redacted bank statements for a period of some two years before the judgment summons and she questioned the appellant about those while warning him that he was not obliged to reply. In her written judgment handed down on 1 March the judge correctly directed herself that she had to be sure that the appellant had means to pay but was in wilful default. She reviewed the bank statements, noting that they showed no evidence of payment or conventional outgoings such as rent or utilities, but repetitive spending on food and drink outlets and entertainment. She found that this, set against the striking history amounted to a case of wilful neglect and she sentenced accordingly.

5. The appellant appealed, but to the wrong court, and unfortunately it took until mid-January 2022 for this to be appreciated and rectified. We grant an extension of time for the bringing of this appeal in the circumstances.

6. It appeared from the paperwork presented by the appellant that he was advancing two grounds of appeal but, during the course of today's hearing, he has identified four reasons for challenging the judge's decision, the first and the last being matters that were crystallised this morning. I will deal with each ground of appeal in turn.

7. The first concerns the fact that the court issued two judgment summons documents on the same date but naming different sums. They were, according to the appellant, not correctly completed and signed. He accepts that this is a pure question of process with no substantive repercussions whatever, but he argues that in a quasi-criminal context, these matters invalidate everything that followed. He observes that case management thereafter was, in his words, non-existent. I do not accept that. In fact, on 25 August 2020, in an order already noted, HHJ Wright squarely identified the judgment summons which claimed arrears of £30,300 and gave detailed directions in respect of that summons. The fact that the mathematically correct figure turned out to be £29,500 is neither here nor there.

8. What happened in August is that the court, using its case management powers in a case involving two unrepresented litigants, got the case in order and there is no possible respectable argument that any peculiarity in the documents initiating the process can be taken to have invalidated steps subsequently taken.

9. The second argument is that under the terms of rule 33.14A of the Family Procedure Rules 2010, it is stated that a debtor must not be committed to prison under section 110(2) of the County Courts Act 1984 unless the debtor has been paid or offered reasonable travel expenses to and from the court building. The appellant argues that this provision applied to the hearing before the judge. He was not paid or offered any conduct money for his travel from the south coast to London, so again he says that the process is invalidated and he could not have been committed to prison. This is a hopeless argument. As was pointed out during the hearing, rule 14A does not apply to the hearing

of a judgment summons but only to an adjourned hearing where a debtor has failed to attend an original hearing. So the legal argument is unsound and, in any case, is a point which is obviously without any practical merit, the appellant having appeared at the hearing and not having taken the point at the time.

10. The third ground of appeal arises under FPR 33.14 whereby, reflecting the general law, a debtor may not be compelled to give evidence – see subrule (4) – although, of course, he may do so willingly. Here the appellant argues that the judge was wrong to have relied upon her analysis of his own bank statements, produced by him during the course of the earlier enforcement proceedings in December 2019 and July 2020 respectively, in each case before the issue of the judgment summons.

11. The appellant argues that, because they were produced at an earlier stage in the proceedings, that makes them inadmissible. Initially he relied upon the authority of the decision of this court in *Mohan v Mohan* [2013] EWCA Civ 586; [2014] 1 FLR 717, as authority for this proposition, but on examination I find that that case states the opposite.

12. The appellant now argues that the documents could not be used in the judgment summons because they had been provided in the enforcement proceedings. Again, there is no possible basis for that submission. This was not evidence provided under compulsion and the appellant was not compelled to give evidence. He had the opportunity, which he did not take, to provide evidence according to the court's reasonable timetable, but instead he took his own course and he cannot now complain.

13. Finally on this point, the appellant says that he was not given the opportunity to argue before the judge that the bank statements were inadmissible, but as the argument is an empty one, that does not avail him today either.

14. Fourthly, the final matter raised today by the appellant, is that the proceedings before the judge were unfair because, in his words, the production of the bank statements during the course of the hearing amounted to an ambush. He complains that he did not know exactly what it was that the judge was considering, or whether his witness statements that had

originally accompanied the bank statements were being taken into account for context, and he states that he offered to give evidence on oath but this did not happen, and further that he was not given any opportunity to cross-examine the respondent.

15. The first thing to say about these arguments is that, if they were foreshadowed at all in the appellant's written documents, it was only in the faintest of terms. Nevertheless, we have permitted the matter to be argued. Having considered it, this ground also fails. No effort was made by the appellant to lay the groundwork for it by seeking a transcript of the hearing. For my part, I am certainly not prepared to infer that the appellant did not have a perfectly proper opportunity to dispel any of the obvious inferences arising from the bank statements. The statements that he had originally filed with them, which we have in our papers, add nothing on these points and cross-examination of the respondent would have been entirely beside the point. It was not for her to answer questions about why the appellant had not paid his debts. So that ground of appeal fares no better.

16. Finally, because there was an ancillary application concerning them, I note that the statements of 20 and 26 February 2021 exist, and that these were the documents that were not admitted by the judge but which we are asked to admit. In fact that point has achieved no prominence. Those statements have not been referred to today, although we are aware of their general contents, and they can make no difference to the outcome of the appeal. I would decline to admit them formally.

17. The result, if my Lady agrees, is that this appeal will be dismissed, although we will extend the time for bringing it and decline to admit the two statements just mentioned.

LADY JUSTICE ELISABETH LAING:

18. I agree.

Order: Application for extension of time allowed; application to admit further evidence dismissed; appeal dismissed with costs assessed in the sum of £6,000 under section 194 of the Legal Services Act 2007.

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

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