

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court

IN THE FAMILY COURT
(Sitting at Milton Keynes)

No.

351 Silbury Boulevard
Witan Gate East
Central Milton Keynes
MK9 2DT

Friday, 24 January 2020

Before:

HIS HONOUR JUDGE HUGHES

(In Private)

B E T W E E N :

DZ

Applicant

- and -

CZ

Respondent

Re Z

MR W. RASHID (instructed by HRJ Foreman Laws, Solicitors) appeared on behalf of the Applicant.

MS C. HENDERSON (instructed by Fullers Family Law, Solicitors) appeared on behalf of the Respondent.

E X T E M P O R E J U D G M E N T

JUDGE HUGHES:

- 1 This is a judgment in the case of the child known as Z. These are committal proceedings which form part of a private law case between the father, Daniel Robert George Wallace (“DZ”), and the mother, CZ, in relation to their child, Z.

- 2 It is necessary for the purposes of this judgment for me to deal with some of the background because it provides, firstly, a proper context for the committal sentencing remarks which I make below, and secondly, it provides, I hope, some guidance in relation to how it came to pass that, in private law proceedings with a represented father, he was able to manipulate the results of a drug test that he was ordered to file by the court, by using a commonly available programme in the matter of some minutes.

- 3 I should record that father is represented by Mr Rashid of counsel and the mother, who is not present, is represented by Ms Henderson. Ms Henderson thought it would be necessary for her to make representations in the case in particular, not so far as sentence is concerned, but because of the circumstances that led to a fairly easy manipulation of evidence, in the hope that some guidance can be forthcoming with the matter being referred to the President of the Family Division and reported on BAILII. To this end, I have asked the parties to carefully scan the draft judgment in the fullness of time to ensure that it is properly anonymised, and the point of public concern adequately highlighted.

- 4 Just by way of background therefore, father made an application for a child arrangements order on 7 December 2018. The child lives with the mother and the basis of the father’s application has really been focused on contact. Historically, the parties started a relationship in about January 2016. By May of 2017, mother discovered that father abused cocaine and

had an addiction over a substantial period of years. Father has a range of difficulties and has been diagnosed with ADHD in the past.

5 All this led to separation of the parties in September 2018 following, what the mother would say, was a volatile and cocaine-fuelled altercation. The mother has always promoted contact but is concerned about the father's history of cocaine addiction and is sceptical about the father's ability to abstain.

6 The reasons for her concern are rooted in proper child-centred reasons, in terms of potential risk to Z and that is why the mother, although on the one hand anxious to promote contact, on the other was concerned about the exposure of Z to this way of life and to people who buy and sell drugs.

7 The matter came before the court on 20 February 2019 for a first hearing dispute resolution appointment. The arrangement that was made, which is enshrined in an order, was for Z to be made available for contact each Monday and alternative Saturdays. The contact was to be supported and there was to be a s.7 report. The report was duly completed and filed in June 2019, and recommended that Z lives with the mother and that supported contact continued, with the father having to provide evidence, and I come now to the crux of the matter, of drug-free abstinence by way of hair strand testing only, over the course of 12 months. The father also agreed not to drink alcohol for 24 hours before contact and during contact.

8 Thus far, thus good. It seems though that throughout the proceedings the father maintained that he had been abstinent since September 2018. At the dispute resolution appointment on 21 June 2019, father's contact progressed from supported contact to contact in the community with handovers taking place at a contact centre. At that crucial hearing, the

court directed that the father should undergo hair strand testing for cocaine for a period of three months. The test results were due to be filed and served by 1 September 2019.

9 Therein lies, if you like, the beginnings of the difficulties in relation to this case. It seems that the direction was not complied with and the mother suspected that the father had cut his hair. The matter was set down for a final hearing on 1 October 2019.

10 There then followed a range of behaviours by the father that it is not necessary for me to go into so far as this judgment is concerned, but suffice it to say it involved allegations of harassment and a requirement that he should appear before the Magistrates' Court, a warrant being issued, and other inflammatory texts sent by the father to the mother.

11 In terms of harassment, he received a community order and was directed to undertake 80 hours of unpaid work and pay costs. I understand, from submissions made today, that that order has been completed and that is one of the numerous matters that the father has done to redress, if you like, some of his activities in the past.

12 It has been a persistent concern of the mother that the father has provided false drug tests and apparently he has admitted to the mother, both orally and in writing, that he has cheated urine testing by running the tap and placing the testing strip in hot water, stockpiling negative tests, or by carrying an orange squash solution which he would pour into the sample pot pretending it to be his urine.

13 As I indicated earlier, the father was due to file and serve the results of hair strand testing on 1 September 2019. That did not happen and there was a suspicion about that in terms of the lapse of time. Suspicions were heightened when father's solicitor indicated in a telephone call that father himself was due to send him the report in short order.

- 14 It is unusual for a represented party to arrange the hair strand test themselves and, ordinarily, the results would be sent directly from the service, provided to the solicitor for onward circulation to the court and the parties. It came to be that the statement from Cellmark was eventually circulated by the father's solicitors on 20 September 2019 and that statement was authorised by one Alistair Derrick, a forensic scientist employed by Cellmark. The statement is dated 10 September 2019 and outlined that the father provided a sample of hair on 6 September 2019 of 3.6cm in length. The result suggested that no substances were detected.
- 15 There are a number of curious features about that report: namely indicating that the father's hair samples were 3.6cm and that did not accord with observations by the mother in relation to his hair length at contact handovers. It was also odd that the father's statement, circulated on 24 September 2019, made no reference whatsoever to the drug test results, which is a peculiar omission given that his progress of contact largely depended on whether he could provide evidence that he was drug-free.
- 16 Those suspicions, coupled with the mother's knowledge of the father's historical untruthfulness, led the mother to requesting that her solicitor contact Cellmark to establish whether the report they received was legitimate. To her dismay, and subsequently it became a substantial matter of concern to the Family Proceedings Court, the report circulated by the father was not the report prepared by them. The report they prepared, in fact dated 26 July 2019, related to a sample taken on 12 July 2019. The hair length was reported to be 1.5cm and the report confirmed that the result was positive for cocaine for the period covering the end of May 2019 to the end of June 2019.

- 17 It became apparent therefore, beyond doubt, that the father had resorted to the most extreme lengths by falsifying evidence for his own gain without any regard to the safety and welfare of Z. I observe, so far as the court is concerned, that this type of deception undermines the system and devalues and seriously undermines the court's ability to protect children in these circumstances. It is a very serious issue.
- 18 There were a number of reports filed, and evidence filed subsequently, and it came to be that the father subsequently admitted that he did, in fact, change the witness statement of Alistair Derrick, and has described it as a serious error of judgment, and in these committal proceedings throughout has not tried to minimise his actions in any way and has been open in terms of what he has done and has shown true contrition and, furthermore, paid the mother's legal costs throughout.
- 19 Contact, of course, to his detriment, as has been pointed out by his Counsel Mr Rashid, went back to supported contact, which is a pity because whatever I may think of this applicant father, he enjoyed his contact with his child and there is some evidence that his child derived some benefit from it too.
- 20 Matters came before the Family Proceedings Court on 1 October 2019 and there was an application to adjourn, and further directions were made for Cellmark to file their correct report of 26 July 2019, for a statement to be prepared by Alistair Derrick of Cellmark, and another statement from Cellmark in terms of the date of collection of the sample.
- 21 When the directions had been agreed in correspondence in advance of the hearing on 1 October 2019, the father subsequently admitted he had falsified the evidence and there was an attempt by him to retain the hearing as a final hearing, requesting that the lay justices consider this issue as part of their overall judgment. This application was, to all intents and

purposes, a complete waste of time and the justices were sufficiently concerned about the matter to refer the matter to a Judge for the consideration of contempt proceedings.

22 So it came to be, as is made plain from the recitals of the Magistrates' order of 1 October 2019, that the matter came before me, and father was directed to provide a statement. There was some difficulty, it was provided in manuscript; it should not have been. I put that to one side, it is a minor aggravation considering the serious issues in relation to this case.

23 Crucially, and this is the matter of public interest to which I alluded earlier; within his statement the father confirms that he amended the report using a programme called Adobe Acrobat Pro. He claims to have procrastinated for two months about what to do about the positive tests, yet he later suggested that he had acted suddenly. It matters not, because the fact of the matter is that he used this programme and altered the results.

24 The matter was reallocated to a District Judge and subsequently directions have been made for the further conclusion, hopefully, of this matter through the course of 2020 in what I hope will be a child-centred approach so far as this young child is concerned.

25 The matter, as I have said, has come before me and the father has admitted his contempt at the first available opportunity before me, in a formal way, and I adjourned matters for sentence from when I first dealt with the matter to today 24 January 2020 to give the father an opportunity of demonstrating through his actions that he had effectively changed his ways, he was committed to contact and abiding by court orders. He has paid costs. As a consequence of his actions, he is having to pay for supported contact at a contact centre, and he has been unequivocal, so far as his willingness to pay the mother's costs (inaudible) are concerned.

- 26 There is little doubt that this is a serious matter, and there is little doubt that particular care needs to be given so far as orders providing for the filing of drug tests by unrepresented parties on the one hand, or any arrangement whereby a drug test result is sent direct to a party whereby it could be manipulated - very, very easily by using this programme - and the probity of family justice decisions substantially undermined.
- 27 It may well be that guidance should be given, but certainly so far as this court is concerned I shall be clear that reports from drug test providers should be filed with the court; they should not go through any other party, and if that means filing them with the court and the other parties contemporaneously well that is all to the good.
- 28 That leads me to the sentence in relation to this case. There is no doubt that under normal circumstances this case would attract a substantial immediate custodial sentence, probably in the region of 12 months. It substantially undermines the system; it is a serious perversion of the course of justice and cannot be tolerated at all. The entry point is therefore custody, but there are features in this case that tend me to feel that immediate custody should be suspended for a period of two years.
- 29 That means, of course, that the father is in jeopardy over a two-year period if he repeats such conduct in the future, but I am conscious of a number of features in relation to this case:
- Firstly the extent to which the father has co-operated in this process.
- Secondly, the extent to which he has been able to tell the court and the parties as to how he managed to manufacture a different result.
- Thirdly, he is a father and it would perhaps, at this crucial stage in the development of his relationship with Z, certainly not be in Z's interest to know that the father had been committed into custody.

Fourthly, he has been unconditional in relation to making reparation so far as the mother's costs are concerned. He can do no more. He is not a man of unlimited means and I have no doubt that this is causing him some financial hardship.

30 So in all those circumstances, looking at the matter with a child-centred approach and looking also at the positives of the relationship between the father and Z, it is only right that the court should throw those into the balance to mitigate the gravamen of this serious issue. For all those reasons, the sentence is 12 months imprisonment, suspended for two years.

31 I look to the father now to step up to the plate; to be a father, to make sure his conduct is such that Z would be proud of him and not ashamed. Also, and I say this in relation to his litigation conduct so far as the mother is concerned and his behaviours, that he should respect the child's mother. She is the child's mother and Z loves the mother and it is she that provides Z's day-to-day care.

32 Against that background, hopefully he can look forward to a long and fruitful and rewarding relationship with Z, and one of mutual respect so far as the mother is concerned.

33 This judgment is to be transcribed at public expense; the father has undergone enough expense in this matter. That concludes the judgment.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by Opus 2 International Limited
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

**** This transcript is subject to the Judge's approval ****