Case No: BS20P02124

IN THE FAMILY COURT AT BRISTOL

2 Redcliff Street,

Bristol

Date of hearing – 28th July 2021

Before:

HIS HONOUR JUDGE WILDBLOOD QC

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Between:

Y **Appellant**

- and -

The Secretary of State for the Department of Works and Pensions **Respondent**

(In relation to the Child Maintenance Service)

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Mr Y in person

The Respondent did not appear.

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JUDGMENT

HHJ Wildblood QC

1. The father in this case, Mr Y, has asked me to publish this judgment to record the difficulties that he has encountered in securing a resolution of a disagreement that arose in relation to whether he was liable to make payments under The Child Support Act 1991. It is a tale of years of delay and failed communication in relation to a modest sum of money. Despite months of attempts to secure the engagement within these proceedings of the Child Maintenance Service (and, more recently, the Secretary of State), there has been none. Mr Y has been attempting to resolve the issues (which relate to just over £2,500) for years.

2. This, therefore, is an appeal by Mr Y against a regular deduction order that was made on 23rd October 2020 under s 32A of The Child Support Act 1991 in accordance with The Child Support (Collection and Enforcement) Regulations 1992 (SI 1992/1989). By that deduction order, the sum of £34.82 is to be deducted from Mr Y's account [details omitted] each Friday. However, there has been so much partial communication and changes in the steps relating to enforcement, that I need to emphasise that, as far as I am concerned, this appeal relates to all steps by way of deduction order that the Child Maintenance service (or Secretary of State) are seeking to enforce against Mr Y in relation to the sums currently in issue in these proceedings.

3. The deduction order relates to alleged arrears of £2,519.86 that allegedly arose between 2007 and 2015. The appellant's notice was sent by Mr Y to the court for issue on 6th November 2020; if that is the correct date, the Appellant's notice was filed within the 21 days prescribed by para 9.17 of PD 30A of The Family Procedure Rules 2010.

4. The basis of the appeal is that he denies that he is correctly treated as a 'non-resident' parent for the purposes of section 3 (2) of The Child Support Act 1991.

5. The child maintenance assessment was made in relation to Mr Y's three children. Two of them are now adult. The youngest is nearly adult.

6. By an order dated 23rd October 2007, made by a District Judge, it was directed that the children should live with both of their parents on an equal division. As an issue of fact, Mr Y has calculated that the children spent more time with him, and case law suggests that is the method of calculation in determining whether he is a non-resident parent. The Court of Appeal decision in Child-Villiers v Secretary of State for Works and Pensions 2003 1FLR 829, [2002] EWCA Civ 1854 examines this issue and the regulations that have been made under it. I do not wish to repeat what is said there. There is no new point of law arising from this judgment.

7. It is extremely disappointing that, despite repeated notices being sent to the Child Maintenance Service and, in June, to the Secretary of State, there has been no response at all from the Service or from the Secretary of State. Form N161C states: '*you must send a copy of your appellant's notice and any other documents to the Child Support Agency and any other*

respondents. The Child Support Agency's contact details can be found on the notification they have sent to you'. That has been done. In addition, paragraph 9.15 of PD30A of The Family Procedure Rules 2010 states that the Respondent means 'the Secretary of State and any person other than the appellant who was served with an order…' The address for service on the Secretary of State is given in para 9.33. Service has been effected as required, but there has not been any response at all. Further, they have ignored Mr Y's correspondence and approaches.

8. Mr Y has made an online complaint to the Child Maintenance Service. A lady from the Service telephoned him in response on 16th July 2021 at 10.48 a.m. She rang from the telephone number [omitted]. They had a twenty-two minute conversation (he read the details of the call from his mobile during this hearing). The case officer (he did not get her name) told him that she knew that there was a hearing coming up (and that the date had been changed and she gave a date for the hearing – he cannot remember whether she got the date right, as she phoned him at a time when he was in a customer's garden – he is a landscaper). She apologised for the fact that the Service had not communicated with him. He told me: 'she was very nice.' She said that the onus was 'on the client' to show that he was not a non-resident parent – that that was the way that 'it works'. Mr Y told me that he already knew that. She told him: 'everything would be on hold until we can look into it.'

9. The issue is simple – is [or, rather, was] Mr Y a non-resident parent during the relevant time? He points to the order made in 2007, by which the relevant children were directed to live with Mr Y and the children's mother. He asserts in evidence and as a matter of fact, that the children resided with him during the relevant period more than they did with the mother. He has set all this out in communication with the Service. I have no argument from the Respondents to the appeal about the procedural requirements of an appeal, the facts of the case or the legal definitions that apply. For instance, I have no assistance at all as to whether the arrangements for the children should be subject to any shared care arrangements under the Act.

10. I have heard the father in argument. He affirmed in evidence the information that he had given during this hearing.

11. Paragraph 9.30 (c) of Practice Direction 30A provides that this is a rehearing. It is not simply an appellate review. I accept Mr Y's evidence; I have nothing from the Respondents to contradict it or to explain their reasoning.

12. On 29th June 2021, I made my most recent order. I had made previous orders trying to engage the Service in these proceedings on 15th November 2020 and 15th November 2020. The court has had no response at all from the Service or from the Secretary of State. On 29th June 2021, I ordered the Secretary of State to file documents by 20th July 2021. She has not done so. As I set out in that order of 29th June 2021, I concluded that I was entitled to issue a stay of the deduction order and made such a stay; I had hoped that, of itself, might lead to engagement from the Secretary of State or the Child Maintenance Service. It didn't. I forewarned that the appeal would proceed today.

13. Under Rule 27.5 of The Family Procedure Rules 2010, the Secretary of State will have the right to apply to set aside my order, subject to the provisions of Rule 27.5(3). The Secretary of State would have to file evidence showing that she had acted promptly, had good reason for not attending the hearing and had a reasonable prospect of success at the hearing.

14. By para 9.29 of the PD 30A of The Family Procedure Rules 2010, I have a range of powers. On the basis of the unchallenged evidence before me, I accept that the appeal must be allowed for the reasons advanced by Mr Y and I do allow it.

15. I have decided that I should not remit the case to the Secretary of State for reconsideration. I say that bearing in mind:

    i) The lack of engagement from the Secretary of State and the Service.
    ii) The modest sums involved and the proportionality, therefore, of remitting the case. Remitting the case would involve further expenditure of public money.
    iii) The delay.
    iv) The current ages of the children.
    v) The very real possibility that remitting this case to the Secretary of State will lead to further months of delay given the experiences in this case so far.
    vi) The fact that the sums involved relate to a period that began 14 years ago and ended 6 years ago.

16. The correct course, in my opinion, is to set aside the deduction order. I therefore do set it aside entirely. If the Secretary of State wishes to challenge this, she can apply to set this order aside under Rule 27.5 of the 2010 Rules. However, she should not take this judgment as any encouragement for her to do so. It would be for the Respondents to consider whether they could satisfy the provisions of Rule 27.5(3) bearing in mind their total lack of engagement in these proceedings and their knowledge of this hearing. Further, they would have to consider the legal and factual merits of any application to do so and would need to produce evidence accordingly.

17. Under paragraph 9.29 (a) (iv) of PD 30A of The Family Procedure Rules 2010, I have power to make a costs order. Mr Y limits this to the sum of £125 that he has borne in court costs when issuing the Appellant's notice. I order that the Secretary of State must pay that sum to Mr Y forthwith. Further, Mr Y has paid to the Service the sum of £150 already under the deduction order. That sum must be repaid forthwith, given the invalidity of the deduction order as determined by this judgment.

HHJ Stephen Wildblood QC
28th July 2021.