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<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 20/87453/A01
	Delivered: 12/04/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

CANDICE WINTER

Petitioner

and

COLIN WINTER

Respondent

**Ms Lisa Moran BL (instructed by Donaldson McConnell & Co. Solicitors) for the
Respondent
The appellant appeared as a litigant in person**

FOWLER J

Introduction

[1] These sentencing remarks should be considered in light of the earlier judgment in *Winter v Winter* [2023] dated 28 November 2023.

[2] On 28 November 2023, the respondent was found guilty of contempt on all terms in the served notice of motion. At that juncture the court adjourned the case and invited submissions from the parties in relation to the appropriate sanction. Throughout these proceedings, the respondent was advised on numerous occasions that contempt proceedings were serious and that he should avail of legal representation. He chose not to do so and appeared throughout these proceedings as a litigant in person. Having received written and oral arguments from both parties, the court now deals with the issue of sentence.

Powers of the court

[3] Schedule 4 to the Contempt of Court Act 1981 provides:

“Proceedings in Northern Ireland

14. (1) In any case where a court has power to commit a person to prison for contempt of court and (apart from this provision) no limitation applies to the period of committal, the committal shall (without prejudice to the power of the court to order his earlier discharge), be for a fixed term, and that term shall not on any occasion exceed two years in the case of committal by a superior court, or one month in the case of committal by an inferior court.

(2) In any case where an inferior court has power to fine a person for contempt of court and (apart from this provision) no limit applies to the amount of the fine, the fine shall not on any occasion exceed £2500.

(2A) A fine imposed under subsection (2) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.

(4) Each of the superior courts shall have the like power to make a hospital order or guardianship order under article 44 of the Mental Health (Northern Ireland) Order 1986 or an interim hospital order under article 45 of that order, in the case of a person suffering from mental disorder who could otherwise be committed to prison for contempt of court as the Crown Court has under that article in the case of a person convicted of an offence.

(4A) Each of the superior courts shall have the like power to make an order under article 42 of the said Order of 1986 where there is reason to suspect that a person who could be committed to prison for contempt of court is suffering from mental illness or severe mental impairment as the Crown Court has under that article in the case of an accused person within the meaning of that article.

(4A) For the purposes of the preceding provisions of this section a county court shall be treated as a superior court and not as an inferior court.

(5) In subsections (1) and (2) of section 20 of the Coroners Act (Northern Ireland) 1959, for the words "ten pounds" there shall be substituted "£200" and in section 34 of that Act for the words "twenty-five pounds" there shall be substituted "£500".

(6) ...

(7) In article 55 of the County Courts (Northern Ireland) Order 1980, in paragraph (2), for the words “not exceeding £50” there shall be substituted “not exceeding £500” and for the words “any period” Shall be substituted “a specified period.””

[4] Accordingly, in summary, the sanctions available to the court are as follows:

- (a) Fixed term of imprisonment, not exceeding two years, which may be suspended;
- (b) Unlimited fine;
- (c) A hospital order.

Legal principles

[5] In contempt cases, the primary objective is to punish breach of the court order and encourage future compliance. The Court of Appeal in Northern Ireland in *Stelfox v Stelfox* [2023] NICA 45 has recently observed that:

“It is a given that contempt powers should be used sparingly. They should only be exercised as a last resort where other less drastic remedies are not available. However, it may be necessary for a court to act to protect the processes of the court and an element of deterrence is a proper consideration.”

[6] A sentence of imprisonment for contempt in a family case should only be imposed if it is necessary, proportionate and where nothing other than a custodial sentence is justified. The power to order committal must be exercised with very great care. It should not be ordered where the contempt is of a minor or technical nature. However, where imprisonment is necessary, the length of any sentence must be commensurate with the seriousness of the contempt. Imprisonment is only appropriate where, in the words of Lord Phillips MR in *Gulf Azov Shipping Company Ltd v Idisi* [2001] EWCA Civ 21, the contempt is a “serious, contumacious flouting of orders of the Court.” A central consideration is an assessment of the contemnor’s culpability, and the resulting harm see *Otkritie Personal Investment Management Ltd v Gersamia* [2015] EWHC 821.

[7] There are no formal guidelines for sentencing in civil committal proceedings, given the fact-specific nature of such cases. However, general criminal sentencing principles are applicable and have been applied in such circumstances. They include

the desirability to keep low-risk and first-time offenders out of prison, as demonstrated in *Templeton Insurance Limited v Thomas* [2013] EWCA Civ 35. This was underlined in the decision of *R v Brown* [2017] All ER 97, where the court observed that:

“In line with general sentencing principles, if the appropriate period of imprisonment under consideration is 12 months or less, the court should further consider whether a shorter term will sufficiently meet the sentencing objectives, especially if the contemnor has not previously experienced imprisonment.”

[8] The relevant factors for the court to consider when assessing the seriousness of the contempt in any particular case were identified by Collins J in *Crystal Mews Ltd v Metterick* [2006] EWHC 3087 (Ch), expanded upon by Leech J in *SRA v Khan* [2023] EWHC 302 (Ch) and articulated by Johnson J in *Rowland v Stanford* [2022] EWHC 1713 as follows:

- “(i) Whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;
- (ii) The extent to which the contemnor has acted under pressure;
- (iii) Whether the breach of the order was deliberate or intentional;
- (iv) The degree of culpability;
- (v) Whether the contemnor has been placed in breach of the order by reason of the conduct of others;
- (vi) Whether the contemnor appreciates the seriousness of the deliberate breach;
- (vii) Whether the contemnor has cooperated;
- (viii) Whether there has been any acceptance of responsibility by apology, any remorse or any reasonable excuse put forward”.

In the circumstances of the present case the following factors should be added:

- (a) Whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea. By

analogy with sentencing in criminal cases, the earlier the admission is made, the more credit the contemnor is entitled to be given;

- (b) The contemnor's previous good character and antecedents;
- (c) Any personal mitigation advanced on his or her behalf.

The Petitioner's submissions on sanction

[9] The petitioner highlights the court's earlier finding that the respondent is in contempt. It has been determined that he has deliberately and wilfully failed to pay maintenance to the petitioner and failed to remove agreed direct debits from the joint account used to service household bills, including the mortgage. He has made unauthorised direct debit payments of £11,672 and £17,588 unauthorised personal withdrawals. Consequently, the joint account became significantly overdrawn, and the mortgage remains in arrears with possession proceedings imminent. All to the petitioner's detriment and in breach of the court order. The respondent was found to have acted deliberately to ensure his financial interests were secured over that of the petitioner. He was, and remains, indifferent to the needs of his wife and children. His obligations under the court order have been wilfully ignored.

[10] It is the petitioner's case the respondent's actions have resulted in huge prejudice to her. The mortgage is in arrears, and repossession of the family home is threatened. The respondent has not shown any remorse or regret, he contested the proceedings and does not accept that he owes a financial obligation to his wife and children.

The respondent's case on sanction

[11] The respondent, in an email and in oral submissions to the court, acknowledged that he failed to uphold his part of the agreement entered into with his wife and made an order of the court in terms of scheduled payments to his wife and the payment of certain household standing orders. However, he claims this was not deliberate. It was due to his financial circumstances, which he claims remain dire. He suggested in written submissions to the court that he was remorseful for the stress he caused to his wife and would pay back what is due to his wife as soon as he is able. He claimed he would never leave the petitioner financially harmed moving forward and would honour his commitments to them. He hoped his new job outside Northern Ireland would earn him more than he was paid in Northern Ireland. He denies his desire to emigrate is motivated by the potential to avoid paying any maintenance to his wife.

[12] He argues that he has no criminal record and that imprisoning him would serve no useful purpose and destroy his career as a consultant anaesthetist. His patients would be deprived of his skill at a time when there is a shortage of doctors globally. He would be unemployable, destitute and unable to pay the petitioner maintenance. This would, in his view, benefit no one at all.

[13] He suggests that if the court feels that a custodial sentence is necessary, it should be suspended to allow him to continue paying his wife until May 2027. As an honourable man, he indicates that he will do so. He claims as a result of the marriage breakdown, he suffers from mental health difficulties and has been off work during October and November. He asks the court for compassion and to give him another chance.

[14] However, in more recent email correspondence, he has become more entrenched in his attitude to the petitioner and the court.

Consideration

[15] I remind myself that imprisonment for committal is a Draconian measure that should be reserved for serious cases and is a power to be exercised with great care.

[16] The respondent has been found in breach of the consent order made by Master Bell on 31 May 2023. This order is clear on the face of it, and I have found that the respondent deliberately breached that order by wilfully siphoning money from the joint bank account for his own needs to the exclusion of his wife and children and omitting to pay maintenance which he was obliged to pay under the consent order. He has gone to extreme lengths to avoid compliance with the order by stopping private and locum medical work and, most recently, resigning from his post as a consultant anaesthetist in the NHS. Coupled with an expressed intention of removing himself from the UK to avoid paying maintenance under the consent order. In these circumstances, I must carefully consider the relevant factors set out above in paragraph [8] to determine the appropriate sanction.

Relevant factors

[17] Regarding prejudice and/or harm, the petitioner has been placed in very significant financial difficulties with attendant worry, stress and uncertainty concerning income and accommodation for herself and the children of the marriage. Mortgage payments have been regularly missed, and repossession is an ever-present fear. The fact the petitioner is on the joint mortgage and payments have not been met regularly makes it increasingly difficult for her to obtain a mortgage moving forward. Sadly, the respondent appears to have had little, if any, regard for the situation he has placed the petitioner and the children in. He has pursued his lifestyle characterised by frequent holidays over and above the petitioner's and children's needs. I consider there has been significant prejudice to the petitioner due to the respondent's breach of the court order.

[18] The respondent was not under any pressure, impacted by the conduct of others or matters outside his control to breach the court order; rather, his actions were exclusively his own deliberate decisions. His claim that he could not afford the payments under the order rings hollow in light of the fact that he consciously chose to significantly reduce his earning capacity, in my view, with the sole aim of frustrating the court order. He fully knew and intended that his wife would suffer financially and emotionally as a result of his action, and that is abundantly clear from his email correspondence to the petitioner's solicitor, which is worth repeating, where he writes:

"I wish to point out that arguably I don't have to continue to pay further spousal maintenance once I have left Northern Ireland. UK court rulings no longer apply to me then. Fact. And I would suggest you won't have a clue where I will be settling. So good luck in trying to figure that out as you desperately ponder a REMO application for spousal support. That is why UAE, Kuwait or Saudi are perfect for me... Indeed I won't be screwed over by the NI courts' obsession with their unfettered sympathy for all divorcing wives.

...

I'm emigrating to a happy peaceful existence away from my ex-wife, Northern Ireland - and you. I cannot wait to be away from this pathetic place."

[19] In my view, this evinces an unequivocal intention to take whatever steps are necessary to avoid making the payments due under the court order to disadvantage the petitioner significantly. While he lodged his monthly salary into the joint bank account, this was simply to meet his standing orders. Once these were discharged, he withdrew significant sums and deposited these into an account in his brother's name, which the petitioner was unaware of. In such circumstances, the respondent has a high level of culpability.

[20] The respondent could not have been under any misapprehension of the seriousness of his breach of the court order. The petitioner's solicitors warned him of the consequences of his action. Regrettably, it is an underlying theme that the respondent simply refuses to accept that he has a financial obligation to his wife until May 2027. This is concisely articulated in his email to the petitioner's solicitor of 6 November 2023, where he says:

"I stopped paying my salary into the joint account for one simple reason: my ex-wife has access to those funds when she has paid absolutely nothing into that account for more than three years. And that is absurd. And I do recall that in the February 2022 court ruling that it was suggested

that Candice would not access that account. Clearly that has been ignored. And I won't be played for this rubbish".

[21] The respondent fully contested the committal proceedings, with the petitioner being required to give evidence and be cross-examined. Accordingly, he is not entitled to any reduction in sentence in this regard. Only after being found guilty of contempt did the applicant proffer any apology or indication of remorse. Given the tone and content of his subsequent emails, any semblance of remorse was short-lived. In these circumstances, it is difficult to accept that these expressions of remorse are genuine, given how the respondent has conducted himself in his financial dealings with the petitioner and in his correspondence with her solicitors. Any contrition came very late in the day to be worthy of significant credit and has all but been withdrawn.

[22] Turning to credit for personal mitigation. I accept and give credit that the respondent has no criminal record, and it has not been contradicted that he is a respected consultant anaesthetist. He is entitled to have this considered in his favour, and I do so. He makes the case his patients depend on him for the care that he offers them. In relation to this point, he has given up his private and locum work, has not worked in the NHS since the end of September 2023 as a result of a medical certificate which refers to an unspecified work-related condition and has now resigned from his post as a consultant in the NHS. However, I do give him credit for the many years he has worked in the NHS since coming to the UK.

[23] He makes the case that if sentenced to imprisonment, this would have a major, if not catastrophic, impact on his career, the job he loves and his ability to obtain future employment. Unfortunately, he ignores the long term consequences for the respondent if he decides to carry out his earlier threat to emigrate to Kuwait without having paid the outstanding maintenance pending suit and arrears under the consent order.

[24] He has claimed to be suffering from mental health issues and gives this as a reason for reducing his hours and then ultimately leaving the NHS. Unfortunately, he has produced no independent medical evidence in terms of a GP or other medical report to the court. All that has been proffered is the GP unfitness to work certificate described above. Despite the claims of being significantly unwell, he has engaged in numerous holidays and business trips abroad. He has also applied for a number of jobs and has been interviewed both abroad and within the UK and Ireland. He has taught training courses and worked with the RAF. He did not tell the RAF of any of the mental health issues being suffered by him as outlined to the court and continued to work for them.

[25] Unfortunately, I do not accept that he is off work due to ill health. If that were the case, he would have provided independent medical evidence. Regrettably, given his actions since February 2022, when the first consent order for

maintenance pending suit was made, he has failed to make consistent payments to the petitioner under that order and the subsequent consent order made by Master Bell. I have been driven to the compelling conclusion he has chosen to reduce his earning capacity to avoid paying the petitioner and will continue to do so until 2027 when the order is to terminate, or he leaves the jurisdiction. This is the clear inference to be drawn from his desire to emigrate to Kuwait. I do not accept his promises to honour his obligations to his wife once he leaves Northern Ireland. I believe he still intends to travel to a country without reciprocal enforcement arrangements. That was his expressed intention to the petitioner's solicitors. At present, he promises much, but experience has shown that past promises have rarely been followed up by consistent performance of court obligations. He has been persistent in his refusal to comply with court orders without enforcement. Disappointingly, the respondent's conduct makes it necessary for the court to act to protect the processes of the court, and an element of deterrence is a proper consideration in this case.

Sanction

[26] I have carefully considered what would be a necessary and proportionate sentence in this case and take into account the fact that a custodial sentence in a family case should only be imposed as a last resort, particularly for a first-time offender and a man of positive good character. However, I am compelled in the circumstances of this case, to find that the respondent's conduct amounts to a "serious, contumacious flouting of orders of the Court." The least sentence I consider necessary and proportionate to protect the processes of the court is an immediate custodial sentence of two months, absent payment of the arrears. For the avoidance of doubt, unlike sentences for criminal contempt, there is no remission on this sentence, and the full two months will be served in custody.

[27] The respondent should present himself at Laganside Courthouse on Friday, 19 April 2024, to be taken into custody. Should the respondent agree with the petitioner to make a lump sum payment within a specified and limited time, he can apply to this court, and I will consider suspending or varying the order. The respondent has a right of appeal to the Court of Appeal. I once again strongly advise him, as I have on numerous occasions throughout the currency of these proceedings, to seek legal advice in this regard. In any event, I advise him, if he intends to appeal, to serve his notice of appeal and any application for bail well before next Friday.