

Neutral Citation No: [2025] NIFam 1

Ref: KIN12758

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No:

Delivered: 14/05/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Between:

CANDICE WINTER

Applicant

and

COLIN WINTER

Respondent

Both parties appeared as Litigants in Person

KINNEY J

Introduction

[1] These proceedings have been brought by the applicant who seeks the committal of the respondent for failure to comply with the terms of a court order made in May 2023. There is an extensive litigation history already involving these parties. A brief history which is pertinent to these proceedings is as follows.

[2] The parties were married in 2001 and there are two children of the marriage. The parties then separated in 2020 and divorced in 2023. Ancillary relief proceedings had been issued by the applicant in 2021 and a maintenance pending suit hearing was convened on 8 February 2022. At that stage the parties entered into a consent order. The respondent failed to abide by this maintenance pending suit order and the judgement summons was issued by the applicant. This was heard by the court on 11 May 2023. Mr Justice O'Hara ordered that the respondent was to pay a lump sum of £7,000 to the applicant within 12 months of the order. This order was not appealed and no payments were made on foot of the order by the respondent.

[3] The parties then, with the benefit of legal advice, entered into a consent order made by Master Bell on 31 May 2023. There were difficulties in the performance of this order and ultimately the respondent sought leave to appeal the order out of

time. That application was refused on 9 November 2023 by Mr Justice Fowler. The applicant then brought contempt and committal proceedings against the respondent for his failure to comply with the terms of the court order of 31 May 2023. At that time the respondent argued that he could not afford to pay the maintenance and other sums payable under the consent order. The respondent is a consultant anaesthetist and during the case before Mr Justice Fowler he decided to give up his private hospital work and locum work, thus reducing his income. He had resigned from his NHS post in Northern Ireland and wished to seek employment outside Northern Ireland. Mr Justice Fowler found that the respondent had deliberately reduced his earning capacity pending leaving Northern Ireland which was essentially to avoid paying maintenance to the applicant under the terms of the consent order. Mr Justice Fowler found that the respondent had committed the breaches of the consent order and was in contempt for those breaches. There were arrears under the terms of the order in the sum of £14,135.95.

[4] At a subsequent hearing Mr Justice Fowler conducted a sentencing process as a result of which he concluded that the respondent's behaviour had been a serious and contumacious flouting of orders of the court and imposed an immediate custodial sentence of two months absent payment of the arrears. The judge further provided that should the respondent agree to make a lump sum payment he could apply to the court and the judge would consider suspending or varying the order.

[5] The respondent was then remanded into custody but lodged an appeal with the Court of Appeal. The Court of Appeal delivered its judgement on 1 May 2024. In the recitals of that order the court set out some of the terms of the consent order of 31 May 2023 and noted the history of the respondent's failure to comply with the terms of the order, the issue of the committal summons and the orders made by Mr Justice Fowler. The court also noted that the respondent paid the applicant the sum of £1,000 on 25 April 2024, leaving a sum of £13,135.95 outstanding.

[6] Having heard from the respondent and counsel for the applicant and having considered the papers, the Court of Appeal allowed the appeal in respect of the sanction for contempt. The balance of the two month sentence, being 57 days, was suspended for a period of two years on the condition that the respondent paid a monthly sum of £541.66 per month until the sum of £13,135.95 was discharged in full and there was to be an attachment of earnings order in respect of those payments.

[7] The respondent then brought proceedings seeking a variation of the consent order of 31 May 2023 and that has been dealt with in a separate judgement. It has no direct relevance to these proceedings.

[8] The applicant seeks the committal of the respondent for the failure to pay the £7,000 lump sum due under the order made by Mr Justice O'Hara on 11 May 2023. She does not seek any other orders for any other aspects of the arrangements between the parties at this time.

[9] It is common case between the parties that the £7,000 has never been paid by the respondent. It is common case that the respondent had notice of the terms of the order and that he had acted in a manner which then involved a breach of the order.

The relevant law

[10] Where a contempt is a civil contempt of court, committed in connection with any proceedings in the High Court, an order of committal may be made by a single judge. *Arlidge, Eady and Smith on Contempt* states at para 12-5:

“It is obvious that any civilised society depends upon the authority and effectiveness of orders made on its courts. There is, thus, a public interest in seeing that orders are enforced. Civil contempt cannot be considered therefore merely as a means by which individual litigants can enforce orders in their favour. The court has an interest, on behalf of the community at large, in ensuring that orders are not disobeyed at the option of one party, or even of both.”

[11] These are civil contempt proceedings. The burden of proving the contempt rests with the applicant and the proof required is the criminal standard, that is beyond reasonable doubt.

[12] In *MC v RB* [2019] NICA 57 the Northern Ireland Court of Appeal said at para [21]:

“The general principle governing the proof of contempt of court consisting of the breach of court orders is found in *Hadkinson v Hadkinson* [1952] P 285. That was a case in which a mother was ordered to return a child from Australia. Romer LJ said:

‘It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believed it to be irregular or even void.’”

[13] The respondent raised two arguments in relation to the application. The first was that he simply did not have the funds at any stage to discharge this payment.

The second was that it was his contention that the judgement of the Court of Appeal of 1 May 2024 subsumed and replaced all previous orders and that the £7000 was therefore no longer payable.

[14] I heard evidence from both the applicant and respondent in relation to the financial circumstances of the respondent. Discovery had been provided by the parties of their bank accounts. The respondent had provided details of three bank accounts including one Revolut account in the name of his brother, Robert Winter. The respondent was emphatic in saying that he had no other accounts. The respondent also said that he was reliant on his national health service salary each month and that he was not in a position to meet all of his outgoings. This does not of course explain the historic failure to meet the terms of the order made. The order required compliance by 11 May 2024. In any event the evidence provided by the respondent in relation to his means was entirely unconvincing. He regularly contradicted himself in giving his evidence. One example should suffice. He was asked in evidence which bank account was used for payment of his National Health Service salary. He said this was paid into his Bank of Ireland account. He was very strenuous in his assertions that the money was paid into this account and this account only. On a perusal of that account he struggled to identify his salary payments coming in but then identified a payment of £3,158.20 being lodged to his account on 26 June 2024. He confirmed that this was the amount of his salary after the attachment of earnings deductions were made. The attachment of earnings order made by the Court of Appeal was for the monthly figure of £541.66. However, the amount that the respondent was paying was £1541.66. He repeatedly said that this amount was on the basis of conversations at court but could not identify which proceedings, which court or who else was involved. He then said it was a result of discussions with the applicant's previous solicitor but again could not provide any further context.

[15] The respondent declared himself "gobsmacked" that he could not trace other salary payments and continued to strenuously assert that this was the account the money was paid into. After some further questioning, however, it transpired that the payment he had found of £3,158.20 in fact related to additional work carried out by the respondent for the relevant health authority and was not his salary payment. He then denied that he had ever described this sum as being his salary even though he had previously given a breakdown as to how that figure was arrived at.

[16] He then asserted that his salary was paid into the joint NatWest account held by the parties. However, a perusal of the NatWest account details provided by the parties did not disclose such payments. There was a sum credited on most months of £3,275 which was understood to be the payment due to that account under the terms of the consent order. However, the respondent in evidence stated that this was the balance of his full salary after the attachment of earnings deductions were made. I simply do not accept that evidence as being accurate or correct.

[17] The respondent had also given evidence that his net income from his basic salary was approximately £6000 per month. The deduction of the claimed attachment of earnings of £1,541.66 leaves a balance of £4,458.34. That is quite different to the figure that was being credited to the NatWest account. Furthermore, the respondent immediately extracted from the NatWest account the substantial portion of the money credited. So, for example, on 28 June 2024, £3,275 was credited to the account but on the same day £2,900 was removed. On 1 August 2024, £3,275 was credited to the account but on the same day the respondent removed £2,130.

[18] The bank statements provided also revealed other accounts being used for credits or debits including approximately 10 Revolut accounts for which the respondent could give no explanation. I am satisfied that the respondent has sufficient means and has historically had sufficient means to discharge the £7,000 due under the terms of the order and has simply decided not to do so.

[19] The second ground is easily and quickly disposed of. The Court of Appeal decision of 1 May 2024 is clear in its terms. It was considering only the committal proceedings that had been determined by Mr Justice Fowler. The court accepted that, at the time of the issue of the committal summons, the sum of £14,135.95 was owing under the terms of the order. Mr Justice Fowler's original judgement made it abundantly clear that this did not include the £7,000 payment ordered by Mr Justice O'Hara. The Court of Appeal decision had a narrow focus relating to the sanction imposed by Mr Justice Fowler and suspended the operation of the immediate custodial order made by him subject to the payment of £541.66 per month and an attachment of earnings order was made to give effect to that decision. The Court of Appeal judgement had absolutely no impact on the £7,000 due under Mr Justice O'Hara's order.

[20] In any event it is impossible to accept the respondent's assertion that he believed that the only money he was liable to pay to the applicant was the £541.66 per month identified in that order payable until the balance of £13,135.95 had been discharged. He could not explain why he was paying a further thousand pounds to the applicant monthly, nor could he explain why he had continued to pay £3,275 into the joint account or why he had sought a variation of the consent order of 31 May 2023 if he believed that it had been subsumed within the Court of Appeal judgement of May 2024.

[21] I am entirely satisfied that the respondent is in contempt of the order of Mr Justice O'Hara on 11 May 2023 and that this contempt is ongoing. I am satisfied beyond reasonable doubt that the terms of the order were clear and the respondent understood precisely what he was required to do. I am satisfied it was within the respondent's power to comply with the order and that he deliberately decided not to do so. I am satisfied the respondent understood that his actions were a breach of the order.

[22] Having found that the respondent is in contempt of the order, I will now give him an opportunity to address the court regarding penalty.