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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **22/10/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Between:

AB

Petitioner/Respondent

and

BB

Respondent/Applicant

[Ancillary relief; freezing order; contempt proceedings]

Adele O'Grady KC & Roisin Downey (instructed by Tiernans) for the Applicant
Frank O'Donoghue KC & Bláithín Cleland (instructed by the Elliott Trainor Partnership) for the Respondent

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HUMPHREYS J

Introduction

[1] This is an application on the part of BB, the wife in ongoing matrimonial proceedings ("the applicant"), for an Order committing her husband, AB ("the respondent"), to prison by reason of his alleged disobedience of court orders made on 13 June 2024 and 26 June 2025. There are two separate applications before the court, the first issued on 26 February 2026 and the second on 8 May 2026.

[2] The court had the benefit of considering extensive affidavit evidence from both parties together with their exhibits. The trial bundle for this application stretched to almost 1300 pages, with two supplemental bundles running to some 400 pages. The papers presented to the court contained an extraordinary 20 affidavits, six position papers and four skeleton arguments. These proceedings have been reviewed by various judicial officers in the High Court on over 40 occasions, to say nothing of the litigation before Newry Domestic and Family Proceedings Courts. The parties remain

married. No financial dispute resolution hearing has yet taken place. There could scarcely be a better example of how not to go about divorce proceedings.

Background

[3] The parties married in 2006 and their children are all aged under 18 and in the full time care of the applicant. They separated in 2023 and the respondent commenced divorce proceedings. The applicant has served a cross-petition and these proceedings remain undetermined.

[4] On 18 January 2024, a summons issued for ancillary relief. On 7 June 2024, the applicant issued an application for a Mareva injunction which was granted by Fowler J on 13 June 2024. On 18 October 2024, the respondent sought a variation of the terms of this order, which application remains undetermined. On 10 April 2025, the respondent further sought to vary or discharge the order and this resulted in a variation of the Mareva injunction, by consent, on 26 June 2025.

[5] The applicant issued an application for maintenance pending suit on 19 December 2024 which was heard by the Master on 11 December 2025. It was ordered that the respondent continue to pay the mortgage, rates and insurance on the former matrimonial home and make periodical payments of £2,450 per month to the applicant and £500 per week in respect of the children.

[6] The respondent is a director and sole shareholder in a number of limited liability companies, including Company 1 incorporated in Northern Ireland in 2020. On the respondent's evidence this company has never traded. He also owns and controls Company 2 which is registered in Ireland and carries on the business of property development.

[7] The respondent is also a director and the sole shareholder of [Company 3], registered in Northern Ireland, and [Company 4], also registered in Northern Ireland.

The court orders

[8] The order made on 13 June 2024 restrained the respondent from transferring, disposing of, pledging, charging or removing from the jurisdiction or otherwise parting with or dealing with various assets including:

(i) The capital assets of and shareholdings in [Company 2];

(ii) The capital assets and shareholdings of [Company 1]; and

(iii) Various land and properties located in Co Armagh and Co Monaghan.

[9] The order was subject to certain exceptions in terms of living expenses and legal advice. It also obliged the respondent to make full disclosure of all assets within and

without the jurisdiction and the last three years' accounts of all the listed businesses. It stated prominently on its face:

> "PENAL NOTICE
>
> If you disobey this Order you will be guilty of contempt of Court and will be sent to prison or fined and your assets may be seized."

[10] On 26 June 2025, the 13 June 2024 order was varied on the consent of the parties. This order states:

> "IT IS ORDERED that:
>
> Paragraph 1(a) of the order dated 13 June 2024 shall be varied on consent in the terms attached."

[11] Attached to the order is an agreement which begins with the following recital:

> "WHEREAS this Court made an Order on the 13th June 2024 which, by paragraph 1, ordered that the Petitioner, whether by himself, his agents, servants or otherwise be restrained from transferring, disposing of, pledging, charging or removing from the jurisdiction or otherwise parting with or dealing with various capital assets and shareholdings and lands as set out at paragraph 1(a)-(s) inclusive."

[12] The agreement then states:

> "The Order of the Court relating to the capital assets and shareholdings in respect of the business known as [Company 2] and all assets belonging to the said business is hereby retained but varied insofar as [Company 2] shall be at liberty to sell or dispose of its legal or beneficial interest in any newly constructed house on the development known as [the Castleblaney development] to [the Housing Association 1]."

[13] The variation was agreed on the basis of undertakings given by the respondent in the following terms:

(i) Within 7 days of the order being made, the applicant would provide her written consent to the caution registered on lands comprised in Folio [xx] Co Monaghan being removed so as to allow [Company 2] to enter into a new financial arrangement which provides for borrowing of €1,800,000;

(ii) Within 7 days the respondent would provide to the applicant all documentary evidence from Home Building Finance Ireland or any alternative agreed lending institution in respect of any new borrowing for [Company 2];

(iii) The respondent would not draw down the full amount of borrowing at any time but would be at liberty to draw down an initial lump sum of €850,000 to discharge any sums owing to Court Finance Limited and any existing liabilities of the company, proof of discharge and the liabilities to be provided to the applicant's solicitors;

(iv) Upon discharge of the debt owed to Court Finance, the respondent would cause the existing charge on the lands in Folio [xxx] Co Armagh to be vacated;

(v) If any further drawdown of the loan were required, the respondent would provide to the applicant a report from a Quantity Surveyor appointed by the lending institution measuring the cost of construction works in respect of the development at [the Castleblaney development];

(vi) Any such borrowings received were to be deposited in a designated bank account;

(vii) The respondent would use the monies solely for the discharge of the debts of [Company 2];

(viii) Each month the respondent would provide the applicant with the relevant bank statement and a written explanation in respect of each transaction;

(ix) The applicant was at liberty to correspond with the company accountants in respect of any issue arising from the statements;

(x) In the event that any of the houses in the development were complete and ready for sale, the respondent would notify the applicant.

[14] The order of 13 June 2024, insofar as it related to the other assets, companies and lands, was unaffected by the variation agreed on 26 June 2025.

The Crossmaglen purchase

[15] In February 2026 Company 1 completed the purchase of a dwelling house and lands in Crossmaglen for the consideration of £390,000. This was financed by way of a loan of £450,000 from Court Finance Limited. Funds were drawn down on 6 February 2026 and after payment of stamp duty, legal costs and outlay, a sum of £21,278.06 remains held by the solicitors acting for both Company 1 and the respondent to this application. The applicant states that she was not made aware of this transaction nor did she consent to it.

[16] The loan agreement dated 19 February 2026 was made between Company 1 as borrower, Court Finance Limited as lender and the respondent as guarantor. The security required pursuant to this agreement was as follows:

(i) Fixed and floating charge and debenture over the assets owned by and due to Company 1 to include the property and lands comprised in Folio [xxx] County Armagh comprising development site lands and access thereto;

(ii) First legal charge over the lands contained in Folio [xxx] County Armagh situate in Crossmaglen;

(iii) Personal guarantee from the respondent for the principal and interest;

(iv) Guarantee of the Republic of Ireland company owned by the respondent, namely Company 2, in the form agreed as security for the principal and interest.

[17] On 19 February 2026 Company 1 and Court Finance Limited entered into a debenture whereby Company 1 charged by way of first fixed charge all its interest in the property in Crossmaglen and all of its shares and property rights in favour of Court Finance. All of the shares in the company are owned by the respondent. It also charged its property and assets by way of first floating charge in favour of the same lender.

[18] Both Company 2 and the respondent entered into deeds of guarantee on the same date whereby they guaranteed the obligations owed by Company 1 to Court Finance, each having received legal advice from Margaret Elliott, of the Elliott Trainor Partnership.

[19] A first legal charge over the lands was registered in favour of Court Finance.

[20] The court received an affidavit from Ms Elliott, solicitor. Her firm acts for the respondent in these proceedings and for Company 1 in the property purchase. She states that she was first informed in July 2025 of the respondent's intention to purchase the subject premises with completion to take place in September 2025. She was instructed that this would facilitate the development of adjacent lands in Folio [xxx] Co Armagh in the ownership of Company 1.

[21] Ms Elliott deposed to the fact at the time of instruction she was aware of the ongoing divorce proceedings between the respondent and his wife but not of the injunction made on 13 June 2024. The affidavit further states:

> "The full detail of the Mareva injunction was advised to me on 26th March 2026 when I enquired if the balance funds

held by [Company 1] could be discharged to [AB] or if funds were payable to The Elliott Trainor Partnership."

[22] Ms Elliott also states, without disclosing the source of the belief, that she believes the purchase "does not inhibit or devalue any alleged interest of [BB]."

[23] In correspondence between solicitors, the case is made that the purchase of the property in February 2026 by Company 1 did not constitute a breach of the injunction. It has been stated that the acquisition of the property was necessary in order to meet the planning conditions in relation to sight lines for a development by Company 1. The applicant has pointed out that the respondent is, in fact, living at the property in Crossmaglen with his partner.

[24] The planning file for the site in question reveals that the planning application was made in September 2023 and has been subject to a number of consultation responses:

(i) Northern Ireland Water has recommended refusal unless a number of issues were addressed. Some two years later this has not been done;

(ii) DfI Roads considered that insufficient information had been provided and requested further information, none of which has been forthcoming. Sight lines were only one of the issues raised;

(iii) DfI Rivers requested further information which again has not been provided;

(iv) The NIHE recommended refusal;

(v) The Environmental Health Agency sought further information which has not been forthcoming.

[25] It will be apparent that the planning application is subject to many more concerns than merely the need to acquire sight lines. The respondent has taken no steps in relation to filing information since June 2024. The applicant therefore harbours serious doubts regarding the motivation for the acquisition of the Crossmaglen property.

[26] The respondent's solicitors have also stated that the balance held by them, £21,278.06, is intended to be used as an inter-company loan between Company 1 and Company 2 to discharge a liability owed by the latter.

[27] The solicitors concerned were well aware of the existence and the terms of the injunction, having acted for the respondent. It is difficult to understand why an application to vary its terms was not moved prior to the transaction taking place. Discovery has revealed that the property was agreed for sale in August 2025 but was never notified to the applicant or to the court. It is peculiar that the solicitor acting in

the conveyancing process, who was aware of the ongoing divorce proceedings, was not informed of the existence and terms of the court order of 13 June 2024.

The Castleblayney development

[28] The respondent's evidence reveals that Company 2 owns development lands at Castleblayney, comprised in Folio [xx] Co Monaghan. It had previously developed some 48 houses on the site. On 31 March 2023 it entered into a loan agreement with Court Finance Limited in the sum of €550,000 to fund the construction of new houses at this site, with an interest rate of 15% per annum rising to 20% per annum in the event of default. This loan was secured by way of:

(i) Fixed and floating charge and debenture over the assets owned by and due to Company 2 to include a charge over the development lands comprised in Folio [xx] Co Monaghan;

(ii) A charge over lands owned by the respondent comprised in Folio [xxx] Co Armagh;

(iii) A personal guarantee from the respondent.

[29] This loan expired on 31 March 2024 and in April 2024 an extension was agreed for a further 14 months to June 2025, with an additional €50,000 being loaned on the basis of the existing security. At the date of the court order on 13 June 2024 Company 2 therefore owed €600,000 (plus interest) to Court Finance.

[30] The respondent states that an opportunity arose to build a further nine properties at the Castleblayney site for the Housing Association. A formal contract was entered into on 19 December 2024 to construct these units for the consideration of €2,795,000 with completion by 14 August 2025. On 11 April 2025 the company accountants, John MacMahon & Co, provided a letter indicating that this contract was expected to make a profit of €467,000.

[31] The company sought to refinance with Home Building Finance Ireland Limited ("HBFI") in the sum of €1,800,000 at a lower interest rate than prevailed with Court Finance. HBFI issued heads of agreement in relation to this proposed loan on 8 August 2024. This would have enabled the debt to Court Finance to be discharged and the houses to be built.

[32] The respondent sought the applicant's consent to a variation of the Mareva injunction in June 2024 and, in response to this request, the applicant's solicitors asked for details of the proposed loan agreement and what had become of the proceeds of sale of the 48 houses already completed at the development. A reply to this was not received for nine months. When disclosure was produced, it was apparent that the proceeds of sale of those houses amounted to €4,433,547. It was unclear to the

applicant how this sum had been spent and, in particular, why it was not used to discharge the indebtedness to Court Finance.

[33] The parties could not agree the terms of a variation to the existing court order and this precipitated the application to the court in June 2025 which was ultimately resolved by consent.

[34] In accordance with the undertakings given in the varied order dated 26 June 2025, the applicant provided her written consent to the removal of the caution on 10 July 2025. This was delayed due to an error in issuing the correct court order. The sequence of events appears to be that the incorrect version of the court order was sent to the parties on 30 June 2025 and, on that date, the applicant sought an undertaking that the respondent would not rely on this incorrect order. This was not forthcoming until 10 July 2025 and on that same day the applicant then indicated her consent to the removal of the caution.

[35] An application was made by the applicant to remove the caution on 21 July 2025 and this was effected on 23 July 2025. The loan offer from HBFI expired on 8 August 2025. It is unclear what happened between 23 July and 8 August 2025 to prevent this facility coming on stream. The respondent has stated that due to the delay in obtaining the applicant's consent to remove the caution, the opportunity to borrow from HBFI was lost.

[36] As a result, he entered into negotiations again with Court Finance and the company agreed a further loan of €700,000 at an interest rate of 15% per annum. By the time this additional facility had been entered into, the liability of Company 2 to Court Finance stood at €735,000. The total liability of Company 2 to the lender was therefore €1,435,000. This was not done with the consent of the applicant, nor was any further application made to the court to vary the terms of the existing order.

[37] Company 2 then entered into a fresh debenture, charging its property and assets in favour of Court Finance and the respondent executed a deed of personal guarantee in respect of the obligations owed by Company 2 to the lender.

[38] The applicant states that there have been several significant breaches of the court order:

(i) The respondent has not discharged the liability to Court Finance;

(ii) Company 2 has instead borrowed more money and now owes more than €1,435,000; and

(iii) The security held by Court Finance including the charge on land beside the former matrimonial home has not been released.

The penal notice issue

[40] Order 45 rule 4 of the Rules of the Court of Judicature (Northern Ireland) 1980 ("the Rules") states:

> "(1) Where-
>
> (a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under Order 3 rule 5, or
>
> (b) a person disobeys a judgment or order requiring him to abstain from doing an act,
>
> then … the judgment or order may … be enforced by an order of committal under Order 52."

[41] Order 45 rule 5(2) provides that an order shall not be enforced under rule 4 unless it has been served personally on the person required to do or refrain from doing the act. By Order 45 rule 5(4) there is a requirement to include a penal notice to the effect that failure to comply may lead to a finding of contempt of court and imprisonment:

> "There must be prominently displayed on the front of the copy of an order served under this rule a warning in Form 67 or 68 in Appendix A, as appropriate."

[42] In the case of an order requiring a person to abstain from doing an act, Order 45 rule 5(6) allows enforcement under rule 4 notwithstanding that service of a copy of the order has not been effected in accordance with the rule if the court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order had notice thereof either:

(a) by being present when the order was made, or

(b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.

[43] Accordingly, where an order is prohibitory, rule 5(6) permits enforcement notwithstanding that service has not been effected in accordance with rule 5, provided the court is satisfied that the person against whom enforcement is sought had notice of the order in one of the prescribed ways.

[44] Furthermore, by virtue of Order 45 rule 5(7):

> "… the court may dispense with service of a copy of an order under this rule if it thinks it just to do so."

[45] In *Munib Masri v Consolidated Contractors International* [2010] EWHC 2458 (Comm) Blair J held that the equivalent power in England & Wales could be exercised in relation to mandatory as well as prohibitory orders and, since there is a general power to dispense with service of an order, a court can consider an application to commit notwithstanding the absence of a penal notice. Such discretion is to be exercised in all of the circumstances so as to reflect the interests of justice.

[46] In this case, the respondent contends that the relevant court order, dated 26 June 2025, was not endorsed with a penal notice and therefore any breach of it cannot be enforced by way of an application for committal for contempt of court. There are a number of significant difficulties with this argument:

(i) The order of 26 June 2025 was an agreed variation of an existing court order, made on 13 June 2024, which did contain a penal notice making it clear that breach could be enforced by way of committal proceedings;

(ii) The variation was made on the basis of undertakings offered by the respondent and accepted by the court. The obligation arising from an undertaking to the court derives from the undertaking itself, and its enforcement for breach is to be distinguished from enforcement under Order 45 rule 4 of an order requiring a person to do or abstain from doing an act;

(iii) The respondent was clearly aware of both the terms of the 13 June 2024 order and its implications since he stated in his affidavit of 8 April 2025, sworn as part of the variation application, that he did not wish to be "held in contempt of court"; and

(iv) The variation did not, in any event, relate to Company 1.

[45] Insofar as these applications seek to enforce the order made on 13 June 2024, no issue arises since it was endorsed with the relevant penal notice.

[46] Insofar as they seek to allege breach of undertakings given to the court, it is important to note that these were voluntary acts on the part of the respondent who was present in court on 26 June 2025. It was held in *Re H (a bankrupt)* [1936] 70 ILTR 199 and *Hussain v Hussain* [1986] Fam 134 that it was not necessary to serve a copy of an order containing an undertaking prior to enforcement if the undertaking was given personally in court. In *Hussain* Sir John Donaldson MR held:

> "Undertakings may be recorded in an order of the court, as occurred in this case, but it is the undertaking and not the order which requires the giver of the undertaking to act in

> accordance with its terms. If he fails to do so, he acts in breach of the undertaking, but cannot be said to refuse or neglect to act in accordance with the order which happens to record the undertaking or to disobey that order and it is to those offences alone that these two rules apply …
>
> It follows from the absence of any strict requirement that a record of the undertaking be served on the person giving that undertaking, that there is no requirement for a penal notice in such cases."

[47] Since 1998, this position has been reflected in the Civil Procedure Rules in England & Wales whereby an undertaking contained in a court order may be enforced notwithstanding that the order does not contain a penal notice.

[48] In this jurisdiction, Order 45 rule 4 only applies to judgments or orders of the court which require a person either to do an act or abstain from doing an act. It does not apply to undertakings given by a party to the court which can be enforced without the same requirement for service of an order bearing on its face a penal notice.

[49] The lack of a penal notice on the order dated 26 June 2025 varying the original order does not therefore operate as a bar on these committal proceedings.

[50] Had it been necessary, I would have exercised my discretion under Order 45 rule 5(7) in the interests of justice since the evidence of the respondent makes it clear that he was fully aware of the terms of the court order and the undertakings.

Consideration

[51] In an application for committal under Order 52 rule 4 of the Rules, the applicant must satisfy the court, beyond reasonable doubt, that:

(i) The respondent had notice of the terms of the order;

(ii) The respondent has acted, or failed to act, in a manner which involved a breach of the order; and

(iii) The respondent knew of the facts which made that conduct a breach.

[52] The prohibition in the order of 13 June 2024 restrained the respondent from "charging the capital assets and shareholdings in respect of the business known as Company 1." This was unaffected by the variation of the order on 26 June 2025. By causing Company 1 to enter into the debenture as security for the monies advanced in respect of the purchase of the Crossmaglen property, the respondent breached this term of the injunction. The debenture effected a charge over the assets and shares of

Company 1. At the hearing of the application, this was not seriously denied by his counsel.

[53] The same order also prohibited the respondent from "pledging the capital assets and shareholdings in respect of the business known as [Company 2]." By causing Company 2 to enter into a guarantee in respect of the liability of Company 1, the respondent again breached the terms of the original court order. The June 2025 variation only related to the sale of newly constructed houses by Company 2 at the Castleblayney development to the Housing Association.

[54] The respondent has sought to contend that the purchase of the property at Crossmaglen has not given rise to any demonstrable loss. This seems unlikely given that the property was purchased for £390,000 with the benefit of a loan of £450,000 which carried interest at a rate of 15% or 20%.

[55] In any event, a claim of "no loss" does not provide a defence to an application for committal on foot of breach of a court order.

[56] The respondent was well aware of the terms of the order and had the benefit of legal advice throughout these transactions. I find, beyond reasonable doubt, that he has committed a contempt of court by breaching this court order in these two discrete respects.

[57] In relation to the Castleblayney development, it is striking that at the date of the making of the original court order in June 2024, the debt owing to Court Finance stood at €600,000. It is now €1,435,000 and the respondent has charged the assets of Company 2 in favour of Court Finance as security for this sum.

[58] The undertakings given by the respondent to the court required him to:

(i) Provide the applicant with documentary evidence in relation to the new borrowing from HBFI or an alternative agreed lender for the new [Company 2] borrowing;

(ii) Discharge the loan owed to Court Finance from the initial draw down of €850,000;

(iii) On discharge of this debt, vacate the charge against the lands in Folio [xxx] and cancel any other security held by Court Finance;

(iv) In the event [Company 2] wished to borrow more than the initial draw down, provide the applicant with a quantity surveyor's report measuring the cost of works of construction; and

(v) Provide the applicant with monthly [Company 2] bank statements and written explanations in respect of all company transactions.

[59] I find beyond reasonable doubt that the respondent is guilty of contempt of court in respect of the Castleblayney development and the Company 2 borrowing in the following material respects:

(i) By failing to discharge the debt due to Court Finance in breach of the undertaking given to the court;

(ii) By extending the debt owed to Court Finance to the sum of €1,435,000 without the applicant's consent in breach of the undertaking;

(iii) By failing to vacate the charge over the lands and discharge existing security, in breach of the undertaking;

(iv) By entering into further security in the form of the Company 2 debenture which is a breach of the original June 2024 court order; and

(v) By failing to provide the applicant with monthly bank statements and written explanations of transactions, in breach of the undertaking.

[60] I reject the contention that the failure of the HBFI facility was shown to have resulted from any default on the part of the applicant. Her consent was given on 10 July 2025, the caution was removed on 23 July 2025, and the facility did not expire until 8 August 2025. The evidence does not establish why the facility failed to come on stream during the intervening period.

[61] The purpose of the Mareva injunction was to preserve assets, the court having been satisfied that there was a real risk of dissipation. By substantially increasing the secured indebtedness of Company 2, the respondent exposed the assets which the injunction was designed to preserve to materially increased liabilities.

[62] The respondent is and has been fully aware of the terms of the court order and his undertakings to the court. He has chosen to ignore these in an effort to benefit both himself and his business. Whatever the commercial or personal motivation for the acquisition of the Crossmaglen property, the respondent used company funds, secured by a guarantee from another company, and caused assets subject to the injunction to be charged in circumstances prohibited by the court order. The Company 2 dealings with Court Finance were undertaken at considerable commercial risk in order to service a contract with the Housing Association in circumstances where the respondent caused Company 2's assets to be subjected to further security contrary to the injunction.

Sanction

[63] Having found the respondent guilty of contempt in the terms outlined, I must now consider the appropriate sanction. By Schedule 4 to the Contempt of Court Act

1981, this court may commit a contemnor to prison for a period not exceeding two years. By Order 52 rule 9 of the Rules the court may suspend an order for committal for such period or on such terms or conditions as it may specify. The court may also impose an unlimited fine.

[64] In *Stelfox v Stelfox* [2023] NICA 45, the Court of Appeal stated:

> "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."

[65] 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.

[66] I will hear the parties' submissions in relation to any mitigating factors and the appropriate ultimate disposal.