

IMPORTANT NOTICE

This judgment was delivered in open court. The judgment can therefore be fully reported but there is to be no identification of the Mother or the child involved in the case whether by name or location and this anonymity 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 BRIGHTON FAMILY COURT

[2020] EWHC 746 (fam)

Case No: ME19P50123

Courtroom No. 1

Brighton Family Court
1 Edward Street
Brighton
BN2 0JD

Thursday, 27th February 2020

Before:

THE HONOURABLE MR JUSTICE MOOR

B E T W E E N:

DEAN MAYZE

and

MS X

MS PATEL appeared on behalf of the Applicant
The Respondent did not appear and was not represented

JUDGMENT

MR JUSTICE MOOR:

1. This is an application that is brought, in essence, by the court itself, alleging contempt in the face of the court. I will set out some of the background that is essential before I come to my conclusions, but I must first start with the law.
2. The burden of proof is on the person that applies to bring the application for contempt. In this case, that is the court itself. The standard of proof is the criminal standard of proof. In other words, to find the contempt allegations proved, I have to be sure that they are true. In the old days that was called being satisfied beyond reasonable doubt. If there is anything less than that, then the allegations must be dismissed. The respondent to the application, Mr Mayze, does not have to prove anything. He is entitled to put the court to proof. He did not have to give evidence. I made it clear to him that he did not have to do so but, nevertheless, he decided voluntarily to give oral evidence about the allegations.
3. I entirely accept that this matter arises out of very significantly conflicted proceedings in relation to his son, Z, who is nearly eight years of age. I recognise that such matters do give rise to strong emotions on both sides but that, of course, is true in many cases proceeding in the Family Court and it does not excuse bad behaviour in the face of the court, if I find that to be proved.
4. It is right that Mr Mayze tells me that he initially instructed solicitors and spent £21,000 on the litigation for contact to his son. He then ran out of money. Following that, he and the mother acted in person and, in April 2019, they came to an agreement. The agreement involved him having contact to his son including staying contact every other weekend from Friday to Sunday and I am told that the social worker actively endorsed the agreement.
5. It is his case that the mother then reneged on the agreement and broke it, refusing him contact. He applied to enforce the order. The mother then raised allegations of domestic abuse including coercive control as well as domestic violence. I make it clear that Mr Mayze denies those allegations completely. Although the mother does not accept this, he says that the main allegations against him are very historical. He asserts that the mother has only raised them to give her an excuse for stopping the contact. It is of course right that,

once serious allegations are raised as here, Practice Direction 12J applies. The court has to investigate and may have to make findings as to the allegations. Indeed, in consequence of that, on 5 November 2019, District Judge Suh sitting in the Family Court at Dartford made various directions including that a guardian was to be appointed to represent Z. It is clear that this order was never drawn up by the court and was not properly served on Cafcass. In consequence, the guardian was never appointed. The case came back for hearing before District Judge Suh on 16 December 2019 on a pre-trial review prior to what was intended to be a fact-finding hearing on 14 January 2020. The District Judge discovered on the morning that the order had not been perfected and had not been sent to Cafcass and therefore a Rule 16.4 guardian had not been appointed. She said that this was quite unacceptable and that the court had let these parties, and in particular Z, down. She apologised but recognised that there was nothing that she could do about it. She formed the view that the fact finding hearing would have to be adjourned.

6. She had the parties in to court before her and she explained this. Initially the hearing proceeded relatively amicably but it is quite clear that, by the end, both parents had become quite agitated and at times they raised their voices and they talked over each other. There are no allegations before me in relation to that part of the hearing but I was invited by counsel for Mr Mayze to listen to that tape and therefore I did so.
7. After the matter became heated, the District Judge asked the parties to leave court while she drafted an order. She then called them back in and attempted to read the order to them. I think it is fair to say that the need for the adjournment had, by now, annoyed Mr Mayze considerably. He was frustrated that the case could not proceed quickly and he viewed this as being a further impediment to him seeing his son. I have listened to the tape both in court and before the hearing commenced. Again, the hearing started off in a relatively calm manner and, on this occasion, it is fair to say that Mr Mayze did not raise his voice as much as on the previous tape but it is not the issue of raised voices that has led to these proceedings. Instead, it is what he said.
8. The relevant passages are as follows. The District Judge said she was going to read through the order and she said what was going to have to happen, namely a further hearing to discover what is true and what is not true: what is found as a fact and what is not found as a

fact. Mr Mayze said:

'Well I'm going to say this and you can arrest me if you want, yes? I've tried doing this the right way and I was polite last time and I got a correct order put in place, yes? It then ended up she ignored the court order that you put in place. Nothing's happened to her for breaking a court order, yes. And now I've run out of money. So far this has cost me 21,000 quid. Yes, I've now run out of money'.

9. The judge says, 'Right, so what's...' and gets interrupted. Mr Mayze says, 'I can't keep doing this no more'. The judge says, 'What's your position?' He says, 'So I'm now going to deal with it the way I would originally deal with it. I tried doing it the right way and I can't. I'm not getting no help.' The District Judge says, 'Mr Mayze, I would be concerned if that were a threat to me...'. Mr Mayze responds, 'It's not a threat, it's a promise'. The judge continues, '...a threat to the mother'. She then says, 'I'm going to read through this order and then you can both...' Mr Mayze responds, 'If you're getting accused of something, you might as well do it ain't you'. The judge says, 'I am going to give you a period to reflect on what you have just said because that sounds to me as if you are making a threat'. Mr Mayze says:-

'Ring the police. Ring them. I have had enough. I keep getting accused of stuff. The police have...the police have never looked into me for doing it because I have never done it. I've got photographs and messages from the mother sending me, "Look what my neighbour's done to my car". It's on messages and now she's using it trying to say it's me. That's the reason she's got to move, it's because her neighbour keeps doing it and I'm not, I'm not, I'm not seeing my son because she can make allegations every 30 seconds'.

10. The mother then says, 'You just shouted outside court that my partner's a sex offender in front of security, in front of my child'. Mr Mayze says, 'Your partner is a sex offender. He used to sleep with 14-year olds'. The mother then says, 'Everyone I've been with is a sex offender to you' and then adds 'That's what you always say'. Mr Mayze says, 'Funny, that's what you messaged me'. The judge says, 'Can you both stop arguing with each other. Mr Mayze, I am very worried about what you said'. 'Yes', Mr Mayze says, 'Ring the police'. 'Do you, do you intend that to be threatening to the mother?' says District Judge Suh. Mr Mayze responds, 'If you, if you take it as a threat, you do that. Ring the police

because, do you know what'. The mother then interrupts and Mr Mayze says, 'I've had enough'. The judge says, 'Alright'. Mr Mayze says, 'I've tried everything right'. The judge says, 'I have given you a chance to...' Mr Mayze says, 'I gave her a lift last time and she's claiming domestic violence. She sat in the car for 45 minutes with me'. The judge asks, 'Do you want to read through this order?' and Mr Mayze responds, 'It means nothing, you've told me that yourself. Then if you do not wish me to read it, I've got one of these, it means nothing, I ain't seeing my son every other weekend like it says'. He was clearly referring at this point to the earlier consent order for contact.

11. The judge again offers to read the order through and Mr Mayze responds, 'What is the point. What does it mean? Nothing.' The judge eventually says, 'Unless you are going to listen to me, I will bring the hearing to an end'. Mr Mayze asks again, 'It means, what it means, it means nothing does it?' He then says, 'You can do what you want to do because it means nothing. I've already got one of these' (he again means the earlier order) 'that says I can have my son every other weekend. It means nothing'. The judge then indicates she is going to end the proceedings. Mr Mayze says, 'Good'. He then says, 'I hope you enjoy Christmas with your kids. I hope you enjoy your Christmas with your kids'. I interpolate at that point to say that when reading that as a transcript, it does sound as though it could be threatening of the judge's children. That would be an extremely serious matter. I have listened to the tape with great care. I am satisfied that it was not a threat to the judge's children. It was, instead, a comparison between the judge enjoying Christmas with her children whilst he would not be seeing his son. It was a very ill-advised thing to say but I do not take the view that it was a threat. At this point, the court staff were asked to escort Mr Mayze from the court. He made a further comment about photographs of the Mother that I have decided not to quote in this judgment as it is not relevant to my decision.
12. The mother then asks him, 'Why don't you show the police then?' and he says, 'Because, well, you sending them to me is not illegal and I, when is my phone coming back today, yes or no, because, if not, I'm going to the police station'. The judge then asks him to leave the room. He asks politely for the phone and the judge says, 'Please leave' and he says, 'Alright I'll go to the police station now then, thank you' and the judge asks the security guard to escort him out. The mother is asked to stay in the court until that happens.

13. In consequence of listening to that tape, the Honourable Mrs Justice Theis drafted a notice of application for committal. It is in the correct form and it makes four allegations against Mr Mayze. The allegations all relate to the second hearing on 16 December 2019 and are as follows:-
- (1) You said that the court could have you arrested but you had tried doing this the right way and would now deal with it in the way you would originally deal with it. The judge asked you if this was a threat and you replied that it was not a threat but a promise. By this you meant that you would not pursue contact with your son through the court any further but would do so by illegal means.
 - (2) You made threats saying, 'If you're getting accused of something, you might as well do it'. This followed some discussion between you and the judge about the allegations against you. In the proceedings you had been accused of domestic violence against the mother, controlling behaviour directed at the mother by your conduct in relation to your child, damaging her car and throwing acid or some other corrosive fluid at people.
 - (3) By making the threats in court and in the presence of the judge, you intended to cause the mother to fear for her safety and you succeeded in doing that.
 - (4) The judge said that she would give you a period to reflect on what you had said but you responded telling her to call the police if she wanted to. This response was continued until you were asked to leave the room by security staff. During that time, you accused the mother's current partner of being a sex offender and expressed a hope the judge would enjoy Christmas with her children. This conduct shows that you intended distress seriously because you did not withdraw the threats or apologise when the judge invited you to reflect.
14. The father does not accept that he was in contempt in the face of the court and he has given an account of what it is that he said and he has done so under oath. He has been asked a number of questions both by his counsel and by me. He reminds me that he is dyslexic and he says that as part of that he sometimes only says part of what he means rather than the whole thing.

15. He was asked about the four different allegations. In relation to the first allegation, he says that he was not making a threat; what he was saying was that he intended to go back to doing it the way that he originally did it, namely by instructing a solicitor. It had not worked when they were both in person. He referred to the agreement they reached. He said that he had researched it online and that is what is called “a promise”. Therefore, when he said it was not a threat, it was a promise, he was referring to the legal agreement and to doing this in a legal or proper way. He said he meant that he was going to use a solicitor. He accepted he did not say that in court but relied on his dyslexia particularly when he gets upset saying this is the result.
16. In relation to the second allegation: ‘If you’re getting accused of something you might as well do it, ain’t you’, he told me that meant again that he was going to the solicitor and he would give the evidence to his solicitor. He recognised that it did not come out that way.
17. He was asked about the third allegation, namely making threats in court in the presence of the judge, intending to cause the mother to fear for her safety. He did not accept that he was making any threats in court, whether in the presence of the judge or otherwise and he did not intend to cause the mother to fear for her safety and he said he did not succeed in doing so.
18. Finally, he was asked about the fourth allegation, namely after being given a time to reflect on matters, he responded by telling the judge to call the police and that this response was continued until he was asked to leave the room by security staff. During that time, he accused the mother’s partner of being a sex offender and that this was intended to ensure that his threats were taken seriously because he did not withdraw them or apologise when the judge invited him to reflect. He said that this was all part of the story. Outside court, the new partner of the mother had walked in. He viewed that as inflammatory. He said that, at one point, the mother had a disagreement and split up temporarily with her new partner. At that time, she said on Facebook that he (the new partner) had slept with a 14 year old so that was merely what he was repeating. He says that she said the same thing about him when they split up. He said it as, “You’re a sex offender as well.” He did not mean it in a harmful way. It was said in jest as a joke. He said that he was particularly upset that he was not going to be seeing Z over Christmas because, in particular, he wanted

his mother, the paternal grandmother, to see Z because she had had a very good relationship with Z and I believe he said to me that she has not been well. If that is the case, I am sorry that that is the position. He said that he did not mean any part of it. He accepted he did not apologise saying that that was because he had to leave. He told me he would apologise to me for raising his voice and the way it came across. He wished he had explained it better.

19. I now intend to make my findings of fact. I have already directed myself on the law and the burden of proof and the standard of proof. I must be sure before I find any of these allegations true. In some respects, I am not sure and I will be making amendments to the particulars of those allegations but, in others, I am quite sure and I do find that there was contempt in the face of the court. I cannot accept Mr Mayze's explanation in relation to the first allegation, namely that he was not making a threat but was just intending to go back to see his former solicitor. That is the opposite of what he is conveying in the passages because in the passages he says that he has spent £21,000 but had run out of money and he, 'Can't keep doing that no more'. It is quite clear to me that he was, in fact, saying that he was going to leave the court process because it was getting nowhere, that he tried doing it the right way but would no longer be doing that. This can only mean that, if he is not going to be doing it the right way, he would be doing it a wrong way. He even, at that point, was asking the judge to arrest him if she wanted to do so, which is not what you would be saying if you simply meant you were going to re-instruct your solicitor and get on with the litigation.
20. I then come to the part where he said 'It's not a threat, it's a promise.' I reject his account that this is a reference back to the legal agreement. It is absolutely clear it has nothing to do with the legal agreement. It is a threat to take action himself and it is a common statement to say, 'It's not a threat, it's a promise' to reinforce that you intend to do what you are saying that you will do. I am, therefore, absolutely clear that I must reject his case in relation to that and I find allegation one proved although I am going to delete the words 'illegal means' at the end because there is nothing in the tape that refers to illegal means. I am going to replace it by saying, 'irrespective of court orders'.
21. I now turn to allegation two. In relation to allegation two, it is that he made threats including, 'If you're getting accused of something, you might as well do it'. Again, I reject

out of hand his explanation. He was, undoubtedly, saying there that he might as well do what he was accused of. It is inconceivable that he was referring to going back to see his solicitor. It would not make any sense whatsoever. He was saying, if you are getting accused of things, you might as well do them and the things he was being accused of are indeed domestic violence, controlling behaviour and damaging cars. I am going to delete 'throwing acid or some other corrosive fluid at people'. He has satisfied me that he was not convicted of such a crime. It may well be that the mother is in fact making allegations that he has done that to her partners but it is not clear to me whether that was the case as opposed to the allegation that he had done it in relation to this criminal offence. He has satisfied me that that was not what he pleaded guilty to and, therefore, I am going to delete that as one of the matters that he was accused of. That is clearly an extremely serious matter and I therefore am not satisfied beyond reasonable doubt as to that, but I am so far as the first three allegations are concerned. I am not saying that I find that he has done those things, far from it. I am merely saying that he was making a threat that he would do the things of which he was accused of and those are the three things that I find he was accused of.

22. I then turn to allegation number three. By making these threats in court and in the presence of the judge, he intended to cause the mother to fear for her safety and he succeeded in doing that. I have not heard from the mother. She has been asked to come to court and, therefore, she has told me that she feared for her safety. It follows that I cannot be satisfied so that I am sure that he succeeded in doing that. I delete the last six words from that allegation, but I am satisfied that he was making threats in court and in the presence of the judge and he did intend to cause the mother to fear for her safety.
23. Finally, I turn to allegation four. There is no doubt that the judge gave him a period to reflect on what he said. He did respond telling her to call the police if she wanted to do so. The response was continued until he was asked to leave the room by security staff. During that time, he undoubtedly accused the mother's current partner of being a sex offender. I am going to delete the next few words that refer to the judge's Christmas with her children as I am not satisfied that this was a threat. I am not going to find that this conduct showed that he intended his threats to be taken seriously but I am going to find that he did not withdraw the threats or apologise when the judge invited him to reflect.

24. Those are the findings that I make to the criminal standard of proof such that I am sure that there was contempt in the face of the court.

The Judge then heard mitigation on behalf of Mr Mayze. He proceeded to sentence:-

25. Stand up Mr Mayze. I am clear that, in the Family Court, the maximum sentence for contempt in the face of the court is one of two years in prison.
26. Your counsel has mitigated on your behalf and told me that you are living with your grandmother who has breast cancer and that you are her only carer. Your mother also suffers from pancreatic cancer and you try to give her as much support as you can. Your partner is disabled and cannot be left alone. You try to give her as much help as you can as well. Your counsel then apologised for your behaviour but said that the delay in hearing the case was mitigation.
27. You have been found to have committed contempt in the face of the court. I am satisfied that the contempt was so serious that the custody threshold is crossed and only a custodial sentence will suffice. The court cannot and will not tolerate such threats and behaviour being made in court. I am, however, exceptionally, going to suspend the sentence.
28. The sentence would have been one of three months in prison concurrent on each of the four allegations, but I accept that the court had let you down by not serving the order on Cafcass such that the fact-finding hearing had to be adjourned. That does justify a small reduction in the sentence to two months in prison although it does not excuse your behaviour. If activated, you will serve one-half of the sentence in custody.
29. I am going to suspend the sentence for a period of one year. This means that, if you are found guilty of any further contempt of court in the course of the next year, this two month sentence will be activated and I will be likely to give you a significantly longer sentence for the next contempt, to run consecutively with the first sentence. This will be a significant deterrent to you to ensure that you behave in all future court hearings. The period of one year should cover the period until the litigation involving your son is concluded finally.

Mr Justice Moor

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