



Neutral Citation Number: [2023] EWHC 2966 (Fam)

Case No: FD23F00038

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
IN THE MATTER OF THE CONTEMPT OF COURT ACT 1981
AND IN THE MATTER OF THE ADMINISTRATION OF JUSTICE ACT 1960
AND IN THE MATTER OF PART 37 FAMILY PROCEDURE RULES 2010

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/11/2023

Before :

THE HONOURABLE MR JUSTICE COBB

Between :

HIS MAJESTY'S SOLICITOR GENERAL

Applicant

- and -

JASON-STEVEN: WONG

Defendant

Committal for Contempt: Sentence

Adam Payter (instructed by **Government Legal Department**) for the Applicant
The Defendant was in attendance and unrepresented

Hearing dates: 21 November 2023

Approved Judgment

.....

THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in public.

The Honourable Mr Justice Cobb :

Introduction

1. Following a hearing which concluded on 25 October 2023, I found to the criminal standard of proof that Jason-Steven: Wong (hereafter ‘the Defendant’) was in contempt of court in that he:
 - i) Made a covert audio-recording of a substantive court hearing in adoption proceedings brought under the Adoption and Children Act 2002 conducted at the Family Court in Nottingham, sitting in private, before HHJ Watkins on 18 February 2022;
 - ii) Thereafter, within a few days of the court hearing, he disposed of the recording and associated documents to another with a view to their publication on YouTube.
2. My reasoned judgment, explaining my findings, was delivered on 27 October 2023, under neutral citation [2023] EWHC 2684 (Fam).
3. This hearing has been convened for me to determine sanction.
4. For this hearing, both the Applicant and the Defendant have filed position statements, at my request, addressing issues of sanction. The Defendant has also corresponded with me on two occasions (via my clerk) since the delivery of my last judgment. On the first occasion, on the day of the hand down of the judgment itself, he indicated that he was “formally challenging the Jurisdiction, ... that you are claiming to have to make this purported Judgement”. In another he referred to the fact that “the Police interview was made under duress, and all that I have stated was coerced out of me and must be struck from the record”. He has also purported to file with the court, without leave, an ‘affidavit’ from Mr Andrew Devine which I have nonetheless read.
5. The Defendant has continued to challenge a number of aspects of the procedure. In order to respond constructively to at least part of that challenge I have provided him with a further redacted print out of the FamilyMan log of these proceedings. I asked him again today whether he wishes to be represented by a lawyer; he did not. During the hearing he sought to persuade me that he had been acquitted at the Nottingham Magistrates Court in November 2022. I reminded him that I have copies of the letter of ‘discontinuance’ sent by the Crown Prosecution Service to him (under the provisions of section 23 Prosecution of Offenders Act 1985) on 23 November 2022 (before the hearing in the Magistrates Court) and again on 5 January 2023 (after the hearing), and that I had already satisfied myself that this was not a situation of ‘double jeopardy’ (see §59 of my earlier judgment).
6. The findings of contempt are fully described in my earlier judgment. It will be noted that I rejected the Defendant’s case that the hearing on 18 February 2022 was in a ‘sham’ court. I found the Applicant’s case proved (see §1 and §63-67 of my earlier judgment). I repeat two important paragraphs from my conclusions:

[70] There is, arguably, no category of case within the wide range of our diverse jurisdictions (i.e., both within and

outwith the family jurisdiction) which is more sensitive or private than those concerning the adoption of a young child. As I have earlier said, almost all hearings in the Family Court involving children are heard in private; the privacy law is designed for “the protection of the interests of the minor in question, not the adjudication without interference of the issues arising for decision” (see *Pelling* (citation above) at [40]). As Laws LJ further observed in *Pelling* at [43]:

“... it is an affront to justice that a judgment or proceeding should be publicised which, in the interests of the child, the court has advisedly determined should be kept private”.

This principle is enshrined in both primary and secondary legislation.

[71] The public identification of a child who has been placed for adoption following due process of law has very significant implications for that child, and for the family with whom the child is placed; it may threaten the security and confidentiality of the placement, and the emotional stability of the child and their new parents. It is, in my judgment, a most serious contempt of court to defy the long-established principle of privacy in adoption cases by covert recording of a hearing; the contempt is aggravated when the recording is published. Whether proceedings are current or completed, the protection granted by Parliament remains operational.”

Sanction: Discussion

7. In respect of sanction, I have a range of powers under section 14 of the Contempt of Court Act 1981.
8. The penalty is in my discretion. In exercising that discretion, I have had in mind the Court of Appeal’s comments about sentence in contempt cases in *Liverpool Victoria Insurance Co Ltd v Khan* [2019] EWCA (Civ) 392 at paragraphs 57 to 71. I have also had regard to the more recent Supreme Court decision in *HM Attorney General v Crosland* [2021] UKSC 15 where Lord Lloyd Jones, Lord Hamblen and Lord Stephens in a joint judgment directed judges in these circumstances to adopt the following approach (see [44]):

“1. The court should adopt an approach analogous to that in criminal cases where the Sentencing Council’s Guidelines require the court to assess the seriousness of the conduct by reference to the offender’s culpability and the harm caused, intended or likely to be caused.

2. In light of its determination of seriousness, the court must first consider whether a fine would be a sufficient penalty.
 3. If the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt.
 4. Due weight should be given to matters of mitigation, such as genuine remorse, previous positive character and similar matters.
 5. Due weight should also be given to the impact of committal on persons other than the contemnor, such as children of vulnerable adults in their care.
 6. There should be a reduction for an early admission of the contempt to be calculated consistently with the approach set out in the Sentencing Council's Guidelines on Reduction in Sentence for a Guilty Plea.
 7. Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. Usually, the court will already have taken into account mitigating factors when setting the appropriate term such that there is no powerful factor making suspension appropriate, but a serious effect on others, such as children or vulnerable adults in the contemnor's care, may justify suspension".
9. I bear in mind that the sanction which I impose has a primary function of marking the disapproval of the court and deterring others from engaging in conduct comprising contempt (see *Patel v Patel & O'rs* [2017] EWHC 3229 (Ch) at [22] and [23]). I have also had regard to the comments of Hale LJ in *Hale v Tanner* [2000] EWCA Civ 5570; she listed ten points relevant to committals in family cases, including (and those which follow are those which are potentially relevant to the instant case):
- i) "It is a common practice, and usually appropriate in view of the sensitivity of the circumstances of these cases, to take some other course [than imprisonment] on the first occasion" [26];
 - ii) "If imprisonment is appropriate, the length of the committal should be decided without reference to whether or not it is to be suspended. A longer period of committal is not justified because its sting is removed by virtue of its suspension" [28];
 - iii) "There are two objectives always in contempt of court proceedings. One is to mark the court's disapproval of the disobedience to its order. The other is to secure compliance with that order in the future" [29];

- iv) “The length of the committal has to bear some reasonable relationship to the maximum of two years which is available” [30];
 - v) “The court has to bear in mind the context. This may be aggravating or mitigating” [33].
10. The judgment in *Hale v Tanner* was endorsed by the Court of Appeal in *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631. At [33] in *Lovett* Birss LJ observed that:

“...the emphasis in civil contempt case on the importance of the objective of ensuring future compliance”.

In this case I bear in mind that no existing court orders are in place relevant to this Defendant, in respect of which an order or suspended order of committal may ensure future compliance.

11. All of these points were discussed and helpfully laid out (and to some extent amplified) by MacDonal J in *HM Attorney General v Dowie* [2022] EWFC 33 at [4] – [6].
12. Finally, I should add that I am aware that the prison population currently is extremely high. The current level of crowding of our prisons is a matter to which I am entitled, although not obliged, to have regard; this was made clear by the Court of Appeal Criminal Division earlier this year in *R v Arie Ali* [2023] EWCA (Crim) 232 and also by the Chair of the Sentencing Guidelines Council.

Sanction: the Defendant

13. In this particular case, I find that there are a number of aggravating features which have a bearing on the sanction:
- i) The proceedings which were audio-recorded were private adoption proceedings concerning a child, to which the prohibition on publication in section 97 CA 1989 and section 12 AJA 1960 applied;
 - ii) The audio-recording of the adoption hearing was, in my judgment, a deliberate contempt, in defiance of clear court signage and in the knowledge (according to the Defendant himself, from a warning from a previous court clerk) that recording was prohibited;
 - iii) The audio-recording of the hearing was made by the Defendant covertly;
 - iv) Inevitably, and predictably, when the audio-recording was disposed of and then published the child’s name repeatedly appeared on the public YouTube recording and the name appears in the rolling text in the said publication;
 - v) The child’s mother’s name was also published on YouTube. It is unclear whether she gave consent. Sensitive details about the Defendant and the child’s mother were shared on the video;

- vi) The effect of the publication of the audio-recording of the hearing on YouTube was to undermine the administration of justice and its integrity given the title of the film: “Jason-Stephen: Clearly Exposes The Corruption & Conspiracies within the Criminal Family Courts”;
 - vii) The audio-recording of the hearing, and the publication of the recording, occurred in the context of deliberate attempts by the Defendant during the hearing itself to disrupt and interfere with it;
 - viii) The YouTube video, containing the audio-recording of the hearing taken by the Defendant, has been viewed over 1600 times;
 - ix) For a considerable period of time (indeed until a few days ago, or possibly even today), the audio-recording remained on YouTube notwithstanding that the Defendant had been asked by the council in March 2022 (see §16 of the earlier judgment), and subsequently by the police and Applicant and specifically to remove it;
 - x) The Defendant remains firmly of the view that the care proceedings concerning his child were “void”, “created by fraud”, and “not authentic”;
 - xi) The Defendant is essentially unrepentant; in police interview he threatened to commit similar acts in future, particularly given his lack of recognition of court process.
14. For the avoidance of doubt, in deciding on sanction I have not taken account of the wholly unfounded and deeply offensive comments about the judge which are published on the YouTube video. Nor have I taken specific account of the wholly unjustified and deeply disparaging comments about the local authority professionals and about the family justice system as a whole in the same place. It seems clear, from the Defendant’s comments to the police when interviewed, that he holds those views, but the publication of them on YouTube was in fact effected by another.
15. The mitigating factors which I have taken into account are as follows:
- i) The Defendant has never sought to deny that he made the audio-recording of the hearing, nor that he disposed of the recording to Mr Devine;
 - ii) There was only limited reference in the YouTube video to the evidence, issues, and submissions of the parties from the hearing on 18 February 2022;
 - iii) While I am satisfied that these YouTube videos will have undoubtedly affected those who have been directly involved in the litigation concerning the Defendant’s child, and in the ongoing care of the Defendant’s child, I acknowledge that no harm was caused as such to the underlying family court proceedings which concluded with a final order in February 2022;
 - iv) At the last moment, shortly before the hearing today (even possibly during the course of this morning), Video 1 has been taken down from YouTube; Videos 2 and 3 (not the subject of a finding in the contempt proceedings) have apparently been moved to a private area of the internet;

- v) Because these proceedings began as criminal proceedings before being discontinued and then brought to the High Court for conclusion today, the process has taken longer than it may well otherwise have done, and it has been hanging over the Defendant for many months;
 - vi) The Defendant has no previous record of this sort of conduct.
16. The prohibition on recording family proceedings and on publishing certain information relating to family proceedings is vital to the integrity of family proceedings. The deliberate defiance of the law prohibiting recording and publication of family proceedings involving children must therefore result in substantial punishment. The Defendant, and those who support him (some are observing this hearing on the video-link), or who otherwise come to know of these proceedings and outcome, should be under no delusion about this.
 17. The punishment needs to reflect the court's profound disapproval when the child is named. I am satisfied that the Defendant acted throughout with no regard for the welfare of his child, scant if any regard for the child's mother, and no respect for the professionals who run our family justice system with great care. He also had no regard at all for the prospective adopters (now the legal parents) of his child.
 18. I am satisfied that the Defendant knew that he was not permitted to audio-record the proceedings in February 2022; I am satisfied that he knew that he was not permitted to dispose of the recording and he knew when he did so that he it would be published in a particular style by Mr Devine. The sentence which I pass is in my judgment the shortest possible having regard to the gravity of the contempt, and the extent of my powers overall.
 19. For the finding that the Defendant made a covert audio-recording of a substantive court hearing in adoption proceedings brought under the Adoption and Children Act 2002 conducted at the Family Court in Nottingham, sitting in private, before HHJ Watkins on 18 February 2022, the sentence is one of 4 months imprisonment.
 20. For the finding that thereafter, within a few days of the court hearing, the Defendant disposed of the recording and associated documents to another with a view to their publication on YouTube, there will be a sentence of 4 months imprisonment, which shall be concurrent making 4 months imprisonment in total.
 21. In this case, I have considered whether I can suspend that sentence, but find that the contempt is so serious that it must be met by an immediate, albeit short, custodial term. This is the just and proportionate sentence, having regard to all the matters which I have set out above.

Costs

22. As the Court of Appeal made clear in the appeal in the *Dowie* case ([2022] EWCA Civ 1574), a judge should always look to see whether there is any realistic prospect of the Defendant being able to meet the liability before making the order ([42]). Having reviewed previous authority, Peter Jackson LJ said at [44]:

“... costs will normally follow the event in committal proceedings and a contemnor will normally be ordered to bear the costs of the proceedings in addition to any penalty imposed. However, the court will seek to make an order which is fair, just and reasonable in all the circumstances. It may consider the contemnor's means when making an order for costs, but it is not required to do so”.

23. The Applicant's costs of bringing this application are said to be £30,000. They reasonably make a claim in respect of £5,000. The Defendant has raised no specific objection to paying this sum, subject (he argues) to being satisfied about the authenticity of the adoption proceedings, a point which I reject as without foundation. I propose to order that the Defendant do pay the costs of the Applicant in the sum of £5,000, such sum not to be enforced without leave.

[END]