Neutral Citation No. [2015] NICty 4

Ref:

Judgment: approved by the Court for handing down

Delivered: **22/10/2015**

*(subject to editorial corrections)**

PETTY SESSIONS DISTRICT OF BELFAST

COUNTY COURT DIVISION OF BELFAST

SIMON JONES

Applicant

AND

MARY IVORS

Respondent

JUDGE JOHN I MEEHAN

Panel's Reason for the Dismiss of the Application

1. Having withdrawn to consider the case earlier today, the Panel returned and I read out a short statement of prepared reasons for dismissing this Application. The Applicant's solicitor responded with the remark that the case had only been listed for review and adding that she would require written reasons. This is a re-statement of what was read in court, albeit with some elaboration for the purposes of greater clarity.

2. The Applicant obtained a Final Order for defined contact from Belfast Family Proceedings Court in July 2015. The next month, he issued a fresh C1, which declared that the Order he sought was one for a "defined contact" Order. When I pointed out this contradiction the Applicant's solicitor would not accept that the more appropriate application would be one to vary the present Order. She reported that the Applicant

wanted that Order to remain unchanged. We were given to understand that, from the Applicant's point of view, the Respondent had simply refused to comply with it. We covered this more than once and it was made quite clear to the Court that the Applicant would not be seeking any amendment so as to seek a variation.

3. In the course of those exchanges, the Applicant's solicitor asserted that the existing Order had been varied already by another District Judge at First Directions. That is not correct. The Court on the previous occasion simply gave a direction that the Respondent was to comply with the existing Order and the matter was adjourned to today to see that this was done.

4. I pointed out that, given the Applicant's position, the proper redress was one for enforcement of the current Order, pursuant to Article 112 of The Magistrates' Court (NI) Order 1981. The solicitor's response was that she was acting under instructions in returning the matter in the way she had. Her client did not wish to delay matters by the longer process of an Article 112 Summons. She did not explain how issuing a Summons took longer than the issue of a C1 Application under the 1995 Order. (It was a response which also revealed no disposition to embark upon pre-proceedings mediation; neither was any pre-action correspondence disclosed to the Court.) In any event, it is for the solicitor, not her client, to determine the proper procedure. A client does not instruct his solicitor on matters of law. In her robust rejoinder throughout, though, the Applicant's solicitor showed no inclination to reconsider her position.

5. We were therefore faced with a situation in which (a) the Applicant refused to consider putting a meaningful application before the Court within the terms of Article 8 of the 1995 Order and (b) refused, in the alternative, to consider issuing an Enforcement Summons.

6. The Applicant's solicitor asserted that her client wished to use the Children Order route in an effort to persuade the Respondent to reconsider her attitude. At the same time, she disclosed that she had applied at the First Directions for transfer of the matter to the Care Centre on grounds of the Respondent's implacable hostility. Those two positions cannot be reconciled.

7. It was common case that contact did not take place during the adjournment in advance of today's review. On the Respondent's part it was reported from the bar that the subject child, who is less than 15 months old, had been admitted to hospital on Monday and was later discharged with prescriptions to include an inhaler for use 4 times per day. It was also alleged that the Applicant had not attended the hospital, signifying a lack of proper concern. On his part, it was reported from the bar that he had spoken to hospital personnel by telephone. Evidently, there would be a triable issue as to whether there was a reasonable excuse on the Respondent's part for not affording contact during the adjournment, or indeed previously.

8. The Applicant's solicitor did point out that the application to transfer had been refused at First Directions; nonetheless she was renewing it today because her client believed that the latest failure to afford contact demonstrated implacable hostility and it was appropriate in those circumstances to access the significantly greater powers of the Care Centre to compel compliance (including a power of imprisonment of course). If this case had returned as an Article 112 Enforcement Summons, no question of a transfer would arise.

9. This court is of the view that its authority is to be defended. When it makes an Order, it expects to be put in a position to enforce it, should it be defied. Through the appropriate route, a Magistrates' Court has power to fine and/or imprison anyone who disregards its Order without reasonable excuse. Where an aggrieved party avoids making complaint under Article 112, he deprives this court of the means of enforcement. It then becomes more incongruous still when the aggrieved party seeks to have the case transferred to the Care Centre because of a lack of effective remedy in the Family Proceedings Court.

10. It may very well be that the chosen process was intended to put pressure on the Respondent to comply with the existing Order by the mere fact that an Application, whatever its nature, whatever its merits, has been put before a Court again. Howsoever that may be, a party cannot issue any kind of Application as a mere vehicle for having his grievance ventilated without more. That is an approach which fails to respect the court's function.

11. An Enforcement Summons is a criminal process, with all that this entails. The accused is entitled to have the case against her set out clearly in advance. She has the right to silence. She has the right to a trial without unreasonable delay. It might well be argued that one consequence of the route chosen by the Applicant is that these rights are withheld from the Respondent.

12. Regretfully, the court concludes that the proper course is to dismiss this Application in the expectation that the Applicant can issue an Article 112 Enforcement Summons. Nothing here is intended to suggest any view on the merits of such a complaint; this ruling is about insisting that the real issue, as identified by the applicant, is put before court.

13. The Applicant's Solicitor has signalled that she feels aggrieved that the Court should dismiss the Application at what was only a review hearing. There is authority for the proposition that the court cannot properly make a substantive Order on its own motion, such as a Contact Order, without affording the parties an opportunity to make submissions. In this instance, the point at issue goes to jurisdiction, the strategy selected by the Applicant amounts to an abuse of process and, in any event, the

Applicant's solicitor was given full opportunity to defend her chosen route before the Panel concluded that it was deeply misconceived.

14. The names of these parties have been changed so as to protect their anonymity.

22nd October 2015

Judge John I Meehan,
District Judge (Magistrates' Courts)
Panel Chairman
Laganside Family Proceedings Court.