

Neutral Citation No: [2021] NIQB 8

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

ICOS No: 16/102787/07

Delivered: 27/01/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

WX

Applicant

-v-

YZ

Respondent

**Ms Sarah Ramsey QC with Ms Sarah O'Reilly BL (instructed by Brian Kelly Solicitors)
for the Applicant
The Respondent was a Litigant in Person**

McFARLAND J

Introduction

[1] A hearing of this civil contempt matter was listed before me on 25th January 2021. The judgment has been anonymised to protect the identity of children who are connected, directly and indirectly, to the matters in these proceedings. The respondent had been legally represented during the earlier stages of these proceedings but appeared without representation on the 25th January 2021 and represented himself.

[2] The hearing was conducted remotely under the provisions of the Coronavirus Act 2020, and the applicant, her solicitor and two counsel and the respondent all attended remotely. All evidence at the hearing was given remotely.

[3] At the earlier stages of the hearing on the 25th January 2021 the respondent was interrupting the opening of the case by Ms Ramsey QC and after warning from me that his spoken contributions would be suppressed by muting if he continued to interrupt, the court was forced to do this. At that point the respondent continued to

have video link and he was able to hear proceedings, but could not participate by speaking. At some point after that the respondent cut the link and did not take any further part in the proceedings. The link remained open to him to re-join but he did not do so.

[4] I was satisfied that the respondent having appeared at the hearing was clearly aware of the proceedings. In her evidence Ms K Greene, solicitor for the applicant, confirmed that she had previously handed the three court bundles to the respondent. He therefore had full knowledge of the proceedings, had attended at the commencement of the hearing, and had then voluntarily absented himself from the remainder of the hearing.

Background

[5] The applicant has brought proceedings against the respondent asserting that the respondent has been guilty of contempt of court. The allegations are that firstly, at a hearing in Belfast Family Care Centre before HHJ Kinney, the respondent committed perjury when giving evidence on 29th June 2017 and secondly, that on or after 10th May 2017 the respondent, through his then solicitor, served a document purporting to be a report from Mr Terry Cromey for use in court proceedings before Belfast Family Care Centre, knowing that the report was not a report prepared by Mr Cromey.

[6] The proceedings before Belfast Family Care Centre related to contact arrangements between the respondent and his child. They were of a contentious nature and issues relating to drug taking and anger management were being dealt with by the judge.

Evidence

[7] Evidence at the hearing was given by Terry Cromey (cognitive and behavioural psychotherapist), Christopher Owens (previous solicitor for the respondent), the applicant and Kerrie Greene (solicitor for the applicant).

Findings of Fact

[8] I make the following findings of fact based on the oral evidence given by the witnesses, the contents of the affidavits filed in the case, and taking into account the various written submissions that had been made by, and on behalf of, the respondent. As this is a contempt matter I have applied the criminal standard of proof, namely that I had to be sure beyond a reasonable doubt.

[9] Mr Cromey had been retained on the 17th May 2016 by the respondent's then solicitors (Hunt solicitors) to prepare a report in relation to anger management work he had undertaken with the respondent. This report related to ongoing proceedings between the respondent and another mother of a child of his. Mr Cromey drafted

his report and sent it as a draft in the form of a Word document attachment to an email addressed to the respondent. The respondent was asked to check the accuracy of the detail contained in the report. This draft was dated 9th June 2016 and had an electronic signature. The respondent telephoned Mr Cromey to confirm the accuracy, and then Mr Cromey completed the report, without any amendments to the draft, physically signed the report, and forwarded it to the respondent's solicitors as a pdf attachment by email. I will call this report the "2016 report." Mr Cromey had no further contact with the respondent.

[10] The 2016 report was served on the applicant and lodged with the court.

[11] In early 2017 as the litigation with the applicant in respect of the child was continuing, as a result of the submissions about anger management made by the respondent to the court, the respondent was asked to lodge a report concerning anger management. His then solicitors (Wilson Nesbitt) requested a copy of the Cromey report from the respondent, and the respondent sent an email on 14th February 2017 to his solicitors attaching a report from Mr Cromey dated 14th February 2017. The solicitors then served a copy of the report on the applicant and the court. I will call this report the "2017 report".

[12] Mr Cromey has seen the report of 2017 report. He did not prepare the 2017 report. The reports have the appearance of being identical, however, on examination, the 2017 report differs from the 2016 report in the following ways -

- (a) The dates.
- (b) The 2017 report at page 3 omits the words contained in the 2016 report - "Perhaps this was further exacerbated by his naïve incomprehension at his dad's efforts to support his wife and rebuild the marriage."
- (c) The 2016 report at page 4 contains the sentences - "Shortly after the incident he claims he was led to believe he was going to be charged with 'child neglect and cruelty'. Three and a half years after the accident in 2010, and due to lack of evidence, he was eventually charged by the Public Prosecution Service." The 2017 reports contains the following sentences - "At one point he claims he was led to believe he was going to be charged with 'child neglect and cruelty'. Three and a half years after the accident in 2010, and due to lack of evidence, he was eventually charged by the Public Prosecution Service with '*undue carelessness*'." (The italics are in the document.)
- (d) In the section - 'What has his anger management curriculum involved to date?' The words 'In January 2015 he attended six sessions ...' in the 2016 report have been replaced by 'More recently he attended six sessions ...' in the 2017 report;

- (e) The 2016 report has an actual physical signature and the 2017 report has an electronic signature.

[13] At a hearing at Belfast Family Care Centre on the 29th June 2017 before HHJ Kinney, the respondent gave sworn evidence after taking a religious oath administered by the clerk. In the course of his evidence he stated as follows -

“HHJ Kinney: Have you been taking drugs in the period since you have separated?

Respondent: I haven’t used drugs in three years, Your Honour.”

[14] At another hearing at Belfast Family Care Centre on the 11th October 2018 before HHJ Loughran there was an exchange between the judge, counsel for the mother of another child the subject of those proceedings, and the respondent. At this point of the hearing the respondent was not under oath and was representing himself -

“Counsel: “...We are told that on the 22nd August [the respondent] and his wife were arrested by the police for a large number of cannabis plants, possibly other drugs in his home.

HHJ Loughran: Just let me get this. Well, first of all, is that true?

Respondent: Possible other drugs, I don’t know what this is about but there was a small quantity of plants found for personal use, your Honour.”

[15] Finally, at a further hearing in this second matter at Belfast Family Care Centre on the 31st January 2019 before HHJ Loughran, the respondent gave sworn evidence after taking a religious oath administered by the clerk. In the course of his evidence he stated as follows -

“HHJ Loughran: Are you accepting that you continue to use cannabis from the time that you and [the mother of the child] were together or had a relationship right through until now?

Respondent: Yes?”

[16] The applicant stated that she had separated from the respondent in or about May 2015 and I accept her evidence. I also find as a fact the accuracy of the contents of the Applicant's Chronology prepared by Ms K. Greene (as amended by her oral testimony in respect of one typographical error).

[17] I am satisfied beyond all reasonable doubt that the respondent had changed the report of Mr Cromey and submitted it to his then solicitors knowing that it was a report which had not been prepared by Mr Cromey and that it would be used in court proceedings. The respondent had access to a draft of the 2016 report in Word document form, and therefore it was a relatively simple exercise to amend it. I accept the evidence of Mr Cromey and Mr Owens. No one else could have created the 2017 document.

[18] I am also satisfied beyond all reasonable doubt that he knowingly lied when under oath when he told HHJ Kinney in June 2017 that he had not taken drugs for 3 years. Obviously he has made two contradictory statements, both under oath. In determining which is the truth and which is a lie, I have considered the context of each hearing. The June 2017 hearing was an application brought by the respondent for the court to find that the applicant was guilty of a contempt of court. The hearing focussed on the applicant's refusal to allow the respondent to have contact and she was alleging that the respondent had attended at a contact session under the influence of drugs. HHJ Kinney observed CCTV images of the hand-over of the child and heard evidence from both the respondent and the applicant. The statement that he did not take drugs was particularly relevant to the issue being considered and the respondent had every motivation to lie to bolster his application. At the later hearing, the issue about drug taking was less relevant (it being a different child and opponent) and I consider that the admission to drug taking in January 2019 is likely to be true as it is, in essence, a self-incriminating statement and why else would he make such an admission if it were not true. Given the passage of time he would have long forgotten his earlier evidence.

[18] I have considered the context of the ongoing litigation both when he lied under oath and when he provided the 2017 report to his solicitors. In February 2017 the issue at the forefront of the court's consideration was the respondent's anger management. Therefore his preparation and then promulgation of the 2017 report, which had been amended from the 2016 report to specifically indicate, falsely, recent engagement with Mr Cromey. I am therefore satisfied that the respondent acted deliberately, and with an intention to mislead the court, in an effort to achieve direct contact with his child, without supervision being put in place.

[19] The lies told to HHJ Kinney in June 2017 were in an effort to have the court make a finding that the applicant was in contempt of court.

Is the conduct a contempt of court?

[20] Mr Justice McAlinden has already made a determination that the allegations relate to a civil contempt, as opposed to a criminal contempt.

[21] Any conduct which involves an interference with the due administration of justice is a contempt of court (see *Attorney General v Leveller Magazine Ltd* [1979] AC 440, per Lord Diplock at 449).

[22] Mr Justice Garnham in *Liverpool Victoria Insurance v Khan* [2018] EWHC 2581 summarised the law in relation to contempt of court in the context of false evidence during a hearing as follows at [10] –

“It was held in Nield v Loveday [2011] EWHC 2324 (Admin) that, in order for such an allegation of contempt to succeed, it must be shown that in addition "to knowing what you are saying is false, you have to have known that what you are saying is likely to interfere with the course of justice". A statement made by someone who does not care whether it is true or false is liable as if that person knew what was said was false (see Berry Piling Systems Ltd v Sheer Projects Ltd [2013] EWHC 347 (TCC)), but simple carelessness will not be sufficient (see paragraph 30(c) of the judgment in Berry Piling).”

[23] It is therefore necessary for the applicant to prove, beyond all reasonable doubt, that the respondent:

- (a) Knew that the 2017 report was not a report prepared by Mr Cromey and that the amendments from the authentic 2016 report were false;
- (b) Knew that by submitting the 2017 report the course of justice was likely to be interfered with;
- (c) Knew that his evidence to HHJ Kinney on 29th June 2017 concerning his drug use was false;
- (d) Knew that by giving the evidence the course of justice was likely to be interfered with.

[24] If the applicant cannot prove, to the requisite standard, direct knowledge of any of the matters in [23] (a) – (d), it is sufficient that the applicant proves, to that standard, that the respondent was reckless, in other words, he not did care whether or not the 2017 report and his testimony was true or false, or whether the course of justice was likely to be interfered with.

[25] Having considered my findings of fact and the background circumstances, and taking into account the written submissions made by, and on behalf of, the respondent, I consider that the conduct of the respondent in respect of the 2017 report and his giving of false evidence under oath are separate instances of contempt of court. The respondent clearly knew that the 2017 report was false as he made the amendments to the original without the permission of the author Mr Cromey, he clearly knew that his evidence about drug taking was false, and he would have known that the 2017 report and his evidence were highly material to matters being considered by the court. The presentation of the 2017 report and the evidence were clearly designed to mislead the judge, and as such were likely to interfere in the course of justice.

Next stage of proceedings

[26] Having made the findings set out above, the next stage of the proceedings is to consider the punishment for the contempt of court. As the respondent absented himself from the hearing I will re-convene the hearing to give him the opportunity to appear before me again and to make submissions concerning the appropriate punishment.