Neutral Citation: [2015] IEHC 745

THE HIGH COURT

JUDICIAL REVIEW

[2014 No. 602 JR]

BETWEEN/

K. B.

APPLICANT

AND
DISTRICT JUDGE DAVID KENNEDY

RESPONDENT

AND
L. B.

NOTICE PARTY

JUDGMENT of Ms. Justice Iseult O'Malley delivered 27th day of November 2015

Introduction
1. These proceedings concern a finding that the applicant committed a contempt of court, pursuant to a statutory provision in that regard, by reason of his failure to comply with a maintenance order made in the District Court. The respondent District Court Judge made an order committing the applicant for a period of 60 days. The principal issue in these judicial review proceedings is whether or not the respondent was obliged to fix recognisances for the purposes of an appeal against the order. In turn, this involves consideration of the question whether the finding of contempt is a civil or criminal matter.

Background facts
2. The applicant and the notice party were in a relationship for some years and have three children. Differences arose between them and the applicant has since married and had a child with another woman. There has been litigation for some years in the District Court on various issues, including maintenance payments for the children of the relationship.

3. This court is not concerned with the merits of that dispute, but with the committal order ultimately made. For present purposes, it must be noted that on the 5th October, 2011, an order was made in the District Court directing the applicant to pay €150 per week by way of maintenance. On the 1st November, 2011, the notice party issued a summons under s.9A of the Family Law (Maintenance of Spouses and Children) Act, 1976 alleging failure to make the payments due under that order. A refusal to vary the maintenance order, on the 1st February, 2012, was unsuccessfully appealed by the applicant. On the 2nd January, 2013, an attachment of earnings order was made. A further appeal by the applicant against the refusal of the District Judge to vary the maintenance order was unsuccessful.

4. The applicant was made redundant later in 2013 and received a lump sum redundancy payment. On his own account, he used this to discharge bank debts and to pay for his wedding.

5. A further summons under s.9A was issued on the 2nd December, 2013. This ultimately came on for hearing on the 2nd April, 2014. The court has not been furnished with a copy of the order made on that day. According to the affidavit of the applicant, the respondent reduced the amount payable per week to €30. He also *"directed"* that the applicant be committed to prison for 60 days for contempt in respect of the failure to comply with the previous orders, with what the applicant describes as a stay of six months. However, the applicant also seems to suggest (and counsel submitted on his behalf) that what occurred was simply in the nature of a warning that, if the arrears were not paid in the next six months, a sentence of 60 days would be imposed. In any event, the matter was adjourned to the 1st October, 2014. The applicant did not appeal whatever order was made.

6. On the 1st October, 2014, there was a dispute as to whether any of the arrears had been paid to the notice party, with the applicant claiming to have been paying €20 per week as well as the €30 ordered on the previous occasion. The notice party denied this. The District Judge appears to have found as a fact that the arrears had not been paid. He decided to commit the applicant for 60 days for contempt of court, and told him that he could purge his contempt by paying the money due directly to the Prison Service without having to come back to court. According to the applicant, the judge was then given further information as to the family circumstances of the applicant as of that date, and extended the *"stay"* for a further two weeks to the 15th October, 2014. (Both the applicant and the notice party describe it in these terms.)

7. The order of the 1st October, 2014, is headed *"Family Law (Maintenance of Spouses and Children) Act, 1976, Section 9A (10)"*. It records that the payments directed to be made by the order of the 5th October, 2011, had not been duly made; that the arrears now amounted to the sum of €5,638.97; that the court was satisfied that the failure to make the payments was not due to the inability of the applicant to make them, or to any other reason not attributable to an act or omission on his part; and that the court was satisfied that the failure to make the payments constituted a contempt of court on his part. It concludes:

> *"AND WHEREAS the Court adjudges that the said MAINTENANCE DEBTOR BE COMMITTED TO PRISON FOR A PERIOD OF 60 DAYS WITH A STAY OF 2 WEEKS. ADJOURN TO ARKLOW DISTRICT COURT ON 15TH OCTOBER, 2014."*

8. The judge refused an application to fix recognisances for an appeal, stating, according to the applicant's affidavit, that there was *"no point in this case".*

9. The applicant was granted leave to seek judicial review by the High Court (Peart J.) on the 14th October, 2014, along with a stay on the order of the District Court. The reliefs sought include a declaration that the respondent was required by the District Court Rules to fix recognisances; a declaration that the refusal to fix recognisances was ultra vires, arbitrary, unreasonable and contrary to constitutional and natural justice; and an order of *certiorari* quashing the refusal. No order has been sought in respect of the finding of contempt or the consequent committal order.

The statutory context
Family Law (Maintenance of Spouses and Children) Act, 1976

10. The statutory power to make maintenance orders in respect of dependent children does not require any detailed consideration, other than to note that the relevant sections are ss.5, 5A and 7 of this Act.

11. Under the original provisions of the Act, maintenance debtors could enforce orders either by way of an attachment of earnings application or by utilising the mechanisms provided by the Enforcement of Court Orders Acts, 1926 and 1940.

12. Section 9A of the Act was inserted by s.31 of the Civil Law (Miscellaneous Provisions) Act, 2011 and provides for an enforcement process, by way of summons, in cases where a maintenance order has not been complied with.

13. Section 9A(1) provides that, subject to the section, failure to make a payment due under an antecedent order shall be a contempt of court. Section 9A(2) provides that, as respects a contempt of court arising under the section, a District Judge shall have

> *"such powers, including the power to impose a sanction, as are exercisable by a judge of the High Court in relation to contempt of court in proceedings before the High Court".*

14. The process under s.9A is commenced by way of summons, issued on the application of the maintenance creditor, requiring the attendance in court of the maintenance debtor *"to be dealt with according to law"* for his or her failure to comply with the antecedent order. The summons must, inter alia, contain a statement that failure to make a payment in accordance with the antecedent order constitutes a contempt; and must give details of the consequences of a finding that a contempt has taken place including, in particular, the possibility of imprisonment. It does not seek any specific relief.

15. The section confers a power of arrest where the maintenance debtor fails to appear in accordance with the summons.

16. Before any evidence is heard in relation to the subject matter of the summons, the judge must explain to the maintenance debtor the possible consequences, in particular the possibility of imprisonment, which may follow on a failure to make a payment in accordance with an antecedent order. The judge must also explain to the maintenance debtor that he or she is entitled to apply for legal advice and legal aid under the Civil Legal Aid Act 1995, and must give an opportunity for such an application to be made.

17. If it appears to the judge that the failure to pay is due to a change in the maintenance debtor's financial circumstances, or to some other reason not attributable to any act or omission on the part of the maintenance debtor, the matter may be adjourned to enable payments to be made, or to enable an application for an attachment of earnings order to be made. Alternatively a variation order may be made.

18. Section 9A(10) provides that, if the judge is satisfied that there has been a failure to pay and that, in summary, it is the debtor's fault, the failure to pay may be treated as constituting contempt of court *"and the judge may deal with the matter accordingly".*

19. The rules governing an application under s.9A of the Act of 1976 are set out in O.57 of the District Court Rules, as inserted by the District Court (Enforcement of Maintenance Orders) Rules 2013 (S.I. 306/2013).

20. Rule 12 of the order reads in full as follows.

> *"Where a person is imprisoned for contempt of court in accordance with section 9A of the Act of 1976:*
>
> *(a) the person shall be notified in writing of the action required to purge his contempt;*
>
> *(b) the Court may direct that, if the contempt has not previously been purged, the person shall be brought back before the Court at a place and time fixed by the Court."*

21. Rule 11 of the order stipulates that a warrant of detention consequent upon a finding of contempt under s.9A is to be in accordance with Form 57. 7. If an order is made under r.12(b), the warrant must require the person to whom it is addressed to detain the maintenance debtor until a specified day, when he or she is to be brought before the court, unless a specified sum of money is paid before that date.

22. Apart from the s.9A procedure, it remains possible to seek a remedy by way of the provisions of the Enforcement of Court Orders Act 1940.

23. Section 8 of the latter Act originally provided that a failure to comply with maintenance orders could lead to imprisonment for up to three months. Somewhat similar provisions in s. 6 of the Act (relating to monies due under orders made in ordinary civil proceedings) were found to be invalid having regard to the Constitution in *McCann v. The Judge of Monaghan District Court & Ors* [2009] 4 I.R. 200 (considered further below). Section 8 was undoubtedly vulnerable on some of the same grounds as s.6, and was subsequently amended. As substituted by s. 63 of the Civil Law (Miscellaneous Provisions) Act 2011, it now provides that where a monetary amount payable by virtue of antecedent order within the meaning of the Family Law (Maintenance of Spouses and Children) Act 1976 is not duly paid, the person entitled to the payments may apply to the relevant District Court clerk for the issue of a summons directed to the person by whom such amounts are payable. The summons requires the defaulter to attend before the District Court for the purpose of giving evidence to the court and being cross-examined as to his or her means and assets. The judge may then make such order as seems *"fair and reasonable"* for the recovery of the outstanding amounts. There is no longer a power of imprisonment, which now appears, in maintenance cases, to be conferred only in the s.9A procedure.

The applicant's submissions

24. The applicant submits that proceedings under s. 9A and O. 57 of the District Court Rules are criminal proceedings and are therefore governed by the terms of s. 23 of the Petty Sessions (Ireland) Act, 1851, O. 25 and O.101 r. 4 of the District Court Rules.

25. Section 23 of the Petty Sessions (Ireland) Act, 1851 provides in relevant part as follows.

> *"23. In all cases of summary jurisdiction, whenever an order shall be made upon the conviction of any person for an offence, the justices shall issue the proper warrant for its execution forthwith when the imprisonment is to take place immediately, or at the time fixed by the order for the imprisonment to take place where it is not to be immediate, or directly upon the non payment of any penal sum or the non performance of any condition at the time and in the manner fixed by the order for that purpose, or at furthest upon the next court day after the expiration of the time so fixed for the imprisonment, payment, or performance of a condition, as the case may be, unless …;*
>
> *and whenever an order shall be made in any case of a civil nature, and the same shall not be obeyed, the justice shall issue the proper warrant for its execution at any time after the time fixed for compliance with its directions, where required so to do by the person in whose favour such order shall have been made or by some person on his behalf….;*

Provided always, that in every case where the party being entitled to appeal against any such order shall have duly given notice thereof, and entered into a recognizance to prosecute the same in the manner hereinafter provided, it shall not be lawful for any justice to issue any warrant to execute the said order until such appeal shall have been decided, or until the appellant shall have failed to perform the condition of such recognizance, as the case may be (except where any Act shall expressly authorize or direct the levy of any sum to be made notwithstanding the appeal);

and in any case where any person shall be in custody, or shall have been committed to gaol, or any warrant of distress shall have been issued or executed, under any such order, the justice by whom the warrant shall have been issued, or any other justice of the same county, shall, upon an application being made to him in that behalf, forthwith order the discharge of such person from custody or from gaol, or that such warrant of distress shall not be executed, or that if executed the distress shall be returned to the owner, as the case may be."

26. The section was amended by s.1 of the Courts (No.2) Act, 1991, but only in respect of the time limits for the issue of the warrants referred to.

27. Order 25 of the Rules of the District Court, as amended by the District Court (Criminal Justice) Rules, 1988 (S.I. 48 of 1998), deals with the issue of warrants in execution of court orders. The applicant refers to r. 9(1) of the order, which provides as follows:

> *"9(1) Where an appeal is lodged against an order and a recognizance is entered into and the warrant to execute the order has not been issued, such warrant shall not be issued until the appeal is decided or the appellant has failed to perform the condition of the recognizance, as the case may be."*

28. A footnote to this rule refers to s. 23 of the Petty Sessions (Ireland) Act.

29. Order 101 r. 4 of the Rules of the District Court (S.I. 93 of 1997) originally provided that a recognisance for the purpose of appeal was to be at the discretion of the court. However, after amendment (by S.I. 484/2003), it provides as follows:

> *"Subject to the provisions of O.12, r.20 of these Rules, where a person is desirous of appealing in criminal proceedings or in a case of an order for committal to prison under the Enforcement of Court Orders Acts 1926 and 1940, a recognisance for the purpose of appeal shall be fixed by the Court. The amount of the recognisance in which the appellant and the surety or sureties, if any, are to be bound shall be fixed by the Court and shall be of such reasonable amount as the Court shall see fit. An application to the Court to fix the amount of the recognisance may be made ex parte. A sum of money equivalent to the amount of the recognisance may be accepted in lieu of sureties. The recognisance…shall be entered into within the fourteen day period fixed by rule 1 of this Order."*

30. Order 12 r. 20 is not relevant here.

31. Rule 6 of the order (as substituted by S.I. 80/2005) provides that where a recognisance is entered into under r. 4, execution of the order appealed against is to be stayed and the appellant, if in custody, is to be released.

32. Rule 5 of the order (as substituted by S.I. 484/2003) reads as follows:

> *"Except in cases of appeals from orders committing to prison under the Enforcement of Court Orders Acts, 1926 and 1940, or unless otherwise provided, an appeal shall not operate as a stay of execution in civil proceedings or in summary proceedings of a civil nature unless the Court shall so order and then only upon such terms as the Court may fix. Where the Court grants a stay of execution under this Rule, the appellant shall enter into a recognisance within the said period of fourteen days…"*

33. Order 54 of the District Court Rules (as amended by S.I. 42/1998) regulates the procedures relevant to maintenance applications. Rule 18 of that order provides that, notwithstanding the provisions of O.25 r.9(4) and O.101 and the entry into a recognisance by an appellant, an appeal from an order under ss.5, 5A or 7 shall not operate as a stay on the order appealed against unless the court so directs. Since orders made under s.9A are not covered by this rule, it is submitted by the applicant that O.25 and O.101 r.4 must be taken to apply. Similarly, the new rules introduced in 2013 did not in terms make any alteration in the scope of those provisions. The judgment of Charleton J. in *Burke v. DPP& anor* [2007] IEHC 121 is relied upon for the proposition that the effect of O.101(4) is to create an absolute entitlement to have a recognisance fixed for the purpose of an appeal.

34. Counsel says that the reality of the contempt jurisdiction is that most orders will have an element of both coercion and punishment. It is submitted that the order in the case, while having an element of coercion, is primarily punitive, based on the finding that the applicant used his redundancy money for his wedding rather than to pay off the maintenance arrears. Reference is made to the judgments of Hardiman J. and Fennelly J. in *DPP v. Independent Newspapers (Ireland) Ltd.* [2008] 4 I.R. 88 as to the *"well-established"* proposition that a court called upon to exercise its contempt jurisdiction is dealing with a criminal matter.

35. The case of *McCann v. The Judge of Monaghan District Court & Ors* [2009] 4 I.R. 200 is relied upon for the submission that there is no justification for treating proceedings under s.9A differently to other proceedings before the District Court which may result in imprisonment. McCann was, as noted above, a challenge to the constitutionality of s.6 of the Enforcement of Court Orders Act 1940. The challenge was successful on the basis of the lack of safeguards for the rights of debtors in the process, including the fact that the burden of proof was on the debtor to show an absence of wilful refusal, the lack of legal aid and the fact that the hearing could proceed in the absence of the debtor.

36. At p. 250 Laffoy J. said:

> *"It is difficult to identify any rational basis for treating a person facing the possibility of imprisonment for three months for non-payment of debt at the suit of a creditor differently from a person facing a criminal charge and the possibility of the imposition of a criminal sanction. In my view, there is none."*

37. It is implicit, I think, in the applicant's submissions that the new procedure under s. 9A is designed with McCann in mind and does not suffer from the infirmities found in that case. However, the point made is that the debtor is facing a custodial disposal, and therefore the proceedings should be regarded as criminal.

The notice party's submissions

38. It is submitted on behalf of the notice party that these are not criminal proceedings. The District Court was engaged in a

statutory process to which the word *"contempt"* was attached. The purpose of imprisonment was primarily coercive, and should be seen as relating to a civil contempt. The s.9A process commenced with a failure to comply with an order in civil proceedings, and never lost that essentially civil nature.

39. Further, it is submitted that the proceedings do not relate to the Enforcement of Court Orders Acts. The relevant rule in O.101, if any, is r.5, rather than rr. 4 and 6. An appeal does not, therefore, act as a stay unless the court so directs. In this case, the respondent District Judge had already given the applicant a six-month stay and in refusing to extend that (beyond the two weeks) he was acting wholly within jurisdiction.

40. However, it is submitted that the governing rule is O. 57, which deals with the s.9A procedure, and which contains no provision for a stay on the issue of a warrant in the event of an appeal. Order 54 therefore has no application.

Director of Public Prosecutions v. Independent Newspapers (Ireland) Ltd [2008] 4 I.R. 88
41. The Supreme Court decision in this case concerned a High Court hearing of an application for orders of attachment and committal and sequestration of assets for an alleged contempt of court. The application was made in relation to the publication by the respondents of certain material alleged to have been calculated to interfere with the course of justice in a pending trial. At the conclusion of the applicant's evidence the respondents successfully applied for a *"direction"* on the basis that the case against them had not been proved beyond reasonable doubt. The Director of Public Prosecutions appealed the ruling, leading the respondents to raise a jurisdictional issue as to whether the prosecution had a right to appeal against an acquittal in a criminal case heard by what they contended was the Central Criminal Court. That issue is not of concern here, but the following points from the judgments may be pertinent.

42. Hardiman J. (who dissented on the outcome in the case) said (at p. 93):

> *"There is clear authority, both recent and remote, for the proposition that contempt proceedings of the kind instituted by the applicant in the present case, are criminal proceedings and are not proceedings of any other nature, or proceedings which are sui generis."*

43. He referred to *The State (D.P.P.) v. Walsh* [1981] I.R. 412, *Attorney General v. O'Kelly* [1928] I.R. 308 and *Attorney General v Kissane* (1893) 32 L.R. Ir. 220 as supporting the following conclusions at p. 94:

> *"(a) That the jurisdiction to attach, commit or sequestrate for contempt of court is criminal in nature. There is in my view no answer to the point made by Palles C.B. [in Kissane]: 'Now no-one will contend that the jurisdiction to fine and imprison is not essentially criminal'. The criminal standard of proof must apply.*
>
> *(b) This jurisdiction is of immemorial origin and has been regarded as inherent in courts throughout the recorded history of the common law."*

44. Geoghegan J. noted that it was not in dispute that the alleged contempt in the case was criminal.

45. Fennelly J. said that he fully accepted that it was clear beyond argument that the jurisdiction was of a criminal character, continuing at p. 111:

> *"The nature of the remedy is determinative. The primary remedy sought in the notice of motion is the 'attachment and committal and/or sequestration of the assets of the respondents…'"*

46. Having considered the earlier authorities, Fennelly J. said (at p. 112):

> *"The contempt jurisdiction derives from the need for the courts to be in a position to act speedily to protect the respect and dignity of the courts themselves in the independent exercise of their functions and, equally importantly, to protect the judicial process from contamination by, inter alia, prejudicing parties, witnesses or jurors or risking the fairness of trials."*

47. At p. 114 he observed that

> *"[A] statutory provision having the effect of prohibiting any appeal from conviction of a criminal offence would be, to the least, very surprising. If it were constitutionally possible, it would certainly require clear wording."*

Laois County Council v. Hanrahan [2014] IESC 36
48. This appeal concerned a High Court order committing the appellant to prison for failing to comply with an earlier order requiring him to remove quantities of waste from a particular location. The committal order was made on foot of an application for attachment and committal. On the hearing of the motion, the High Court judge made an "unless" order, directing that the appellant was to be committed for a period of six months unless the waste was removed within a particular time frame.

49. Part of the appellant's case was that this was a punitive, fixed term sentence of imprisonment in circumstances where, he argued, his conduct did not merit it. He submitted that the judge had laid undue emphasis on the finding that there had been unlawful dumping of the waste in the first instance, as distinct from the failure to comply with the order to remove it.

50. At paragraph 49 of his judgment Fennelly J. said:

> *"49. The law with regard to contempt of court has traditionally made a clear distinction between criminal contempt, on the one hand, and civil contempt, on the other. The object of criminal contempt is punitive; it is to uphold the law generally and the authority of the courts. The object of civil contempt is coercive: it is to enable one party to litigation to ask the court to compel another party to obey an order of the court which the first party has obtained. These categories are not entirely mutually exclusive but they are still the basic guide."*

51. Fennelly J. went on to refer to the judgment of O'Dálaigh *C.J. in Keegan v. de Burca* [1971] I.R. 223 as authority for the proposition that committal for contempt must be for a definite period. He also referred to the distinction, as explained in *The State (Commins) v. McCrann* [1977] I.R. 78, between the processes involved – in cases of criminal contempt, the court moves to protect its own dignity, independence and processes, punishing violators, whereas with cases of civil contempt it moves only at the instance

of the party whose rights are being infringed. In the latter instance the purpose of imprisonment is primarily coercive.

52. However, it was noted (at paragraph 56) that in more recent times the courts have identified a hybrid type of case, where an application is made on the civil side for attachment and committal and the court decides that the behaviour of the respondent calls for punishment "over and above the coercive purpose of the application". One such case was *Shell E & P Ltd. v. McGrath & Others* [2007] 1 I.R. 671, where Finnegan P. had held that there was a jurisdiction, on an application for a coercive measure, to punish a contemnor in order to vindicate the authority of the court. This should, however, be as a last resort, to be engaged in only where there was serious misconduct. Similarly, the jurisdiction to imprison for an indefinite term for coercive purposes was to be exercised sparingly.

53. Fennelly J. set out the principles affecting the exercise of the jurisdiction to punish in cases of civil contempt as follows (at paragraph 59):

> *"i) It will normally be a matter for the court to decide of its own motion whether the case is one which justifies the imposition of punishment, which may be a fine or a term of imprisonment, although there may be cases involving matters of purely private interest where the court may be invited to exercise the jurisdiction,*
>
> *ii) The circumstances justifying the imposition of punishment will almost always include an element relating to the public interest, including the vindication of the authority of the court. The object is punishment, not coercion.*
>
> *iii) A court should impose committal by way of punishment as a last resort. The contempt must amount to serious misconduct involving flagrant and deliberate breach of a court order. Mere inability to comply will not amount to serious misconduct.*
>
> *iv) Committal by way of punishment inherently relates to conduct which has already taken place, not to future conduct. A person cannot be punished for his future conduct: that would involve preventive detention.*
>
> *v) Any imprisonment must be for a fixed term."*

54. Fennelly J. added that it was true that even in cases of purely coercive orders, there is an element of punishment. However, the above principles apply where the purpose is punitive.

55. He found it to be *"inescapable"* that the punishment imposed in the case before the Court was for the purpose of coercion, given the nature of the "unless" order made in the High Court. This was not a permissible type of order, since it unacceptably blurred the line between civil and criminal contempt. He therefore proposed remitting the matter for rehearing in the High Court for consideration of the question whether, in the light of the above principles, the conduct of the appellant amounted to such serious defiance of the order of the court as to merit six months or any other terms of imprisonment.

56. McKechnie J. reached a similar conclusion. If the intention of the High Court judge had been purely coercive, which was likely, the detention should have been indefinite in duration (subject to the power of the judge to suspend its operation). If the intention was to punish the appellant for disobeying the earlier order, the sentence had to be for a term certain and could only be in respect of past events. In the latter case, the serving of the term could not be influenced by the appellant's future conduct.

Discussion and conclusions

57. The power conferred on the District Court to impose a sanction for contempt under s.9A of the Family Law (Maintenance of Spouses and Children) Act 1976 is the same as that exercisable by a judge of the High Court. It therefore includes both the coercive and the punitive powers of the contempt jurisdiction, and must be exercised according to the same general principles applicable to the High Court as authoritatively set out in the judgment of Fennelly J. in *Hanrahan*.

58. While it may be true to say that there is always a punitive element involved in sending a person to custody (since the decision to do so must be based on a finding of culpable default), nonetheless the distinction between punitive and coercive imprisonment must be maintained.

59. Where the judge forms the view that the coercive power of the court is required, the committal must be for an indefinite period. Under the District Court Rules, the judge must inform the contemnor of the steps required to purge the contempt. The person may be brought back before the court on a specified date (presumably so that the court can avail of up-to-date information), or may purge the contempt prior to that by taking the required steps. The judge should remember that imprisonment is to be seen as a last resort, and should not be imposed if there is any doubt as to the maintenance creditor's ability to pay.

60. In such circumstances the judge is utilising the civil contempt jurisdiction, in civil proceedings, and the court remains seised of both the substantive maintenance matter and the contempt issue. In my view this situation gives rise to a discretion, rather than an obligation, on the part of the judge to fix recognisances under r.5 of O.101. It seems to me that the passages quoted above from *Director of Public Prosecutions v. Independent Newspapers*, as to the criminal nature of contempt proceedings, were intended to apply in cases where the matter in issue is an allegation of criminal contempt.

61. There will be cases dealt with under s.9A where a District Judge forms a view that the nature of the default is such as to merit punishment, in order that the authority of the court be upheld. This might be the case where, for example, a maintenance debtor had sufficient assets to comply with the order but deliberately dissipates those assets in order to render himself or herself unable to comply. Another example might be where a debtor establishes a pattern of only paying when served with a summons under s.9A, thus depriving the maintenance creditor of the regular income required for the maintenance of children. These are examples only – they are not intended to be binding or exhaustive, but to illustrate a type of behaviour calling for the vindication of the court's authority in the public interest. A finding of criminal contempt requires that the court be satisfied beyond reasonable doubt of the facts alleged, and, again, should be used as a last resort.

62. Where a judge decides to impose imprisonment by way of punishment, it must be for a definite term as is the case with any criminal sentence. The judge should bear in mind that the contempt cannot be subsequently purged – it is a punishment for proven misdeeds prior to the date of the order. It should perhaps also be remembered that a person serving a sentence for contempt will not benefit from remission or early release. However, it does appear to be possible to impose a suspended sentence with conditions attached, as in *Harrahill v. Kane* [2015] IEHC 64.

63. In such circumstances the court will have found the maintenance debtor guilty of a criminal offence and will have imposed a

definite period of imprisonment as punishment. It therefore seems to be appropriate to apply the provisions of the Rules relating to appeals in criminal cases. To hold otherwise would, potentially, nullify the right to appeal against a criminal conviction and sentence.

64. It is obvious from the foregoing that it is essential that the judge, in exercising the powers conferred by s.9A(10), makes clear the purpose and nature of the order being made.

65. The order made on the instant case on the 1st October, 2014, does not appear to have been a final order, in that it records the adjournment of the matter to another sitting of the court rather than a final order with a stay. However, assuming that it reflects the order intended to be made on the adjourned date, it is clear that as in *Hanrahan* it blurs the distinction between civil and criminal contempt in a manner that is not permissible. I therefore propose to quash the order and remit the matter for further consideration in the light of this judgment.