

THE HIGH COURT
JUDICIAL REVIEW

[2016 No. 336 J.R.]

BETWEEN**B.L.****APPLICANT****AND****HER HONOUR JUDGE DOIRBHILE FLANAGAN****RESPONDENT****JUDGMENT of Mr. Justice Richard Humphreys delivered on the 8th day of July, 2016**

1. The applicant for leave to seek judicial review in this case married Ms. C.L. in 2002. Unhappy differences arose and an order for maintenance was made against the applicant on 28th March, 2007. Ms. C.L.'s application for decree of judicial separation was granted on 8th April, 2008, against the wishes of the applicant who appears from the papers to adopt a philosophical or religious objection to the dismantling of the family by legal means, as he characterises it.

2. Ms. C.L. brought an application for the attachment and committal of the applicant, arising from an allegation regarding the applicant's failure to comply with the order of 8th April, 2008. This culminated in an order made by Her Honour Judge Flanagan on 18th February, 2016, in the applicant's absence, directing that the applicant be attached and brought before the court at the earliest opportunity to show why he should not be committed to prison on foot of his failure "*to obey said orders of the court*", the only orders identified being "*the orders of this Honourable Court dated 8th day of April, 2008*".

3. Pursuant to this order, the applicant was arrested on 2nd March, 2016, at 8:30am in Grange, Co. Sligo, and was brought to Portlaoise Garda Station and produced for hearing at 11:30am in front of His Honour Judge Johnson, who granted the applicant bail and adjourned the matter to 5th July, 2016.

4. The applicant now seeks leave to challenge the order of 18th February, 2016, and the warrant issued pursuant to it, as well as related reliefs.

5. As pleaded, the applicant's statement of grounds relies on two points. Firstly, his religious objection to the judicial separation proceedings (grounds 1 to 3, a claim which is not legally stateable); and secondly, a claim that O. 37 of the Circuit Court Rules 2001 (which deals with attachment and committal) has not been complied with. However, in the circumstances it seems to me that there is a further point arising from the facts which, in the interest of justice, the applicant should be entitled to advance if he wishes to do, namely that the order fails to specify with particularity the precise act or omission alleged to amount to contempt of court. It is clear that proper notice to a defendant in a contempt matter is essential (see Law Reform Consultation Paper, *Contempt of Court* (1991), pp. 152 to 153 and 166 to 168, citing the terms of the penal endorsement (O. 41, r. 7 of the Rules of the Superior Courts 1986) and the requirement for a motion under O. 44, r. 3 of those rules), and the need for such notice is arguably no less essential in an order of attachment and indeed in a motion applying for such an order, whether in the High Court or any other court.

6. While I would therefore refuse to permit the applicant to advance Grounds E1 to E3, I would permit him to substitute a new ground that the order of 18th February, 2016, failed to specify with particularity, the precise conduct alleged to amount to contempt of court. The existing ground E4 (relating to alleged non-compliance with O. 37) appears also arguable.

7. As regards the relief sought, reliefs D4 and D5 appear to relate to complaints he has with the family law proceedings, and in particular, the order made in 2008, rather than the order of 18th February, 2016. No arguable grounds have been made out for those reliefs which, in any event, appear to me to be out of time.

Order

8. For the reasons, stated above, I will order:

(i) that the order made under s. 45 of the Courts (Supplemental Provisions) Act 1961 be made permanent;

(ii) that the applicant have liberty to file an amended statement of grounds including an additional ground to the effect that the order of 18th February, 2016 failed to specify with particularity the precise conduct alleged to amount to contempt of court;

(iii) that leave to seek relief D4 and D5, or to seek relief on grounds E1 to E3, be refused, but that leave be granted to seek the remaining reliefs on the remaining grounds including the additional ground which the applicant has leave to add;

(iv) that Her Honour Judge Flanagan be struck out as a respondent, and that Ms. C.L. be the respondent to the application;

(v) that the applicant within 14 days from perfection of the order serve an originating notice of motion returnable for 4th October, 2016, the amended statement and the grounding affidavit; and

(vi) that the order and warrant dated 18th February, 2016, and any conditions attached to the applicant's bail of 2nd March, 2016, be stayed pending the final determination of the judicial review proceedings.

