

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 13 April 2023

Status: Immediate

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S[...] v *S[...]-H[...]* (Case no 771/21) [2023] ZASCA 49 (13 April 2023)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding, with no order as to costs, an appeal against the decision of the Western Cape Division of the High Court, Cape Town (the high court).

The core issue before the SCA was whether the appellant should be committed to prison for three months for contempt of court, as a result of failing to make payment in terms of a maintenance order. Aligned to this, was whether the appellant was entitled to a postponement to allow him to present his case before the high court made the order committing him to prison.

Pursuant to divorce proceedings, a maintenance order was granted against the appellant, which inter alia, provided that he must make a contribution towards the maintenance of the minor children in the sum of R6000 per month per child; all amounts owing to the school that the children attend, including the cost of extra-mural activities and school uniforms. The appellant failed to make payments as ordered. After numerous attempts, over a period of many years, the respondent approached the high court and launched an urgent application, to enforce compliance with the maintenance order. The urgent application was successful and resulted in the respondent being ordered to comply with the maintenance order and that the arrear maintenance must be paid to the respondent by no later than 17h00 on Friday 18 December 2020. Failing which, the respondent could set the matter down on 48 hours' notice for an order that the appellant be declared in contempt of court, a warrant be issued for his arrest and he be committed to prison for a period to be determined by the court. The appellant failed to comply with this order and the respondent accordingly launched the said application.

The high court was satisfied that the respondent had made out a case for the relief that she sought. As a result, the high court declared the appellant to be in contempt of the maintenance order and ordered that he be committed to prison for a period of three months. The appellant's application for a postponement, made on the day that the application for committal was heard, was dismissed. The appellant applied for leave to appeal this decision. His grounds of appeal were that the amount of arrear maintenance claimed by the respondent was incorrect and that the COVID-19 pandemic had significantly diminished his financial situation. Leave to appeal was dismissed by the high court but granted by the SCA.

The SCA held that where a committal is ordered, the standard of proof in civil contempt matters has to be the criminal standard, ie wilfulness and *male fides* have to be shown beyond reasonable doubt. The hybrid nature of contempt proceedings which results in committal, combine civil and criminal elements. But this does not mean that contemnors are not afforded the substantive and procedural protections which apply to any individual facing the loss of his freedom. The SCA found that the high

court did not determine that the appellant's conduct was *mala fide* and wilful beyond a reasonable doubt. As a result, the SCA upheld the appellant's appeal and made an order that the appellant's application for postponement in the high court succeeds. No order was made as to costs.

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