



Neutral Citation Number: [2025] EWHC 840 (Fam)

Case No: FA-2025-000020

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/03/2025

Before :

THE HONOURABLE MR JUSTICE HAYDEN

Between :

VB

Applicant

- and -

JG

Respondent

Janet Bazley KC and Joshua Hitchens (instructed by **Janes Solicitors LLP**) for the
Applicant

Michael Glaser KC and Ewan Murray (instructed by **Stewarts Law LLP**) for the
Respondent

Approved Judgment

This judgment was handed down remotely on 7th April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

THE HONOURABLE MR JUSTICE HAYDEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Hayden :

1. This is an application for permission to appeal and full appeal, if permission is granted.

The application is against the case management decision of HHJ Willans, relating to paragraph 1 of his Order of 27th January 2025. In that order, the Judge curtailed cross-examination of the Applicant to “*matters relating to the fact of the alleged breaches*” of a non-molestation order.

2. This Court rarely intervenes in case management decisions, recognising the wide ambit of discretion afforded to the trial judge and the fact that the first instance judge is usually better placed to manage the case. In *Royal & Sun Alliance Insurance PLC v T & N Ltd* [2022] EWCA Civ 1963, at paragraph 38 of his judgment, Chadwick LJ set out the following:

“... this Court should not interfere with case management decisions made by a judge who has applied the correct principles, and who has taken into account the matters which should be taken into account and left out of account matters which are irrelevant, unless satisfied that the decision is so plainly wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the judge...”

3. Although partly codified by the Contempt of Court Act 1981, contempt of court is principally a common law doctrine which has evolved to protect the integrity of the court by imposing appropriate penalties on those who interfere with, impede, or generally obstruct the administration of justice. It is properly recognised by the Respondent’s Counsel that the application before the Court is of a criminal complexion, for purposes of Article 6, ECHR and that it is, accordingly, the Applicant’s right to cross-examine the Respondent on all issues “*relevant*” to the committal application. As

such, the Judge may not circumvent or curtail this absolute right, guaranteed by Article 6, ECHR.

4. The central issue raised by this appeal is whether the Judge could, as part of his case management powers, conferred by Part 37.7 (1) FPR 2010, inhibit cross-examination on matters relating to questions of proportionality and legitimacy of purpose in the application. The corollary of ensuring compliance with court orders, by way of contempt proceedings, is that they can sometimes be used to intimidate another party. In other words, they may be weaponised. Though this is not, at least expressly, pleaded by the Applicant, there is a clear parity of analysis with the points raised in respect of proportionality and legitimacy centred upon the principles derived from *Navigator Equities Limited v Deripaska* [2021] EWCA Civ 1799.
5. Precisely because these are quasi-criminal proceedings, for the purposes of Article 6, there is a heightened need for procedural compliance, recognising the broader rights of cross-examination afforded to defendants in criminal proceedings, as distinct from litigants in family proceedings. It may be arguable that the Judge failed to give sufficient weight to this point. This underlies both Ground 1 and 2 of the proposed appeal.
6. The Applicant argues in Ground 3 that this issue was determined in an unfair way with no notice and inability properly to prepare. Given the vulnerability of the Applicant, identified in the Psychiatric Assessment of Dr Olusola Awonogun dated 21st January 2025, this Ground may also be arguable.

7. Accordingly, the application for Permission to Appeal is to be listed, as a rolled-up hearing, with appeal to follow on 1st May 2025 with an estimated length of hearing of one day.
8. The parties have leave, if they so choose, to file updated skeleton arguments, no later than 4pm, 29th April 2025.

Post Script

9. I delivered the above short written analysis when determining, as is evident above, that this matter should be listed for an oral application for permission to appeal, with appeal to follow. I had not contemplated publication of my decision. Axiomatically, there was no judgment on the argument advanced. Of course, Rule 31.3(7) FPR 2010 provides that permission for appeal will only be granted where there is (a) real (realistic as opposed to fanciful) prospect of success; or (b) there is some other compelling reason to hear the appeal. This requires to be read in conjunction with FPR Rule 30.12(3) which provides that an appeal may be allowed where the decision was wrong or unjust for procedural irregularity. Thus, my above remarks went no further than indicating that the appeal had a realistic prospect of success.
10. Following receipt of my written decision, there was a good deal of discussion between the parties which, ultimately, resulted in a draft Consent Order set out below:

“Upon the Appellant’s application for leave to appeal made by way of an Appellant’s Notice dated 31 January 2025.

AND Upon the Respondent filing and serving a position statement opposing the grant of permission on 10 February 2025.

AND Upon the Court listing the application for permission to appeal for a rolled-up hearing on 01 May 2025.

AND Upon the Respondent's solicitors writing to the Court on 11 March 2025 to indicate that the Respondent does not oppose the appeal being allowed.

AND Upon the Respondent accepting and the Court determining that:

- (a) The Appellant is entitled to cross-examine the Respondent at trial on any matters relevant to the legitimacy of the contempt application's purpose or the proportionality of a committal order without restriction*
- (b) On determining liability for Contempt, the Court must consider, amongst other things:*
 - a. Whether the committal application is proportionate (by reference to the gravity of the conduct alleged);*
 - and*
 - b. Whether it is brought for legitimate ends.*
- (c) Committal applications must not be pursued for improper collateral purposes.*

IT IS ORDERED BY CONSENT THAT: -

- 1. The appeal is allowed on the grounds set out in the above recital.*
- 2. Paragraph 1 of the Order of HHJ Willans dated 27 January 2025 is set aside.*
- 3. The hearing of 1 May 2025 be vacated.*
- 4. Costs reserved."*

11. In endorsing the order, and particularly the prefacing recitals, the appeal is allowed based on the Respondent's acceptance of the Appellant's central arguments. I have endorsed those arguments, at the request of both parties. Thus, on determining liability for contempt, I consider it is important that the Court recognises the inherent dangers in restricting the scope and ambit of cross-examination in advance of a hearing. Further, the alleged contemnor will always be entitled to cross-examine on any matters relevant to the legitimacy of the contempt application's purpose and the proportionality of a committal order. This cross-examination should be without restriction.
12. When determining liability for contempt, it will always be necessary for the Court to consider, amongst other things, whether the application is proportionate (i.e. to the gravity of the conduct alleged) and whether it is brought for legitimate aims. The Court, for the reasons I have discussed above, must be alert to committal applications pursued for illegitimate or improper collateral purposes.
13. Because these are important issues in proceedings which frequently generate appeals predicated on procedural fairness, I consider it necessary, both Counsel agreeing, to place this very short judgment in the public domain in the hope that it would be of more general assistance.