

ENGLAND AND WALES / JUDGMENT

J, Re (Committal decision)

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IN THE FAMILY COURT (Sitting at Croydon) Neutral Citation Number:

[2025] EWFC 80 (B) No. ZE20P01616 The Law Courts Altyre Road Croydon CR9 5AB Friday 28 th March 2025 Before: DISTRICT JUDGE BAKER Committal decision – judgment

1. This judgement relates to the decision to commit the mother, FE, in her absence, to prison for 28 days in relation to two counts of contempt of court.
2. The father, AS, commenced private law proceedings under the children act in relation to the child, J, in 2020. The application has been beset with delay. FE's engagement in proceedings has been poor. She did not attend a number of hearings. She refused to engage with the Local Authority who were ordered to report. She said that AS was not the father of J. She opposed his application under s.20 of the Family Law Reform Act 1969 for a DNA sample from J for the purpose of establishing paternity.
3. That application was granted, and an order was made requiring the provision of a sample on 17/4/2023 (as amended on 25/5/2023). That order contained a penal notice. That order was not complied with, and the matter came back to court on 17/8/2023 where a further order was made giving FE a further opportunity to comply. The Recitals to that order set out the Courts efforts to emphasise the importance of compliance and the consequences in contempt of continued failure to do so. The order contained a penal notice. It was not complied with.
4. AS brought proceedings for contempt of court and the matter was listed for determination on 29th April 2024.
5. On 26th April 2024 FE sent an e-mail to the court saying that she and J had moved to Germany, requiring time to recover from the psychological trauma of the decisions made by myself and District Judge Rowland.
6. The hearing on 29th April 2024 proceeded in FE's absence and she was found to be in contempt of court for the breaches of the Orders already outlined.
7. Sentencing was adjourned to provide FE with further opportunity to attend and seek to purge her contempt by complying with the Orders. That process has also been beset with delay with a number of ineffective hearings with the court not being satisfied that its orders concerning service on FE had been carried through first by AS's solicitors and then by HMCTS staff.

8. The matter came back before me today. Service has been affected by way of e-mail to the e-mail address FE communicated with the court from on 26th April 2024 following several attempts by bailiffs to locate and serve her personally. 9. I heard from AS who explained that he still believed that FE was in England. He had sent papers into Court showing that she had reported him to a police station for harassment (which he denies, and which may be related to the Bailiffs attempts to serve although that is speculative), something which she is unlikely to have done if in Germany. He understood that I was considering committing FE to prison and he expressed his concern about J if that were to happen.
10. In reaching the decision to commit FE to prison for 28 days I considered the purpose of this exercise to be to secure compliance with the Order with punishment as a secondary purpose. It is very much hoped that when FE receives this by e-mail or it otherwise comes to her attention, she will seek legal advice, provide a sample and make an application to purge herself of contempt. However, given her persistent absence and apparent evasion of service it was difficult to envisage how a lesser penalty would secure compliance.
11. I considered the guidance in *Lovett v Wigan Borough Council and others* [2022] EWCA Civ 1631 and whilst that concerned breaches of Anti-Social Behaviour Injunctions the CJC's guidance was instructive.
12. In terms of assessing seriousness, FE's culpability for each breach is level B in that they are deliberate breaches which are serious, but which do not fall within the category of the most serious. In terms of harm, I assess this as category 2. The consequence of the breach has been to deny AS the acknowledgement of paternity of a child who he has always believed is his through a straightforward procedure which would put the issue beyond doubt further delaying proceedings. I had initially assessed this as category 1 but on reflection consider category 2 as appropriate.
13. That assessment means that my starting point is committal for 1 month with a sentencing range between adjournment to 3 months.
14. In terms of potential mitigation that FE could raise had she have chosen to attend. The key point here is the impact on J which will be very significant and which could be immediately ameliorated by FE purging her contempt. It is difficult to see any other potential mitigation.
15. Whilst there are two breaches they are a continuum of 1 issue, namely the refusal to comply with an order to provide a sample from J for DNA testing. I have considered whether a period of committal shorter than 4 weeks is justified but I do not think this is the case. Four weeks is a sufficient period to offer firm encouragement to comply and strikes the right balance between encouraging compliance and punishing if that is still withheld.
16. The penalty therefore is 28 days in custody for each breach to be served concurrently so the total is 28 days with automatic release at 14 days.

17. This of course can all be avoided and as I have already said, and I repeat, I very much hope FE will seek legal advice and make an application to purge, having complied with the Order.
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