

JERSEY / JUDGMENT

AD v SV [2009] JRC 014A (27 January 2009)

[2009] JRC 014A

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

judgment

the commissioner: 1. The Defendant stands to be sentenced once more for breaches of injunctions imposed by the Court on the 22 nd November, 2006, and as amended on the 16 th February, 2007. The relevant part of the injunction for the purpose of this hearing is in the following terms :- "restraining her , [SV] , from sending the Plaintiff , [AD] , by means of the public telecommunications system, messages calculated to annoy, harass or threaten the Plaintiff , [AD] , or procuring another persons to do so, so that the Defendant [SV] shall be permitted to send to the Plaintiff , [AD] , any necessary messages relating only to the children of the parties." 2. In breach proceedings brought on 24 th November, 2008, doubts were been expressed as to the Defendant's ability to engage in proceedings. In our judgment of the 24 th November, we said this: - "when the matter first came before the Court serious doubts were expressed of the Defendants ability to engage in these proceedings and the matter was adjourned for medical and psychiatric reports. Doctor Harrison's report of 6 th November, 2008, concluded that she was not suffering from any major psychiatric illness and that she was able to give instructions and participate in the proceedings , although he did indicate that the exasperation and distress resulting from these proceedings had led to her finding it increasingly difficult to persevere with the process. She has lost hope that agreement can be reached and this has resulted, in his view, in a clear deterioration in her mental state. This deterioration he advised would continue until the financial issues and divorce are resolved. We agree that these observations do provide some insight as to why the Defendant has breached the orders of the Court." 3. We have since received a report from Doctor Tracy Wade dated the 8 th December, 2008, which concludes that in her opinion SV is not suffering from any specific mental illness, but re presents rather more as an aggrieved person who is finding difficulty in coming to terms with the loss of her marriage, which formed a very substantial part of her identity. 4. Ancillary matters were are due to be heard on the 4 th to 6 th February this year but have been delayed to the 26 th to - th March. In our judgment of 24 th November, , the Court we Court said this:- " ' Her position before us is serious in that she is a well educated, intelligent person who has full understanding of the terms of the injunctions and the consequence which must flow from the breaches of those injunctions. She has been the subject of at least three Judicial warnings since the injunctions were imposed. Ultimately the Court will not tolerate breaches of its Orders. To condone the same would be to undermine the authority of the Court generally and lead to a loss of respect for the Court as a n i a co nstitution. Public interest dictates that firm action must be taken with those

who knowingly and persistently disobey its orders. It is the case that since this Representation was issued some eight weeks ago there have been no further breaches. Texts have been sent but they relate to the children which the terms of the injunction expressly permit. The Defendant is due to be assessed by a treating psychologist on the 3rd December, 2008, with a view to being treated, and in particular help to learn to deal with the problems that upset her and to control her anger. Furthermore the ancillary matters are due to be heard before the Registrar on the 4th, 5th and 6th February, 2009. In the circumstances we accept Mrs Davies submissions that rather than sentence the Defendant now that we should adjourn the matter until after ancillary proceedings have been concluded on condition that the Defendant undertakes the assessment and any treatment subscribed treatment subscribed and complies with the injunctions in the interim. If she complies with these conditions then it may be possible for the Court to deal with her contempt more leniently than it would otherwise be disposed to do." 5. Doctor Wade has in her report confirmed that that appointment was kept but no treatment was given in the event prescribed. Thus in November 2008 the Court took what might be regarded as the exceptional stance on giving the Defendant the opportunity of avoiding or ameliorating punishment for her admitted breaches, following three Judicial warnings, provided that she complied with the injunctions in the interim. 6. However, not withstanding the exceptional considerations shown by the Court on the 24th November, it transpires that by the 16th December, 2008, the Defendant had once again started sending text messages in breach of the injunction. The Plaintiff has produced a schedule showing twenty-eight admitted messages sent during the period 16th December, 2008, to 18th January, 2009. The Defendant accepts that she is in breach, once again, of the injunctions imposed upon her. 7. Mrs Davies has drawn to our attention written police statements from the Defendant and the parties child, Jonathan J, concerning an incident on 18th January, 2009, in which they both allege that the Plaintiff assaulted the Defendant by slapping her across the face five or six times. We understand that a criminal charge is likely. Such conduct, unfortunate and reprehensible as it would be if it is found to have taken place, (the Plaintiff denying the accusation allegation), does not breach any orders made by this Court. It is, however, significant in that the Plaintiff has been advised, that as a result of the likely or possible charge, he should have limited contact with Jonathan J until the case has been disposed of and he therefore will be unable to look after Jonathan J should the Defendant be placed in custody. Neither the Defendant's sister nor her parents can assist and if she were imprisoned, Jonathan J would therefore be left with her housekeeper. 8. Mrs Davies has urged us to once again, to adjourn sentencing until after ancillaries have been completed and at which point she says the position will be clearer and the Court will be able to assess more fully the impact of any order that it makes. In effect she urges us to deal with the matter in the same way as we did last November. 9. We are not prepared to do that. The November order was exceptional and the trust we placed in the Defendant has been flouted. Indeed, neither then, nor on this occasion, does she appear to express any remorse. In our view ordinarily breaches of injunctions should be dealt with as they arise. Furthermore, we, as with all the professionals involved in this case, feel strongly that what is required here is closure. 10. The Defendant has gone beyond the point which this Court can tolerate. She has had, up to now, some four Judicial

warnings. The orders of the Court must be obeyed . and she has had up to now, some four Judicial warnings. We have come perilously close to imposing a custodial sentence, but narrowly concluded that in the interest s of J, a substantial fine is the appropriate remedy. 11. We wish to say this however , SV, that a custodial sentence will almost certainly follow any further breaches not withstanding the repercussions and you are formally warned of this . and you You you must carefully think carefully about what you are doing next time you are tempted to send a text message. 12. We therefore sentence SV as follows: you are fined £2500 or two weeks imprisonment in default, in respect of the breaches admitted on the 24 th November, 2008; and £5000 or four weeks imprisonment in default in respect of the breaches admitted today, making a total fine of £7500, or six weeks imprisonment in default. The higher fine for the sentences or fine s imposed for the breaches admitted today reflect s the aggravated circumstances of those breaches being committed in the light of the earlier warnings. You will have until the th April, 2009, to pay these fines, but we are going to give you liberty to apply if ancillaries have not been completed by that date. 13. We express the view that the Registrar dealing with ancillaries should insure that these fines and the cost orders which we are about to impose, will come out of the Defendant ' s Defendants share of the family assets. Finally we order that you shall also pay the Plaintiff ' s Plaintiffs costs in respect of the Representation dated the 1 st October, 2008, and the Representation dated 20 th January, 2009, on a the indemnity basis , . s . S uch costs to be paid, again by the th April , with liberty to apply should ancillaries not be completed by that date. No Authorities Page Last Updated: 26 Jun 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2009/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ad-v-sv-2009-jrc-014a-27-january-2009>

Prepared on 23 October 2026 · Esheria