

Hope v Krejci [2014] EWHC B5 (Fam)

Application by wife for committal of husband for contempt of court arising from his failure to comply with financial remedy orders. Contempt proved and committal to prison ordered but suspended pending payment of outstanding sums to the wife.

BAILLII Citation Number: [2014] EWHC B5 (Fam)  
Case No. FD00D13664

IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION

Royal Courts of Justice  
Friday, 31st January 2014

Before:

MR. JUSTICE BODEY

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B E T W E E N :

GILLIAN CHRISTINE HOPE Applicant

- and -

LIBOR STANISLAV KAROL KREJCI Respondent

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MR. D. BROOKS appeared on behalf of the Applicant.  
MR. T. BECKER appeared on behalf of the Respondent.

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J U D G M E N T (APPROVED)

MR. JUSTICE BODEY:

1. These are committal proceedings brought by Gillian Hope (whom I shall refer to as "the wife") against Libor Krejci (whom I shall refer to as "the husband"). It is said that the husband is in contempt in court in not having transferred to the wife, pursuant to financial remedy orders, two Mercedes motor cars, one of which has a personalised number plate LB01, and a Harley Davidson motorcycle. The wife has been represented by Mr. Brooks and the husband by Mr. Becker. I am grateful to them for their arguments in the course of which they have said everything which could be said on behalf of their respective clients.

2. The parties married in 1983 and separated in 2000. A good deal later there were financial remedy proceedings which I will come to in a minute. But first it is necessary to explain that during the course of the marriage the husband's father set up a family trust in Jersey called the Krejci Family Trust. The beneficiaries were originally the husband, the wife, the parties' daughter, who is now an adult, and another daughter of the husband's previous relationship. During the course of the proceedings the wife was excluded from the class of beneficiaries. That family trust is the 100% owner of a company called Damsonetti Holdings Ltd., which in turn owned the vehicles to which I have referred, namely a Mercedes SL350 with the personalised number plate I have mentioned; a Mercedes CL500, and a Harley Davidson Huggler motorcycle. The personalised number plate, LB01, can be seen to be similar to the husband's first name, Libor.

3. There were numerous interlocutory applications prior to the final financial remedy hearing in July 2011. At one of those, namely on 18th March 2011, Mrs. Justice Parker made an order until further order that none of the assets I have mentioned should be removed from this jurisdiction. That order has remained extant throughout.

4. The final hearing of the wife's application for a financial remedy order came before Mr. Justice Mostyn on 22nd July 2011. Mr. Justice Mostyn was highly critical of the husband's litigation conduct, which he described as "truly abysmal" and "highly unsatisfactory". He went on that: "... time and again he was asked to answer simple and straightforward questions. His replies were all laconic to the point of total unhelpfulness and, in some instances, misleading and inexact. By his conduct the wife was forced to incur vast costs. His oral testimony was frankly appalling. He was rude, confrontational, aggressive and contemptuous of Mr. Brooks [the wife's counsel]". The orders which Mr. Justice Mostyn made on that occasion were that the husband should pay the wife a lump sum of £268,000 with £100,000 towards her costs. He adjourned the wife's application to vary the Krejci Family Trust to see whether or not the lump sum and costs orders were met. He also made a finding that the Krejci Family Trust property was in effect all the husband's property.

5. The monies were not paid and accordingly the wife restored her application to vary the family trust. That application came again before Mr. Justice Mostyn on 19th July 2012. On this occasion he formally varied the trust to provide that the three vehicles should become the wife's sole property. He ordered that they be transferred by the husband to her, subject to a possible intervention by an intervenor, one DR, who claimed to own the Mercedes SL350 bearing the number plate LB01. Mr. Justice Mostyn gave directions for DR to intervene and ordered trial of the ownership issue by a District Judge. In the course of his judgment, which is reported as *Hope v Krejci & ors* [2013] 1 FLR 182, at para.33 he said: "The only 'positive equity' assets within the jurisdiction, and therefore within my direct powers, are [two real properties], the motorcycle and the two cars". He appointed to the wife "the motorcycle and the two Mercedes-Benz motorcars and the number plate LB01, which I am perfectly satisfied are owned beneficially by Damsonetti Holdings Ltd." (It will be recalled that Damsonetti Holdings Ltd. is held 100% by the family trust). He then went on to provide that the wife could sell these assets and give credit for that money in respect of the outstanding lump sum. As regards those three vehicles, including the personalised number plate attached to the Mercedes CL500, he said: "I would be surprised if they were worth more than £16,000".

6. After the judgment the husband revealed that, in fact, DR had already taken the Mercedes SL350 bearing the number plate LB01 to the Czech Republic where he, DR, lives; further, that his (the husband's) nephew had already taken the motorcycle to Odessa, on the Black Sea.

7. On 18th October 2012 the intervention application by DR to claim ownership of the Mercedes SL350 came before Deputy District Judge Marks. At that hearing DR did not attend, although I am told that he had given a list of dates of unavailability upon which that day did not feature. The

District Judge dismissed DR's application to intervene and directed that the husband and the trustees should forthwith transfer the Mercedes LB01 to the wife.

8. The husband and Damsonetti Holdings Ltd. thereafter applied for permission to appeal that order. That application came on 26th November 2012 before Mr. Justice Coleridge. He was prepared to give permission; but only on conditions that the Mercedes SL350 and the number plate be brought to this jurisdiction by 17th December 2012 and that the costs ordered by District Judge Marks on 18th October 2012, in the sum of £2,900, be also lodged. The date of 17th December 2012 was extended by other judges, but in any event the vehicle was not brought back into the jurisdiction by the due date.

9. Meanwhile DR had applied to vary those conditions imposed by Mr. Justice Coleridge on his having permission to appeal the order of District Judge Marks. That application came on again before Mr. Justice Coleridge on 28th January 2013. He dismissed it as being wholly without merit. He also dismissed the husband's and Damsonetti's appeals against District Judge Marks' order. He made orders requiring the husband and Damsonetti Holdings to deliver up the Mercedes CL500 and the motorcycle to the wife by 4th February 2013 and, requiring the husband, Damsonetti Holdings Ltd. and DR to deliver up the Mercedes SL350 together with the number plate LB01 also by 4th February 2013. He directed that the costs still outstanding from the hearing before District Judge Marks of £2,900 be paid by the same date and he ordered DR to pay the costs of the two hearings before him (Coleridge J) on 26th November 2012 and 28th January 2013. In the light of the non-compliance with those orders, the wife began these committal proceedings. I am satisfied that they were served on the husband back in January 2013 and there is no dispute that that is the case.

10. Meanwhile, following the decision of *Prest v Petrodel* in the Court of Appeal, the husband had issued a notice of application for permission to appeal out of time the decision of Mr Justice Mostyn of 19th July 2012. That was on the basis that it had not been permissible, it was said, for Mr. Justice Mostyn to have transferred direct to the wife the vehicles which were in the legal ownership of Damsonetti Holdings Ltd. Although the husband, or those representing him, ticked the box that he wanted a stay pending the hearing, it is trite law that that does not in fact create a stay. Therefore the husband's obligations to comply with these various orders under discussion has been extant throughout.

11. On 22nd January 2014 Lady Justice Gloster dismissed the husband's application to appeal Mr. Justice Mostyn's order of 19th July 2012.

12. The wife's case, against this summary of the background, is straightforward. She asserts that this is a husband who will do anything to avoid satisfying these due obligations. She says that the orders for the transfer of the two cars and the motorcycle have manifestly been breached and that committal should follow. By reference to a very recent offer by the husband to lodge £16,000 (the value ascribed by Mr. Justice Mostyn to these assets) in an escrow account to await an intended application by the husband to the court in Europe regarding Mr. Justice Mostyn's having transferred the company's assets to the wife, Mr. Brooks seeks a suspended order for committal, on terms that the sum of £16,000 is paid by a date in the reasonably near future; but he does not align himself in any way to the suggestion that the monies should go into an escrow account. He says that it should go to his client as a replacement for the various vehicles that she should have received under the orders.

13. The husband's case differs according to each vehicle. As regards the CL500, he says that he scrapped it in July 2007. He was, I thought, quite convincing in the witness box, telling me that he had been driving it through Germany when the engine had effectively blown up and that he had

simply left it and scrapped it there. It seems to me that there are two difficulties in the husband's way about that though. The first is that the vehicle does seem to have been in existence when Mr. Justice Mostyn gave his judgment on 26th June 2012. It appears in the Judgment as I have already indicated. If the Judge had been told that it had been scrapped five years previously, common sense dictates that such a transfer could and would never have been ordered. Secondly, there is the fact that the husband told me in evidence (which he chose to give) that he continues to complete SORNs in respect of that car. He has produced one from March 2007, but says every year he gets sent one and he fills it in. Being 'off the road' is inapplicable to a car that has been scrapped. It is obvious that once a car has been scrapped, SORNs do not have to be sent in; otherwise the DVLA would be drowning under millions of such documents. The husband said, "Well, they send them to me and I fill them in", but if I may say so, he is a very astute and intelligent man; and it is difficult to understand why he does not simply send a further letter saying, "This vehicle was scrapped years ago. I do not need to do SORN certificates". I have concluded that I cannot accept the husband's evidence as regards this car and I find that the wife has made good her case beyond all reasonable doubt that he could have transferred it to her. What it would have been worth now is a different matter and not the point.

14. Turning to the motorcycle, the husband's case is that in 2008 he gave it to his nephew who took it to Odessa. Again one might be forgiven for thinking that it would not have appeared in Mr. Justice Mostyn's Judgment in 2012 (as it does appear) nor in his order, if it had been given to someone else. However, it is fair to say that the husband did apparently make the announcement just after delivery of the judgment that he had already given it to his nephew. When asked in cross-examination today if he had tried to get the motorcycle back, the husband told me that he had discussed this with his nephew and his nephew had enquired about the costs of shipping it back, but that it had proved prohibitive. That is not saying that the nephew would not have sent the motorcycle back. It is saying that it did not seem economical. No application was ever made to Mr. Justice Mostyn to substitute a monetary value in variation of the delivery up of the motorcycle in specie and I conclude beyond all reasonable doubt that the husband could have retrieved that motorcycle and transferred it to the wife, but has not done so as per his obligation.

15. Third, there is the SL350 Mercedes. Deputy District Judge Marks had seen documents for the Mercedes in DR's name -- purchase documents, specifications -- but nonetheless held that the car was beneficially the property of Damsonetti Holdings Ltd. The husband says that DR used to use this car when in London, DR being a well-known tennis player, although it is accepted by the husband that Damsonetti Holdings Ltd. was its registered keeper, garaged it on its premises and paid some of the maintenance bills. There is a somewhat surprising suggestion that DR purchased from the husband the number plate LB01 and put it on the car. That number plate had everything to do with the husband's name, i.e. was personalised to him, and absolutely nothing to do with DR.

16. The husband told me in his evidence that after Wimbledon in 2012, DR took the car to the Czech Republic where it now is. That would seem to be just after Mr. Justice Mostyn's judgment, delivered on 29th June 2012. I consider, and I am satisfied so I am sure, that the husband could have ensured that this vehicle did not just disappear from the jurisdiction in the summer of 2012. I am sure that he stood back, putting it at its lowest, whilst it departed. Although that would arguably have been in breach of Mrs. Justice Parker's order of 18th March 2011, there is in fact no committal application for breach of that particular order. So the question is only as to whether it has been in the power of the husband to retrieve it from DR in the Czech Republic. What is quite clear, on the face of it, is that there is a robust letter from DR's Czech lawyers which states that DR is saying very firmly, notwithstanding the English court order, that it is his property. No allegation of there having been some collusive arrangement was put to the husband; but, on the other hand, he accepted that he

had not tried to get the car back from DR by talking to him about it, because as he told me their relationship is sour.

17. My Judgment is that the husband cannot reasonably be expected to go to law in the Czech Republic to seek to get this particular vehicle back in the face of the documentation in DR's name. But, on the other hand, the obligation to transfer it to the wife surely carries an obligation at least to try by negotiation to retrieve it, so as to be able to comply with to this court's orders. I am satisfied beyond all reasonable doubt that the husband has not tried to retrieve this vehicle (the SL350) in order to be able to transfer it to the wife and that this amounts to a contempt of court.

18. I observe, transcending all of the above, that the husband could have shown a measure of good faith by signing all and any documents which would have the effect of transferring the vehicles and number plate to the wife in the normal way, rather than relying on the transfer of the beneficial interest (as Mr. Becker suggests relying on *Mountney v Treharne* [2003] Ch. 135). But he has not done that. That, in my view, although perhaps technical, also constitutes a contempt, given that he was specifically ordered to execute all the necessary documents to carry out the transfers.

19. I am therefore satisfied beyond all reasonable doubt that the wife has proved contempt of Court in these various ways.

LATER, after mitigation by Mr Becker:

20. I have found this afternoon that the husband is in contempt of court in failing to transfer three vehicles to the wife pursuant to orders of the court. The value, as Mr. Becker points out on the husband's behalf, is relatively modest, not to say very modest, put by Mr. Justice Mostyn in his Judgment in this case, reported at [2013] 1 FLR 182, at £16,000 or so. In that context Mr. Becker invites me, having regard also to the possible damage to the husband's business creditworthiness if there were a committal order, to consider adjourning the question of the 'disposal' of this committal application to see if the husband does pay the £16,000 which he has offered to place in an escrow account by 15th March 2014 (to await a possible trip to Europe in respect of Mr. Justice Mostyn's decision to transfer these company assets to the wife). I see the force of that and the attractiveness of it from the husband's point of view. I might have been tempted to go down that route, but for the litigation history. This hearing occurs against a background of the wife having to struggle for everything she has been able to achieve pursuant to the orders in her favour. Very substantial sums are owed to her, against the background of the decision of Mr. Justice Mostyn that there are substantial undisclosed resources. She has had to face constant litigation as highlighted in the judgment given earlier this afternoon. That said, the contempts are limited to precisely what has been found and so the 'disposal' must be a proper and proportionate response based strictly upon that which the husband has been found not to have done which he should have done. I therefore put out of my mind entirely the other sums which are owing, although I have mentioned them here as part of the frustration which this wife must have been feeling.

21. My concern with Mr. Becker's proposal is that if the money were not paid, and there is no guarantee that it will be, then the wife would have to come back before the court with continuing aggravation and delay and with increased costs which she might find she is unable to recover. She has already sustained, I am sure, a great deal of stress and strain which she should not have been having to endure three years after the final hearing. Therefore it is most important that this money which is now on offer (and which is a clearly sensible way of dealing with the question of these vehicles) is actually paid. To make it the more sure that it will be paid, I do propose to make a committal order to prison for the modest period of 2 months, bearing in mind the modest sum. I will suspend it however so long as the husband pays £16,000 to the wife's solicitors by 15th March

2014, which is in six weeks' time. Upon that payment to the wife's solicitors the committal order will stand discharged and will not take effect. If the money is not paid by that date, it will take effect. I do not take up the suggestion of an escrow account. This money is to go to the wife, via her solicitors.