Case No: FD14P00733

Neutral Citation Number: [2015] EWHC 235 (Fam)
IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/02/2015

Sanchez v Oboz (Committal: Non-attendance of Respondents)

Before :

MR JUSTICE COBB

- -

Between :

EVELYN ROJAS SANCHEZ	**Applicant**
- and -	
PAWEL OBOZ	**Respondents**
JOLANTA OBOZ	

- -
- -

Michael Gration (instructed by **Dawson Cornwell, Solicitors**) for the Applicant
The First and Second Respondents did not appear and were not represented

Hearing dates: 4 February 2015

- -

Judgment

The Honourable Mr. Justice Cobb :

Introduction

1. By application dated 30 September 2014, issued on 21 October 2014, Evelyn Rojas Sanchez (hereafter "the mother") seeks orders for the committal to prison of Pawel Oboz (hereafter "the father") and Jolanta Oboz (hereafter "the paternal grandmother"). This application arises in relation to alleged breaches of orders made on 8 August 2014 and 15 August 2014 within wardship proceedings brought under the inherent jurisdiction concerning Isabella, the three year old child of the mother and father, a child who is habitually resident in this country but who is currently in Poland. In those wardship proceedings, the mother has sought, and seeks, the return of Isabella from Poland where, it has now been found, Isabella has been wrongfully retained.

2. For the purposes of determining this application, I received and read evidence filed within those wardship proceedings, and evidence relevant to the committal application; I heard oral argument from Mr Michael Gration for the mother.

3. Neither the father nor the paternal grandmother was present at court. Mr. Gration invited me to proceed in their absence. The proceedings were, of course, conducted in open court in accordance with the *Practice Guidance* (*2013*).

Committal proceedings in the absence of the Respondents

4. It will be an unusual, but by no means exceptional, course to proceed to determine a committal application in the absence of a respondent. This is so because:

    i) Committal proceedings are essentially criminal in nature, even if not classified in our national law as such (see *Benham v United Kingdom* (1996) 22 EHRR 293 at [56], *Ravnsborg v. Sweden* (1994), Series A no. 283-B); in a criminal context, proceeding with a trial in the absence of the accused is a course which will be followed only with great caution, and with close regard to the fairness of the proceedings (see *R v Jones (Anthony)* [2003] 1 AC 1, approving the checklist provided in *R v Jones; R v Purvis* [2001] QB 862);

    ii) Findings of fact are required before any penalty can be considered in committal proceedings; the presumption of innocence applies (*Article 6(2) ECHR*). The tribunal of fact is generally likely to be at a disadvantage in determining the relevant facts in the absence of a party;

    iii) The penalty of imprisonment for a proven breach of an order is one of the most significant powers of a judge exercising the civil/family jurisdiction; the respondent faces the real prospect of a deprivation of liberty;

    iv) By virtue of the quasi-criminal nature of committal process, *Article 6(1)* and *Article 6(3) ECHR* are actively engaged (see *Re K (Contact: Committal Order)* [2002] EWCA Civ 1559, [2003] 1 FLR 277 and *Begum v Anam* [2004] EWCA Civ 578); *Article 6(1)* entitles the respondent to a "*a fair and public hearing*"; that hearing is to be "*within a reasonable time*";

v) *Article 6(3)* specifically provides for someone in the position of an alleged contemnor "*to defend himself in person or through legal assistance of his own choosing*", though this is not an absolute right in the sense of "*entitling someone necessarily to indefinite offers of legal assistance if they behave so unreasonably as to make it impossible for the funders to continue sensibly to provide legal assistance*" (per Mance LJ (as he then was) in *Re K (Contact: Committal Order)* (reference above)). The respondent is also entitled to "*have adequate time and the facilities for the preparation of his defence*" (*Article 6(3)(b)*).

5. As neither respondent has attended this hearing, and in view of Mr. Gration's application to proceed in their absence, I have paid careful attention to the factors identified in [4] above, and, adapting the guidance from *R v Jones; R v Purvis*, have considered with care the following specific issues:

i) Whether the respondents have been served with the relevant documents, including the notice of this hearing;

ii) Whether the respondents have had sufficient notice to enable them to prepare for the hearing;

iii) Whether any reason has been advanced for their non-appearance;

iv) Whether by reference to the nature and circumstances of the respondents' behaviour, they have waived their right to be present (i.e. is it reasonable to conclude that the respondents knew of, or were indifferent to, the consequences of the case proceeding in their absence);

v) Whether an adjournment for would be likely to secure the attendance of the respondents, or at least facilitate their representation;

vi) The extent of the disadvantage to the respondents in not being able to present their account of events;

vii) Whether undue prejudice would be caused to the applicant by any delay;

viii) Whether undue prejudice would be caused to the forensic process if the application was to proceed in the absence of the respondents;

ix) The terms of the '*overriding objective*' (*rule 1.1 FPR 2010*), including the obligation on the court to deal with the case 'justly', including doing so "*expeditiously and fairly*" (*r.1.1(2)*), and taking "*any … step or make any… order for the purposes of … furthering the overriding objective*" (*r.4.1(3)(o)*).

This may be a useful checklist in all such cases. I deal with each point in turn.

6. Crucial to my decision on whether I should proceed in the absence of the respondents is the requirement for proof that both had been satisfactorily served with the relevant documents, and were aware of the hearing (see [5](i) above). The documents before me reveal the following chronology:

2014

20 October — First hearing of the committal application before Russell J: On the mother's solicitors' undertaking to issue the committal application: the application was adjourned to 17 November for directions. The father and paternal grandmother were ordered to attend that hearing: penal notice attached to that requirement.

10 November — The father was served personally at his work address with the committal application, the affidavit in support, the order of 20 October 2014, and the Particulars of Breach; the father was also (re-)served with the Order of 8 August, and Order of 15 August (these having previously been served by post &/or e-mail). The documentation was provided in English and Polish. (reference: affidavit of process server).

The paternal grandmother is said to have refused to accept personal service of the documentation. (reference: affidavit of process server).

12 November — The paternal grandmother is said to have refused again to accept personal service of the documentation; the process server deposes to having left the documentation at the grandmother's address under her front door.

17 November — Directions hearing before Theis J: Neither the father nor the paternal grandmother attend. The proceedings were listed for substantive committal hearing on 10 December. A warning notice on the order explicitly declared (in bold and capitals) that if the father and paternal grandmother did not attend the hearing on 10 December "*the Court may make such order as it considers to be appropriate in your absence, including (in the event that it is found that you are jointly or separately in contempt of court) an order for your committal to prison.*" The Order was adorned with recitals of what had been said at the hearing; it further specifically recorded that the parties may be eligible for criminal legal aid for the purposes of defending the application.

10 December — Hearing before Peter Jackson J: By the time of this hearing neither the father nor the paternal grandmother had been served with the Order of 17 November; the hearing was therefore adjourned, and re-listed for 4 February 2015 (estimate 1 day). The order is explicit that the hearing was adjourned to allow the respondents an opportunity to obtain legal advice, and to attend at the adjourned hearing; the order reflects that the respondents may be eligible for criminal legal aid. Once again, the order specifically warns the father and paternal grandmother that if they do not attend the hearing on 4 February, the court may proceed to

	determine the mother's application in their absence. The order re-states all of the relevant obligations to return Isabella. [Later the same day] The father was personally served at his place of work in Poland with the order of the 10 December, and the statement of the mother filed in the committal proceedings. (reference: further affidavit of process server).
22 December	The mother's solicitor served the father with all the documents filed in the committal proceedings up to that point (as attachments) by e-mail (to the e-mail address which the father has used for previous e-mail correspondence with the mother, and from which he later sent his documents for this hearing) and by post.
<u>2015</u>	
8 January	The mother's solicitor served the father with the Order of the 10 December, by e-mail (to the same e-mail address to which the documents had been sent on 22 December 2014, which the father himself had used for e-mail correspondence). The covering letter made clear (in bold and underlined) of the date of the hearing (in fact the solicitors record the right day [Wednesday], wrong date [stating it to be the 5th] February); the order had the correct date for the hearing.
20 January	The mother's solicitors sent a letter to the father (by e-mail) reminding him of the time, day and date of the hearing (date corrected), the requirement to attend; they confirm that a Polish interpreter will be present.
26 January	The mother's solicitors sent a letter to the father (by e-mail) reminding him of the time, day and date of the hearing, the requirement to attend, and sending a bundle index and Practice Direction Documents The court bundle is further sent to the father via Facebook page (the mother's solicitor has, I was advised, subsequently been 'blocked').
28 January	The mother's solicitors sent a letter to the father (by e-mail) reminding him of the time, day and date of the hearing, the requirement to attend, and sending a full scanned copy of the bundle

7. Significantly, by Order of 10 December 2014, the father was given leave to file evidence "*if so advised and if he so wishes*. The father did file and serve evidence (by e-mail), under cover of a letter dated 30 January 2015, which opens with the words:

> "*In response to your e-mail with an attached document dated 8/1/2015 I would like to thank you for sending me the order of Mister Justice Peter Jackson from 10/12/14. There were errors in the earlier messages you had been sending me, but the last e-mail reached me without any technical difficulties. By virtue of the power of attorney (sic) granted to me in point 3 of the above court order I would like to present you with the affidavit and following exhibits….*"

8. This covering letter helpfully demonstrates that the father was aware of the forthcoming hearing, and had plainly read of the contents of the order.

9. On the basis of the material above, I am satisfied that:

   i) The father was personally served on 10 November 2014 with the orders requiring him to return the child, including a continuing obligation to do so;

   ii) The father was personally served on 10 December 2014 with all of the relevant documents, including the orders requiring him to return the child, including a continuing obligation to do so, and the order which listed this hearing on 4 February 2015;

   iii) By no later than 8 January 2015, the father had all of the relevant documents, including the order listing this hearing.

10. I am further satisfied, on the evidence before me, that on 12 November, the paternal grandmother was properly served with the orders which require her to return Isabella or cause her to be returned (see [6] above: entry 12 November): see, in combination, *rule 6.25, 6.26, 6.41 FPR 2010*.

11. However, I am not satisfied on the evidence that the paternal grandmother was ever served with the order of 10 December 2014; there is no evidence that she has been served (i.e. independently of the father) with notice of this hearing. Moreover, the mother's solicitors have not corresponded with the paternal grandmother directly (i.e. independently of the father) since before the last hearing; there is no evidence of any direct e-mail communication with her. While it is reasonable to assume, in my view, that the father will have informed the paternal grandmother about this hearing (on all the information before me from a number of sources, they reside together and share the care of Isabella), I cannot be sufficiently sure on the evidence that he has. It would be unsafe to proceed to deal with the alleged breaches by the paternal grandmother of the relevant orders in her absence, relying on such an assumption.

12. I proceed therefore to consider the father's position alone, at this stage.

13. I am satisfied that the father has had sufficient notice to enable him to prepare for the hearing ([5](ii) above); indeed he has prepared statements and affidavits in response to the mother's evidence.

14. No reason has been offered by the father for his absence ([5](iii) above).

15. Having regard to all the circumstances, including specifically (a) the extensive notice which he has had of this hearing (since 10 December), (b) his conduct in attempting and failing (see below [23]) to establish jurisdiction in the Polish Courts, (c) that he has communicated with the court and the mother's solicitors by serving evidence, but has not offered any explanation for his non-appearance, the strong inference which I have drawn from his absence is that he has waived his right to participate (see [5](iv) above). He is, in my judgment, more than aware of the need to attend, and of the consequences of not attending, as the Orders of 17 November and 10 December make clear. Parties to proceedings of this kind must understand that when the judges of the Family Courts require the attendance of the parties at hearings, they mean it. When the judges of the Family Courts warn that hearings may proceed in the absence of parties, this is not just an idle threat. As Sir James Munby P made crystal clear in *Re W (A Child)* [2013] EWCA Civ 1227 at [74], and *Re W & H* [2013] EWCA Civ 1177 at [52]:

> "*Orders … must be obeyed. … Non-compliance with orders should be expected to have and will usually have a consequence*".

16. For the reasons set out in the paragraph above, I am satisfied that even if I were to grant a short adjournment to give the father the opportunity to attend, I do not consider that he would do so (ref: [5](v) above).

17. With regard to [5](vi) above, this is an application in which judicial determination of the facts relevant to the alleged breaches does not require evaluation of highly contentious evidence. Indeed, as is apparent from the father's evidence in reply ([36] below), he does not materially challenge the essential facts. In the circumstances, the disadvantage to the father by his non-attendance is not as significant as it may be in other cases. Delay in the resolution of this application, however, is prejudicial to the mother; she has brought this application as a means of seeking to enforce the safe return of her child to this jurisdiction, her place of habitual residence ([5](vii) above).

18. Overall, and taking all the factors into account above, I considered that there would be no undue prejudice to the forensic process in proceeding in the absence of the respondents ([5](viii) above), and it would be only faithful to the 'overriding objective' to so proceed ([5](ix) above). That said, at the outset of the hearing I indicated to Mr. Gration that, in the event that I found the alleged breaches proved on the basis of the material presented, I would intend to give the father (and paternal grandmother) an opportunity to make representations to the court in person, or through legal representative, by way of mitigation or otherwise, in relation to the imposition of the penalty. This course it seems to me strikes the proportionate balance between advancing the proceedings as contemplated, while sufficiently protecting the respondents' *Article 6* right to make representations before I specifically consider removal of their liberty.

Factual background

19. On 4 July 2014, the mother issued an application for a return of Isabella to this jurisdiction; orders (including wardship and Tipstaff orders) were made by Roderic Wood J without notice to the father. On 15 July, Roberts J made an order that the father was to return Isabella to England and Wales by 4 p.m. on 23 July 2014; the

father was present at court and was represented by counsel. The father did not return Isabella. When the father did not return the child, the case was restored for hearing on 31 July 2014, before Moylan J. The father was again present and represented. The order records that the father informed the court "*that the paternal grandmother will travel to England with the child on 6 August 2014"***.** The order for return was repeated, but this time with a penal notice attached. I am satisfied that the father purchased a flight ticket for Isabella. On 6 August, the paternal grandmother travelled to this country, but she did not bring Isabella with her.

20. On 7 August 2014, the application was listed before Moor J for determination of jurisdiction. The father appeared in person, as did the paternal grandmother. The father conducted the proceedings in English throughout; the paternal grandmother was assisted by an interpreter. At the conclusion of the two day hearing (at which evidence was given), Moor J declared that Isabella was habitually resident in England at the date of the application and remains so. The orders for her return were repeated. The detail of the orders was discussed in court in the presence of the father and the paternal grandmother (see [30] below). A penal notice was attached to those orders, and the father and paternal grandmother were each warned of the consequences of breaching them. The father and the paternal grandmother were each directed to return Isabella to England and Wales by no later than Thursday 14 August 2014. It was intended that the father would remain in England and Wales (his travel documents having previously been seized pursuant to a passport order) and that the paternal grandmother would travel to Poland to collect the child and return her, in accordance with the father's instructions.

21. Isabella was not returned on 14 August 2014. A further hearing took place on the following day before HHJ Hughes (sitting as a Deputy High Court Judge); neither the father nor the paternal grandmother was present. It appears that by that time the father had left the country (although it is not clear how, as the father had purportedly given all his travel documents to the Tipstaff pursuant to a tipstaff order – 4 July 2014). The return orders were repeated, again with penal notices attached. Pursuant to those orders the father and the paternal grandmother were directed to return Isabella to England and Wales forthwith and in any event by no later than 22 August 2014. It was made clear that there was a continuing obligation upon them to bring about her return.

22. The sequence of court proceedings and hearings following this date, and relevant to the committal application, have been outlined above at [6].

23. It now appears that, at some point after 8 August 2014 and before 6 September 2014, the father &/or the paternal grandmother instituted 'custody' or residence proceedings, and proceedings to "*restrict…* [the mother's] *parental power*" concerning Isabella in Poland (the paternal grandmother told Moor J that it was she who had instituted the proceedings "*to remove the mother's parental responsibility*"). Within proceedings in Poland a welfare report was commissioned and filed (the father has recently served and filed a copy of this report in these proceedings); the mother was not contacted in relation to the preparation of this report. It has emerged, following helpful international judicial liaison between Network Judges through the Office of International Family Justice, that the father's custody claim in respect of Isabella has been rejected (8 December 2014) and that there are no other pending applications before that court.

Particulars of Alleged Breach

24. The Particulars of Alleged Breach are set out in seven numbered paragraphs (each containing multiple sub-paragraphs), each identifying the specific Court Order (and parts of Order) which it is alleged that the father and paternal grandmother respectively have breached.

25. In the end, some of the allegations were not pursued at this hearing; Mr. Gration indicated that he did not seek findings in relation to the alleged breaches of three specific orders, namely:

    i) Tipstaff passport order of Wood J (4 July 2014); by this order, the father was required to hand to the Tipstaff every passport, identity card, ticket, travel warrant or other document which would enable him to leave England, and was prohibited from obtaining or making any application in relation to such document. Although there was a very strong inference, argued Mr. Gration, that the father had breached this order (as I have mentioned, the father had in fact left the country), it was conceded that he may not be able to discharge the heavy burden of proving the breach to the required standard, in the absence of the father; Mr. Gration reserved the right to pursue findings arising from an alleged breach of this order at a later time;

    ii) Order of Roberts J (15 July 2014); this order did not, in fact, contain a penal notice;

    iii) Order of Moylan J (31 July 2014) as the order had been erroneously drawn to include a direction to the father to return the child by a date (23 July) which had in fact passed.

26. The committal did however proceed on all other grounds relevant to alleged breaches of the orders of the 8 August 2014 and 15 August 2014. I approach determination of the particulars by reference to the *Re L-W (Enforcement and Committal: Contact); CPL v CH-W and Others* [2010] EWCA Civ 1253, in which Munby LJ (as he then was) said at [34]:

> "*(1) The first task for the judge hearing an application for committal for alleged breach of a mandatory (positive) order is to identify, by reference to the express language of the order, precisely what it is that the order required the defendant to do. That is a question of construction and, thus, a question of law. (2) The next task for the judge is to determine whether the defendant has done what he was required to do and, if he has not, whether it was within his power to do it. To adopt Hughes LJ's language [in Re A], Could he do it? Was he able to do it? These are questions of fact. (3) The burden of proof lies throughout on the applicant: it is for the applicant to establish that it was within the power of the defendant to do what the order required, not for the defendant to establish that it was not*

> *within his power to do it. (4) The standard of proof is the criminal standard, so that before finding the defendant guilty of contempt the judge must be sure (a) that the defendant has not done what he was required to do and (b) that it was within the power of the defendant to do it.*"

27. The law of contempt is a complicated mixture of the common law, statute and in the High Court the inherent jurisdiction. When determining this application I have borne firmly in mind that:

    i) The burden of proof lies on the Applicant mother; the Respondent father does not need to prove anything;

    ii) Any issues of fact relevant to the alleged breaches must be established beyond reasonable doubt (*Re C (A minor) (Contempt)* [1986] 1 FLR 578 at 588) (I refer to this as "the required standard" for shorthand below).

Findings of Fact: Alleged breaches of the Order of 8 August 2014

28. By paragraph 3 of the Order of Moor J of 8 August 2014 (at the conclusion of the 2-day hearing), the father was directed to return or cause the return of the child to England and Wales by no later than 12 noon on 14 August 2014. In relation to this order, I am satisfied to the required standard that the Order:

    i) Carried on its face a clear and explicit warning that if the father acts in breach of this order it will be open to the mother to apply to have him committed to prison for contempt of Court. A similar warning was made in relation to the paternal grandmother;

    ii) Required the father to return or cause the return of the child, Isabella, to this jurisdiction by 14 August 2014;

    iii) Required the paternal grandmother to return or cause the return of the child, Isabella to this jurisdiction by 14 August 2014;

    iv) Contained a clear penal notice warning that breach of the order requiring the father and paternal grandmother not to return Isabella could lead to a finding that they had been in contempt of court and imprisoned or fined, or their assets seized;

    v) Contained specific requirements on the father and paternal grandmother in relation to the booking of the tickets, and the facilitation of Isabella boarding the flight by 14 August 2014;

    vi) Directed the father to attend a further hearing listed before a High Court Judge of the Family Division sitting at the Royal Courts of Justice, Strand, London at 10.30 a.m. on 15 August 2014 (a penal notice attached to this provision too).

29. At that hearing, I am satisfied to the required standard that:

    i) the father was present throughout, as was the paternal grandmother; both gave oral evidence;

ii) the father conducted the proceedings in English throughout; the father has a "*very good grasp*" of English (per judgment of Moor J), having lived and worked in the USA or England for the majority of the last 12 years;

iii) at the conclusion of the hearing, the Judge explained to the father the expectations on him pursuant to the order (see [30] below);

iv) the father understood that he was expected to return Isabella by a date in the following week (see his last answer in the exchange quoted at [30]).

30. Following the judgment, there was a discussion between Moor J and counsel; there followed a discussion between Moor J and the father. The exchange with the father begins with the father accepting that he understands "*the outcome*" of the case; it continues:

- "*Mr. Justice Moor: … I am going to say that Isabella must come back to this country by 12.00 noon next Thursday*
- *F: Yes, my Lord*
- *Mr. Justice Moor: I have also got to warn you that I am going to attach a penal notice to that, and that if it is not complied with, an application may be made for your committal to prison.*
- *F: Yes, my Lord*
- *Mr. Justice Moor: And if it is proved beyond reasonable doubt (which means so that the judge is sure) that you are in breach of the order, then you could go to prison for up to two years.*
- *F: Yes my Lord. What kind of confirmation I am going to get that my wife can take care of my daughter <u>when she returns next Thursday</u>?...*" (emphasis by underlining added)

31. The final answer quoted illustrates that the father had understood the requirement for Isabella to be returned by 14 August.

32. There is a requirement in the *Family Procedure Rules 2010* for an applicant to demonstrate in the context of a committal that an order of this kind has been personally served on the respondent (see *rule 37.6 FPR 2010*), even if the respondent has been present in court when the order was made. This did not happen immediately following the hearing on 8 August. On the mother's case, the father had falsely told her lawyers at court that he was residing at a Travel Lodge in Wembley, and when the process server attended there, the hotel had no record of the father. Having regard to the fact that the father had been present in court, and the order had been explained to him by the judge (see [30] above), I do not regard this failure to serve as fatal to the application to commit. It is apparent (*Nicholls v Nicholls* [1997] 1 FLR 649 – per Lord Woolf MR at 655/661) that not every instance of non-compliance will render the committal invalid, and that (see *PD37A para.13.2*) the court may in any event waive

any procedural defect "*if satisfied that no injustice has been caused to the respondent by the defect*".

33. While making no finding about the difficulties encountered by the process servers engaged by the mother in serving the father, I am wholly satisfied that no injustice has been caused to the father by non-service of the order. The father knew exactly what was required of him.

34. I am satisfied that it was in the father's power to facilitate the return of Isabella to this country pursuant to that order (see *Re L-W* above). Moor J had found (it appears to have been an agreed fact) that between March and May 2014, Isabella was staying in Poland with the paternal grandparents by agreement with the parents, who remained in this country; the paternal grandmother accompanied Isabella on each international journey. There was no court order in Poland preventing her removal in August 2014; it is obvious that the father had the financial means to pay for her travel here (he had bought her a ticket in the past).

35. The father did not attend the hearing on 15 August 2014 as he was ordered to do. A penal notice was attached to that part of the Order.

36. Pursuant to leave granted by Peter Jackson J, the father has submitted evidence, which I have read with care. His own statement contains the following:

> "*The lawyers representing me in court have not explained clearly enough to me the consequences of violating court orders. The legal advice provided by my counsels did not prove sufficient for me to protect myself from the accusations of the applicant mother concerning my daughter's departure from the UK to Poland. My opinion has been influenced by my shock at being summoned before the Honourable Court as a perpetrator whose actions were considered unlawful. The consequences of the lies my wife told in relation to my daughter's departure to Poland were beyond my comprehension. It has never occurred to me that my actions, undertaken with my wife's knowledge and consent to my daughter's and the whole family's best interest, could carry the threat of a prison sentence. Especially that the Family Divisions of the Polish Courts do not have the legal means to punish parents with a prison sentence*".

He adds (and this passage is specifically relevant to any alleged breach of the Tipstaff order, which has not yet been adjudicated):

> "*The court order not to leave the country that was imposed on me by the civil court was not clear. In the country I come from, such court orders can be issued only by a criminal court, in relation to a justified suspicion that the person concerned may have committed a crime. Therefore, I was not aware that violating this court order could bear consequences defined in the criminal law. Especially given that, in my view, the freedom of individuals to move within*

the borders of the EU, guaranteed by treaties, was of primary importance".

37. These accounts do not offer any defence to the alleged breaches. Specifically, the father's evidence does not address the fact that:

    i) the orders served on him are explicit on their face as to the potential consequences of breach, and that

    ii) Moor J had explained to the father in person the obligation on him to comply.

38. In the circumstances, I find that the father has been breach of the order of 8 August 2014 in the following respects:

    i) The father did not return or cause the return of the child to England and Wales by 12 noon on 14th August 2014, or at all.

    ii) The father did not (as he was ordered to do):

        a) Book flight tickets for the child and an appropriate accompanying adult to travel from Poland to England to arrive by no later than 12 noon on 14 August 2014;

        b) Notify the mother of the booking of any such flight tickets by 6 p.m. on 12August 2014, or at all;

        c) Cause the child to board the plane upon which the child had been booked to return to England and Wales;

        d) Instruct any accompanying adult to take the child onto the plane upon which the child had been booked to return to England and Wales.

    iii) The father did not attend the hearing listed before a High Court Judge of the Family Division sitting at the Royal Courts of Justice, Strand, London at 10.30 a.m. on 15 August 2014.

Findings of Fact: Alleged breaches of the Order of 15 August 2014

39. The order of the 15 August 2014 is in similar format to that of the 8 August 2014. In relation to this order, I am satisfied to the required standard that the Order:

    i) Required the father to return or cause the return of the child, Isabella, to this jurisdiction by 22 August 2014, with a continuing obligation on him to do so if he had not done so by then;

    ii) Required the paternal grandmother to return or cause the return of the child, Isabella, to this jurisdiction by 22 August 2014, with a continuing obligation on her to do so if she had not done so by then;

    iii) Contained a clear penal notice warning that breach of the order requiring the father and paternal grandmother not to return Isabella could lead to a finding

that they had been in contempt of court and imprisoned or fined, or their assets seized.

40. I am satisfied to the required standard that the father was served with this order by post on 18 August 2014, and personally served with this Order on 10 November 2014.

41. For the reasons more fully discussed above, I am satisfied to the required standard that:

    i) The father did not return the child to England and Wales forthwith, by 12 noon on Friday 22 August 2014 or by any later date.

    ii) The child has not been returned to England and Wales at all.

Conclusion

42. I make the specific factual findings against the father set out at paragraphs [38] and [41] above.

43. I make no findings at this stage against the paternal grandmother, in her absence for the reasons set out above.

44. I adjourn disposal of:

    i) Determination of alleged breach by the father of the Tipstaff order (4 July 2014);

    ii) Determination of penalty for the proven breaches by the father of the relevant orders,

    until 2pm on 9 March 2015. I shall in any event deal with penalty on that day. The father must attend that hearing; at that hearing he may make representations, and present any mitigation, relevant to penalty. If he has returned or caused the return of Isabella to this country by that date, this will obviously be taken into consideration in the determination of any penalty imposed.

45. I adjourn the application to commit the paternal grandmother until 2pm on 9 March 2015 to be considered alongside the sentencing of the father.

46. I direct both the father and the paternal grandmother to return Isabella to this jurisdiction forthwith and in any event by no later than 12 noon on 6 March 2015.

47. That is my judgment.