IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2011/0415

BETWEEN:

GREGORY KNIGHT (By his attorney Kent Knight)

Claimant/Applicant

and

FIRST CARIBBEAN INTERNATIONAL BANK

Defendant

AND

CLAIM NO. GDAHCV 2011/467

BETWEEN:

BRENDA KNIGHT

Claimant/Respondent

and

KENT KNIGHT

Defendant/Applicant

Appearances:

Mr. Derick Sylvester for the Applicant
Ms. Sabrita Khan-Ramdhani for the Respondent

2014: July 17; September 18;
October 29.

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[1] MOHAMMED, J.: Gregory C Knight, Kent Knight, Brenda Knight and Faith Knight are siblings whose deep rooted anger with each other have manifested itself in the applications before this Court. Kent Knight ("the Applicant ") has filed two substantive applications which have engaged the Court's attention. They are the application filed on the 28th May 2014 ("the committal application") for committal of the Respondents Brenda Knight and Faith Knight for breach of an order dated 12th January 2012 ("the Order"), and the application filed 5th June 2014 ("the security for cost application") asking the Court to order the Respondent Brenda Knight to pay a sum of money as security for costs.

[2] After the hearing of both substantive applications and some three days before the scheduled date for the ruling the Respondent Brenda Knight filed an application for permission to admit new evidence ("the application to admit new evidence") relevant to the determination of the committal application. I will address the application to admit new evidence immediately before I deal with the committal application.

[3] The genesis of the substantive applications stem from the actions in two matters. In GDAHCV 2011/0415 ("the first matter") Gregory C Knight instituted proceedings against First Caribbean International Bank ("the Bank") whereby he is seeking to have the Bank honour the clauses in a Power of Attorney registered in the Deeds and Land Registry of Grenada at Liber 25-2011 at page 424 ("the Power of Attorney") by allowing him access to an account at the Bank. The Bank's defence is that the account in dispute is a joint account with two signatories, it is bound by the agreement with the said signatories and that the Power of Attorney is only from one signatory and not from both, and there is no expression of written permission from the other signatory.

[4] In GDAHCV 2011/0467 ("the second matter") the Respondent Brenda Knight instituted proceedings against the Applicant seeking to be appointed the guardian of Gregory Gay Knight ("the father") pursuant to the Mental Health Act 1959 UK, to strike out the Power of Attorney on the basis that the father did not have the requisite mental capacity to execute it, and an account by the Applicant of the

accounts of the father from the date of the Power of Attorney to July 2012. The Applicant's defence is the father knew what he was doing at the time of execution of the Power of Attorney. The central issue in both matters is the mental capacity of the father at the date of the execution of the Power of Attorney.

The Security for Cost Application

[5] The sole ground set out in the security for costs application is pursuant to CPR 24.3 (g) which is, the Respondent Brenda Knight is ordinarily resident outside of the jurisdiction since she resides at No. 5 Blenheim Road, Northolt, Middlesex, London, England. The affidavit in support of the application for security for costs repeats the said ground.

[6] The Respondent Brenda Knight opposed the application for the following reasons:

(a) being ordinarily resident outside of the jurisdiction by itself is not a ground for an order for security for costs to be made since it is discriminatory and unjust;

(b) there is no other evidence provided by the Applicant to demonstrate that it is just in the circumstances for the Court to exercise its discretion to grant the order;

(c) the Case Management Conference ("CMC") and pre-trial review ("PTR") have long past;

(d) the deponent of the affidavit in support, Crystal Mc Lawrence, is not a party to the proceedings; and

(e) an order for costs against the Respondent Brenda Knight can be enforced since she is entitled to a share of a property in Woodlands, St. George's, Grenada, and both parties reside in the United Kingdom, a country where Grenada has statutory arrangements for the reciprocal enforcement of foreign judgments.

[7] CPR 24 governs the security for costs application. There is no specific time set by the rules for the making of such an application since CPR 24.2 (2) provides that:

"(2) Where practicable such an application must be made at a Case Management Conference or pre-trial review."

[8] In exercising its discretion whether to make an order for security for costs, the Court is guided by the conditions set out in CPR 24.3 which states:

"The court may make an order for security for costs under rule 24.2 against a claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that -

… (g) the claimant is ordinarily resident out of the jurisdiction."

[9] The issues arising from the security for costs application are:

(a) Was it practicable for the security for costs application to have been made at the CMC or PTR?

(b) Is being ordinarily resident outside of the jurisdiction by itself a ground to make an order for security for costs?

(c) Is it just in the circumstances to make an order for security for costs against the Respondent Brenda Knight?

Was it Practicable for the Security for Costs Application to have been made at the CMC or PTR?

[10] In Surfside Trading Ltd v Landsome Inc.[1] the Court considered the effect of delay in making an application for security for costs. It stated:

"Generally, the application should be made shortly after the proceedings are commenced and delay may be reflected either in refusing the application or reducing the amount of security ordered."

[11] The first action was instituted in September 2011 and the second action was instituted one month after, in October 2011. The CMC and PTR were in 2012. The security for costs application was filed almost two years thereafter. The Applicant and the Respondent Brenda Knight knew from the inception of both matters

[1] Unreported decision of George- Creque J in AXA2005/0016

that they ordinarily resided out of the jurisdiction yet the Applicant did not file the security for costs application since 2011. Indeed there is absolutely no evidence in the affidavit in support of the security for costs application to even indicate to the Court any change in circumstances since inception of this matter, or after the CMC or the PTR to explain the reasons for making this application so late in the proceedings. In my view, the Applicant has failed to demonstrate why it was not practicable at the CMC or PTR to make the application or why it is now practicable to make it.

Is being Ordinarily Resident outside of the Jurisdiction by itself a ground to make an Order for Security for Costs?

[12] In Leon Plaskett v Stevens Yacht Inc. and anor.[2] Rawlins J, following the learning in Nasser v United Bank of Kuwait[3], held that residence out of the jurisdiction is not by itself a ground for the Court to make an order for a party to give security for costs. The learned judge stated that a court should only do so if it is just in the circumstances of the case where the person was ordinarily resident out of the jurisdiction.

[13] The sole ground in support of the security for costs application is that the Respondent Brenda Knight is ordinarily resident in the United Kingdom. In my view, this ground only gives the Court the jurisdiction to consider the application but by itself it is insufficient to persuade the Court to exercise its discretion in favour of making the order sought.

Is it just in the circumstances to make an order for security for costs?

[14] In examining the issue of what was just in the circumstances where residence abroad is an issue, Baptiste J in Richard Rowe v Mark Secrist et al[4] was of the view that:

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[2] BVIHCV2002/0001 unreported decision
[3] [2002] 1 WLR at 1868
[4] SKBHC2003/0222 unreported decision at paragraph 12

"(3) The discretion to award costs against a claimant resident out of the jurisdiction is to be exercised on objectively justified grounds relating to obstacles to the burden of enforcement in the context of a particular individual or country concerned. The absence of reciprocal arrangements or legislation providing for enforcement of foreign judgments does not by itself justify an inference that enforcement would not be possible.

(4) It behoves an applicant to show some basis for concluding that enforcement would be impossible, or would face substantial obstacles or extra burden."

[15] Paragraph 3 (b) of the affidavit of Crystal Mc Lawrence[5], filed in support of the security for costs application, only states that "the Respondent/Claimant resides at No. 5 Blenheim Road, Northolt, Middlesex, London, England". It is devoid of evidence of any challenges which the Applicant may have in enforcing any order which he may obtain against the Respondent Brenda Knight. While the affidavit of Krista Hood[6], which was filed in opposition on behalf of the Respondent Brenda Knight, states at paragraphs 10 and 11 that if judgment is granted against her and there is an order for costs, the Applicant would be able to enforce it since she is entitled to property situate in Woodlands Grenada by virtue of a will dated 16th January 2009 of the father and that both the Applicant and the Respondent reside in the United Kingdom, a country with which Grenada shares reciprocal provisions for the enforcement of a judgment as provided by Chapter 113 of the consolidated Laws of Grenada. There is no evidence from the Applicant challenging any of these assertions and I therefore have no reason to doubt the Respondent Brenda Knight's position. In the circumstances, I have not been persuaded by the Applicant that it is just in the circumstances to make the order.

[16] For the aforesaid reasons, I dismiss the security for costs application and order the Applicant to pay the Respondent Brenda Knight costs of the application in the sum of $1000.00.

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[5] Filed on 5th June 2014
[6] Filed on 11th July 2014

The Application to admit new evidence

[17] The grounds for the application to admit new evidence can be summarized as: the Respondent Brenda Knight applied on 23rd May 2014 for certain hospital records ("the hospital records") concerning the father; by letter dated 3rd July, 2014 she was informed that it would take 40 days to process her request and the costs associated with it; on the 18th August 2014 the hospital records of the father were posted to her; she could not read them immediately since she was recently hospitalized in the UK ; she travelled to Grenada recently and brought the hospital records but she was unable to attend Counsel's office prior to Friday 12th September 2014 due to her illness with Chikungunya Virus which she contracted upon arrival in Grenada; and the information in the hospital records is material to the outcome of the committal application.

[18] The Applicant has opposed the application to admit fresh evidence on the following grounds. He submitted that it has failed to satisfy the test in law to admit "fresh evidence"; the evidence in paragraphs 4-9 of the Respondent Brenda Knight's affidavit filed 12th September 2014 are inadmissible hearsay and ought to be struck out since there is no indication of the source of the information; the exhibits to the affidavit are inadmissible since they came from a foreign jurisdiction and were not notarized and Gregory C Knight was never a party to the proceedings.

[19] The classic statement on conditions which a Court must consider in an application to admit fresh evidence can be found in Ladd v Marshall[7] where Lord Denning stated:

> " In order to justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed or, in other words, it must be apparently credible, though it need not be incontrovertible."

[7] [1954] 3 All ER 745 at 748

[20] In Mostyn Neil Hamilton v Mohamed Al Fayed[8] Lord Phillips MR in adopting the approach in Ladd v Marshall, a pre CPR judgment stated his reasons for doing so in a post CPR era as:

> "We consider that under the new, as under the old procedure, special grounds must be shown to justify the introduction of fresh evidence on appeal. In a case such as this, which is governed by the transitional provisions, we do not consider that we are placed in a straightjacket of previous authority when considering whether such special grounds have been demonstrated. That question must be considered in light of the overriding objection of the new CPR. The old cases will, nonetheless remain powerful persuasive authority, for they illustrate the attempts of the courts to strike a fair balance between the need for concluded litigation to be determinative of disputes and the desirability that the judicial process should achieve the right result. That task is one which accords with the overriding objective."

[21] The Respondent Brenda Knight stated that she applied for the hospital records (which date back to April 2012) on the 23rd May 2014 and that she was notified on the 3rd July 2014 that her application was being processed and that it took 40 days for processing. She stated that she could not inform the Court that she was awaiting hospital records since she did not know what they contained. She also stated that although she received them on the 18th August 2014 she could not make the application until a few days before the ruling since she was ill in the UK upon receipt and then subsequently upon returning to Grenada.

[22] I accept that the Respondent Brenda Knight could not have brought this evidence to the attention to the Court until after receipt, which was one month after the hearing, because before that date she had nothing tangible and therefore no proper basis for engaging the Court with such an application. In my view, only until the committal application was filed she was aware of the importance of the hospital records and she took steps to obtain the information but it was out of her control when they were made available to her. I am therefore satisfied that the Respondent Brenda Knight was reasonably diligent in attempting to have this evidence obtained before the hearing on 17th July 2014.

[8] [2000] EWCA 3012

[23] The evidence which the Respondent Brenda Knight seeks to now bring before the Court concerns hospital records of the father in April 2012 from the UK. She contends that it would have an important influence on the outcome of the committal application since it goes to the motive and credibility of the Applicant and Gregory C Knight. She also contends that it allows the Court to draw the inference that both the Applicant and Gregory C Knight understood that the Order did not stop the father from leaving Grenada.

[24] One of the breaches of the Order which the Applicant has contended in the committal application is the Respondent Brenda Knight removed the father from Grenada on 30th September 2012. The hospital records confirm that the father was not in Grenada in April 2012. In my view it has an important influence on the outcome of the result of the committal application since it is material to the parties understanding of the terms of the Order. Further, I do not accept the Applicant's submission that the hospital records are immaterial since Gregory C Knight is not a party to the proceedings. In the first matter, Gregory C Knight is the Claimant and the Applicant is his "lawful attorney". This matter was consolidated with the second matter where the Applicant is the Defendant in October 2011 and the Order was made in the consolidated action. In my view the Order concerns all the parties in the consolidated action.

[25] However, the manner in which the Respondent Brenda Knight has chosen to place the hospital records before the Court is less than desirable.

[26] Hearsay evidence is admissible in proceedings for civil contempt. However, it is subject to the requirements set out in the Evidence (Amendment) Act 2000 of Grenada where first-hand hearsay is admissible in civil proceedings as to the fact of the statement but not to prove the truth. CPR 30.3 sets out the requirements which an affidavit must comply with in particular where first-hand hearsay is relied on. It states:

> "(1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge.
>
> (2) However, an affidavit may contain statements of information and belief:

(a) where any of these Rules so allows; and

(b) where it is for use in an application for summary judgment under Part 15 or any procedural or interlocutory application,

Provided that the affidavit indicates:

(i) Which of the statements in it are made from the Deponent's knowledge and which are matters of information or belief; and

(ii) The source of any matters of information or belief.

(3) The court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit."

[27] In short, the affidavit is supposed to contain facts which are within the deponent's own knowledge and belief and, where it is not, it must set out the source of the information and belief or it would be hearsay. The Court is also empowered to strike out any material that is scandalous, irrelevant or otherwise oppressive.

[28] The statements made at paragraphs 6 to 9 of the Respondent Brenda Knight's affidavit filed 12th September 2014 were information from her own knowledge but information which she read from the hospital records. Indeed while there was no need for the exhibits to be notarized since the affidavit was sworn in this jurisdiction, I accept that the deponent is not the maker of the documents exhibited as "BAK 3" to "BAK 7" and therefore their contents are inadmissible hearsay as to the truth but they are admissible for the fact of their existence.

[29] In the circumstances, I will allow the application to admit new evidence but the evidence is limited to the fact of the existence of hospital records for the father. The Respondent having been successful, I order the Applicant to pay the Respondent Brenda Knight costs of the application assessed in the sum of $750.00.

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The Committal Application

[30] The Applicant contends that the Respondents Brenda Knight and Faith Knight have breached the following aspects of the Order:

(i) by having the father removed from Grenada on 30th September 2012;

(ii) by not permitting him to have access to the father while he was in the United Kingdom;

(iii) by making arrangements other than that set out in the Order for the care of the father; and

(iv) in addition, with respect to Faith Knight alone, for failing to file the extermination report.

[31] Both Respondents have denied breaching the Order. They contend that the Order did not state that the father could not leave Grenada; the Order was incorrect in stating that Faith Knight was to file the extermination report since it was Brenda Knight's responsibility; the Applicant delayed in filing the contempt application during the lifetime of the father; the Order did not contain a penal clause; CPR 53.7 has not been complied with; the Applicant has relied on inadmissible hearsay in support of the contempt application (the affidavit of Crystal Mc Lawrence filed 28th May 2014) and the Applicant has breached the Order since he has failed to provide a full account of the bank account in issue from the date of the Power of Attorney.

[32] The issues to be addressed are:

(a) Should certain parts of the affidavit of Crystal Mc Lawrence[9] be struck out?

(b) Does the failure by the Order to contain a penal clause and/or to comply with CPR 53 bar the committal application?

(c) Should the committal application be struck out due to delay?

(d) Has the Applicant satisfied the test that the Respondents Brenda Knight and and Faith Knight have breached the Order?

[9] Filed 28th May 2014

Should certain parts of the Affidavit of Crystal Mc Lawrence be struck out?

[33] Counsel for the Respondents submitted that paragraphs 4, 7, 9, 10,11,12 and 16 of the affidavit of Crystal Mc Lawrence[10] be struck out on the basis that they contain inadmissible hearsay and are not in keeping with the provisions of CPR 30. The Applicant's position is that all the information relied on in the said affidavit is based on the deponent's personal information and, where not, it is supported by documentary evidence. In any event Counsel for the Applicant submitted that hearsay evidence is admissible in proceedings for civil contempt.

[34] The following are the paragraphs in issue:

> "4. That two (2) months after the order of Madam Justice Clare Henry, and pursuant to police report dated 21st March 2012, the said Gregory Gay Knight made a report to the South Saint George Police Station that Brenda Knight stole his passports (English and Grenadian) and land documents inclusive of title deeds. The said report was requested from the Office of the Commissioner of Police and attached hereto and marked "B"."
>
> "7. On the 28th September 2012, Faith Knight arrived in Grenada and departed two days later with Mr. Knight as per exhibit "C"."
>
> "9. That Kent Knight has instructed our offices via email correspondence that he was denied access to his father even while in England, he being deceased since 23rd February 2014 and to date has not been buried. A copy of the email correspondence is attached and marked "F"."
>
> "10. On the 23rd February 2014 the Defendant succumbed to his death while in a nursing home (where he was admitted by the Defendant) named Drayton Village Care Centre, 1 Spring Promenade, West Drayton, Middlesex, United Kingdom. The same is evidenced on the death certificate exhibited "F" above."

[10] Supra

"11. The deceased died in a nursing home in England while Brenda Knight was in Grenada from 16th December 2013 to 2nd March 2014, as per exhibit "C"."

"12. That on the death certificate Brenda Knight was listed as the informant."

"16. That on 21st March 2012 Brenda Knight took the travel documents of Mr. Gregory Knight including his two passports (Grenada and UK) together with all land documents. A report was made to the South Saint George Police Station by Mr. Knight. The matter is under investigation and the report from the Commissioner of Police confirms same."

[35] I have already referred to the relevant rules and law which must be complied with for hearsay evidence to be admissible. I therefore strike out the following:

(a) Paragraph 4 - The first sentence since the deponent does not state the source of the information. I leave the last sentence solely for the fact of the report and not the truth of its contents since the deponent was not the maker of the report.

(b) Paragraph 7 - the words "and depart two days later with Mr. Knight, as per Exhibit "C". At best the exhibit "C" states the date and time the father and Faith Knight left Grenada but it does not say that they left together. I find that statement to be highly prejudicial.

(c) Paragraph 10 - the words "where he was admitted by the Defendant" since the exhibited death certificate upon which the deponent relies does not state that the father was admitted by Brenda Knight. It is highly prejudicial.

(d) Paragraph 16 - the first sentence is struck out since this is made as a statement of truth, which is also prejudicial. The last sentence remains as fact that the report was made but not to its truth.

[36] Paragraph 9 remains since this is information obtained from Mr. Kent Knight. The information in paragraph 10 which remains is supported by the exhibit together with the information in paragraphs 11 and 12.

Should the Application be struck out for failure to comply with CPR 53.4?

[37] CPR 53.4 deals with the endorsement of the penal notice on the Order and its service on the Respondents Brenda Knight and Faith Knight. The Respondents submitted that the contempt application should be struck out since the Order was not served on them as required by CPR 53.4(a) and secondly, it did not contain an endorsed penal clause as required by CPR 53.4(b). The Applicant has admitted that there is no penal clause endorsed on the Order but submitted that the rules allow the Court to consider the committal application notwithstanding the absence of a penal notice. He also submitted that under CPR 53.5 the Court has the discretion to dispense with the requirement of service of the Order if the parties were present in Court when it was made.

[38] CPR 53.3 sets out the conditions which ought to be satisfied before a committal order is made. It states:

> "Subject to rule 53.5, the court may not make a committal order or a sequestration order unless -
>
> (a) The order requiring the judgment debtor to do an act within a specified time or not to do an act has been served personally on the judgment debtor;
>
> (b) At the time the order was served it was endorsed with a notice in the following terms:
>
> "NOTICE: If you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court and you may be liable to be imprisoned."

[39] CPR 53.5 deals with circumstances where the Order has not been served. It empowers the Court to make an order for committal in the absence of service of an order once the Court is satisfied that the party who has to refrain or perform an act under the order was present in Court. In my view CPR 53.3 applies to parties who were not present in Court since the purpose of service is to inform the absent person of the terms of the order.

[40] Paragraph 7 of the affidavit of the Applicant[11] confirmed that the Respondents Brenda Knight and Faith Knight were present in Court when the Order was agreed upon since the Judge at the time requested all the parties to be present. This has not been denied by the Respondents and I am therefore satisfied that they were fully aware of the terms of the Order. In these circumstances, the Court has a discretion to waive the requirement for service since the purpose of service was to notify the Respondent of the terms of the Order, and I am satisfied that the Respondents in this matter were fully aware of its terms.

[41] In Sofroniou v Szgetti[12] the Court was of the view that the omission of the penal clause is not fatal to enforcement by committal once the person who is sought to be committed was well aware of the consequences of disobedience. The Court may dispense with a penal notice under the power to dispense with service (Jolly v Circuit Judge of Staines County Court[13]) but the onus is on the Applicant to show that no injustice would be done by waiving the defect of the presentation of the penal notice.

[42] At paragraph 8 of the affidavit of the Applicant[14] he states,

> "The said order of the court is self-explanatory and Justice Henry had explained to all the parties the implication of the said order of the court and the consequences of breaching same by virtue of the level of acrimony that existed during the proceedings".

[43] Again, this has not been denied by Respondents and as such I am satisfied that they knew the consequences of not obeying the Order.

Should the Application be Struck Out due to the Delay in Filing?

[44] The Respondents submitted that the contempt application should be struck out on the basis of delay for the following reasons:

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[11] Filed on 10th June 2014
[12] [1991] FCR 332
[13] [2000] 2 FLR 69
[14] Filed on 10th June 2014

(a) the alleged breach of the Order took place on the 30th September 2012;

(b) the Applicant failed to file contempt proceedings immediately after the alleged breach;

(c) the Applicant waited until 28th May 2014, some 23 months after the alleged breach to make the contempt application;

(d) the Applicant failed to make the contempt application during the lifetime of the father and the Applicant waited until the body of the father was repatriated to Grenada for burial to make the contempt application.

[45] In response, the Applicant's position is that he was unaware of the initial breach of the Order; during the 1 year and 8 months he and his siblings made numerous attempts to communicate with the Respondent Brenda Knight to contact the father; he exhausted all avenues for resolution before making the contempt application; and he only became aware of the availability of the remedy of committal upon consultation with Counsel in early 2014.

[46] In its commentary on civil contempt, Blackstone's Civil Practice 2012[15] states:

> "Punishment for a civil contempt is not in itself a remedy; it is a means of enforcing a remedy. A civil contempt is prosecuted as a matter between parties to proceedings and is punishable primarily in order to enforce compliance with an order of the court, for the benefit of the party who obtained the order. There is also a penal element in the punishment, which serves the public purpose of enforcing respect for court orders and for the rule of law, which is an essential element of our civil society (Re S (A Child) (Contract Dispute: Committal) [2004] EWCA Civ 1790, [2005] 1FLR 812)."

[47] Halsbury's Laws of England[16] has described civil contempt as:

> "In circumstances involving misconduct, civil contempt bears a two-fold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the state, a penal or disciplinary jurisdiction to be exercised by the court in the public interest."

[48] It is not in dispute that the father passed away in February 2014. Therefore, enforcing compliance of the aspects of the Order which the Applicant has alleged

[15] At page 1285
[16] 4th ed Volume 9(1) at paragraph 460

that the Respondents Brenda Knight and Faith Knight have breached concerning the father are moot and, therefore, delay in bringing the application may have affected this remedy. However, delay cannot defeat the Court's ability to enforce respect for its orders, which is a central pillar of the civil justice system.

[49] I therefore find that delay in the filing of the contempt application is not a proper ground to strike it out.

Has the Applicant proven that the Respondents Brenda Knight and Faith Knight are in contempt?

[50] To show that a person is in contempt, it must be established that his or her conduct was intentional and that he or she knew of all the facts which made that conduct a breach of that order[17]. The test which the Court is to apply in determining whether the Applicant has proven that the Respondents Brenda Knight and Faith Knight are in contempt was described in Blackstone's Civil Practice 2012[18] as:

> "The court will not commit a person for civil contempt unless the allegations of contempt are proved beyond a reasonable doubt … Where more than one breach is alleged, the court must consider whether each of them has been proved beyond a reasonable doubt, but in deciding whether the breaches justify committal, the court must consider the whole picture to see whether it portrays a respondent seeking to comply with the orders of the court or one bent on flouting them (Gulf Azov Shipping Co Ltd v Idisi [2001] EWCA Civ 21, LTL 16/1/2001, at [18])."

[51] The aspects of the Order which the Applicant contends the Respondent and Faith Knight have breached concerned the care of and access to the father. The following paragraphs of the Order deal with the arrangements for care, namely:

> "3. Mrs. Faith Knight, Registered Nurse and Dietician, in consultation with Dr Byron Calliste, attending physician, shall prepare an appropriate diet for Mr. Gregory Knight, which shall then be implemented and followed by Ms. Shirley Munroe and Ms. Wendy Derick, caregivers.

[17] Blackstone's Civil Practice 2012 at 1293
[18] At page 1293

4. Ms. Brenda Knight to arrange home Nursing Care by the General Hospital for Mr. Gregory Gay Knight.
5. Shirley Munroe and Wendy Derick shall remain and continue to be employed as caregivers to Mr. Gregory Gay Knight."

[52] The following paragraphs deal with access to the father:

"9. All the children of Gregory Gay Knight are to have unrestricted visitation with Mr. Knight whenever each visits Grenada. Each sibling shall respect the right of access of the others and shall do nothing to obstruct or interfere with such rights.
10. Similarly, the siblings are to have unrestricted access to Mr. Gregory Gay Knight via telephone while in England where they reside."

[53] It is an elementary principle of justice and fairness that no order will be enforced unless it is expressed in clear, certain and unambiguous language[19]. In my view the terms of the Consent Order was only limited to the arrangements for the father when he was in Grenada. It provided for home nursing care for the father in Grenada since it was to be arranged by the General Hospital, in Grenada. The father was to be cared for by Shirley Munroe and Wendy Derick in Grenada, with liberal unrestricted access afforded to his children to him whenever they visited Grenada, or when they were in the UK, via telephone. Notably absent from the Order was any expressed provision restricting the father from leaving Grenada. There was also no expressed provision for arrangements for the care and access to the father once he was not in Grenada.

[54] Consistent with the expressed terms of the Order, from the evidence presented I have found that the father was not in Grenada at least twice after the order was made. The existence of hospital records in the UK for the father in April 2012 meant that the father was not in Grenada. While the Applicant has opposed the information contained in the said report he has not challenged the fact of its

[19] Harris v Harris [2001] 2 FLR 895 at 288

existence. Secondly, it was not in dispute that the father died in the UK in February 2014. In my view the father leaving Grenada was not a breach of the Order.

[55] Further, there was no evidence to show that the Respondent Brenda Knight and/or Faith Knight deliberated flouted paragraphs 3,4, 5, 9 and 10 of the Order by failing to make the care arrangements for the father in Grenada or that they prevented the Applicant from having access to the father while he was in Grenada.

[56] The last part of the Order which the Applicant contends that the Respondent Faith Knight has breached is her failure to file the extermination report. I accept that Faith Knight did not intentionally flout the Order since she stated that she gave the information to her Counsel to file the document. In my view, where the consequences of a finding of contempt is imprisonment, it is unfair that Faith Knight should be punished for an act that her Counsel failed to perform.

[57] Finally, although the Respondents have asserted in the affidavit in opposition to the contempt application that the Applicant has breached the Order since he has not filed an account, there was no application by them asking the Court to find him in contempt and as such it is unnecessary for me to address this matter.

[58] For the reasons aforesaid, I have not been satisfied that the Applicant has proven beyond a reasonable doubt that the Respondents have knowingly breached the aforesaid aspects of the Order.

[59] I dismiss the committal application and order the Applicant to pay the Respondents costs in the sum of $ 2,500.00.

Margaret Y. Mohammed
High Court Judge