

BANNATYNE v BANNATYNE 2003 (2) SA 359 (SCA)

Headnote : Kopnota

The parties' High Court divorce order included an order that the appellant was to pay maintenance for the respondent and their minor children, that he was to retain them on his medical aid scheme and that he was to bear certain of their medical costs. Soon after the order was made, the appellant applied to the maintenance court for the amounts to be reduced and, pursuant to such application, it was ordered that the appellant pay reduced amounts of maintenance plus 'medical costs as per the original order'. Thereafter, the appellant fell into arrears, withdrew the children from his medical aid scheme and failed to pay certain of their medical costs. After having unsuccessfully invoked certain of the mechanisms provided for in the Maintenance Act 99 of 1998 to enforce the maintenance court order, the respondent approached the High Court for an order committing the appellant to prison for contempt of the High Court order. While she was successful in her application, at the time the order was granted, the attention of the presiding Judge had not been pertinently drawn to the fact that the High Court order had been substituted by an order of the maintenance court. The respondent submitted that the Court a quo was nonetheless entitled to commit the appellant to prison for contempt of the maintenance court order and that the order should therefore be allowed to stand; that the remedies provided in the Maintenance Act for the enforcement of a maintenance court order were not exclusive and that the High Court, in the exercise of its inherent jurisdiction (more particularly when the order affected children), was entitled to commit for contempt of such an order.

Held that, in terms of s 22 of the Maintenance Act, the effect of the maintenance court order was that the High Court order thereupon ceased to be of any force or effect, at least insofar as it dealt with matters which were provided for in the maintenance court order. It was, accordingly, not competent for the Court a quo to have committed the appellant to prison for contempt of the High Court order and the order fell to be set aside. (Paragraphs [6] and [7] at 361I/J - J and 362A/B - B.)

Held, further, that, when the High Court entertained civil proceedings for committal for contempt, it did so in the exercise of its inherent jurisdiction to ensure that its orders were obeyed. A maintenance court did not have those inherent powers but there were statutory remedies for the enforcement of its orders. (Paragraph [8] at 362C - D.)

Held, further, that, on the assumption that the High Court was indeed entitled to commit for contempt of a maintenance court order, it was a matter which fell within its discretion and such discretion ought to be exercised sparingly and only in exceptional circumstances for the Legislature had provided effective remedies that were not intended to be ignored. In the present case, there were insufficient grounds for that discretion to have been exercised in favour of the respondent. It had not been established that the statutory remedies had been fully and diligently pursued and they were found to be wanting. There were thus no adequate grounds upon which the Court a quo

might have made a committal order. (Paragraphs [9] and [10] at 362E/F - G and 362J - 363A/B.)

Appeal allowed.

The decision in the Transvaal Provincial Division in *Bannatyne v Bannatyne* reversed.