

## Re Dad

### [2015] EWHC 2655 (Fam)

15/09/2015

#### **Barristers**

Dermot Main Thompson

#### **Practice Areas**

International Children Law

Public Children Law

#### **Summary**

A committal application made under the Family Procedure Rules 2010 was struck out where the collection order on which the application was based failed to display a penal notice, prominently on the front page, warning the person on whom it had been served that disobedience of the order would constitute a contempt of court punishable by imprisonment.

#### **Solution**

A mother applied under the Family Procedure Rules 2010 for the committal to prison of her child's uncle for contempt of court following his arrest for failure to comply with the information requirement of a collection order.

The father was British, of Pakistani descent, and the mother was Polish. The child, who was aged six at the date of the abduction, lived with his mother in Poland. After an agreed visit, the father failed to return him to his mother. Although the father and child were thought to be in England, there was no reliable information as to their whereabouts. The mother obtained the collection order, which stipulated that any person served with the order had to inform the High Court tipstaff of the whereabouts of the child if known and of any other matters which might assist in locating the child. On the fifth page of the order, there was a heading which stated: "Important notice to the respondent and to any other person served with this order". There followed a number of paragraphs with headings including "Liability to be arrested" and "Liability to be committed to prison". After the latter heading, there was a paragraph which stated that breach of the order was a contempt of court punishable by imprisonment or a fine. The order permitted the arrest of any person whom the tipstaff had reasonable cause to believe had disobeyed the order. The police attended the residence of the child's uncle and produced a copy of the collection order. The uncle denied any knowledge of the whereabouts of the father and child. The tipstaff took the view that the uncle was disobeying the collection order by withholding information and ordered his arrest. The uncle, who was remanded in custody for 13 nights, gave evidence that he had little education and needed to read documents many times before he was able fully to understand them.

#### **Comment**

Provision for committal applications was made by r.37.4 and r.37.9 of the Rules. Rule 37.9 stipulated that

a penal notice had to be “prominently displayed” on the front of the judgment or order in question as a warning that disobedience of the order would constitute a contempt of court, punishable by imprisonment. However, no penal notice was prominently displayed on the front of the collection order or on the first four pages. The font or print size on pages five and six was exactly the same as that used throughout the whole of the order. The use of the words following the heading “Liability to be committed to prison” did not in any way satisfy the requirements of r.37.9(1). The warning could not be said to be “prominently displayed”, since it was merely part of several pages of text, and it did not appear on the front of the order. Given the prohibitive terms of r.37.9, the court had no discretion to enforce the order by committal where such a warning had not been displayed. In the event of that failure to comply with r.37.9, the court was empowered by PD 37A para.13 to strike out the committal application. The discretion under PD 37A para.13.2 to waive a procedural defect in the conduct of a committal application could only be exercised if no injustice had been caused to the respondent by that defect. The purpose of r.37.9 was to allow a person in the uncle’s position to see at once the gravity of his situation and the risk that he might be committed to prison. All applications to commit required proper adherence to enactments and rules of court, and in the instant case there was a serious defect in the order on which the application was based. The uncle had clearly been caused a great deal of injustice by the collection order and he could not be committed to prison for any breach of it, however egregious. The application for committal was therefore struck out (see paras 9-10, 12-14, 16-17 of judgment).

### Permission

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