

M v P and others (Concept of Court: Committal Order) Butler v Butler

[1992] 3 WLR 813

23/07/1992

Barristers

Robin Barda

Court

Court of Appeal

Facts

In the first appeal a local authority applied to commit the contemnor to prison for contempt of court following outbursts of violence during wardship proceedings in which they were both parties. The contemnor attended the hearing of the motion to commit, at which he was represented. The judge found the allegations proved and committed him to prison for six months. The committal order was drawn up by court staff, signed by the judge, sealed and sent to the solicitors representing the contemnor and the local authority. Subsequently the contemnor complained to the local authority that they had not served the committal order on him personally and had failed to comply with the instruction issued by the Clerk of the Rules, that “in all cases the applicant’s solicitors are responsible for serving the committal order” and that in consequence the order should be set aside.

In the second appeal the contemnor had been prohibited by injunctive orders, issued with an attached power of arrest under the Domestic Violence and Matrimonial Proceedings Act 1976, from assaulting, molesting or harassing his wife or from entering the premises where she lived. Following repeated breaches of the orders the judge, in the contemnor’s presence, found him guilty of contempt of court and committed him to prison for eight months. The committal warrant was signed by the judge but the contemnor complained that, contrary to Ord. 29, r. 1(5) of the County Court Rules 1981, no copy of the committal order had been served on him and that in any event the order had been drawn on the wrong county court form. He claimed that such irregularities invalidated the order and that it should accordingly be set aside.

Held

Held, dismissing the appeals, that failure to observe the proper procedures for service was not necessarily fatal to the lawfulness of a committal order; that the court, in exercising its discretion under section 13(3) of the Administration of Justice Act 1960, had to take into account the interests not only of the contemnor but also of those affected by the contempt and the need to maintain its authority, and that where an irregularity caused the contemnor no injustice the committal order should not be set aside; that since, in the first appeal, there was no

1 Administration of Justice Act 1960, s. 13(3): see post, pp. 821H – 822B.

2 County Court Rules 1981, Ord. 29, r. 1(5), as amended: see post, p. 818C-D

requirement for personal service of a committal order so that the only irregularity was that the court, rather than the local authority had served a copy of the order on the contemnor's solicitors, the contemnor had suffered no injustice and the order would stand; and that, in the second appeal, since the husband was fully aware of the findings of contempt and had not sought to challenge them or the sentence imposed, he had suffered no injustice and it was appropriate in the circumstances to affirm the order despite the irregularities which had occurred (post, pp. 822B-C , F – 823B , 823C-E , 824B-D , F , 825C-D , 826D-F).

Linnett v. Coles [1987] Q.B. 555, C.A. considered.

Clarke v. Clarke [1990] 2 F.L.R. 115, C.A.; B. v. B. (Contempt Committal) [1991] 2 F.L.R. 588, C.A. and Howes v. Howes (1992) 142 N.L.J. 753, C.A. not followed.

Per curiam. (i) Consideration should be given to changes in the procedures of the High Court. The sealing of committal orders should have the highest priority, taking place preferably on the day of committal and certainly as soon as practicable thereafter. The form of the committal order should be amended to draw the contemnor's attention to his right to apply to purge his contempt. There should be personal service of a copy of the committal order on the contemnor by the court itself acting by one of its officers (post, pp. 823G-H , 824F , 826F).

(ii) County court staff should be again reminded of the urgency with which the documentation of contempt cases should be undertaken and of the need to comply strictly with the rules and that service of committal orders should always be made personally on the contemnor. Either County Court Form N111 should be resurrected and amended to include a reminder that there is a right to apply to purge contempt or County Court Form N79 should be revised to take account of the fact that proceedings may begin with an arrest under a power of arrest attached to an injunction issued under the Act of 1976 (post, pp.824D-F , F , 826F).

Decision of Sir Stephen Brown P. affirmed.

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