

Golubovich v Mirimskaya (2010)

[2010] EWCA Civ 1519

08/12/2010

Barristers

Justine Johnston

Court

Court of Appeal (Civil Division)

Practice Areas

Financial Remedies

Summary

The Family Division's practice of treating an applicant who had the benefit of a suspended committal order as having the right to apply for the lifting of the suspension ex parte by simply serving an affidavit was open to question.

Facts

The applicant (G) applied for permission to appeal out of time against a suspended order for his committal to prison for his failure to make payments of maintenance pending suit to the respondent (M). He also applied for permission to appeal against a subsequent order lifting the suspension. The suspended committal order had been made following G's failure to make payments of maintenance pending suit during a period in which enforcement of the order for such payments had been suspended by consent. M had then applied ex parte, but on very short notice to G, for the lifting of the suspension. That application was dealt with by a different judge and was granted on the basis that it was the normal practice of Family Division judges to treat an applicant with the benefit of a suspended committal order as having the right to apply for the lifting of the suspension ex parte by simply serving an affidavit. G submitted that the order for committal should not have been made, and the suspension should not have been lifted, because enforcement of the order for maintenance pending suit had been stayed by consent.

Held

(1) Even where the liberty of the applicant was at stake, permission to appeal out of time would not be granted without proper grounds. In making the suspended committal order the judge had carefully considered the issues and had concluded that he should make the order. There was nothing in G's point on the stay. The consent order staying enforcement merely suspended M's right to enforce payment and did not suspend G's obligation to pay. Permission to appeal out of time would not be granted (see paras 3-7 of judgment). (2) The approach of the Family Division, followed by the judge when lifting the suspension, seemed to be open to question. It would therefore be wrong to let the order lifting the suspension stand and the appropriate course was to allow the appeal and remit the application for the lifting of the suspension to the judge who had made the suspended committal order (paras 12-16).

Permission

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