

Re C (Children) (2011)

[2011] EWCA Civ 1230

14/07/2011

Barristers

Mark Jarman KC
Michael Edwards

Court

Court of Appeal (Civil Division)

Practice Areas

Public Children Law

Summary

Breaches of injunction, restraining a mother from approaching within 200m of her children's foster care accommodation, were serious enough to impose an immediate sentence of imprisonment. However, a total sentence of three months' imprisonment was substituted for a sentence of six months to take into account, in particular, the mother's admission of the breaches, contrition and her undertaking to act in the right manner.

Facts

The appellant (C) appealed against an order to commit her to a total period of six months' imprisonment for breaches of an injunction. C's two children had been made subject of final care orders. An injunction was granted to restrain C from (i) contacting the children either directly or indirectly; (ii) approaching within 200m of the foster care accommodation; (iii) approaching the children whilst they were at school. C breached the injunction by approaching within the 200m limit and returning again the early hours of the next morning armed with a baseball bat which she used to hit the foster carers' car and their front door. C admitted the breaches but maintained that she had visited the foster parents out of concern for her children. In the committal proceedings the two children were joined. In respect of the two incidents the judge imposed two months' and four months' imprisonment, to run consecutively. The issues were whether (i) the children should have been joined; (ii) an immediate sentence of imprisonment was necessary; (iii) the sentence was manifestly excessive.

Held

HELD: (1) The joinder of the children had no adverse impact on the sentence imposed on C. An inquiry as to how the children would react if a sentence of imprisonment was imposed on C was a proper one. The children expressed no adverse comments in that regard. (2) The judge was entitled to take into account that the purpose of the injunction was to restrain C's behaviour, which would otherwise have had an adverse effect on the foster carers and the children. The judge was entitled to take the view that C's motive for visiting the foster carers was to harass them. The judge was also entitled to take the view that

being upset and unhappy with the court orders was no excuse for flagrant breaches of the injunction. He was fully entitled to conclude that the breaches were serious enough to impose an immediate sentence of imprisonment, despite the fact that the sentence of imprisonment was imposed for the first time for breaches of the injunction. (3) C's emotional state was part of the circumstances that the court should have taken into account by way of explanation of what had happened. Also the judge had not expressly dealt with C's admission to the breaches as a mitigating factor, which justified a reduction in sentence. The judge did not expressly deal with C's regret, contrition and her undertaking to act in the right manner. Accordingly the judge had failed to take into account all the relevant factors when imposing sentence. A total sentence of three months imprisonment was substituted.

Appeal allowed

Permission

Lawtel 