

HM Solicitor General committal to prison of J. Jones for alleged contempt of Court

[2014] 1 FLR 852; [2013] EWHC 2579 (Fam)

21/08/2013

Barristers

Christopher Hames KC

Court

High Court (Family Division)

Practice Areas

International Children Law

Summary

Application heard by the President of the Family Division by HM Solicitor General for a mother's committal to prison for alleged contempt of court for failure to comply with an order within Hague Convention proceedings

Facts

In a well-publicised case in which the mother, her partner and her five children "went on the run" to avoid the children being returned to Spain where their father remained, the President dismissed the application brought by the Solicitor General to commit the mother.

The mother is Welsh and the father a Spaniard. While working in Spain the mother met the father and they married in 1995 and remained living in Spain. They have five children aged between 9 and 17 years. The parties separated in 2008.

There was substantial litigation between the parties in Spain and in this jurisdiction and the father made two successful applications in this jurisdiction for orders for the return of the children to Spain under the Hague Convention.

The second set of Hague proceedings culminated in an order for the return of the children to Spain by the children being delivered to Cardiff Railway Station at 4:00pm on 12/10/12.

The President considered, in a helpful review of the authorities, whether or not a judge was entitled to refer a case to an outside agency (a judge is entitled to do so) and whether upon referral of a case to the Attorney General (as Roderic Wood J did in this case) the Law Officers have the necessary locus standi to make an application for committal (they do).

The President heard oral evidence from the mother and her partner. In arriving at his conclusion, that the Solicitor General had failed to prove his case, the President noted that the first paragraph of the

order (which the Solicitor General did not base an allegation upon however) did not specify any time for compliance and that such an omission was fatal. It was therefore unsurprising that the application to commit was not pursued on that basis.

The Solicitor General pursued the committal application on the basis that the mother had failed to comply with the second paragraph of the order. Under the second paragraph, it was the Solicitor General's case that first, the mother had failed to deliver the children by 4:00pm on 12/10/12 and secondly, failed to deliver the children after 4:00pm. The President held that there was no basis in law for finding that the mother was in contempt on the second basis because it did not require her to do anything after the 4:00pm deadline and that it was impossible to read in an implied term.

Held

When considering the first basis for the committal application, the President heard evidence about the unfortunate sequence of events that caused a delay that subsequently prevented the mother from delivering the children by the specified time and date. Two of the children had run away from their home shortly before they were all due to leave to travel to Cardiff Railway Station. The mother and her partner were caused to pursue the children culminating in the mother having to attend the police station to retrieve the children. This caused a significant delay to the time it would take to deliver the children to Cardiff Railway Station by 4 pm.

The mother, her partner and the children subsequently fled and were eventually found at a guest house in Gwent. However, the Solicitor General failed to prove that it was within the mother's power, in light of the delays to her leaving home, to have arrived at the appointed time at the railway station on 12/10/12 and that she could not be committed for a failure to deliver the children thereafter.

Application dismissed

Permission

Family Law Week 