

Joyce v Joyce [2013]

[2013] EWHC 1353 (Fam)

16/05/2013

Barristers

Alistair G Perkins
Cliona Papazian

Court

High Court (Family Division)

Practice Areas

International Children Law

Summary

Finding of contempt of court for father in breach of orders to return children to Ireland. Sentenced to 6 months imprisonment.

Facts

Three boys (twins aged 13 and an 11 year-old) had been living in Ireland with their mother and the father was living in England. In November 2012 the mother brought the boys to England for a wedding and sought to take them back to Ireland in December 2012. The father would not agree for them to return to Ireland and the boys have been living with the father since then.

The mother commenced Hague Convention proceedings which the father defended, unsuccessfully, by stating that the children objected to returning to Ireland. The judge ordered that the children be returned to Ireland, Dundalk specifically, by 1st March 2013 and the father was to escort them from London.

The children were not returned to Ireland and the matter returned to court on 4th April 2013 when the previous order was reiterated, save for permission for the parties to come to an agreement regarding return if they felt that they were able to agree a return method which did not involve the father returning the children to Dundalk. There were repeated attempts and repeated failures on the part of the father to return the children.

On 14th April 2013 Wood J made a Collection Order for the Tipstaff to collect the children. When an attempt to execute the order was made it was clear that the children did not wish to go and so the attempt was abandoned.

A Guardian was appointed for the children. The Guardian's recommendations were that the children return to Ireland, despite their protestations as they had been caught in an "emotional whirlpool". Accordingly, the stay on the Collection Order was lifted. However, when an attempt to retrieve the children was made, they were found to be absent from the father's home. The father was picked up by

the Tipstaff and brought to court before Bodey J at this hearing.

Held

Bodey J, reminding himself that the test “in this matter...is as to whether contempt is proved beyond all reasonable doubt”, found:

“...It is really inconceivable that he [the father] does not know where the children are. I am sure he does know where they are, or at least that he knows how they can be contacted and located....I find him to be in contempt in not giving the court the assistance which the court required of him.”

The father was imprisoned for 6 months with the opportunity to purge himself at a hearing the following week by apologising to the court and giving the assistance required. Bodey J also made clear that the mother might make an application for a fresh order for the father to return the children to Ireland. If that order was made and the father continued with his non-compliance he could be subject to a further prison sentence.

Permission

Family Law Week 