

Button v Salama [2013]

[2013] EWHC 2974 (Fam)

10/10/2013

Barristers

Mark Jarman KC

Court

High Court (Family Division)

Summary

High Court application made within Wardship proceedings for Respondent's committal to prison

Facts

The case concerned a 6 year old girl who, having been taken to Egypt on holiday by both parents in December 2011, was removed from the mother's care and placed with the paternal family by the father. The mother returned to England without her, followed, about a year later, by the father.

The mother started proceedings in which the child was warded and various orders were made (to which a penal notice was attached) including orders requiring the father to return the child to the jurisdiction, to disclose details of her whereabouts and the arrangements for her care and to lodge his passports with the Tipstaff.

The father's non compliance resulted in his committal to prison, where he had remained since January 2012.

In January 2013, Cobb J committed him to prison for a further 6 months and made fresh orders reaffirming the obligations with which the father was to comply. No compliance having been forthcoming, the case came before Wood J in July 2013 on the mother's application to show cause.

Held

In considering the matter, Wood J gave himself a Lucas warning and reminded himself that :-

- he was not trying a child abduction case
- that the burden of proof lay with the applicant,
- that the standard of proof was that of the criminal jurisdiction (ie beyond reasonable doubt) and that,
- for the purposes of penalty, any breaches found must be new and settled breaches from those previously dealt with.

Having set out in detail the obligations placed on the father by the order of Cobb J, Wood J went on to consider the evidence, finding the mother to have been truthful, but the father to have been “shifty, evasive and plainly dishonest”. Moreover, the father’s defence (that his family had “closed ranks” against him and that the means of compliance were therefore outside his control) was “bogus” and “designed to mislead the court”.

Accordingly, having found that there had been breaches of the orders of Cobb J, he then went on to consider sentencing.

It was argued on behalf of the father (citing Article 5 of the ECHR incorporated as Schedule 1 of the Human Rights Act 1998) that the breaches under the current application were (a) repetitions of previous breaches for which punishment had already been meted out and (b) that further punishment for the “same offences” would be disproportionate.

Both parties’ counsel referred (inter alia) *Re W (Abduction – Committal)* [2012] 2FLR 133. Wood J was of the view that the correct approach to follow was that taken in that case (in which the trial judges had drawn attention to sentences passed in the criminal jurisdiction as a “cross check” when determining proportionality in sentencing).

Father’s counsel urged caution against punishing more than once on the same facts and sought to suggest that the fact that the judgment in *Re W* contained no reference to Article 5, rendered reliance on that case unsafe.

Rejecting both arguments, Wood J found that he was dealing with “fresh contempts based on a fresh order relating to a different period of time on fresh facts” and that, as he was bound by *Re W*, any issue with it (right or wrong) would have to be taken up elsewhere.

Although noting that the father had served 18 months in prison, he did not consider that it would be disproportionate to sentence him further.

Accordingly, he sentenced the father to four sentences of 6 months each for separate breaches, all to be served concurrently, consecutive to the sentence previously given by Cobb J.

(No separate penalty was imposed for a breach found in relation to failure to surrender his passports as, despite his “egregious” non compliance, they had been retrieved by other means and an additional penalty would have served no purpose.)

Finally, Wood J made further orders, including directions for the matter to be returned to court before the expiry of the sentence now imposed, with, if necessary, another show cause notice being issued.

Permission

Family Law Week 