

SK v (1) HD (2) SD (3) UD (4) MD (5) FD (2013)

[2013] EWHC 796 (Fam); [2014] Fam Law 22

02/04/2013

Barristers

Ruth Kirby
Hassan Khan

Court

High Court (Family Division)

Practice Areas

International Children Law

Summary

For a mandatory order to be enforceable by committal, it had to be clear what had to be done and when it had to be done. The reference in CPR r.81.4 to “the time fixed” did not require a specific calendar date for compliance to be stated. In a case of child abduction, an immediate and continuing obligation might be appropriate which had effect until the child was recovered.

Facts

The applicants (X) applied to strike out a committal application brought by the respondent father (F) following the abduction of his child (C) by C’s mother (M).

A residence order had been granted to F following the separation of F and M. In August 2011, M disappeared with C. X were M’s family: C’s aunt, uncle and grandparents. In September 2011 an order was made requiring the uncle and others to provide information on C’s whereabouts and a location order was made. F issued committal proceedings against X which were dismissed on undertakings by them that they would assist in the search for C, and disclosure orders were made. Following disclosure, F issued fresh committal proceedings against X and sought a writ of sequestration and an order for disclosure of their assets. He asserted that X had deliberately failed to disclose information which could have led to C being found.

X drew attention to the unsatisfactory service of the order and submitted that the application should be struck out as they had no idea of C and M’s location and had fully cooperated with the court’s inquiry. X further argued that a time limit for compliance with a mandatory order was necessary if it was to be enforced through committal proceedings so that the September 2011 orders could not be enforced as they did not set a time limit for compliance. The grandparents challenged the court’s jurisdiction over them on the basis that they lived in Bahrain.

Held

(1) The evidence of service on the uncle was unreliable and any allegation against him arising solely from

that court order was struck out. F's application for committal was not struck out as it had not been shown that he had no reasonable prospect of establishing at least some of his allegations on the basis of the evidence. The location order was not too imprecise to be enforced. F's application was not an abuse of the process of the court on the basis that his previous application for committal had been dismissed with his consent. Nor was the delay in making the application abusive. The case was extremely serious. No substantial injustice had been done to X by the procedural complaints. (2) For a mandatory order to be enforceable by committal, it had to be clear what had to be done and when it had to be done. The reference in CPR r.81.4 to "the time fixed" did not require a specific calendar date for compliance to be stated. In a case such as the instant case, an immediate and continuing obligation might be appropriate which had effect until the child was recovered. (3) F was not granted permission to issue a writ of sequestration or an order that X disclose their assets. (4) The grandparents were amenable to the jurisdiction as they had sufficient links to the United Kingdom which was reflected in their presence at their London home at the time of C's abduction (see paras 27-29, 38-40 of judgment).

Permission

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