

Re B (A Child) (2014)

[2014] EWCA Civ 843

20/06/2014

Barristers

Private: David Williams QC
Alistair G Perkins

Court

Court of Appeal Civil Division

Practice Areas

International Children Law

Summary

In wardship proceedings in which a mother abducted the ward and removed her from the jurisdiction, it was impermissible for the court to retain the passports of the mother's relatives in order to induce them to influence or pressure her into returning the ward to the jurisdiction.

Facts

The appellant child (L) appealed against an order authorising the court to retain his passport and requiring him to produce records of his telephone, email, text and other electronic communications.

The order had been made in wardship proceedings concerning L's nine-year-old half-sister (B). B had been abducted by her mother (M) and removed from the jurisdiction in order to avoid the consequences of previous court orders. The judge therefore enlisted the help of M's wider family in locating her and ensuring B's return. He made an order, endorsed with a penal notice, requiring M's parents and L to lodge their passports with the court, and requiring L to attend court to give evidence. Upon hearing L's evidence, the judge was not satisfied that he had been completely candid. He directed that the passports should remain with the court, and that L should produce records of his telephone, email, text and other electronic communications over the material period. Again, the order was endorsed with a penal notice.

Held

(1) The judge had made the passport orders in order to induce M's parents and L to apply their minds to persuading, influencing or putting pressure on M to return B to the jurisdiction. That was not a permissible basis on which to make such an order, B (Minors) (Wardship: Power to Detain), Re [1994] 2 F.L.R. 479 applied. In B, a father had removed his children from England and taken them to live with his parents in Algeria. The court ordered his detention in prison until his parents delivered up the children. That order was held to be impermissible. The only material difference between that case and the instant one was the detention in prison rather than the retention of a passport. While there were clear differences between the two sanctions, both were equally outside the ambit of the court's powers, B v B (Injunction: Restraint on Leaving Jurisdiction) [1998] 1 W.L.R. 329 and Young v Young [2012] EWHC 138

(Fam), [2012] Fam. 198 considered. The impropriety of the passport orders had nothing to do with L's age. The judge had been equally wrong to make such orders against M's parents. Unlike L, however, they had not appealed (see paras 22-35 of judgment). (2) The judge had been wrong to attach a penal notice to the orders. L was 17 and could not have been imprisoned or detained for contempt, Wookey v Wookey [1991] Fam. 121 and G v Harrow LBC [2004] EWHC 17 (QB), [2004] N.P.C. 4 applied (para.36). (3) There was nothing to indicate that the judge had undertaken the analysis required by W (Children) (Family Proceedings: Evidence), Re [2010] UKSC 12, [2010] 1 W.L.R. 701 before ordering L to give evidence. What the outcome might have been had he done so was a matter of speculation, but L was entitled to have that part of the order set aside, Re W followed (paras 37-40). (4) The judge had not evaluated whether the disclosure order was proportionate. It was manifestly too wide, there being no justification for making an order extending beyond those records that were relevant to locating M and B (para.41). (5) The order which led to L attending court, under an impermissible threat of imprisonment, should not have been made. In those circumstances, the judge's finding that L had not been candid could not stand (paras 42-43). (6) Nothing in the instant judgment was intended to throw any doubt on the well-established powers of the court to deal with problems such as those faced by the court below, HM (Vulnerable Adult: Abduction), Re [2010] EWHC 870 (Fam), [2010] 2 F.L.R. 1057 followed. There were circumstances in which the High Court could properly order someone to lodge their passport with the court or with a suitable custodian. The instant case dealt with the ambit of that power, particularly where it was sought to be exercised against a non-party (paras 13-17).

Appeal allowed

Permission

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