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Egeneonu v Egeneonu (Adjournment of Committal Application)

[2017] EWHC 2451 (Fam)

30/08/2017

Barristers
Andrew Powell

Court
Family Division

Practice Areas
International Children Law

MacDonald J examines the principles relevant to the court in considering an application for an adjournment in committal proceedings.

On 30 August 2017, MacDonald J heard an application, arising out of wardship proceedings concerning three children, being an application to commit the father to prison for contempt of court. The applicant was the children's mother.

By way of background, the mother and the father married in 2001 and in March 2002, travelled together to London from Nigeria. The mother and the father held dual British and Nigerian nationality, as did the three children, who had been born and raised in the United Kingdom. On 16 July 2013, the family travelled together to Nigeria. The mother contended that this was a planned holiday. The mother returned to the United Kingdom from Nigeria using emergency travel documentation on 12 November 2013. However, the children remained in Nigeria.

On 22 November 2013, the mother commenced proceedings in the United Kingdom, applying for the children to be made wards of court and for an order that the children be returned to the jurisdiction of England and Wales. It should be noted that the children remained wards of court during these proceedings, the substantive hearing on the wardship application not due to be heard until 25 September 2017. On 30 January 2014 Russell J, determined inter alia that the children's habitual residence was in England and Wales, that the children should be made wards of court, that the father had control of or knowledge of the whereabouts of the children and was able to cause their return to the jurisdiction of England and Wales from Nigeria and that the father should cause the children to be returned to the jurisdiction of England and Wales no later than midnight on 14 February 2014. However, the father failed to return the children. On 14 February 2014, an order was made for the father to attend a hearing on 19 February 2014. Service of that order was attempted but was unsuccessful; it was understood that the father had returned to Nigeria. In April 2014, the mother issued proceedings for committal, heard on 2, 4, and 6 March 2015 and culminating in the father being found guilty of nine counts of contempt of court.

The father attended the hearing via video link and sentencing was adjourned, so that he could attend and present mitigating circumstances. The father did not attend the sentencing hearing, or instruct lawyers and Newton J proceeded to sentence the father to one year's imprisonment for each of the breaches found proved, to be served concurrently. The mother engaged in further litigation in an attempt to recover the father. However, subsequently, the father returned and the mother restored the matter to the court. The father was arrested under the committal warrant on 26 March 2017 and was committed to HMP Pentonville. At the time of these proceedings, the father continued to serve his sentence for contempt, to be released on 26 September 2017.

The mother continued to pursue litigation in an effort to secure the whereabouts and return of the children. The father obtained representation and on 4 August 2017 the mother issued a further application to commit the father for breaches of various orders of the court and as a consequence the matter came before MacDonald J.

Prior to the hearing the father changed representation. He did so again, immediately prior to the hearing and as a consequence, at the hearing, argued for an adjournment, supported by his legal team. The mother initially opposed the adjournment, unless the application could be heard prior to 26 September 2017, being the date set for the father's release.

In addition, the father presented as unwell. The father was examined and certified fit to attend court. In any event, the father continued to seek an adjournment to allow him time to instruct his new solicitors.

The court was able to confirm that the final hearing of the committal application could be relisted, prior to 26 September 2017 in which circumstances, the adjournment was not opposed. However, MacDonald J considered it was appropriate to consider the application for an adjournment on the merits, in circumstances where this matter had been listed for a two-day hearing during a period when time was at a premium.

The court considered the legal principles, as set out in the decision of the Court of Appeal in Hammerton v Hammerton [2007] 2 FLR 1133 and a number of more recent authorities, summarised as follows [28]:

a) By virtue of Section 6 of the Human Rights Act 1998, it is unlawful for a court, as a public authority for the purposes of Section 6(3) of the 1998 Act, to act in a way incompatible with the respondent's rights enshrined in Article 6 of the convention for the protection of Human Rights and Fundamental Freedoms.

b) Proceedings for committal are a criminal charge for the purposes of Article 6, (see Re K Contact Committal Order) [2003] 1 FLR 277 at [21]). Thus, the respondent of such proceedings has the right enshrined in Article 6(3)(c), namely, 'to defend himself in person or through legal assistance of his own choosing, or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require'.

c) The interests of justice in principle call for legal representation when deprivation of liberty is at stake (see Benham v the United Kingdom [1996] 22 EHRR 293 at 324 and also Re G (Contempt committal) [2003] 2 FLR 58 at [22]).

d) The lack of legal representation for a respondent in committal proceedings constitutes a serious procedural flaw leading to a failure to hold a fair trial (see Ronald Brown v London Borough of Haringey [2017] 1 WLR 542).

e) Such a right exists even where a respondent has parted company with one set of lawyers. In Re K (Contact: Committal Order) [2003] 1 FLR 277, Hale LJ, as she then was, observed as follows at [23]:

‘One has to say that in the context of ordinary criminal proceedings, the fact that the respondent has parted company with one set of lawyers would not normally be regarded as a good reason for depriving a respondent of access to another set of lawyers for those proceedings.’

f) The obligation to afford the respondent representation imposed by virtue of Article 6(3)(c) is not, however, unlimited. A respondent’s intransigence in unreasonably failing to cooperate with whatever legal assistance is offered, or in refusing it, may make it impossible for legal assistance to be continued. In Re K, Mance LJ, as he then was, contemplated at paragraph 34 a respondent who had behaved ‘so unreasonably as to make it impossible for the funders to continue sensibly to provide legal assistance’.

g) Absent the type of impossible behaviour identified by Mance LJ in Re K, a litigant in person who is liable to be sent to prison for contempt of court is entitled to legal representation. If the respondent is unrepresented then, save in circumstances of extreme urgency, an adjournment should be granted so that representation may be obtained. Bad behaviour earlier in the proceedings, including a tendency towards extreme truculence, is unlikely to justify proceeding without permitting the respondent to secure legal representation (see again Ronald Brown v London Borough of Haringey [2017] 1 WLR 542 at [41]).

h) The more serious a case, the more a respondent is likely to need persuasive and skilful representation. It is almost impossible to envisage a case where such representation will not be needed, if only to remind a judge of the principles which apply. Even in a case where a respondent admits each and every allegation alleged, representation will be needed so as to assist the judge in considering the appropriate disposal.

MacDonald J then considered a) whether there was evidence of unreasonable behaviour on the part of the father in the manner in which he had dealt with the issue of representation and b) whether there was any other reason why the application should not be adjourned. He concluded that there was no clear evidence of unreasonable behaviour on the part of the father and was therefore satisfied that it was appropriate to adjourn the final hearing for a short period, to enable the father’s new solicitors to receive the papers and to advise him [31]. He added that were the father once again to change legal representation in the short period before the adjourned final hearing, that would constitute strong evidence and the court would be unlikely to agree to an adjournment a second time [36].

To read the judgment, please click here.

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