

# Michael Andrew Gayle v Julie Nwamara Gayle (2001)

**[2001] EWCA Civ 1910**

29/11/2001

## **Barristers**

Charles Hale KC

## **Court**

Court of Appeal

## **Facts**

There were deficiencies in Form N77 Notice of Application for Committal but in the instant case there was substance in the allegation of breach of a court order and a suspended committal order was accordingly upheld.

Mother's appeal from a suspended committal order made by HH Judge Hornby sitting in Bow County Court on 21 November 2001. By an order made on 6 October 2000, the mother was required to make the parents' child ('N') available for contact with the father on two dates. The mother refused to make N available on the specified dates and the father accordingly issued a committal application in January 2001. Due to a number of adjourned hearings the application came before the judge on 16 October 2001. He heard oral evidence from the parents and found that the mother was in breach of the order. The judge sentenced the mother on 21 November 2001 to seven days for each breach, suspended in order that the mother complied with the contact order. This was the mother's appeal from that order on the grounds that, inter alia, there was a breach of Art.6(2) European Convention on Human Rights because the summons bringing her to court failed to sufficiently demonstrate the burden of proof and standard of proof placed on the applicant to an application for committal. The mother argued that the summons, on Form N77 Notice of Application for Committal, inferred that the recipient was already in breach of a court order and carried the burden of showing why she should not be imprisoned.

## **Held**

HELD: (1) There was substance in the mother's criticism of county court Form N77 Notice of Application for Committal. There was a need for reconsideration of the form and the information provided in it. (2) It would have been more appropriate had Form N77 made plain that the court's first duty was to evaluate the evidence in support of the application for committal and that the court would only find that there had been a breach on the application if it had been proved on the criminal standard of proof, and from that eventuality, the recipient was only then required to show why imprisonment should not be imposed. (3) Notwithstanding that deficiency in Form N77, the substance of the hearing in the instant case was that the mother had every opportunity to answer the father's allegations that she was in breach. The father gave oral evidence in support of his application to commit and the mother gave oral evidence in rebuttal.

In the result the judge found there were breaches of the order on the overwhelming evidence of the father. (4) Accordingly, there was a need to look at Form N77, which was in general use in county courts, but in this case there was substance in the allegation made. (5) The judge's order was accordingly upheld.

Appeal dismissed.

**Permission**

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