

Re X (2011)

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24/03/2011

Barristers

Private: David Williams QC

Court

Civil Division

Practice Areas

International Children Law

Summary

Eight months' imprisonment imposed on a mother upon committal for breach of an order in wardship proceedings requiring her to facilitate her son's return to the United Kingdom was not manifestly excessive.

Facts

The appellant mother (M) appealed against the length of her imprisonment imposed following her committal for breaching the terms of an order made in wardship proceedings concerning her son, the respondent (X). X was aged 17 and had lived with M in the United Kingdom. He travelled to Nigeria voluntarily with M on what he understood to be a family holiday. He did not return to the UK and he was enrolled in a boarding school in Nigeria. Wardship proceedings were initiated in the UK by X's litigation friend and an order was made for his return. M later returned to the UK without him. An order was made for M to sign a letter authorising X's school in Nigeria to take him to the airport in order to be returned to the UK. On the face of it, M complied with the order by signing the letter. However, she subsequently sent another letter, not through her solicitors, to the school instructing it to hand over X to her sister. Consequently, the school did not take X to the airport as previously instructed. At a hearing, a judge held that M had deliberately attempted to thwart efforts to return X to the UK. She was found to be in contempt and was sentenced to eight months' imprisonment. M submitted that her sentence was manifestly excessive.

Held

The court was not to interfere with a sentence unless it was manifestly excessive or disproportionate. A judge who heard a case would have the feel of the case and therefore any tinkering by the Court of Appeal was to be avoided, *Slade v Slade* (2009) EWCA Civ 748, (2010) 1 WLR 1262 applied. M's actions amounted to an active breach of the order in which she deliberately did something that was intended to frustrate what had been done previously, namely her instructions to the school to take X to the airport. Further, the length of any sentence of committal for contempt had to bear some reasonable relationship to the maximum sentence of two years' imprisonment, *Hale v Tanner* (2000) 1 WLR 2377 CA (Civ Div)

applied. The judge's sentence of eight months' imprisonment had to be considered within those parameters. There had been a grave breach of a court order and the sentence was a matter for the judge's discretion. It therefore fell well within the parameters of the applicable principles.

Permission

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