

Doncaster Metropolitan Borough Council v Elizabeth Watson (2011)

[2011] EWHC 2376 (Fam)

01/09/2011

Barristers

Rob Littlewood

Court

Family Division

Practice Areas

Public Children Law

Summary

When suspending a sentence of nine months' imprisonment which had been imposed for breach of a confidentiality order issued in child care proceedings, the court emphasised that committal proceedings for contempt of court were not issued in order to stifle free speech but to ensure obedience to orders of the court.

Facts

The applicant (W) applied to purge her contempt of court. W had been committed to prison for nine months after breaching an order for confidentiality issued in child care proceedings.

Held

(1) The myth that a person could be sent to prison "in secret" was to be dispelled. Nobody in England was sent to prison for contempt of court in secret. The procedure for hearing an application for an order of committal in private was set out in the CPR Sch.1 Ord.52 r.6, which stated that if the court decided to make such an order, it was to be stated in public. The family courts were frequently accused of acting "in secret" and it needed to be emphasised that courts hearing cases involving children, under the Children Act 1989, sat in private to hear evidence because they were democratically authorised to do so by Parliament. They did so to protect the interests and confidentiality of children. The courts regarded with particular seriousness any breach of a court order designed to protect the identity and confidentiality of a child. Judges believed in the rule of law and in free speech. Every child case involved a balancing exercise in relation to rights under the European Convention on Human Rights 1950 art.8. In each case, s.1 of the 1989 Act required the welfare of the child to be paramount; that was more important than anything else. Where a judge made an order restricting publicity and forbidding the identification of a child, the judge was duty bound to carry out what had been described by the House of Lords as an "intense focus" on the rights of a child and the rights of everybody else to freedom of expression under art.10 of the Convention, *S (A Child) (Identification: Restrictions on Publication)*, Re (2004) UKHL 47, (2005) 1 AC 593 followed. Committal proceedings were not issued in order to stifle free speech but to

ensure obedience to orders of the court. Everybody was entitled to free speech but, equally, nobody was entitled to breach an order of the court (see paras 2-8, 23 of judgment). (2) In the instant case, which had been heard and judgment given in open court, what made W's contempt particularly grave was the fact that she had breached the order not only by communicating through emails with a large number of third parties but had also given material to an internet provider. The mischief of the publication, as W now appreciated, was that the publication of allegations held by the court to be without foundation had not only put the identity of the child into the public domain but had also put W in the hands and power of the internet provider. Those factors explained why a prison sentence had been inevitable. However, W had now expressed contrition and had done what she could to remove the offending material from the internet. In those circumstances, the sentence of nine months' imprisonment would be suspended for two years, which would enable W to be released immediately (paras 13-19).

Permission

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