

Lydia E v E O-I (2011)

[2011] EWCA Civ 555

24/03/2011

Court

Court of Appeal (Civil Division)

Practice Areas

International Children Law

Summary

A sentence of eight months' imprisonment was justified in the case of a mother who had committed a contempt of court by breaching an order aimed at enabling her 17-year-old son, who had obtained a forced marriage protection order, to return from Nigeria to England.

Facts

The appellant (E) appealed against a sentence of eight months' imprisonment for contempt of court.

In July 2010, E's 17-year-old son (S) had consulted solicitors, expressing concern that E was planning to take him to Nigeria and force him into a marriage there. A forced marriage protection order was obtained. Later that month, S travelled voluntarily with E to Nigeria on the understanding that it was to be a family holiday and that he was to return to England in August. In the event, he did not return. Wardship proceedings were issued and material was placed before the court which gave rise to substantial concern that S was being kept in Nigeria against his wishes. By November 2010, S had issued a summons for E's committal to prison for breaking orders, several in number, requiring her to cause him to be returned forthwith to England. On November 8, an order was made requiring E to sign letters instructing and authorising S's aunt in Nigeria to hand over S's passport to his school and the school to cause him to be taken to the airport. E signed the necessary letters. However, a few hours later she sent another letter to S's school. In it she authorised and requested the school to hand S over to his aunt "because she is the main GUARDIAN". The judge found that the second letter constituted a contempt of court. In sentencing E to eight months' imprisonment, the judge concluded that she was not truly remorseful for her breach of the order of November 8, that she had not done all in her power to effect S's return to England and that she had not shown any indication of a willingness to co-operate other than on her own terms.

Held

E's breach, being an active breach rather than just a failure to do something which had been ordered, was a breach which directly struck at what had been ordered hours previously. It was a breach which was intended totally to frustrate the entire arrangements upon which the order dated November 8, and the letters which E had then written, had been constructed. It had been decided in *Hale v Tanner* [2000] 1 W.L.R. 2377 that the length of any sentence for committal for contempt had to bear a reasonable

relationship to the statutory maximum of two years, and E's sentence had to be considered in the light of that. It was perfectly obvious that this was a breach of such gravity that there had to be a sentence of imprisonment and that it could not sensibly be suspended. As to the length, eight months fell well within the parameters which were open to the judge on the facts of the case, Hale and Slade v Slade [2009] EWCA Civ 748, [2010] 1 W.L.R. 1262 applied (see paras 18, 30-31 of judgment).

Permission

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