

MB v GK [2014] –contempt – sentencing

[2014] EWHC 1122

03/04/2014

Barristers

Mark Jarman KC

Court

Family Division

Practice Areas

International Children Law

Summary

Application for father's committal for contempt for failing to comply with three High Court orders requiring the return of his five year old son wrongfully retained in Singapore

Facts

M, a child, had been wrongfully retained in Singapore by his father and paternal family who had made without notice application to the court there. The mother applied to the High Court which, declaring M to have habitual residence in England and Wales, ordered her return.

The father failed to comply with the order to return and two subsequent orders (which had penal notices attached). The court had given the father clear warnings about the consequences of non-compliance and (as he had appeared in person claiming impecuniosity) made plain to him that public funding for representation was available because of the risk to his liberty. He was also warned that, if, as he alleged, it was not him but his parents who were failing to comply/ seeking orders in Singapore, he should take action against them in that jurisdiction.

Having made three orders in March, the matter was adjourned to provide a final opportunity for the father to comply and to obtain representation.

Before the matter came back before Russell J (who had heard the matter throughout), the father, represented on a privately funded basis, made a without notice application before Theis J to discharge the last order for return and to adjourn the forthcoming hearing. Theis J refused the application and ordered that it be made to Russell J.

Held

Russell J found that the without notice application was a deliberate attempt to subvert the process and demonstrated (as the father had paid for representation) that the assertion that he was without funds was untrue. She also found that he had deliberately "planned and contrived" to retain M against his mother's wishes.

The father was in breach of three separate orders. He was fully aware of the consequences and of his right to public funding. There was no doubt that he was in contempt (proved to the requisite standard of beyond reasonable doubt) and that his application before Theis J amounted to a “determined and organised course of conduct contemptuous of the jurisdiction of the court”. The contempt was “very serious”.

In sentencing, the court considered that it had had to make successive mandatory injunctions (as permitted by *Re W (Abduction:Committal)* [2011] EWCA 1196) and had given the father every opportunity to comply. Also noted was the “unspeakable cruelty” of keeping a parent from a child referred to in two criminal appeal cases in which sentences for abduction were upheld and that the father could not pray in aid breach of his Article 8 rights when his actions breached those of the mother and child.

Accordingly, the father was sentenced to a total of 18 months imprisonment (6 months for the first breach, to be followed by two sentences of 12 months each for the latter breaches, to be served concurrently).

The process for judicial liaison between this jurisdiction and Singapore had been set in train.

Permission

Family Law Week 