

Button v Salama & Anor

[2019] EWHC 363 (Fam)

26/02/2019

Barristers

Mark Jarman KC

Court

Family Division

Practice Areas

International Children Law

Mr Justice Mostyn gives a judgment formally asking the Secretary of State for Foreign and Commonwealth Affairs to use “all available diplomatic measures” to help locate a British child, Elsa Salama, who has been missing in Egypt since 2011.

Background

In December 2011, Ms Button, Mr Salama and Elsa (then aged 4) travelled together to Egypt for a short holiday. During that time, Mr Salama caused Elsa to be removed from Ms Button's care and placed in the care of her paternal grandmother in Egypt. Ms Button returned to England, followed shortly afterwards by Mr Salama. Elsa has never returned to England since that time. Mr Justice Mostyn observes in the present judgment:

“The cruelty that is being inflicted on this woman and on this child is formidable. It is hard to imagine the daily agony that this mother must endure” (para [2]).

Legal proceedings began upon Ms Button's return to this jurisdiction and Elsa was made a ward of court on 3 January 2012. A series of orders were made requiring Mr Salama to reveal the whereabouts of Elsa and to procure her return to England and Wales. Mr Salama refused to comply. He was detained in prison for contempt on 5 January 2012.

In August 2012, Ms Button brought proceedings in Egypt and was awarded a “short custody order” of Elsa. This became a “long custody order” in November 2015. These orders required Elsa to be delivered up to Ms Button. Mr Salama was prosecuted for breach of these orders and sentenced to 12 months' imprisonment in his absence. The sentence was reduced to 3 months on appeal. Mr Salama has not returned to Egypt since the sentence was handed down.

On 27 September 2013, Mr Justice Holman sentenced Mr Salama to a further 6 months' imprisonment for failing to obey an order made on 2 July 2013. He repeated the orders made previously for Mr Salama to disclose Elsa's whereabouts and to cause her return to England and Wales. Mr Justice Holman was

satisfied having heard Mr Salama give oral evidence that he was “sure that the father could have complied substantially with the ... orders” and observed that he was “clearly shifty, evasive and plainly dishonest” (para [5], [7]). However, Mr Justice Holman found that Mr Salama had not committed an offence under the Child Abduction Act 1984.

When the matter came back before Mr Justice Holman on 19 December 2013, he noted that Mr Salama had served the equivalent of a sentence of four years’ imprisonment in circumstances where the maximum sentence for an individual contempt of court was two years imprisonment. Thus Mr Salama could not be further punished for contempt:

“Although successive orders [for contempt] are legally permissible, the reality in this case is that from day one this father has manifested an absolute determination not, under pressure of court orders, to reveal the whereabouts of his child and not to cause her return to England” (para [4])

Hearing before Mr Justice Mostyn

Prior to the most recent hearing, heard on 20 February 2019, Mr Salama submitted a statement setting out that his solicitor, Mr Kevin Skinner, had spoken to the head of the paternal family by telephone and that Elsa is “a happy, healthy and well-behaved child” and that her “education is going well” (para [11]). Mr Salama continues to deny that he had information regarding Elsa’s location.

The statement makes a number of allegations against Ms Button. Mr Justice Mostyn responded to say:

“The father’s allegations against the mother, justifying his cruel and heartless conduct, are obviously untrue, and to my mind are an aggravating factor” (para [11])

At paragraph [14] of the judgment, Mr Justice Mostyn sets out the so far futile steps that Ms Button has taken to try and locate her daughter both in this jurisdiction and in Egypt, efforts which date back to 2013.

Conclusion

Mr Justice Mostyn observes that while Mr Salama could not be further punished for contempt, the prosecuting authority ought to consider criminal proceedings for conspiracy to commit the offence under Section 2 of the Child Abduction Act 1984 Act and for perjury. The Judge ordered his judgment to be sent to the Commissioner of the Metropolitan Police.

Mr Justice Mostyn assessed that it was time to formally ask the Secretary of State for Foreign and Commonwealth Affairs, the Rt Hon Jeremy Hunt MP, to use “all available diplomatic measures ... to seek to persuade the authorities in Egypt to locate this missing child” (para [15]). He adjourned the case and invited the Secretary of State to inform the court at the next hearing “what steps have been taken following my request” either by way of written submissions or by instructing counsel to attend (para [16]).

To read the judgment, please click [here](#).

Permission

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