RE W (ABDUCTION: COMMITTAL) [2011] EWCA Civ 1196

Court of Appeal

Hughes, Tomlinson and McFarlane LJJ

17 August 2011

Abduction – Contempt – Father imprisoned for 2 years for failure to comply with orders to disclose whereabouts of child and effect her return – Fresh orders not complied with – Whether the judge could impose a further term of imprisonment

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The father abducted his 2-year-old child during a week of planned contact and took her to Pakistan. He contacted the mother and informed her that she would never see the child again. The father left the child in the care of his brother and on his return to England was arrested. The mother issued proceedings which resulted in the child being made a ward of court and the father being ordered to immediately disclose the exact location of the child and cause her to be returned to England. The father failed to comply but attempted to negotiate with the mother by offering her £250,000 if she abandoned all her rights and responsibilities to the child. He then claimed the child was in Iran being cared for by two friends. The father was found in contempt for failing to comply with the court order and committed to prison for the maximum sentence of 2 years. A fresh order was made requiring him to give information as to the child's whereabouts and he was warned that if he failed to comply he would be at risk of further committal proceedings. Three days before the expiration of the prison sentence a further committal application was heard in respect of the father's refusal to comply with the second order. The father claimed to have no knowledge of the child's whereabouts and no means of contacting the friends who were taking care of her, but he informed the judge that if he were released from prison he would seek employment to fund his own father's trip to Pakistan to start searching for the child. The judge rejected the father's evidence and the claim put forward on his behalf that his actions were part of one act of contempt for which he had already been punished and, therefore, he could not be punished again. The judge imposed a 12-month prison sentence and the father appealed.

Held – dismissing the appeal –

(1) It was legally permissible for the court to make successive mandatory injunctions requiring positive actions, such as the disclosure of information, notwithstanding a past failure to comply with an identical request. A failure to comply with any fresh order would properly expose the defaulter to fresh contempt proceedings and the possibility of a further term of imprisonment (see paras [37], [51]).

(2) The question of whether such a course of action was justified was a matter for the court to determine taking into consideration past orders, the cumulative total of any time already spent in prison and, if appropriate, having regard to the likely sentence that might be imposed for similar conduct in the criminal court. The court should take a proportionate, stage-by-stage, hearing-by-hearing approach relying on the discretion and judgment of the judge at each hearing in assessing whether a further term of imprisonment was both necessary and proportionate (see paras [38]–[40]).

(3) There could be circumstances where it was obvious that the coercive element provided by a term of imprisonment had evaporated and that there was little to be gained other than pure punishment from any continued incarceration. There was nothing in the evidence to establish a stalemate had been reached with the father stoically refusing to co-operate. On the contrary, his formal case was that he too would like to know where his daughter was and he had formally put forward suggestions for locating her (see paras [41]–[43]).

Statutory provisions considered
Contempt of Court Act 1981, s 14(1)

Cases referred to in judgment
A (Abduction: Contempt), Re [2008] EWCA Civ 1138, [2009] 1 FLR 1, [2009] 1 WLR 1482, CA
Barrell Enterprises, Re [1973] 1 WLR 19, [1972] 3 All ER 631, CA
Enfield London Borough Council v Mahoney [1983] 1 WLR 749, [1983] 2 All ER 901, CA
Kumari v Jalal [1997] 1 WLR 97, [1996] 2 FLR 588, [1996] 4 All ER 65, CA
Villiers v Villiers [1994] 1 FLR 647, [1994] 2 All ER 149, CA

Jason Green appeared for the appellant
James Turner QC and *Geraldine More O'Ferrall* for the respondent

MCFARLANE LJ:

[1] This is an appeal brought by the father of a young girl in relation to an order for committal to prison that was made against him by Baker J on 8 April 2011.

[2] The young girl, to whom I shall refer as A, was born on 7 November 2006 and is, therefore, now some 4 1/2 years of age. Her parents met in 2003 and the relationship, which is described as 'on and off', lasted until 2008, by which time their daughter was nearly 2 years of age.

[3] The father enjoyed some contact with his daughter but the focus of all of the proceedings before the High Court, and now this court, has been his abduction of her out of England and Wales on or around 7 November 2009. I can do no better in summarising the background facts than to read from part of the judgment of Baker J. At para [3] he says this:

> '[3] The mother met the father in 2003 and they conducted an on/off relationship as a result of which [A] was born on 7 November 2006. The relationship ended in March 2008. On 7 November 2009 [A] went to stay with her father, with her mother's agreement, for a week of contact. The mother believed that the father was taking her to Southport for a holiday. In fact, unbeknownst to her the father flew with his own mother and [A], to Pakistan. When the father failed to return [A] to the mother's care at the conclusion of the holiday as planned, he spoke to her over the telephone and informed her that she was never going to see [A] again. He returned to [this] country and was arrested. There then followed a series of further conversations in which the father reiterated that the mother would never see [A] again and would have nothing further to do with her.
>
> [4] The father was apparently not detained by the police and on 18 December 2009 the mother issued an application [in wardship]

> leading to the hearing before Mrs Hogg J to which I have already referred, in which the learned [judge] on 21 December, made an order divided inter alia that the child should become a ward of the court, that the father should immediately disclose to the court, the mother and the police, the location of the child, including the exact address where she is resident and the name and contact details of any person who was presently caring for the child. Furthermore, the order required the father to "Cause the child to be returned to England and Wales forthwith".
> [5] Thereafter there were various negotiations between the mother's solicitors and the father which Mostyn J in his judgment described as "Sordid negotiations whereby he wanted only to have to return [A] provided he had an equal share of the care of her".'

[4] I pause from reading Baker J's judgment to offer two examples of what was being referred to there. In part of an affidavit by the mother's solicitors at C14 of the bundle, the solicitor records the father, during a conversation over the telephone in February, in the following terms:

> 'When I pushed [the father] for a response in relation to what would happen if we could not reach an agreement he became frustrated and said that [A] was "settled in Iran with her brother" (by which he meant his son) and his partner. He said that his partner was really [A's] mother and that [the mother] was her "biological mother".'

Secondly, at C16, a telephone conversation on 1 March:

> 'He said that if [the mother] was willing to relieve all her rights and responsibilities as [A's] mother then he would "pay her a lump sum of £250,000". He said that £100,000 would be in an account by the 29 March and then £150,000 would be available the month after. I told him I thought it was entirely inappropriate to be making such an offer but he was insistent that I speak to [the mother]. A copy of [the father's] email detailing the proposal is attached.'

And indeed, the court has a copy at C50 of an email from the father in precisely those terms. It was matters such as that to which Mostyn J had referred.

[5] I return now to conclude the quotation summarising the history from Baker J's judgment:

> 'Mostyn J rightly criticised this approach of the father as an attempt by him to "Parley with the court about its orders". As Mostyn J observed, "Orders are there to be complied with, it is part of the rule of law and if they are not complied with then he must expect to suffer the consequences". As Mostyn J observed in his judgment, the father's response was the exact opposite of what was required of him by the order of Mrs Hogg J. Instead of returning [A] to England, it seems that he arranged for [A] to be removed to Iran. In his evidence before Mostyn J, the account given by the father was that he had arranged for [A] to be cared for in Iran by the family of his former girlfriend [AK] …

> and a friend of the father's, called [MK]. The father told Mostyn J that he had moved [A] to Iran because he was fearful that his own father would go to Pakistan to recover her and take her back to England.'

It is no surprise to this court that Mostyn J regarded the matters I have just summarised as being distinct aggravations of the already aggravated circumstances of the original abduction.

[6] The proceedings before the High Court moved forward from the original orders of Hogg J making A a ward of court and requiring the father to disclose details of her whereabouts and return her to the jurisdiction. He took no regard of those orders. She was not returned and no information was given. Thus it was that on 8 April 2010, the father was arrested and remanded in custody under orders made by High Court judges, and the question of his committal for contempt for breaching the order of Hogg J, and indeed the subsequent order of Mostyn J, was brought before Mostyn J on 11 June 2010.

[7] Mostyn J heard oral evidence from the father and in the course of his judgment, to which I have already made some oblique reference, the judge was particularly damning in his characterisation both of the father's behaviour and of his evidence. He found that the father had aggravated his original behaviour in the way I have described, and was deliberately lying to him in the course of his evidence. The judge described this as 'as bad a case of child abduction as I have encountered'. He found that the father had breached the orders made by Hogg J in that he had failed to cause the return of A to England and Wales, and on the basis of that finding of contempt, he made an order for committal to prison for the maximum term available, that of 2 years.

[8] In addition, Mostyn J made a fresh order requiring the father forthwith to give information as to the child's whereabouts and at the conclusion of his judgment, the judge warned the father that if he failed to comply with this fresh order, he would once again be at risk of facing further committal proceedings.

[9] Matters moved on: the father was incarcerated. He failed to give any information as to the whereabouts of the child, despite requests to do so by the mother's solicitors and the case came on before Baker J on 15 March 2011 for the matter to be considered prior to the father's expected release from his term of imprisonment on 11 April.

[10] On that occasion, Baker J made a fresh order requiring the father, once again, to give details of the child's whereabouts. The father failed to do so and an application for his committal was before Baker J on 8 April, some 3 days before the expected date of release and it is the hearing of that day and the judgment and resulting order which are the focus of this appeal.

[11] At the hearing, the father was represented, as he is before us today, by Mr Jason Green of counsel. On that occasion the father had the benefit of legal aid and solicitors. Legal aid has now been withdrawn and this court is extremely grateful to Mr Green for representing the father in the course of this appeal on a pro bono basis. It seems to us to represent and demonstrate the finest traditions of commitment to his client, and to the bar as a profession, that Mr Green has clearly deployed full diligence, both in marshalling his arguments on paper and presenting them to this court today, and we are extremely grateful to him for that.

[12] Baker J heard the father give oral evidence, during which the father professed to have no knowledge now of his daughter's whereabouts. The father also claimed to have no direct means of contacting his friend, MK, whom he says was responsible for his daughter's initial move to Iran, where the father still believes she is, and her initial care. The father's plan, he told the judge, was that if he were released from custody, he would obtain work in order to supply the funds for his own father, A's grandfather, to go to Pakistan to try to begin the search for the child.

[13] Baker J, as Mostyn J had before him, gave no credence to much of what the father said and he held that the father was lying when giving his evidence. The judge said this:

> 'I am sure that he is deliberately concealing information from the court about his daughter's whereabouts.'

That finding led to a finding of contempt of court by the father failing to comply with the order that had been made on 15 March 2011, requiring disclosure of information as to the child's whereabouts and the contact details of those who the father knows are caring for her.

[14] In the course of his judgment, Baker J rejected the argument put forward on behalf of the father to the effect that the father's actions were, in reality, all part of one piece of behaviour for which he had already been punished and, therefore, could not be punished again. The sentence imposed by Baker J was one of 12 months imprisonment and it is against that sentence that the father now appeals and his appeal, in essence, is for that sentence in its entirety to be set aside.

[15] The notice of appeal was filed on 5 May and it criticises the judge's approach for failing to distinguish the single course of conduct which the father's counsel argues is the case here. Secondly, the notice of appeal seeks to argue that the father has already received the maximum permitted sentence of 2 years for this singular contempt, and that, therefore, the court was acting unlawfully, or in error, in adding to the total of the father's term of imprisonment. These matters have been developed in the course of submissions.

[16] Turning to the legal context, the powers of the court dealing with contempt are set out within the Contempt of Court Act 1981 and in particular, s 14(1). That reads as follows:

> 'In any case where a court has power to commit a person to prison for contempt of court and (apart from this provision) no limitation applies to the period of committal, the committal shall (without prejudice to the power of the court to order his earlier discharge) be for a fixed term, and that term shall not on any occasion exceed two years in the case of committal by a superior court, or one month in the case of committal by an inferior court.'

[17] The case of *Villiers v Villiers* [1994] 1 FLR 647 identifies that the 'occasion' referred to in s 14(1) is the occasion of sentence and it contemplates in the course of the court's judgment that different contempts

could be dealt with on different occasions and could result in an individual in the end serving an accumulative sentence of more than 2 years.

[18] However, the court has been referred to the case of *Kumari v Jalal* [1997] 1 WLR 97, [1996] 2 FLR 588, where the contemnor was required to deliver up particular chattels in the course of court proceedings by a certain date. They failed to do so, a breach was found and a sentence imposed. The court held that it was not possible for that contempt to be brought back on the basis of the same order for a fresh sentence notwithstanding that the chattels even at a later date had not been given up. The Court of Appeal left open in the course of its deliberations in that case the possibility of there being a fresh directive order made with a fresh date for compliance that might found the basis of a subsequent application to be made in due course.

[19] I turn now briefly to the arguments that have been before us in the course of this appeal. Mr Green characterises this appeal as being based upon an important point of natural justice. Quite rightly, he seeks to avoid arguing any points on behalf of the father which seek to detract from the very negative view that the judges have formed of the father's behaviour.

[20] He is, therefore, focusing upon the legal context and the legal consequences, and indeed the consequences in terms of human rights and the father's potential or long-term incarceration, when couching his submissions before this court.

[21] He makes three essential points. First, that this is a single course of conduct and that it is wrong for the father to be punished twice for it; secondly, that the court's progress now with this second application for contempt with a further order for disclosure made with the potential for a further application for committal in due course creates the danger of indefinite incarceration, and thirdly, that any coercive element that might have been present when the clang of the prison doors was first heard by the father in the middle part of last year has now been exhausted.

[22] Dealing with each of these in short terms: point one, that this was a single course of conduct. What Mr Green is submitting is that although Mostyn J purported to sentence for a failure to return and Baker J purported to sentence for a failure to disclose whereabouts, Mostyn J in fact took account of all the circumstances of the case, including the father's continued failure to assist in giving information. Mr Green says if that is correct it cannot be right for the father to be punished again for this same conduct.

[23] Mr Green submits that if the current order is right, what is to stop judges sequentially making orders against this man in the future, with the result that he would be incarcerated indefinitely, an outcome which would not be permissible under the terms of the 1981 Act.

[24] That really runs into the second point, and Mr Green says that, as a matter of principle, there is nothing to stop courts, if the current orders stand as a matter of law, keeping this man in prison year by year, with fresh orders being made for the indefinite future.

[25] Thirdly, I can do no more than repeat the headline point which Mr Green has expanded, which is that the coercive element has been exhausted.

[26] In the course of submissions, Mr Green agreed that points two and three have a common characteristic. He is submitting that the time must come as a matter of law and of fact in any particular case that the court will have to

say that 'enough is enough' and that any longer, in terms of time in prison, was not to be contemplated because of the danger of indefinite incarceration, or 'enough is enough' in terms of there being no further coercive benefit present in any additional term of imprisonment.

[27] Again, looking at ways in which to describe or characterise that position, the phrase 'reached the end of the road' was used and Mr Green, in the course of his submissions, accepted that that probably was not the case on the facts of the present proceedings and that either the father was still at the beginning of the road of experiencing the process, or that there was at least still some way to go along the carriageway.

[28] In response to the appeal, the mother is represented both by leading counsel and by junior counsel. The fact that leading counsel has been instructed indicates to this court the importance that the Legal Services Commission attributes to this case. They are right to do so. Mostyn J in the course of his judgment eloquently described the impact on a mother of extended abduction of a child to a country which has no formal legal links to this jurisdiction and which places the child effectively out of the mother's reach. The mother has, in this case, to use the jargon in child abduction cases, been 'left behind', in that she is unable to follow her child to the foreign jurisdiction and the father seemingly, on the findings of the judges, has done all he can to ensure:

(a) that that is the position; and
(b) by reference to the fact that he referred to her as effectively only, or merely, the biological mother, to eradicate her from his child's experience as the child grows up.

[29] It is impossible to underestimate the impact on a mother of this continuing limbo with the elongated and suspended sense of bereavement that she must have and I do not seek to do so.

[30] Any court focusing upon children must also move away from the impact on the adults and look at the impact on a child growing up without any relationship with her mother. It is, therefore, entirely right that a high priority is given to the representation of the mother in these proceedings.

[31] We have been assisted by submissions made by counsel on behalf of the mother, and in effect Mr Turner submits that what the judge did on this occasion was entirely in order. He accepts that, as a matter of approach, there will come a time in any case when 'enough is enough' but that that point has by no means been reached in this case. Rhetorically, he says if the court backed off now on the basis at the hearing before Baker J that 2 years was 'enough', then the message would go out that parents who act in the way that this father has acted would only need to contemplate something of the order of 1 year in prison as the downside of their actions were they to act in this grossly abusive and harmful way.

[32] Turning now to look at matters in the round, first of all, as a matter of fact and law, the contempt for which Mostyn J passed sentence in June 2010, namely the failure to return the child to England and Wales, is different from the contempt that is the foundation of Baker J's order in April 2011, namely a failure in breach of two fresh orders to give information as to her current whereabouts. Therefore as a tight and strict matter of law, this is not the same

contempt that is being punished and, therefore, the primary argument raised by the appellant on that basis would fall. But it is unfair to the father and indeed to the arguments raised by Mr Green to deal with the matter on that rather narrow basis.

[33] I have approached the case by questioning the position as if it were it the case that precisely the same breach were alleged, namely a failure to disclose information when before Mostyn J, and then a continued failure to disclose information when subject to a further order in front of Baker J.

[34] Whilst the father's mindset, which is a dogged and dishonest one, set upon maintaining his daughter out of the jurisdiction and apart from her mother, and his behaviour from day to day may be a manifestation of that mindset, that behaviour is, nevertheless, in my view fresh and further behaviour on each occasion he is required to undertake an act and fails to do it. A man who is the subject of an injunctive prohibition not to molest, assault or interfere with his former partner may be of a mindset which drives him to be in contact with her over and over again in a manner which breaches the injunction. Each such contact, if proved, would be a fresh breach of the order and might justify committal orders which, cumulatively, over time, if imposed on separate occasions, would result in him spending more than 2 years in prison. The lawfulness of such an outcome was expressly contemplated by Lord Bingham in the case of *Villiers v Villiers*.

[35] What is the position in relation to a positive or mandatory requirement by an order? Two authorities in my view shed some light on this. The first is the case of *Re A (Abduction: Contempt)* [2008] EWCA Civ 1138, [2009] 1 FLR 1, [2009] 1 WLR 1482. That is a decision of the Court of Appeal and in fact the principal judgment was given by my Lord, Hughes LJ. It was a child abduction case: the father had abducted a young child to Syria and despite orders for the child's immediate return, the father had failed to comply. The principal matters that occupied the court's mind are not relevant to the issue before the court today, but the headnote states this in relation to the final matter that was considered:

> 'It was open to the mother to make a fresh application to commit the father for contempt; she would then have to demonstrate, by sufficient evidence to make the judge sure, that there was a means by which the father could effectively return the child and that he had failed to do so. If such contempt were proved, it would not be in the least surprising, in the context of the deliberate prior abduction of a toddler, if the judge were to think in terms of a sentence several times longer than the one already imposed …'

Then in the body of the judgment itself, Hughes LJ is quoted in these terms:

> 'It is open to mother to make a fresh application. Father should understand that it is his duty and his legal obligation to do everything within his power to undo the grave wrong which he has done both to the child and the mother.'

That authority would seem to contemplate, despite the mindset and the continued behaviour of the father in failing to bring the child back, continued

use by fresh order and, if breached, fresh contempt proceedings, of the process that was undertaken in this case.

[36] Similarly, the authority of *Kumari v Jalal* to which I have already made reference contemplates a failure continuing, and if repeated, being the subject of further committal proceedings. In the course of his judgment, Neill LJ, at 103 and 593 respectively, says this:

> 'That order was not complied with, and it was a single breach. It seems to me that it was quite plain that there was no power in the court to commit Mr Jalal again on 23 July 1996. I would conclude by drawing attention to the fact that the current edition of *Borrie and Lowe on the Law of* Contempt … p 630, n 15, in a passage dealing with the case of an offender who repeatedly commits contempt, states:
>
> > "If [the strategy of seeking increasingly longer sentences] is adopted care should be taken that a fresh order is made on each occasion lest a plea of autrefois convict is raised."'

[37] In a more tangential way, I regard that too as authority for the process of repeat resort to the court, despite failures positively to take action which is required by court orders. As in the case of prohibitive injunctions, it must in my view be permissible as a matter of law for the court to make successive mandatory injunctions requiring positive action, such as the disclosure of information, notwithstanding a past failure to comply with an identical request. A failure to comply with any fresh order would properly expose the defaulter to fresh contempt proceedings and the possibility of a further term of imprisonment.

[38] While such a course is legally permissible, the question of whether it is justified in a particular case will turn on the facts that are then in play. It will be for the court on each occasion to determine whether a further term of imprisonment is both necessary and proportionate.

[39] Part of the court's proportionate evaluation will be to look back at past orders and at the cumulative total of any time already spent in prison and to bear those factors in mind when determining what order is to be made on each occasion. The court should also have some regard, if that is appropriate, to the likely sentence that might be imposed for similar conduct in the criminal court.

[40] This is not, however, a licence for the courts to subvert the 1981 Act by blindly making successive committal orders for the remainder of a contemnor's natural life, as has been suggested on behalf of the father. It is a proportionate, stage-by-stage, hearing-by-hearing approach relying upon the discretion and judgment of the judge at each hearing.

[41] The cases of *Re Barrell Enterprises* [1973] 1 WLR 19 and *Enfield London Borough Council v Mahoney* [1983] 1 WLR 749 established that on the facts of any given case, the time may come when it is obvious that the coercive element provided by a term of imprisonment will have evaporated, and there is thus little to be gained other than pure punishment from any continued incarceration. But the facts of those two cases were stark and the evidence that the 'carrot and stick' approach had reached the end of its useful life was very clear. The case of *Re Barrell Enterprises* arose in the context of commercial proceedings where an individual was required to hand over

documents to the official receiver acting as liquidator. The court took the view that it was inconceivable that the contemnor, now, at the time that they were dealing with the case, would comply with any order and in the course of his judgment, at 27, Russell LJ said this:

> 'The enforcement aspect is more difficult. If we thought it at all likely that the dismissal of all Mrs Barrell's applications to this court and the continuance of her incarceration for some reasonable period would lead to her producing the securities or enabling them to be recovered by the Official Receiver then we would be in favour of refusing her application for release … But we do not think there is the least likelihood that if Mrs Barrell were kept in prison she would now within a short time disclose the true story of these securities.'

[42] The second case, *Enfield London Borough Council v Mahoney*, is on starker facts. A precious cross had been opportunistically stolen by the defendant and hidden, and the local authority sought its recovery and he had been sent to prison as a result of his failure to give the item up. The question of his continued incarceration was before the court. It was plain that there were some mental health difficulties that the defendant had, but it was also plain that if anything, he was enjoying the notoriety that he had attracted by his actions.

[43] In the course of his judgment, Watkins LJ at 755 said this:

> 'Of the two elements of the punishment inflicted by the original order, one has by now surely been served, namely, that of punishment for the contempt itself. All that remains now of the order, so it is asserted, is that part of the period of two years which can only be said to relate to the coercive effect which it was hoped by the judge the sentence would impose on him. It being obvious to everyone now that no form of coercion, including no matter how long a stay in prison, is going to cause this man to change his mind, it is pointless to keep him where he is.'

In contrast to those two reported cases, there is nothing in the evidence that was before Baker J to establish that a similar stalemate had been reached with this father stoically refusing to co-operate. On the contrary, the father's case was that he too would like to know where his daughter now is and was putting forward suggestions for locating her.

[44] This court must start by giving great weight to the assessment and the evaluation of the first instance judge, who was seised of the case and who heard the father give his evidence. The judge not only felt it right to impose a sentence of imprisonment, but also made a fresh and further order for disclosure. The clear implication is that the judge did not come to the view that the coercive element had run its course in this case.

[45] It is, in my view, impossible to hold that Baker J was plainly wrong in holding that a further term of imprisonment was justified and, indeed, it is correctly not argued on behalf of the father that the coercive force of committal had totally expired. We are, as I indicated earlier, only some way along the road.

[46] It follows that my conclusion is that the committal order made by Baker J on 8 April 2011 was legally permissible, and that it is not possible to hold that the judge was plainly wrong in imposing a further substantial term of imprisonment for the father's continued refusal to obey the strict orders of the court. Indeed, for my part I would go further and hold that Baker J was fully justified in imposing the term that he did.

[47] The sooner this father wakes up to the fact that the High Court is intent upon the repatriation of his daughter to England and is not falling away in its resolve, the better. The father must surely realise that because of his actions and his continued refusal to bring her back to England, this 4-year-old girl has now not seen either of her parents for a period that is fast approaching 2 years. I hope that now, if not before, this father will contemplate the position and realise that not only is his continued refusal to co-operate getting nowhere, not only has it resulted in his spending some 2 years in prison, not only is the High Court not giving up in its endeavour to have a return to England, but above all, his daughter is fast growing up without any knowledge of or relationship with either her mother or father.

[48] The way forward is in the father's own hands and for the child's sake, I earnestly hope that he will now change from the highly abusive course upon which he has hitherto been set and obey the court's orders. I would dismiss the appeal.

TOMLINSON LJ:

[49] I agree.

HUGHES LJ:

[50] I also agree. Some of the relevant principles applicable to repeated or successive contempts applicable to this case include these: first, if the timetable is manipulated with a view to avoiding the 2 year maximum sentence imposed by s 14 of the Contempt of Court Act by bringing separate contempts before courts on two or more occasions when they could be brought before it on a single occasion, it will very likely be right simply to refuse to impose a consecutive sentence on a subsequent occasion; see *Villiers v Villiers*.

[51] Secondly, there is no doubt that there may be successive or repeated contempts of court constituted by positive acts disobeying an order not to do them. For my part, I am quite satisfied that there may also be consecutive or successive contempts of court constituted by repeated omissions to comply with a mandatory order positively to do something. However, where the latter is in question, it is plain that there may well come a time when further punishment will be excessive. When that will be is a matter of fact for each case.

[52] Thirdly, the mechanism when either there has been manipulation of the timetable or the point has been arrived at when further punishment would be wrong is, as it seems to me likely to be, simply to refuse to make any further order. It seems to me unlikely that the concept of abuse of process adds anything of significance to that simple power in cases of this kind.

[53] Fourthly, there is no doubt that all courts dealing with contempt of court applications for committal need to consider both punishment for past disobedience to orders and the potential coercive effect of the order that is

made. For the reasons that my Lord has so clearly given, I am wholly unsatisfied that the coercive effect of the present order is yet spent. I too would dismiss the appeal.

Appeal dismissed.

Solicitors: *Bromleys* for the appellant
Pluck Andrew for the respondent

SAMANTHA BANGHAM
Law Reporter