



Neutral Citation Number: [2024] EWCA Civ 411

Case No: CA-2024-000228

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM HIGH COURT OF JUSTICE
FAMILY DIVISION
MR JUSTICE MACDONALD
[2023] EWHC 2792 (Fam)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/04/2024

Before :

LADY JUSTICE KING
LORD JUSTICE NEWEY
and
LORD JUSTICE DINGEMANS

Between :

Fahad Abdi
- and -
(1) Manchester City Council
(2) (3) (4) (5) The Children (via their Children’s
Guardian)
(6) Maryan Yusef

Appellant

Respondents

The appellant appeared in person

Sara Mann (instructed by **Manchester City Council**) for the **First Respondent**
The Second to Fifth Respondents were not in attendance and were not represented
Damian Garrido KC (instructed by **Pluck Andrew Solicitors**) for the **Sixth Respondent**
Hearing date : 10 April 2024

Approved Judgment

This judgment was handed down remotely at 14.00 hrs on 30.04.24 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Dingemans :

Introduction

1. This is the hearing of an appeal against committal brought by Mr Fahad Abdi. He is a national of Somalia and he informed the court in the course of his submissions that he is now a British citizen. Mr Abdi had been committed on 7 November 2023 by Mr Justice Macdonald (the judge) to an immediate term of 12 months' imprisonment. This was on the application of Manchester City Council, which was the relevant local authority for the children of Mr Abdi and Maryan Yusuf, for breaches of an order of the court made on 11 May 2023.
2. The order required Mr Abdi to return his children to the jurisdiction of England and Wales by 30 May 2023 and to inform the local authority of the PIN number and passwords of mobile phones belonging to him which were now in the possession of the local authority, again by 30 May 2023.

Factual background

3. The full background facts are set out in the judgment of the judge, see [2023] EWHC 2792 (Fam). This summary is provided so that the matters raised on appeal by Mr Abdi might be understood.
4. Mr Abdi is married to Ms Yusef, also a national of Somalia and a Dutch citizen. Mr Abdi and Ms Yusef have four children. These are twins now aged 12 years, and two other children aged 7 years and 8 years. The children were born in England and Wales, lived in England and Wales until March 2022, and went to school in England and Wales.
5. In March 2022, just over two years ago, a referral to children's services was made by the school attended by the children. Very shortly afterwards the children were taken in March by Ms Yusef to Turkey, and then in April 2022 on to Somalia. Ms Yusef said that she had taken the children to Turkey for the medical treatment of one of the children, and that when in Turkey she had been pressurised by Mr Abdi to take the children to Somalia.
6. Ms Yusuf said that on arrival in Somalia her passport was taken and she and the children were taken to a gated community in Mogadishu. Ms Yusuf said that she was removed from the children and returned on a flight to the UK in April 2022. Since then the children have remained in Somalia. Ms Yusuf claims that the children are under the control of Mr Abdi and his relatives, and Mr Abdi claims that the children are under the control of Ms Yusuf and her relatives or persons that she has retained to act for her.
7. Ms Yusuf said that on her return to England Mr Abdi said that he would return to Somalia to collect the children and bring them back. A boarding pass for May 2022 recovered on Mr Abdi's arrest suggested he had travelled to Somalia in May 2022, but the children were not returned. Ms Yusuf returned to Somalia in August 2022. Ms Yusuf stated that she commenced court proceedings in Somalia for the return of the children, obtained a warrant for the arrest of a cousin of Mr Abdi and entry to the cousin's property, but by the time that the police arrived the property was empty.

8. Ms Yusuf gave evidence to the judge that she last saw her children in August 2022, although she had given evidence in earlier proceedings before the judge that she had last seen her children in April 2022.
9. At some stage when Ms Yusuf was in Somalia in August 2022 she alleged that she spoke to Mr Abdi on the telephone who told her to stop misbehaving, that Ms Yusuf would not see her children again unless she behaved well and that she had gone to a house. Ms Yusuf had replied that she had just wanted to see the children. Ms Yusuf said that she was with her cousins when this call was made. There was a transcript of the conversation produced before the judge which was described as a voice note or recording, with a male voice and a female voice. The evidence given by Ms Yusuf was that she was the female voice and that Mr Abdi was the male voice on the transcript. If Mr Abdi was in fact the male voice on the transcript of the conversation, it showed that Mr Abdi knew of the whereabouts of the children and was denying Ms Yusuf access to the children unless she stopped acting in a way which Mr Abdi considered was misbehaving.

The proceedings

10. On 13 October 2022 the local authority issued proceedings in wardship in respect of the children. On 14 November 2022 an order was made requiring Mr Abdi and Ms Yusuf to return the children to the jurisdiction of England and Wales and made location orders.
11. On 5 December 2022 the judge gave judgment [2022] EWFC 160 on an application by the local authority to commit Mr Abdi and Ms Yusuf for contempt of court for failing to return the children and for failing to comply with the location order. Ms Yusuf was found to be in breach of the location order. The judge found the breach to be a minor one and imposed no separate penalty. The judge found that Mr Abdi knew where the children were and had deliberately failed to provide information to the Tipstaff about the location of the children. The judge sentenced Mr Abdi to immediate imprisonment for three months reflecting the fact that he had been in custody on remand for three weeks following his arrest. The judge made a further order on 5 December 2022 requiring Mr Abdi to facilitate the return of the children.
12. Mr Abdi did not facilitate the return of the children and was released from custody, but the local authority brought further proceedings for contempt of court for failing to comply with the order made on 5 December 2022. On 9 February 2023 Mr Abdi was found to be in breach of the order dated 5 December 2022, and he was sentenced to 6 months imprisonment. Further orders were made on 3 March 2023 requiring Mr Abdi to provide PIN numbers for mobiles which had been delivered up by consent to the local authority, and to facilitate the return of the children.
13. On 11 May 2023 the judge gave a judgment [2023] EWHC 1248 (Fam) and found that Mr Abdi was in breach of the orders dated 3 March 2023. Mr Abdi had, as was his right, refused to have legal representation, notwithstanding adjournments being granted so that he could consider whether to take advantage of legal representation under the legal aid provisions. The judge sentenced him to 12 months imprisonment. The judge made further orders on 11 May 2023 requiring the father to ensure that the children were returned forthwith to the jurisdiction of England and Wales, and to provide the PIN numbers and passwords for the mobile phones.

14. Mr Abdi appealed against the committal order dated 11 May 2023 to the Court of Appeal. The appeal was heard on 14 September 2023. By a written judgment dated 20 October 2023 [2023] EWCA Civ 1214 the Court of Appeal dismissed the appeal. Moylan LJ said at the end of his judgment, with which Phillips and Birss LJ agreed, that Mr Abdi still had the opportunity to purge his contempt, and that the best way of doing that would be by explaining how the children could be brought back. Moylan LJ urged Mr Abdi to consider engaging with the court.
15. The children were not returned, and Mr Abdi did not provide the local authority with his PIN numbers or passwords for his mobiles.
16. The local authority made a further application to commit the father for breach of the orders dated 11 May 2023. The local authority wrote a letter explaining the application and urging Mr Abdi to obtain legal advice. Mr Abdi chose to act in person.
17. The application was heard on 2 November and on 3 November the judge gave a written judgment in which he found that Mr Abdi had acted in breach of the orders dated 11 May 2023. The judge then adjourned to deal with the issue of sentence and following a hearing on 7 November 2023 the judge gave a written judgment on that date. Both judgments were amalgamated and are now reported as [2023] EWHC 2792 (Fam). This is the judgment which is the subject of the appeal.

The judgment below

18. The judge set out the relevant background and the history of the proceedings. The judge recorded that he had heard evidence from the social worker and Ms Yusuf. Mr Abdi had chosen to represent himself and he had cross examined the social worker directly and the cross examination of Ms Yusuf had been carried out by Mr Abdi directing questions through the judge. Mr Abdi had not given evidence before the judge, or in the earlier proceedings, but he had made submissions.
19. The judge summarised the relevant law recording, among other matters, that given the liberty of an individual was at stake, the strict procedural requirements of a properly constituted committal hearing had to be observed. Deliberate disobedience to the order to return the children had to be proved.
20. The judge then set out his findings that he was satisfied beyond reasonable doubt that the father was in breach of the orders made on 11 May 2023 to ensure that the children were returned and to inform the local authority of his PIN number and passwords.
21. The judge accepted that Mr Abdi had been imprisoned since the order was made, but the judge found that the local authority had provided Mr Abdi with a mechanism by which he could take steps to have the children returned, and one of the steps that might have been taken was providing the PIN numbers and passwords for the phones. The judge repeated in paragraph 50 his conclusion that he was satisfied beyond reasonable doubt that the father was in breach of the orders of 11 May 2023.
22. As far as sentence was concerned, the judge affirmed that the penalty of contempt had two primary functions, first upholding the authority of the court, and secondly ensuring future compliance. The judge held that the committal proceedings were for breach of a fresh and different order from the ones for which Mr Abdi had been previously

sentenced. The judge recorded, at paragraph 65, that he had asked Mr Abdi whether he would be willing to provide the court with a document giving his consent to the return of the children to this jurisdiction and authorisation to travel. Mr Abdi had refused, saying that it would be of no effect in Somalia and might incriminate him. Mr Abdi did not provide the PIN number or passwords for the mobile phones. When asked whether he would take any steps to return the children, Mr Abdi said that his hands were tied.

23. The judge found that the appropriate sentence was custody, and that a further period of imprisonment was just and proportionate. The judge imposed a sentence of 12 months in custody for breaches of the order of 11 May 2023.
24. The judge made further orders requiring Mr Abdi to return the children by 30 November 2023, to provide written consent to the return of the children, and to inform the local authority of the PIN number and passwords for the mobile phones.

The issues on the appeal

25. Mr Abdi has appeared before this court in person. As already noted above, Mr Abdi appeared before the Court below in person, notwithstanding previous efforts to attempt to ensure that he had the opportunity to have legal representation. Mr Abdi has, of course, the right to act for himself without legal representation.
26. In his grounds of appeal, Skeleton Argument and oral submissions, Mr Abdi has raised a number of issues about whether the findings that he was in breach of the Court orders were properly made, and whether the sentence imposed on him was manifestly excessive or wrong in principle. The grounds of appeal produced by Mr Abdi ran to 24 pages and did not “identify as concisely as possible the respects in which the judgment of the court below is (a) wrong; or (b) unjust because of a serious procedural or other irregularity” and it included reasons why the decision was wrong or unjust, which should have been confined to the Skeleton Argument, see Practice Direction 52C at paragraph 5(1) and (2). Mr Abdi put in a Skeleton Argument in which other complaints were made.
27. This approach (albeit understandable because Mr Abdi was acting in person) made it more difficult to identify clearly what were Mr Abdi’s grounds of appeal. The local authority helpfully summarised Mr Abdi’s grounds of appeal in its Skeleton Argument as being: (1) Mr Abdi has been sentenced for the same matter four times; (2) Mr Abdi has been sentenced to a period of imprisonment for longer than 2 years; (3) the Judge was wrong to order further terms of imprisonment and should have considered that Mr Abdi has been punished enough; (4) the local authority is racist; (5) the Court has no jurisdiction as the children are not living in the UK; and (6) the local authority is discriminating against Mr Abdi as he is a male. In his oral submissions, however, Mr Abdi set out some further complaints including that the sentence imposed was wrong in law and manifestly excessive.
28. The appeal was resisted by Maryan Yusef, the mother of the children, and by the local authority. Mr Garrido KC on behalf of Ms Yusuf, and Ms Mann on behalf of the local authority, both submit that the findings of breach of the orders were properly made, and that the sentence imposed on Mr Abdi was just and proportionate. Neither party took

objection to the way in which Mr Abdi had raised his grounds of appeal, and I have attempted to address all of the complaints made by Mr Abdi.

29. By the end of the hearing it was apparent that the following matters, which I have re-ordered, were the issues raised on the appeal: (1) statements were left out of the appeal bundle prepared by the local authority which the court should consider; (2) the Court has no jurisdiction as the children are not living in the UK, and the local authority has lied to the court wrongly claiming that the children had British passports; (3) the local authority is racist and sexist, and has sent letters to the prison giving confidential information about his children's names and dates of birth; (4) there has been harassment of his family and friends by the local authority; (5) the judge was wrong to make findings of fact that Mr Abdi had acted in breach of the orders made on 11 May 2023 because: Ms Yusuf's evidence was false; and the social worker's evidence misled the court; (6) Mr Abdi has been sentenced for the same matter four times; (7) Mr Abdi has been sentenced to a period of imprisonment for longer than 2 years, contrary to section 14 of the Contempt of Court Act 1981; (8) the Judge was wrong to order further terms of imprisonment and should have considered that Mr Abdi has been punished enough because the sentence was manifestly excessive, the court took into account sentences in cases in which the father had removed the children from the jurisdiction, and the court shouldn't make committal orders for the remainder of his life; (9) Mr Abdi was not released at the halfway stage of his imprisonment contrary to section 258 of the Criminal Justice Act 2003; and (10) there has been an infringement of Mr Abdi's rights under articles 2, 3, 5, 6, 7, 8 and 14 of the European Convention on Human Rights, to which domestic effect was given by the Human Rights Act 1998.

30. I will address the issues in turn.

(1) Statements were left out of the appeal bundle prepared by the local authority which the court should consider

31. Mr Abdi handed up an unsigned statement dated 17 January 2023 and a Social Worker's Updating Statement dated 21 November 2023 during the hearing of this appeal. Both were made by Anna Owen, an advanced social work practitioner on behalf of the local authority. We had the opportunity to read both of these statements. They detail contact between Ms Owen and Mr Abdi, and also efforts made by the local authority to trace the children through contacting and speaking with various persons. One of the records is of a call with a relative of Ms Yusuf, which contained information inconsistent with some information provided by Ms Yusuf.

32. In my judgment the fact that the statements were not included in the appeal bundle which the local authority had helpfully prepared (because Mr Abdi was acting in person) does not provide Mr Abdi with any cause for complaint. The updating statement post-dated the hearing before the judge. In any event, it was not apparent that either statement would be relevant to the grounds of appeal raised by Mr Abdi.

33. Further although Mr Abdi referred at the hearing of the appeal to the hearsay report from Ms Yusuf's relative set out in the updating statement, it does not assist him. This is for a number of reasons. First, the relevant conversation did not take place until after the committal order had been made. Secondly the judge had expressly found in paragraph 14 of the judgment that Ms Yusuf had given inconsistent evidence about when she had last seen the children (being August 2022 and not April 2022) and

therefore the judge stated that he had some reservations about the evidence of the mother in paragraph 43 of the judgment. Another inconsistency in Ms Yusuf's evidence would not have affected the judge's approach. Thirdly the hearsay evidence as a whole was itself inconsistent with Mr Abdi's case, and so it does not help him. Fourthly the judge's findings that the father could have taken steps to secure the return of the children and give his PIN numbers and passwords for his mobiles to the local authority did not depend on the mother's evidence. The evidence in the two statements did not therefore assist Mr Abdi or provide any grounds for appeal.

(2) The Court has no jurisdiction as the children are not living in the UK, and the local authority has lied to the court wrongly claiming that the children had British passports

34. A court in England and Wales has jurisdiction over a child who is habitually resident in England and Wales. The habitual residence of a child is the place which reflects some degree of integration by the child into the social and family environment, see *A and another (Children: Habitual Residence)* [2013] UKSC 60; [2014] AC 1. In this case the children had been born in England and Wales, lived in England and Wales and attended school in England and Wales, and they are habitually resident in England and Wales.
35. It is correct to state that the local authority referred to the children having British passports, when it is now common ground that they had only Dutch passports. Ms Mann apologised for the error in the local authority's written submissions about this. Mr Abdi said that he had pointed this out on numerous occasions, and it was only at the hearing of this appeal that it had been acknowledged. It is correct to point out that the local authority had made an error in referring to British passports, but the error was not material because it made no difference to the issue of habitual residence. Mr Abdi informed the court at the hearing that he now had a British passport, and it seems likely that he had made the application as a spouse of an EU national pursuant to the EU Withdrawal Agreement which was given domestic effect by the EU (Withdrawal Agreement) Act 2020 and Immigration Regulations.
36. These matters do not form a basis for setting aside the judge's order committing Mr Abdi to prison.

(3) The local authority is racist and sexist, and has sent letters to the prison giving confidential information about his children's names and dates of birth

37. Mr Abdi has complained that the local authority has made assumptions about Somalia and referred to terrorism and violence and has accepted Ms Yusuf's evidence because she is a woman. The local authority say that they have made proper inquiries because they are interested in the best interests of the children, and point out that they sought orders for the return of the children against both Mr Abdi and Ms Yusuf, and they brought proceedings for contempt against both of them. I can see no basis for finding that the local authority has acted otherwise than in good faith. It has sought orders from the court, and reported on its attempts to obtain information about the children and to return them. The fact that Mr Abdi believes the local authority to be racist and sexist does not prove that to be the case. His particular complaint that a white male father would not be committed for contempt of court in similar circumstances is not supported by the reported cases on contempt in family cases.

38. It is agreed that letters have been sent to Mr Abdi which contain information about his children's names and dates of birth. It appears that attempts were made to have those letters delivered without disclosing the contents but that the local authority was told that they could not be so delivered under prison rules. Whatever the merits of these points, the delivery of the letters can form no basis for setting aside the orders made by the judge.

(4) There has been harassment of his family and friends by the local authority

39. The local authority has made detailed and proper inquiries of friends and family of both Ms Yusuf and Mr Abdi. Details of more recent inquiries appear in the updating statement from Ms Owen. These inquiries have been carried out to assist the local authority in obtaining the return of the children to this jurisdiction. The local authority has acted properly in making these inquiries.

(5) The judge was wrong to make findings of fact that Mr Abdi had acted in breach of the orders made on 11 May 2023 because: Ms Yusuf's evidence was false; and the social worker's evidence misled the court

40. The judge heard evidence from Ms Yusuf and Ms Owen. The judge carefully considered all of the evidence. Mr Abdi could not identify any internal inconsistency in the findings of fact made by the judge, inconsistency with any established fact, irrationality or any other basis for setting aside the findings made by the judge, see generally *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5; [2014] EMTR 26 at paragraph 114. The judge placed considerable reliance on the transcript of the conversation between Ms Yusuf and found as a fact that the other party to the conversation was Mr Abdi. The judge was entitled to make that finding, and Mr Abdi (as was his right) did not give any sworn evidence to contradict Ms Yusuf's evidence that he was the other party to the conversation. Once that finding had been made, it became clear from the contents of the transcript that Mr Abdi was the person who was controlling access to the children in Somalia.

(6) Mr Abdi has been sentenced for the same matter four times

41. This repeats a complaint that Mr Abdi made on his last appeal to the Court of Appeal, which was rejected by Moylan LJ at paragraph 61 of his judgment at [2023] EWCA Civ 1214. Although Mr Abdi is right that he has been sentenced on four occasions for failing to return his children, Mr Abdi has not been sentenced four times for the same matter. The judge sentenced Mr Abdi for his breach of the order dated 11 May 2023, and his earlier sentences were for breach of earlier and separate orders with different timescales for the return of the children.
42. It is permissible to sentence a person to contempt for breaching a subsequent order, even though the subject matter of the order was similar to an earlier order, see generally *Re W (Abduction: Committal)* [2011] EWCA Civ 1196; [2012] 1 WLR 1036. 2 FLR 133. In *Re W* it was held that the court was empowered to make successive mandatory injunctions requiring positive action, notwithstanding a past failure to comply with an identical request. Whether a failure to comply with the fresh order justified a further term of imprisonment would turn on the facts then in play.

(7) Mr Abdi has been sentenced to a period of imprisonment for longer than 2 years, contrary to section 14 of the Contempt of Court Act 1981

43. Section 14 of the Contempt of Court Act 1981 provides that “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 a committal by a superior court ...”.
44. It is apparent that Mr Abdi has been sentenced for four separate breaches of four separate orders. The aggregate total of the sentences is 33 months, which is longer than the 24 months set out in section 14 of the Contempt of Court Act. However each individual sentence for contempt has been for less than two years and there has been no infringement of section 14 of the Contempt of Court Act.

(8) The Judge was wrong to order further terms of imprisonment and should have considered that Mr Abdi has been punished enough because the sentence was manifestly excessive, the court took into account sentences in cases in which the father had removed the children from the jurisdiction, and the court shouldn't make committal orders for the remainder of his life

45. The judge considered very carefully the breach and its effect, the past sentences of imprisonment, and the proportionality of the sentence being imposed on Mr Abdi. The judge was, in my judgment, entitled to impose a further sentence of imprisonment because of Mr Abdi's actions and because the judge considered that the effect of the sentence might encourage Mr Abdi to comply with the court's orders. The sentence was not manifestly excessive given the principled aim of ensuring the safe return of the children to this jurisdiction. The court has not made a committal order for the remainder of Mr Abdi's life. Mr Abdi can choose to comply with the court orders and to demonstrate that compliance by providing the PIN numbers and passwords for his phones. Mr Abdi claims that he wants to have his children returned to England and Wales. The judge identified ways in which Mr Abdi could do that. He has chosen not to do so.

(9) Mr Abdi was not released at the halfway stage of his imprisonment contrary to section 258 of the Criminal Justice Act 2003

46. It seems that Mr Abdi was about to be released but was then sentenced again for a separate contempt of court, and he was kept in prison pursuant to that separate order. There is nothing unlawful in that, because Mr Abdi was imprisoned pursuant to a court order made after a fair and public hearing.

(10) There has been an infringement of Mr Abdi's rights under articles 2, 3, 5, 6, 7, 8 and 14 of the European Convention on Human Rights, to which domestic effect was given by the Human Rights Act 1998

47. There has been no infringement of Mr Abdi's rights. It is apparent that Mr Abdi has found life in prison very difficult and he has lost his employment and fears losing his housing. The sentences which Mr Abdi has served have, however, all been lawfully imposed for good reasons. Mr Abdi is the person who, on the judge's findings, can ensure the return of his children to this jurisdiction. It is not too late for Mr Abdi to cooperate with the local authority and ensure the return of his children.

No basis for setting aside the judgment below

48. I have reviewed all of the points made by Mr Abdi and considered again the judgment below. I have been unable to determine any basis for setting aside the findings that Mr Abdi was in contempt of court and the sentence imposed by the judge.

Conclusion

49. For the detailed reasons set out above I would dismiss the appeal.

Lord Justice Newey

50. I agree.

Lady Justice King

51. I also agree.