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Case No: NE18P01942/NE21P07336

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

The Law Courts
The Quayside
Newcastle-upon-Tyne
NE1 3LA

Date: 11/10/2021

Before:

MRS JUSTICE ARBUTHNOT

**IN THE MATTER OF AN APPLICATION FOR THE COMMITTAL TO PRISON OF
IAN MALONE**

Mr Paul Caulfield (instructed by **Hewitts Solicitors**) for **Ian Malone**
Ms Kate Fenwick (instructed by **Caris Robson LLP**) for the **Mother**
Mr James Howard (instructed by **Hadaway & Hadaway Solicitors LLP**) for the **Child (by
his Children's Guardian)**

Hearing dates: 11th October 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MRS JUSTICE ARBUTHNOT

REPORTING RESTRICTIONS APPLY

Mrs Justice Arbuthnot:

Introduction

1. After protracted proceedings, involving James' parents, a final Child Arrangements Order was made by Deputy District Judge Goudie in the family court on 8th June 2021. James was to live with his mother but to have regular supervised contact with his father Ian Malone. The mother was fully supportive of James having contact with his father.
2. The contact was to take place every Tuesday and Wednesday between 1pm and 5.30pm. Mr Malone's mother, the paternal grandmother or his father or another named family member were to supervise the contact that was to take place.
3. The order was endorsed with this warning: in bold:

“Where a Child Arrangements Order is in force: if you do not comply with a provision of this Child Arrangements Order–(a) you may be held in contempt of court and be committed to prison or fined; and/or(b) the Court may make an order requiring you to undertake unpaid work ("an enforcement order") and/or an order that you pay financial compensation.”
4. This matter has come to this court today at the order of Mr Justice Cobb. It was said that the alleged contemnor breached the order of the family court made on 8th June 2021. Mr Malone removed James from the supervision of his mother and abducted James for seven days in breach of the final order of the family court.
5. Mr Malone has accepted he breached the order and has committed a contempt. He told the court earlier today why he did this.

The events and Mr Malone's evidence

6. The circumstances are the following:
7. In the run-up to 4th July 2021, James' nursery asked that he self-isolate because of Covid 19. He was to do this from Friday 25th June 2021 to midday on 3rd July 2021. James therefore missed two contact sessions due to take place with his father. The mother told the paternal grandmother that this was due to Covid and at the nursery's request.
8. As a result of the missed contact, the mother decided to arrange for the father to have a longer day with their son the day after the end of the self-isolation, on 4th July 2021. This was to be from 9am to 6pm, exactly the length of contact the father had missed.
9. The paternal grandmother came to collect James and he was taken back to her home where Mr Malone was waiting. At about 10.15am Ian Malone removed James from the area. He failed to return James to the paternal grandmother's home.
10. The mother later tried to contact the paternal grandmother to find out when they would return. The grandmother said they were not back yet. At that stage the grandmother was not being open with the mother. At 6.30pm the grandmother finally confirmed that James and his father had gone missing. She told mother she had last seen them at around 2pm. This was untrue but was a story she repeated to the police.

11. In fact, as I have set out above, Mr Malone and James had disappeared from the area at about 10.15am.
12. The mother immediately contacted the police and for the next week, there was a hullabaloo and a nationwide search for the little boy involving the police. There was much publicity in the press aimed at finding out where they were.
13. Mr Malone was finally tracked down at just after midnight on 11th July 2021 in Dunblane, Scotland.
14. During that period, Ian Malone failed to respond to attempts to contact him.
15. On arrest, Ian Malone said he was going to return James to his mother the following day, 12th July 2021. He admitted today in evidence, however, that in fact he had not given any thought to how the abduction would end.
16. Ian Malone accepted he was in contempt of court. The evidence I heard today was in relation to his motives in taking James away. He said that he had planned the abduction and been thinking about it since the final order was made on 8th June 2021. He had obtained the help of a friend Sunny Parmar who lent him a car from about 18th June 2021 and whose flat he was staying in Dunblane.
17. His reasons for the abduction were that he had been involved in the family proceedings for three years. He said he had found them extremely difficult and believed that he was being removed from his son's life. The judge had agreed with his ex-partner and not with him. He said he felt traumatised by the proceedings, and they had had a profound effect upon him.
18. He accepted he had made a huge mistake and should not have taken James in the manner that he did. He wanted to spend time with him. Prior to the 4th July 2021 he had not seen James for 10 days as a result of contact being cancelled because of Covid. His intention was that they would spend some time on holiday together. He was running out of money and had not planned how the abduction would end. In any event he wanted James to be back for school in September 2021.
19. He was asked whether he had attempted to disguise James by cutting his curly hair and he said that he hadn't, he had cut it simply because it was too long, and this was a bone of contention between the father and the mother.
20. Mr Malone said he understood the upset and worry he had caused by what he had done and now knew that this would mean that his future contact with James would be difficult. He apologised for what he had done. Essentially though he was apologising for the fact that what he had done may prevent him having even supervised contact with James until this is considered by another court.

Culpability and harm, aggravating and mitigating features

21. The first matter I must decide is how culpable Mr Malone is.
22. Mr Malone had planned this abduction. This was premeditated. He had borrowed the car from a friend in mid-June and told the court he was planning removing James from shortly after the last hearing which took place on 8th June 2021.

23. He borrowed a flat from the same friend in Dunblane.
24. He purposefully did not answer his telephone and ensured he had disappeared digitally.
25. He must have known that the police were searching for him as it was on the news and the internet.
26. Mr Malone said he had no end plan for the abduction, but he wanted James to go to school in September, some two months later. When arrested by the police, he was running out of money which was going to cause him difficulties.
27. There was no consideration at all to the effect this disappearance might be having on James' mother.
28. I find his culpability to be high.
29. The next consideration is harm.
30. James found the removal from his father's care to be traumatic. He has autism and is more vulnerable to change than many children. James returned to his mother, looking terrified and exhausted. He looked thinner and he had vomit on his dressing gown and hands. He was sobbing quietly. The mother had never seen him looking so distressed.
31. In the days that followed James did not want to be separated from his mother. If she left him with friends playing, he would become distressed and go off in search of her. It is fortunate now that he has settled down and is enjoying school.
32. Mr Howard for James' guardian points out that there is other harm, which is that the contact between James and his father may now take a different route, yet children need to see their fathers.
33. Finally, and most importantly, there was much press involvement in the case, many accounts of the abduction are on the internet and this means that James' story will always be out there when he wants to google himself. He will be able to find it in future years. The story will not disappear. It is difficult to anticipate what the effect of that information may be on James as he grows older.
34. I heard from Ms Fenwick for the mother and she explained the harm caused to the mother by the abduction of James. She is now experiencing periods of severe anxiety and occasionally panic. She was aware of abusive comments on social media and the entirely wrong assumption there that she was obstructing the father's contact with the child. As I have said above, quite the opposite, she was encouraging contact and had arranged for the father to see James after the end of his self-isolation for double the time because of the missed contact.
35. I find medium harm in the circumstances.
36. The next matter I must consider are the aggravating features.
37. Mr Malone had come to an agreement with James' mother about contact after they had separated which he breached. I find his behaviour in breaching the agreement an aggravating feature.

38. On 7th July 2018, Mr Malone was due to return James at 8pm. He set out for a walk with James at 730pm which ended at 10pm, apart from anything else that was way past his bedtime. Police had to be called to persuade him to hand over James.
39. The following day on 8th July in view what had happened the day before, he was informed that contact was cancelled. Mr Malone went to the home anyway and hung around outside the address calling and texting continuously.
40. On 22nd July 2018, he went again and this time looked in through the windows and attempted to climb on to the window ledge.
41. On 18th August 2018, after a six-week gap, the father refused to return their son after contact. The police were called, they had to break in to get James back.
42. Deputy District Judge Goudie who heard the case later, described it as a situation where the father was showing his frustration but at the same time, he was determined to control the situation and “do just as he wanted”.
43. There were one or two other concerning incidents, then on 7th January 2019, Mr Malone was highly obstructive when the mother had to take their son to Accident and Emergency at a doctor’s suggestion.
44. Contact after January 2019 slightly improved but by then it was supervised, and Mr Malone could no longer decide how much contact he could take.
45. In mitigation, I heard from Mr Caulfield who said as much as he could to mitigate what Mr Malone had done.
46. Mr Caulfield pointed out that the abduction was for a week. Mr Malone had not left the country and James was returned to his mother very shortly after being found. The mother never considered James to be at risk of serious injury in Mr Malone’s care, the real concern was that he had disappeared with James without trace.
47. Mr Caulfield explained that Mr Malone lost his business last year. His mother had been extremely ill with cancer and Mr Malone was driven by the frustration he felt about the lack of contact he was having with James.
48. Mr Malone has no convictions and certainly none of a similar kind, so I gave him credit for having a good character.
49. Mr Caulfield said that Mr Malone had apologised to the court but I noted that what he really felt was sorry for himself and that he feared that he had done would affect his contact with James in the future.
50. Finally, I gave him full credit for his early admission of the contempt.

Final remarks

51. In summary, taking into account the culpability and harm caused, the aggravating and mitigating features set out above, this was a planned purposeful breach of a court order by a father who considers he knows what is best for James. Mr Malone, you refuse to listen to the others or to accept a court or indeed that James’ Cafcass guardian, let alone

his mother, may know better than you what is best for James. That is what has led to the breach of this order.

52. Mr Malone, you have brought this sentence on yourself.
53. The starting point is one of six months immediate custody. I have reduced this by a third and given you full credit for your admission of the contempt. This is the least order I can impose, and it is commensurate with the gravity of what you did.
54. I have considered whether I could suspend the committal as argued for by Mr Caulfield. I have weighed up the factors for and against. The planned nature of the abduction is such that a suspended sentence is not appropriate in my judgment. An immediate custodial order is the only appropriate sentence reflecting the gravity of the contempt. I have taken into account the personal mitigation and the fact that you have never before served a custodial sentence.
55. Mr Malone, you will be committed to prison for four months in respect of the contempt you committed.
56. You will serve half of this period and then you will be released. You will be subject then to recall and the probation will supervise you for up to 12 months from your release.
57. I direct the order and the judgment shall be made available to the press and public. Both will be placed on the judiciary website.
58. There is a reporting restrictions order ensuring that the mother is not identified in any report of this case.
59. Mr Malone you now have 21 days in which to appeal without permission being required. Mr Caulfield will advise you about this.
60. This judgment is to be handed to the contemnor in prison.