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R (on the application of Prosser) v Secretary of State for the Home Department

Queen's Bench Division, Divisional Court

[2010] EWHC 845 (Admin) ; [2010] All ER (D) 125 (Apr)

21 April 2010

CATCHWORDS:

Extradition - Extradition order - Convention rights - Right to respect for private and family life - Prohibition of torture - Claimant's extradition to United States of America sought in respect of offences of fraud and child abduction - Claimant suffering from several conditions including severe depression and fibromyalgia - Secretary of State ordering claimant's extradition pursuant to warrant - Whether extradition process and trial in US would breach claimant's human rights - European Convention on Human Rights, arts 3 and 8.

INTRODUCTION:

In March 1998, the United States of America issued a warrant for the claimant's arrest. The warrant alleged that, in 1997, the claimant had procured US\$ 6,750 by fraud and accepted money for fictitious advertisements and, in 1998, that she had unlawfully abducted her daughter in contravention of a custody order in favour of the father. The claimant was arrested under the warrant in the United Kingdom in September 1998. She denied the 2007 offences but admitted the abduction charge. In 2000 and 2002, the claimant made representations to the defendant Secretary of State that she should not be extradited but, in 2004, her extradition was ordered under the US warrant. The claimant challenged that decision by way of judicial review and the order was quashed by consent in 2006, with the Secretary of State accepting that further medical evidence required a reappraisal of the decision. The medical evidence concerned, inter alia, the claimant's severe depression, fibromyalgia and Crohn's disease, as a result of which the claimant was recorded as being severely disabled, requiring a stair lift, a bath lift, a special motor vehicle and a specialist wheelchair. In December 2008, the Secretary of State decided to proceed with the extradition. In January 2009, the claimant sent the Secretary of State further medical reports (see [8]-[15] of the judgment) and in March the Secretary of State was informed that she had been admitted to hospital as a result of an exacerbation of her Crohn's disease. In July, however, the Secretary of State confirmed the decision to extradite the claimant, whereupon the claimant issued proceedings by way of judicial review.

She submitted, inter alia, that the process of extradition to and a trial in the US would severely exacerbate her depressive state and that the journey would cause her extreme pain both in travelling to and from airports and on the plane. She further submitted that there would be a severe risk of her suicide arising from the fact that she would have to be held in custody in the US, if only because she would have nowhere else to be and because only thus could she receive the necessary care and treatment. She contended that all of those factors would comprise inhuman and degrading treatment both domestically and in the US, in contravention of art 3 of the European Convention on Human Rights and that there would be disproportionate invasion of her private and family life in contravention of art 8 of the Convention.

The application would be dismissed.

On the facts, the instant case did not reach the level of severity necessary for a violation of art 3 of the Convention either as a domestic or as a foreign case. Further, in all the circumstances, her extradition would not be disproportionate in art 8 terms and it served the necessary democratic aim of preventing crime and maintaining public order by adhering to extradition treaties. Moreover, the claimant's case did not have striking and unusual features which would otherwise lead to the conclusion that it would be disproportionate to interfere with her art 8 rights (see [21]-[23], [31]-[33] of the judgment).

Bensaid v United Kingdom (Application 44599/98) [2001] 11 BHRC 297 considered; R (on the application of Tozhlukaya) v Secretary of State for the Home Department [2006] All ER (D) 155 (Apr) considered; R (on the application of Wellington) v Secretary of State for the Home Department [2008] All ER (D) 95 (Dec) considered; Norris v Government of the USA [2010] All ER (D) 256 (Feb) considered.

COUNSEL:

Hugh Southey QC (instructed by Birnberg Peirce & Partners) for the claimant.

Hugo Keith QC (instructed by the Treasury Solicitor) for the Secretary of State.

Alison Pryor Barrister.

PANEL: Sir Anthony May P and Foskett J