

## A (A Child) [2015]

### [2015] EWCA Civ 486

20/05/2015

#### **Barristers**

Justin Ageros

#### **Court**

Court of Appeal (Civil Division)

#### **Practice Areas**

Private Children Law

#### **Summary**

Mother's appeal against a child arrangements order for supervised contact following the making of 'serious findings' of fact against the father – appeal dismissed

#### **Facts**

Background

At a hearing in September 2014 HHJ Farquhar made findings that the father had been guilty of abusive sexual conduct towards the mother during the course of their marriage. He also made more limited findings as to three incidents of "low level" domestic violence.

At the subsequent welfare hearing in January 2015, HHJ Farquhar made an order providing for the child (aged 3) to have supervised contact with her father once a week, initially for one hour.

The Appeal

Before the Court of Appeal were the following cross-appeals:

(1) The father sought to appeal the findings of fact made against him in September 2014 – the application for permission was refused at an early stage of the hearing.

(2) The mother sought to overturn the welfare decision and replace it with an order for no contact for the time being, or at least until she had undertaken CBT. Her appeal was broadly based on the following grounds:

- a. That the judge had failed to afford any, or any proper, weight to the findings of fact that he had made in September 2014;
- b. That the judge had failed to have any regard to the required approach to domestic abuse encapsulated in *Re L (A Child) (Contact: Domestic Violence)* [2001] Fam 260 and in FPR 2010, PD12]; and
- c. That the judge gave insufficient weight to the psychiatric evidence before the court.

## Held

### The Judgment

During the course of the hearing, the mother continued to rely upon allegations, which she had made at the fact-finding, but in respect of which no findings had been made. The Court of Appeal reiterated that any allegations not proved on the balance of probabilities are not established facts in the proceedings and are not therefore to be relied upon in forming any further conclusions relating to a child's welfare. The mother had not sought to appeal the findings of fact and therefore the court had to proceed on the basis of the findings made.

In relation to the grounds of appeal the Court of Appeal found:

- a. Whilst it was plainly correct that the judge did not make any express reference to Re L or PD12J, the judge nevertheless conducted his analysis in a manner which was fully compatible with those requirements [paras. 49 – 56];
- b. It was clear that the judge had given full and proper consideration to each of the relevant factors necessary for the risk assessment required by CA 1989, s 1 and PD12J, including consideration for the findings that he had made [para. 59];
- c. The judge had been justified and sensible to observe at the end of the fact-finding judgment that the findings he had made did not establish that the father presents as any sexual or physical risk to the child or as a continuing risk to the mother and that therefore his findings did not rule out contact. The Court of Appeal found that there was plainly a difference between 'not ruling out' direct contact and actually ordering it and therefore his judgment at that stage did not indicate that he had reached an improperly premature conclusion on the issue [para. 58];
- d. Finally, the judge had been entitled to conclude that the opinion of the psychiatrist (who had suggested that there should be 6 sessions of CBT before the introduction of contact) was outweighed by the need not to delay the resumption of contact. The fact the judge decided against the psychiatric opinion did not establish that he had failed to accord proper regard to it – the evidence had in fact featured prominently in the judgment [para. 60].

The Court of Appeal considered that, to avoid any doubt that the court had approached matters in the required manner, it would be wise for any court dealing with a case where domestic violence or abuse has been established to make some express reference, at least, to PD12J in the judgment or record of decision.

## Permission

Family Law Week 