

Re G (Children) (Residence: Same-Sex Partner)

1 WLR 2305

26/07/2006

Court

House of Lords

Facts

G and W lived together in a lesbian relationship from 1995 to 2002. Wanting to have a family together, they arranged for G to be artificially inseminated, using sperm from an anonymous donor. She gave birth to two children, born in 1999 and 2001. In 2002 the relationship broke down, and the parties entered into relationships with new partners. In September 2003 W applied for an order for contact and a shared residence order, and an order was made for alternate weekend and holiday contact. The judge rejected W's proposal for a shared residence order, largely because of hostility between the parties, but the Court of Appeal allowed W's appeal against that refusal. Shortly afterwards, G moved with her new partner and the children to Cornwall. W, who lived in Shropshire, applied for the residential arrangements to be changed and the children's primary home to be with her. The judge, who said that she had no confidence that if the children remained in Cornwall G would promote their essential close relationship with W and her family, ordered that, while the shared residence order remained in force, W should have parental responsibility for the children and her residence should be their primary home. The Court of Appeal dismissed G's appeal.

Held

Held , allowing the appeal, that the welfare of the children was the paramount consideration; but that in determining what would be best for them at the present time and in the future the fact that G was their natural mother was an important factor; that the judge and the Court of Appeal had given insufficient weight to that factor; and that, accordingly, the shared residence order should be varied to provide for the children's primary residence to be with G (post, paras1 -5 ,30 -31 , 44).

Per curiam. While it may well be in the best interests of children to change their living arrangements if one of their parents is frustrating their relationship with the other parent who is able to offer them a good and loving home, this is unlikely to be in their best interests while that relationship is in fact being maintained in accordance with the court's order (post, para 44).

Dicta of Lord MacDermott in J v C [1970] AC 668, 710-711, 715, HL(E) applied.

Decision of the Court of Appeal [2006] EWCA Civ 372; [2006] 1 FCR 681 reversed.

Permission

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