

L v K (2005)

[2005] EWCA Civ 918

01/07/2005

Barristers

Matthew Persson

Court

Civil Division

Facts

A trial judge had erred in the exercise of his discretion by ordering the appellant father to return the parties' children to the respondent mother in circumstances where the father had made serious allegations against the mother and the judge had failed to at least carry out peremptory investigations into those allegations.

The appellant father (F) appealed against an order whereby his three youngest children had been ordered to be returned by F to the respondent mother (M). The parties had four children aged between 7 and 15. The parties had agreed that M was to have residence of the three youngest children, and that the eldest child was to live with F. However, the children had spent a period of contact with F during which F claimed that they had made statements to him which gave rise to F making serious allegations against M. On that basis F refused to return the children to M and immediately applied to the court for a residence order. The judge ordered the immediate return of the three youngest children to M pending a hearing into those allegations. In the meantime the judge ordered that investigations be carried out into the allegations. Subsequent to the judge's order F agreed that the youngest child should be returned to M, as she had been distressed by not being with her mother. Further, one of the children (W) had expressed a strong desire to remain with F, but there had been no inquiry into the wishes of the remaining child (S). F argued that (1) the judge had erred in the exercise of his discretion by failing to at least carry out a peremptory investigation into the allegations before ordering the return of the children to M; (2) in light of W's desire to remain with F, the judge's order with regard to her, and also in regard to S, should be set aside.

Held

(1) The exercise of the judge's discretion was open to criticism. The allegations that had been made by F were serious, and to some extent had some force in light of other evidence that was before the judge. The judge should at least have put into place peremptory investigations so that he could be sure of the facts and the wishes of the children. (2) In light of matters that had occurred since the judge's decision, and taking into account an agreement reached between the parties as to the youngest child, the only remaining matters were to exercise the discretion afresh in relation to W and S. Since W had expressed a desire to remain with F, based on matters relating to the allegations made, the appeal would be allowed

and an order made that F have interim residence for her until the further hearing. In relation to S, since no investigation had been carried out into her wishes, an order would be made granting F interim residence until that investigation had been carried out. To that extent the appeal would be allowed in part.

Appeal allowed in part.

Permission

Lawtel 