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Re Uddin (A Child)

[2005] 1 WLR 2398

08/12/2004

Barristers
Catherine Wood KC, MCIArb

Court
Court of Appeal

Facts
The mother applied for permission to appeal from a High Court determination that she had attempted to cause serious injury to her child. That application was refused. The mother subsequently applied for permission to reopen the appeal under CPR r 52.17 on the ground that fresh medical evidence and newly published research cast doubt on the expert evidence on which the High Court judge had relied.

On the mother's application for permission to reopen the appeal

Held
Held , dismissing the application, that the principles on which an appellate court on an appeal brought in the ordinary way allowed the admission of new evidence were of an altogether different and less demanding order from what had to be shown to invoke the residual jurisdiction to reopen a concluded appeal; that that jurisdiction was by no means solely concerned with whether the earlier process had or might have produced a wrong result, but rather, primarily, with special circumstances where the process itself had been corrupted; that although the case where the process had been corrupted was the paradigm example, it was not the only case where the jurisdiction to reopen an appeal could be invoked; but, that if the discovery of fresh evidence was ever to justify reopening a concluded appeal the injustice had to be so grave as to overbear the pressing claims of finality in litigation; that it had to be shown, not merely that the fresh evidence demonstrated a real possibility that an erroneous result had been arrived at in the earlier proceedings, but that there existed a powerful probability that such a result had in fact been perpetrated; that, in the circumstances, the case was not one in which the integrity of the earlier litigation process had been critically undermined and it had not been demonstrated that a wrong result had been arrived at; and that, accordingly, there were no grounds on which to reopen the appeal (post, paras18 -22 , 23 ,95).

Taylor v Lawrence [2003] QB 528, CA applied.

Ladd v Marshall [1954] 1 WLR 1489, CA considered.

Per curiam. A party in a public law case is not entitled to attempt to dispense with, sideline or marginalise the guardian on the ground that, in an earlier part of the case, the guardian's

recommendation had been adverse to that party. Other than in exceptional circumstances of specific bias or impropriety, the independence of the guardian may not be impugned as a result of the decision of the guardian to support the proposed care plan of the local authority (post, para 99).