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B v B (Residence: Condition Limiting Geographic Area)

[2004] 2 FLR 979

13/05/2004

Barristers
Kate Branigan KC

Court
Family Division

Facts
The mother applied for leave to remove the child, then aged 6 years old, permanently from the jurisdiction to Australia. The application was withdrawn 3 months later, but the mother made a second similar application. This was pursued until she was given permission to withdraw it. In the interim, and on hearing that the mother was planning to move to the north of England, the father applied for a specific issue order to determine the child's future schooling. He also issued an originating summons in wardship. The mother wished to move to Newcastle and had found two schools for the child and her older brother, a child from a previous relationship. The father wished the child to remain at school in the area in which she was currently living. He was paying maintenance and school fees for both children. He believed that the mother was proposing to move to create as much distance as possible between him and the child and ultimately cause difficulties in the contact arrangements. There had been protracted and contentious litigation between the parties in relation to contact, with two detailed contact orders. In two judgments in the context of the contact litigation, the district judge expressed firm views about the mother's intransigence and unwillingness to co-operate with the father. The children had told the children and family reporter that the mother wanted to go to Australia to get away from the father.

Held
Held – discharging the wardship and adjourning the father's specific issue order – making a residence order in the mother's favour with a condition that she and the child should reside within an area bounded by the A4 to the north, the M25 to the west and the A3 to the south and east until further order – amending the previous contact order and directing that the parents should agree the child's school from September 2004 –

(1) The real question was whether the proposed move was in the child's best interests. A move in this case was a move to a geographically distant location where all contact arrangements would depend on the mother ensuring that the child would board an aeroplane for London. The mother was so hostile to contact and to the father that she could not be relied upon to promote contact. She had misled the court and the father on a number of very serious issues (see paras [19], [22], [23]).

(2) A move to a school out of the geographical area where she currently lived would not be in the child's best interests. It would be in her best interests to remain in an area where appropriate schooling was available and, importantly, where there was a greater prospect of contact continuing (see para [24]).

(3) The court had the power under s. 11(7) of the Children Act 1989 to impose conditions upon any residence order made. The geographical condition proposed was not a permanent prohibition on relocation. It was what was needed now. Section 11(7) conditions were only to be attached in exceptional circumstances. This was a highly exceptional case. The mother had made two applications to go to Australia, with the prime motive being to get away from the father (see paras [25], [26], [28]).

(4) As regards wardship, the powers which the court had under the Children Act 1989 were adequate for the purpose of the dispute between the parents and more than adequate to protect the child's interests and ensure that her welfare was promoted (see para [30]).

(5) In relation to the issue of the costs of the mother's abandoned application for leave to remove permanently from the jurisdiction, there was no reason to depart from the general principle that there should be no order to costs in children cases (see para [32]).