

A v. A (Shared Residence)

[2004] 1 FLR 1195

04/02/2004

Barristers

Rex Howling KC

Court

Family Division

Facts

The parents of two children aged 9 and 11 separated and divorced in bitter and protracted proceedings. The children resided with the mother and had contact with the father. The father applied for joint residence and defined contact complaining that the mother was making unilateral decisions in respect of the children's health and education. Following his objections to a proposed school change, the mother asserted that the younger child, the girl, was frightened of the father and stopped contact. The National Youth Advisory Service (NYAS) recommended that contact take place. Contact was directed by the court with the parties' consent, but did not take place. A further report recommended interim residence to the father, further fact finding in respect of allegations of sexually inappropriate behaviour by the father and consideration of a s. 37 order on the basis that the children were suffering significant harm. The case was immediately transferred to the High Court. Contact was ordered and a subsequent fact finding hearing found the father was not a risk to the girl. The mother failed to accept the court's findings, continued to have the girl questioned by a friend and applied to the court to have contact suspended. The application was dismissed and an interim residence order made to the father with a full hearing listed for December 2003. By that time the children were spending 50% of their time with each parent and this was acceptable to the parents and children alike. The father sought to retain a sole residence order while the mother wanted a shared residence order. Both parents wished the order to last until each child was 18 with a restriction on further applications.

Held

Held – making shared residence orders until each child was 18 and an order under s. 91(14) of the Children Act 1989 –

(1) In terms of the time the children spent in each of the parents' homes and the importance of each home to the children, this was a prime case for a shared residence order. Because the parents were incapable of working in harmony a court order which reflected both the reality of the children's lives and the fact that the parents were equal in the eyes of the law and had equal duties and responsibilities towards their children was needed. Additionally, there was a risk that a sole residence order could be misinterpreted as enabling control by one parent when what the family needed was co-operation as recognised by a shared residence order.

(2) The parents and court agreed that the court had no further role to play in the case and an order under s. 91(14) of the Children Act 1989 reflected that agreement.

(3) The requirements of s. 9(6) of the Children Act 1989 as to the exceptional circumstances needed before making a residence order extending beyond a child's sixteenth birthday were satisfied in this case.

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