

Re B (Disclosure to other Parties)

[2001] 2 FLR 1017

19/07/2001

Barristers

Private: David Williams QC

Court

Family Division

Facts

The mother's four children were in the care of the local authority under interim care orders. The mother had been married to the father of the eldest two, had never married the father of the third child and was currently married to the father of the fourth child. The unmarried father of the third child was joined as a party to the care proceedings, alongside the other two fathers, and for the purposes of his participation wished to see all the filed documents. He was seeking contact with his child, now aged 6, although his parental responsibility and contact applications had been dismissed in 1999. The mother alleged that serious violence had been inflicted by him on both her and the children, including his own child. She wished to limit the ambit of disclosure, alleging that it would violate her and the children's privacy. The case as it developed was one of conflict between the litigant's asserted right to a fair trial under Art 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and the mother's and her children's asserted right to privacy under Art 8.

Held

Held – authorising non-disclosure of certain documents –

(1) An entitlement to a fair trial under Art 6 of the European Convention was absolute but that did not mean an absolute and unqualified right to see all the documents. Since the Human Rights Act 1998 came into force, it was no longer the case that the only interests capable of denying a litigant access to documents were the interests of children involved in the litigation. The interests of anyone else who was involved whether as victim, party or witness and who could demonstrate that their Art 8 rights were sufficiently engaged, could also have that effect. *Re D (Minors) (Adoption Reports: Confidentiality)* considered.

(2) Although the litigant was *prima facie* entitled, under Art 6, to disclosure of all materials which might be taken into account by the court, the Art 8 rights of the mother and her husband as well as of the children had to be afforded due respect. Consequently, a limited qualification of the right to see the documents may be acceptable if directed towards that clear and proper objective. Non-disclosure must be limited to what the situation imperatively demanded and was justified only when the case was compelling or strictly necessary, with the court being rigorous in its examination of the feared harm and

any difficulty caused to the litigant counterbalanced by procedures designed to ensure a fair trial.

(3) The litigant's right to a fair trial would not be impeded by being denied access to documents relating to the police evidence about the two older children or psychiatric and psychological reports on those children and the mother and her husband, and the need to show proper respect for the Art 8 rights of those parties required such non-disclosure. The harm that would be suffered by disclosure would be wholly disproportionate to any legitimate forensic purpose served.

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