

Harris v Harris; Attorney-General v Harris

[2001] 2 FLR 895

27/04/2001

Barristers

Catherine Wood KC, MCI Arb

Court

Family Division

Facts

Following the parents' divorce, the three children resided with the mother under a residence order, with regular contact to the father. The father was dissatisfied, and sought increased contact and, ideally, residence. He went to considerable lengths to see and speak to the children between agreed contact visits, and made repeated applications to the court to change the contact and residence arrangements. Unhappy with the professionals involved in his case, he staged public demonstrations against those of the lawyers, social workers and doctors whom he felt were against him, pressuring them in a number of ways. Eventually all three children refused to have further contact visits with the father, claiming that during contact he was placing unacceptable pressure on them, and was stalking and harassing them and the mother. In the High Court, the husband stated that if he did not obtain the orders he wanted, he would: ignore all court orders; make every opportunity to see the children; stage rooftop demonstrations at public buildings to attract maximum publicity; move into the children's street; send messages by any means available; and follow the children wherever they went. The judge ordered indirect contact only and committed the father to prison in respect of 30 breaches of injunctions. The father was ordered not to seek publicity for his case in a way which identified the children, their address or their school, and an order prohibiting such publicity was made *contra mundum*. A further order prohibited the father from discussing the family circumstances with the media. On release from prison there were a further 30 breaches of injunctions by the father within less than 5 months and he was given a suspended sentence. After a 6-month period, monthly contact sessions were re-introduced, supported by further injunctions including the setting up of an exclusion zone. The eldest child refused to attend. At the next hearing the father's contact was reduced in response to expert reports which suggested that the father's continued questioning of, and pressure on, the children was causing them emotional harm. The court rejected the arguments that the mother was sabotaging contact, noting that she obeyed all the contact orders, and that professionals observed no attempted manipulation of the children. The father then began a series of serious and continuing breaches of the court's orders. He entered the exclusion zone on a number of occasions, sent notes to the children, renewed his campaign of public protests, put pressure on the professionals involved, including throwing a brick through the window of one expert, and made a large number of applications to the courts. The fuel line on the mother's car was cut and her car vandalised, although there was no evidence to link these incidents with the father. All three children now refused to attend contact. The mother sought to have the father committed for contempt, and the father sought a

new contact order, with discharge of the various injunctions in place.

Held

Held – reducing indirect contact, making a specific issue order dispensing with any requirement for the school to obtain the father’s consent for school activities, restricting the father’s right to make further applications, discharging the Official Solicitor, continuing the injunctions, but amending the injunction relating to publicity –

(1) There was no implacable hostility on the mother’s part, and the father’s non-contact with his daughters had been directly brought about by his obstinacy, pig-headedness and blindness. The father’s behaviour had caused the children such emotional strain that direct contact could not take place, and even indirect contact had to be significantly reduced. Any benefits which the girls derived from direct contact were heavily outweighed by the damage which such contact had inflicted upon them.

(2) It was unacceptable that the father had to consider six different court orders in order to identify all the injunctions in place. The proper practice when drawing up an order amending an existing injunction was to express the new order as: (a) discharging the earlier injunction; and (b) granting a new injunction in the desired terms, incorporating the amendments. The need for these injunctions to remain in place was overwhelming in order to protect the mother and the children. A single order was required, setting out all the present injunctions with minor amendments.

(3) The father had continued to conduct the litigation in a wholly excessive, oppressive, unreasonable and abusive fashion, notwithstanding the s 91(14) orders which had been made. As a weapon of last resort, the court was entitled to act to prevent this abuse of process. No party was to commence any proceedings arising from these matters without leave, any application for leave was to be filed with the court only and would be dealt with on paper. This order imposed serious restrictions on the father’s rights to bring proceedings, but the father had persisted in making groundless applications, and it was in the best interests of the children that there be a complete cessation of the litigation for the time being to end the quite intolerable and wholly unacceptable strain which the litigation was causing them.

(4) The court should only exercise its powers to restrain publicity under the inherent jurisdiction, if and to the extent that the automatic restraints provided by the Administration of Justice Act 1960, s 12, the Contempt of Court Act 1981, s 2 and the Children Act 1989, s 97(2) were inadequate to protect the child from harm and if the interests of the child could not properly and adequately be protected by an order under the Children and Young Persons Act 1933, s 39. Given that s 97(2) of the 1989 Act now provided automatic protection of the child’s identity in all cases where the child was involved in proceedings, in the future there would be fewer cases in which it was legitimate to exercise the inherent jurisdiction, particularly contra mundum. Those who sought to obtain an injunction contra mundum in the standard form, that is combining an injunction restraining identification and an injunction restraining solicitation, had to demonstrate: (a) that it was necessary for there to be an injunction protecting the identities of each of the categories of person referred to; and (b) quite separately, that it was necessary for there to be an injunction restraining solicitation in relation to each of the categories of person referred to. It should not be assumed that, because there was a demonstrated need in relation to identification, that there was necessarily also a need to protect those persons from solicitation. In this case, given the father’s involvement with the media, there was ample evidence that the court needed to exercise its inherent jurisdiction to protect the children from the harassment to which they would otherwise be exposed.

(5) It was not a contempt of court to engage in reasoned criticism of the judicial system or the judiciary, even if the criticism was expressed in vigorous, trenchant or outspoken terms. The court should not,

even in a case involving children, exercise its inherent jurisdiction to prohibit such criticism. The contra mundum and in personam injunctions should be qualified by appropriate words making it clear that, subject to appropriate safeguards, the injunction was not of itself to prevent the publication or public display of information that the father, by name, had been involved in court proceedings concerning his contact with his daughters. It was wrong in principle to prevent the media and the father from using his name and photograph in connection with his campaign of protest, and neither the use of the father's name, nor his photograph, would inflict on his children any damage such as could justify the extension of the court's protective powers over them to prevent it.

The father was an unprincipled charlatan, but the remedy for his antics was not a futile attempt to gag him, but the truth, which was why the judgment was being given in public. The children's own best interests would be furthered by the public being told the truth.

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