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D v D (Shared Residence Order)

[2001] 1 FLR 495

20/11/2000

Court
Court of Appeal

Summary
The parents had three children. The marriage broke down in 1995 and a pattern was quickly established whereby the children spent substantial periods of time with each parent. However, the arrangements were subject to a high degree of animosity between the parents, and frequent legal proceedings to sort out their details. In 2000, the father applied for a 'joint' (ie shared) residence order, arguing that he was being treated as a second-class parent by authorities with whom he had to deal regarding the provision of information etc about the children. The mother sought a change in the contact pattern. The trial judge accepted the father's case and made a shared residence order. During the summer, problems arose over the children's return to the mother after a holiday abroad and the mother applied for an order that contact be supervised or suspended. The judge dismissed the application and ordered her to pay the costs of the hearing. The mother appealed.

Held
Held – dismissing the appeal but making no order on the mother's application to suspend the contact –

(1) Contrary to earlier case law, it is not necessary to show that exceptional circumstances exist before a shared residence order may be granted. Nor is it probably necessary to show a positive benefit to the child. What is required is to demonstrate that the order is in the interest of the child in accordance with the requirements of s 1 of the Children Act 1989.

(2) While guidance from the Court of Appeal should be valuable to first instance judges in setting out the principles to be followed, it should not inhibit them from making the right decision on the individual facts of each case, where the judge exercises his discretion and decides what is best for the children in that particular case.

(3) The courts are reluctant to make a costs order in cases about children unless one of the parents has behaved totally unreasonably in bringing the proceedings. The father had wisely undertaken not to enforce the costs order the judge had made and the mother had accepted that the appropriate outcome was to make no order on her application.