

Re A (Contact: Separate Representation)

[2001] 1 FLR 715

20/11/2000

Barristers

Rex Howling QC

Court

Court of Appeal

Facts

Following the parents' separation both parents sought care of the child. The judge was sufficiently concerned by the court welfare officer's report to order a s 47 report under Part IV of the Children Act 1989, and to invite the local authority to consider whether they should intervene in the proceedings. The father had a number of criminal convictions, including possession and supply of drugs, and had a background of drink. The mother had a history of depression. One of her older children had been accommodated by the local authority on a number of occasions, and another child had had problems with drugs. However, the s 47 report did not disclose matters of real concern, and the judge eventually made a residence order in favour of the mother, with a detailed contact order to the father. He also made a family assistance order for 6 months, at the end of which the court welfare officer reported that the contact between the child and the father was good and should continue. However, when the father applied for staying contact the mother raised allegations of sexual abuse of the child and of the mother's older children. Nothing happened in relation to the allegations, other than psychiatric and psychological reports on the parents, and at the adjourned hearing the judge made a contact order. After one contact session the mother refused to allow the father further contact, and failed to attend subsequent hearings at which visiting and staying contact were ordered. The mother approached the National Youth Advocacy Service (NYAS), which sought leave to intervene and to act as guardian ad litem to the child, who was now 4¹/₂ years old. The NYAS appealed the judge's refusal to grant leave.

Held

Held – allowing the appeal, transferring the case to the High Court in London, inviting the Official Solicitor to act as guardian ad litem, suspending the previous contact orders and making an order for supervised contact for 2 hours once a month – in light of the particular problems facing both parents, of the allegations of sexual abuse, and the potential conflict of interest between each parent and the child, it was appropriate to add the child as a party to the contact proceedings, and to appoint a guardian ad litem for her. The NYAS was a well-known and well-respected service, and in principle there was no objection to use of respectable charitable organisations such as the NYAS to represent a child, at least pending arrangements made when CAFCASS was established. In this case the Official Solicitor would be invited to act as guardian, because although there was no doubt that NYAS would act independently, there was a risk that the father would perceive NYAS as acting on the mother's behalf, because of the degree of contact which had already taken place between the mother's family and the Service.

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