

Re B (Contact: Stepfather's Opposition)

[1997] 2 FLR 579

11/06/1997

Court

Court of Appeal

Facts

J was born in 1988. Her parents separated a month after her birth, and were subsequently divorced. The mother remarried in India in 1992, and returned to England in 1993. After she had returned, J's father indicated that he wanted contact with J and issued proceedings in the county court seeking a contact order. There had been no contact between J and her father from the time of his separation from J's mother to the time he issued his contact application. J's stepfather made a statement in the contact proceedings indicating that he was strongly opposed to J having contact with her natural father. At that time, J had not been informed that her stepfather was not her true father. The application for contact was adjourned in the county court and transferred to the Principal Registry. The Official Solicitor was invited to act as J's guardian ad litem. A hearing before Hollis J in 1995 resulted in there being no order on the father's application for contact, the mother undertaking not to remove J from the jurisdiction without the leave of the court, and to inform J of her real father's identity if asked by her. In early 1996 a further contact application was made by the father, by which time J had learned that her stepfather was not her natural father. At a directions hearing before Johnson J the stepfather indicated that if the proceedings continued he would reject not only J but her mother as well. Counsel for the Official Solicitor indicated that there was not merely a risk, but a substantial probability that if the case proceeded further J would be adversely affected by her home becoming divided. Although the father was not present at the directions hearing, and had not been forewarned that his application might be dismissed on that occasion, Johnson J dismissed the contact application and made an order that not further applications relating to J be made by her father without the leave of the court. The father appealed.

Held

Held – dismissing the appeal –

(1) The issues in the appeal boiled down to the short question of whether the judge below had been justified in summarily dismissing the application by the father for contact even though the father had neither been present nor had had any warning that his application might be dismissed, where the sole ground for the dismissal was the attitude of the stepfather which had never been tested in cross-examination.

(2) As the father had conceded, in an appropriate case an application for contact could be dismissed on a directions hearing. In the exercise of that power, the court was obliged to bear in mind that the more Draconian the order and the more unique the situation, the greater the need for the court to be satisfied that grave harm was virtually certain to befall the child if the court followed the usual procedure and investigated the matter on its merits.

(3) The judge below had concluded that if the matter was not disposed of summarily, there was a real risk that the child would be deprived of a stable and satisfactory home. No criticism of the judge for reaching that conclusion could be sustained. Any contact which might have been ordered would have been of a limited nature and, without detracting from the importance of contact between a father and his child, would not have had a significant impact on J's well-being when compared with the risk to J's family unit. On the material before the judge it was not a case in which there was any suggestion that the stepfather was acting anything other than bona fide according to his beliefs in adopting the unyielding approach which he had, and there was no suggestion that his intention had been to blackmail the court.

(4) The judge below had been placed on the horns of a fearful dilemma. He had been acutely conscious of the injustice to the father but equally aware of the risk of harm to the child if her stepfather implemented his threat. There was force in the father's submission that the court below should have insisted on hearing directly from the stepfather, and that the father should have had the opportunity of hearing from the judge as to why it was crucial that his daughter be denied contact with him. The judge had not erred in principle in exercising his discretion in the way he did. Indeed, whichever way he had exercised his discretion he would have been open to criticism. Since there was no right answer to the problem confronting the judge, it was impossible to conclude that his decision was beyond the generous ambit within which reasonable disagreement was possible.

(5) The father had, on appeal, been granted leave to introduce fresh evidence in a number of respects. The additional evidence would not and should not, however, have caused Johnson J to have taken a different view, and did not invalidate the reasons given by the judge for his decision. The father's appeal would be dismissed, although it was emphasised that the stepfather's obduracy would not prevent contact between J and her natural father when J's interests demanded it.

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