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Hampshire County Council v S

[1993] 1 FLR 559

13/10/1992

Court
Family Division

Facts
At the time of the appeal the child was nearly 5 years of age. In March 1992 a care order had been made to the local authority with a contact order to the parents. Provision had been made for the child's rehabilitation with the parents, which had included staying contact to commence the following month. The local authority had subsequently become concerned as to the effects of staying contact on the child. The local authority had refused contact for 7 days, pursuant to s 34(6) of the Children Act 1989, and had then applied to the family proceedings court for an order reducing contact between the child and the parents. It had been agreed at a previous directions hearing that only the issues that related to the education of contact would be considered at the interim hearing. An interim order was made which had reduced the parents' contact substantially. The justices had made the order on the parties' submissions and had not read the statements filed by the local authority pursuant to r 17 of the Family Proceeding Courts (Children Act 1989) Rules 1991 or the report of the guardian ad litem. No proper reasons had been given by the justices prior to the order being made. It had not been possible for the final hearing to take place until the following November. The parents appealed against the interim order.

Held
Held – allowing the appeal –

(1) Justices should bear in mind that they are not required to make a final conclusion at an interim hearing. An interim order or decision will usually be required to establish a holding position, after weighing all relevant risks, pending the final hearing. Nevertheless, they must always ensure that the substantial issue is tried and determined at the earliest possible date.

(2) If justice find they are unable to provide appropriate hearing time when an urgent interim order may have to be made, they must consider the transfer of the proceedings laterally under FPC (CA 1989) R 1991, r 14(2)(h).

(3) Justices should rarely make findings as to disputed facts in an interim hearing.

(4) Justices should bear in mind that the greater the extent to which an interim order deviates from a previous order or the status quo, the more acute the need for an early final hearing date. The preferred course should be leave the child where it is with a direction for safeguards and the earliest possible hearing date.

(5) When an interim order may be made which will lead to a substantial change in a child's position, the justices should consider permitting limited oral evidence to be led and challenged by cross-examination. The evidence must be restricted to the issues which are essential at the interim stage. To this end, the court may well have to intervene to ensure that this course is followed and that there is not a 'dress rehearsal' of the full hearing.

(6) Justices should, if possible, ensure that they have before them the written evidence of the guardian ad litem, who should, if there are substantial issues between the parties, be at the court to give oral advice. A party opposed to a guardian's recommendation should normally have the opportunity to put questions to the guardian.

(7) Justices must always comply with the mandatory requirements of the rules.

(8) If the justices are delayed in the preparation of their written findings of facts. and reasons, especially when the length of the hearing lasts beyond normal hours, they should adjourn the making of the order or giving of the decision until the following court day or earliest possible date, when one of their number is permitted to return to court to state the decision, findings of fact and reasons (r 21(6)).

(9) When granting interim relief, justices should state their findings and reasons concisely, and it may be helpful if they summarise briefly the essential factual issues between the parties.