

Re A (Joint Residence: Parental Responsibility)

[2008] 2 FLR 1593

30/07/2008

Barristers

Kate Branigan KC
Barbara Mills KC

Court

Court of Appeal

Summary

In circumstances where a mother's former partner was not the biological parent of her child but where the child had been brought up by him whilst they cohabited the recorder was right to make a joint residence order so that the partner acquired parental responsibility which would prevent the mother from marginalising his influence over the child.

Facts

The appellant mother (M) appealed against an order granting the respondent (X) joint residency and parental responsibility in relation to her child (H). H had been born in 2002 whilst M was cohabiting with X. For the first two years of H's life he was brought up by them on the assumption that X was his biological father. Following the breakdown of their relationship X issued proceedings for parental responsibility, residence and contact. A CAFCASS report was prepared which recommended joint residence and staying contact. Following that report it emerged that X was not H's father, which meant that the only route by which he could acquire parental responsibility was via the provisions of the Children Act 1989 s.12(2). It was M's case that a joint residence order conferring parental responsibility on X was inappropriate, unnecessary and would be used by X to interfere in an officious and controlling manner. At the hearing various orders were made and M gave an undertaking not to move from the area where both parties lived. The recorder deferred his decision in relation to the joint residence order for six months due to M's attitude. At the later review the recorder held that X had exercised, and should continue to exercise, the role of H's father and that he should be the beneficiary of a joint residence order as the only means by which he could avoid being marginalised and acquire parental responsibility. A final order, made to that effect, also permitted M to relocate provided she made H available for contact on alternate weekends and for holiday periods. The order also provided that M was prohibited from introducing H to his natural father, who had informed the court that he wished to have no part in the proceedings and each party was prohibited from bringing further applications without permission under s.91(14) of the Act. M submitted that the recorder had erred in principle and as a matter of law in his overall approach to the applications and as a result had made a series of orders that were fundamentally flawed. M contended that the recorder had failed to give any proper weight to her position as H's natural and legal parent as against X, who was not.

Held

HELD: (1) The making of a joint residence order was a legitimate means by which to confer parental responsibility on an individual who would otherwise not be able to apply for a freestanding parental responsibility order, as was the case in respect of someone who was not the natural parent, H (Shared Residence: Parental Responsibility), Re (1995) 2 FLR 883 CA (Civ Div) and G (Children) (Residence: Same Sex Partner), Re (2005) EWCA Civ 462, (2005) 2 FLR 957 considered. It was clear that the reason a joint residence order was made was not for the purpose of recognising the reality of equal or near equal sharing of residential time between the parties. The recorder clearly intended and emphasised that M was, and should remain, the primary carer albeit with generous contact to X. The joint residence order was made for the purpose of conferring on X the parental responsibility that went with it and which the recorder considered was merited by X, whose role he did not wish to see marginalised or diminished. (2) The order was made on the basis of the evidence that despite opportunities presented to M from the time of the first order her antipathy towards X's exercise of any parental role or function and her desire to marginalise his influence over H had continued. The recorder also held that M's desire to move was motivated by the intention of marginalising a relationship which was in H's best interests. A parental responsibility order was necessary in order to secure the position of X as well as to recognise the nature of his beneficial influence and relationship as a social and psychological parent to H. The recorder had plainly considered the order desirable both as an appropriate recognition of the role of X and as a clear message to the parties. There was no error of principle in his reasoning or approach. (3) The recorder had not said or done anything to undermine M's position as biological parent albeit he made findings that were not in accordance with her wishes. M's status was clearly recognised as a feature which entitled her to be the primary carer of H. At the same time the recorder emphasised the role of X as the only father figure H had ever known. The purpose of his order was to require M, as biological parent, to recognise the role of X as H's social and psychological parent in circumstances where, for the two years prior to their separation, she had herself engineered and recognised his role as father only to repudiate it once it became apparent that the CAFCASS officer was recommending a joint residence order, G (Children) (Residence: Same Sex Partner), Re (2006) UKHL 43, (2006) 1 WLR 2305 considered. (4) The order under s.91(14) of the Act was deleted from the order as X had never sought such an order and neither party had been invited to address the recorder on that point.

Appeal allowed in part

Permission

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