

RE F (CHILDREN) (2006)

[2007] 1 FLR 65; [2006] EWCA Civ 792

18/05/2006

Court

Court of Appeal

Summary

A matter concerning the reinstatement of contact between two children and their father in circumstances where the father had been accused of sexual assault was remitted for retrial where the judgment of the trial judge was so lacking in reasoning and substance that it presented at least an appearance of not having engaged fully with the important issues in the case.

Facts

The appellant mother appealed against an order providing for the reinstatement of contact between two children and their father (F). F had applied for contact with two of his children. During the trial three allegations were made that F had sexually abused his children and other children. At trial a large amount of the evidence, including video interviews of two of the alleged victims, was only produced on the second day of the trial with the result that the trial judge never saw the videos in their entirety, despite being invited to form a view of the credibility of the young people being interviewed in those videos. The judge did not have available to him any expert guidance on the subject of inherent reliability or otherwise of the allegations that had been advanced to him. The judge found none of the allegations proved. M submitted that the reasoning that underpinned the judgment of the court below was so inadequate that it gave all the appearance of a case never really having been tried at all.

Held

HELD: (1) It was very important that the appellate court had in mind its proper role in relation to appeals that challenged factual conclusions of judges, both in terms of the fact that the judge had thought carefully and had considered all the written and oral evidence. The court also had to bear in mind that an experienced judge knew what he had to take into account and dealt with matters accordingly, *Piglowska (Ewa) v Piglowska (Henryk)* (1999) 1 WLR 1360 applied. (2) In the instant case the judgment of the trial judge was so lacking in reasoning and substance that it presented at least an appearance of not having engaged fully with the important issues that were being ventilated and it was wholly deficient in explanations as to how or why he had arrived at the conclusions that he had. A particular concern was the absence of explanation as to why the judge disbelieved two of the witnesses in relation to the second allegation. Also the judge had failed to explain what he had meant when he said that, although he was essentially credible, F's credibility had been dented, and had failed to explain the implications of that conclusion. In addition the judge had made a number of adverse findings against F based on text and telephone communications with two of the alleged victims, which he described as inappropriate and wrongful, but had failed to consider the implications of those findings. In relation to the third allegation it

was impossible to work out from the judgment whether the judge had accepted that the victim had made the allegation that her mother claimed she had made, whether the allegations were consistent with any other evidence and why it was that the evidence was not capable, even at its highest, of sustaining the allegation that was being made by the mother. For those principle reasons and the overall impression created by the inadequacy of the judgment, the judgment was insupportable in the form in which it presently stood. The matter was remitted for a retrial. F was entitled to ask the court to reconsider the interim position in relation to contact.

Appeal allowed.

Permission

Lawtel 