

Re K (Sexual Abuse: Evidence)

[2009]1 FLR 921; [2008] EWCA Civ 1307

09/10/2008

Court

Civil Division

Summary

In private law children proceedings, a judge had erred in aborting a hearing concerning allegations of inappropriate sexual behaviour by a father in the presence of his child, despite a lack of consistency and accuracy in the available evidence.

Facts

The court was required to determine an appeal against a judge's decision to abort a hearing in private law children proceedings in which parents sought substantial rights and responsibilities in relation to the children of the family. The hearing concerned allegations of inappropriate sexual behaviour by the father in the presence of one of the children (E). The allegations had resulted from a conversation between E, when aged four, and a school assistant (X), of which no contemporary record had been taken. Further conversations took place between E, Social Services and a police officer, but again no contemporaneous records were kept. During a recorded interview, E had complained of her father's "rude" behaviour. During police interview seven months after her initial conversation with E, X was unable to recall E's exact words as regards the precise acts complained of. At the start of the hearing, an expert witness stated that whilst it was possible that E had been exposed to inappropriate sexual experiences, it was equally possible that she had not. The judge declined to hear further evidence and aborted the hearing, on the ground that she was unlikely to be able to reach any positive conclusion on the application of the standard established in *B (Children) (Sexual Abuse: Standard of Proof)*, *Re* (2008) UKHL 35, (2009) 1 AC 11, because there was a lack of consistency, accuracy and clarity about what had been said during E's first disclosure to F.

Held

It was impossible to support the judge's reasoning. The evidence was suggestive of inappropriate exposure of a child to adult sexuality and required judicial investigation and determination. Although it would have been extremely difficult for the judge to arrive at a positive finding that would meet the high probative standards set in the House of Lords authorities, it was crucial for her to have heard, as a minimum, the evidence of X and that of each of E's parents, *Re B* considered. The judge had responsibility for the management of a very difficult family breakdown, and needed to evaluate each of the parents in relation to the primary issue and possibly also wider issues that had been raised. On the facts, and in light of the core concerns which existed as regards E's words to X and to the police officer, together with her words in the recorded interview, the judge was premature in aborting the fixture. Those concerns were not negated by what had been the failings of proper procedure, nor by inevitable

differences in the recollection of what E had said to the several adults involved. The core concerns simply demanded a fuller investigation. The appeal was allowed, and the case remitted to the judge.

Permission

Lawtel 