

Re W (Children) (2009)

[2009] EWCA Civ 160

28/01/2009

Court

Civil Division

Summary

Although a judge had not analysed the effects refusal of an application to move abroad with her children would have on a mother who had said she suffered from depression, he had found that she would be no more than upset. The judge had clearly formed an impression of the mother at trial, which was something he uniquely could do, and the Court of Appeal did not interfere with his decision.

Facts

The appellant mother (M) appealed against a decision to refuse her permission to move to New Zealand with her two children by the respondent father (F). M was the primary carer for the children, a boy of 10 and a girl of 5. She had begun a new relationship, and had a baby, with a man (B) who had found work in New Zealand. There was evidence that B would move to New Zealand regardless of whether M was given permission. The boy had said he was looking forward to going. F opposed the application on the grounds that it would mean the end of his relationship with the children. M gave evidence that she suffered from depression, and the effect on her of being refused permission would be devastating. The judge found that while she would be upset if the application was refused, there was no medical evidence that she would suffer more than disappointment. M argued that the judge had failed to (1) properly analyse the effect of refusal on her, and as a consequence on the children; (2) give proper weight to the wishes of the children.

Held

HELD: (1) It was clear from what the judge had said that he had not formed a particularly favourable impression of M or her condition, or of B and his decision to leave in any event. He had also formed an impression of F which was plainly more favourable. He had clearly formed an impression of the parties in the witness box, which was something uniquely that the judge could do and an appeal court could not. There was some force in the criticism of the judge in the way he had not gone profoundly into the likely effect of the move on M, but he had recorded the evidence faithfully and reached his conclusions on it. (2) In relation to the children, the judge had made it clear that the boy's willingness to go had to be qualified: when he was told he would not see so much of F, the boy's enthusiasm diminished somewhat; his enthusiasm was greater because he probably regarded the move as a fait accompli; and he had only seen New Zealand on holiday and had not been there for the day to day grind. The judge had found that the girl was too young to express a view, although he regarded her relationship with F as being of considerable importance. (3) The judge had considered other factors in order to reach his conclusion, which were factors which he could properly weigh in the equation and on which, although another judge

might have reached another conclusion, he had reached conclusions he was entitled to reach.

Permission

Lawtel 