

Re S (Children) (2004)

[2004] EWCA Civ 1397; (2005) 1 FLR 469

21/09/2004

Barristers

Ruth Kirby KC

Court

Civil Division

Summary

An order under the Children Act 1989 s.34(4) giving power to a local authority to terminate a parent's contact with a child should not be made merely as a contingency against possible future circumstantial change.

Facts

The appellant mother (M) appealed against a decision of the county court to make an order under the Children Act 1989 s.34(4). The county court had concluded that M should have contact with her child on four occasions per year, for six hours on each occasion. However, the court had made no positive order to that effect. Instead, in the light of a prior abduction by M, the court had made an order under s.34(4) of the Act giving power to the first respondent local authority to further restrict or terminate future contact without any prior application to the court. M argued that the court should have made a positive order for contact under s.34(3) of the Act. The order made failed to properly give expression to the decision of the judge below. Moreover, it was clear from authority that orders under s.34(4) of the Act should not be made as a contingency against a possible future change in circumstances.

Held

HELD: Anyone picking up the order would infer that the outcome of the trial had been to terminate all future contact between M and the child. The order as drawn had failed in its primary purpose of giving expression to the discretionary judgment of the trial judge to grant contact in the interests of the welfare of the child. There should have been a positive order for contact that gave M security and an independent judicial umpire in the circumstance of any future dispute with the local authority. In any event, it was clear from authority that orders under s.34(4) of the Act should not be made merely against the possibility that circumstances might change in such a way as to make termination of contact desirable, *L (Minors) (Care orders: Termination of contact)*, *Re (1996) 1 FLR 116*, *T (Minors) (Termination of contact: Discharge of order)*, *Re (1997) 1 WLR 393*, followed.

Permission

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