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C (A Child)

[2010] 2 FCR 664 : [2010] EWCA Civ 89

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Barristers
Private: Marcus Scott-Manderson QC

Court
Court of Appeal

Practice Areas
Private Children Law

Summary
A contact order granted against the recommendation of the guardian ad litem and other professional advice was set aside where the judge making the order had failed to explain his reasons for departing from that advice.

Facts
The applicant mother (M) applied for permission to appeal against an order for contact between her son (H) and his paternal grandparents (G).

H, a boy aged nine-and-a-half, lived with M. M, and H's father (F), had long been separated. At a fact-finding hearing some years previously, it had been found that F had been guilty of sexual misconduct towards H, then a very small boy, and towards H's maternal grandmother. Previous supervised contact between H and F had culminated in H refusing to see F and becoming increasingly depressed. G submitted to a county court judge that, if the case were to continue on that basis, they and F would apply for enforcement of contact and a change of residence. They also raised the idea of transferring the matter to the High Court, and the judge concurred. Despite concerns having been expressed not only by M and H, but also by the guardian ad litem and other professionals about any swift resumption of contact with F or extension of contact with G, the county court judge had made an order that H would have immediate staying contact for the weekend with G.

Held
In departing from the recommendation of the guardian ad litem or children's guardian, the judge had been obliged to explain his reasons for doing so. However, he had failed to provide any such explanation despite the advice of five professionals against making the decision he had made. Indeed, one of those professionals had noted a reference to suicidal ideation in H. Moreover, the order for contact was inconsistent with the judge's thinking behind the order for transfer to the High Court. The prior order for contact in favour of G had been made on the basis that there should be non-staying contact for some time before enlargement; however, the judge's reaction to the failure of two non-staying contacts in

favour of G had been to bring forward the move to staying contact months earlier than he had, only five weeks earlier, considered it appropriate for such contact to begin. The judge had not considered that anomaly. Moreover, there was no appreciable urgency to recreate between H and G a relationship that had, in any event, been interrupted for over a year. To force that issue against all professional advice was misguided and plainly wrong.

Appeal allowed

Permission
Lawtel