

Re D (A Child) 2010

[2010] EWCA Civ 593 : (2010) 106(16) LSG 13

08/04/2010

Barristers

Joy Brereton KC

Court

Court of Appeal

Practice Areas

Public Children Law

Summary

Justice might not be seen to be done where a judge did not have the benefit of a full CAFCASS report and did not adequately deal with that point when deciding to permit a mother to remove a child from the jurisdiction contrary to the father's wishes. The judge would have to reconsider her decision in light of a full report.

Facts

The appellant father (F) appealed against a decision permitting the respondent mother (M) to remove their child (D), who was nearly five years of age, from the jurisdiction of England and Wales. F and M had been married for a short period. They had a difficult relationship which came to an end through divorce. M remarried. She wished to live with her husband, a doctor, in Australia and take D with her. Directions given in respect of M's application to remove D from the jurisdiction dealt with, amongst other things, the filing of a CAFCASS report. At the hearing of the application, the report was not ready. F, who appeared in person, cross-examined the CAFCASS officer who was responsible for producing the report. The judge initially wanted a full report but then changed her mind. However, later she apparently said that the CAFCASS evidence was the only outstanding issue. The judge relied on other evidence when arriving at her decision about removal. The judge also dealt with the contact that F should have with D, including the duration and frequency of contact. F submitted that (1) he did not cross-examine the officer at length because he thought that a full CAFCASS report would be provided, and so the hearing was unfair as his views and D's views were not put forward; (2) there was a lack of consideration of the impact on the relationship between him and D arising from D's removal.

Held

HELD: (1) The judge did not have the benefit of a full CAFCASS report and did not adequately comment on it. The judge had made her decision without all the relevant factors fully in mind. In those circumstances, justice might not be seen to be done. The judge would have to reconsider her decision in light of a full report and if she arrived at the same conclusion she should reconsider the question of contact. (2) In view of the case of *Payne v Payne* (2001) EWCA Civ 166, (2001) Fam 473, little attention

was paid to the effect of the removal of a child on the parent who was left behind and too much attention was paid to the parent leaving jurisdiction. However, Payne was binding on the judge who was entitled to find as she did in respect of the impact on the relationship between F and D, Payne considered.

Permission

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