

R (A Child)

[2010] EWCA Civ 1137

01/09/2010

Barristers

Barbara Mills KC

Court

Civil Division

Summary

Court of Appeal refused Father's appeal against an order granting the Mother leave to remove their 5 year old son permanently to Australia.

Facts

The Father appealed to the Court of Appeal against an order granting the Mother's application for leave to remove the child of the family permanently to Australia. The appeal was dismissed.

The Father appealed the Circuit Judge's decision on the basis that he had been plainly wrong to have proceeded without the benefit of a Cafcass report. The Court of Appeal held that while such reports are quite often prepared they are not invariably prepared and in this case was of limited use. In particular, observation of contact would not assist the court because it was not disputed by the Mother that in principle the child had a good relationship with the Father and that at age 5, the child was too young to express wishes and feelings of any real significance.

The further ground of appeal that the child would lose the important relationship he had with his half-siblings was held not to hold any weight because those half-siblings would soon be adults and probably be living away from home.

The Father further sought to bolster his appeal with allegations that the Mother's mental health had not been properly investigated and that the Mother's motivation was to curtail the Father's relationship with the child by the move to Australia. The Court of Appeal held there was material before the judge at first instance to allow him to arrive at the conclusion that this was not the Mother's motivation and that the mental health allegation was not made out because the Mother had assumed full care of the child with no complaint from the Father.

One of the Father's major grounds in his appeal was held to be misconceived: that the judge did not make an actual order for contact. While there may be a contact attachment to an order, the English court in granting leave is surrendering its control over the child to a foreign court and a contact order is an order taking effect until further order of the English court.

While the Father pursued in his appeal the failure of the Mother to specifically address the effect on her of a refusal of her application, the judge did address the point in his judgment and the Court of Appeal noted that it is easy for an applicant to say how devastated they will be if the application is refused, the court can still ascertain the effect of the refusal by way of inference from the surrounding circumstances

Permission

Family Law Week 