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Re A (A Child) (No.2) (2011)

[2011] 1 FLR 1817 : [2011] 1 FCR 141 : [2011] Fam Law 365 : [2011] EWCA Civ 12

19/01/2011

Barristers
Private: Hassan Khan

Court
Civil Division

Practice Areas
International Children Law

Summary
A judge conducting a fact-finding hearing was entitled to explain his thought processes and reasoning in whatever way he deemed appropriate. In a case where there was satisfactory proof on some matters but suspicion and speculation on others, it would be artificial and potentially misleading for the judge to suppress all reference to the latter while giving appropriate prominence to the former.

Facts
The appellant father (F) appealed against findings of fact made against him in the course of wardship proceedings concerning his child. The findings were made in a main judgment ([2010] EWHC 2175 (Fam)) and a supplemental judgment ([2010] EWHC 2216 (Fam)). F and the child's mother (M) were both Kurds living in the United Kingdom. The fact-finding hearing had concerned allegations made by M against F of sexual misconduct, domestic violence, child abduction and threats of "honour-based" violence. The judge found many of those allegations proved but also made findings adverse to both F and M, finding, for example, that they had each lied in aspects of their evidence. While he found M's core allegations to be true, he disbelieved much of the supporting detail she had given to describe the matters that he had found proved. F submitted, broadly, that the judge's findings were either unsupported by, or were against the weight of, the evidence; that he had failed to provide any analysis of why he had ultimately preferred M's account; and that he had been influenced in his decision-making by suspicion, speculation and stereotyping.

Held
1) A judge conducting a fact-finding hearing was entitled to explain his thought processes and his reasoning in any way he deemed appropriate. In a case where there was satisfactory proof on some matters but suspicion and speculation on others, it would be artificial and potentially misleading for the judge to suppress all reference to the latter while giving appropriate prominence to the former. Moreover, where a judge had found certain facts not to be proved, it could be useful for the welfare stage if he were to record whether he had made such a finding because he was satisfied that the alleged

events did not happen, or because they had not been established to the relevant standard of proof in circumstances where there was, nevertheless, continuing suspicion. The court's duty to act on facts rather than on suspicion or doubt was not, of itself, a reason for excluding any reference to suspicions or doubts from the fact-finding judgment. In terms of stereotyping, the judge had been careful neither to stereotype the parties nor to project onto them western views and behaviours, founding his approach on M and F's evidence of how they and their families behaved. He was plainly correct in that approach (see paras 29-30, 32-33 of judgment). (2) In considering an appeal against findings of fact the appellate court had to bear in mind that the first-instance judge was uniquely placed to assess credibility, demeanour, themes, perceived cultural imperatives, family interactions and relationships (para.39). Two of the judge's findings adverse to F could not stand, not being supported by the evidence, and a second had to be qualified (paras 46, 52-54, 64-65, 76-77). The remainder would stand (paras 60, 63, 78-79, 83, 88-89, 107-109, 129, 131-132, 139).