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Re A (Children) (2010)

[2010] 2 FLR 577; [2010] EWCA Civ 208

09/02/2010

Barristers
Mark Jarman KC

Court
Civil Division

Practice Areas
Public Children Law

Summary
Orders for the separate representation of a child and his guardian ad litem in child care proceedings were to be issued very sparingly and were reserved for situations in which the wishes, feelings, opinions and position of the child so conflicted with an objective view of his welfare that separate representation was necessary.

Facts
The appellant parents (M and F) appealed against a judge's refusal of their application to replace the guardian ad litem in child care proceedings. The local authority had brought care proceedings in respect of two children (R and D) and care orders had been made in respect of both. There were, however, outstanding issues in relation to contact. Although R had expressed a wish to have future contact and a relationship with M, the local authority had applied to terminate contact between the parents and children. The guardian was supportive of future contact between R and M, provided that M could be relied upon not to disturb R's equilibrium by her behaviour at contact meetings. M and F's application was put squarely on the basis that the guardian was pressing not the case as R saw it, but the case as she saw it on the balance of the considerations in the welfare checklist set out in the Children Act 1989 s.1(1). The judge directed himself that there should be no tandem arrangement for separate representation of the child unless the child wished to give instructions which conflicted with those of the guardian, and was able, in the light of his understanding, to give such instructions. He concluded that although R was bright and articulate, he had not the maturity to comprehend and weigh all the complex considerations that s.1 imported and to arrive at a proportionate, balanced conclusion. He went on to find that there was no conflict of interest between R and the guardian. M and F submitted that the guardian was conflicted and had to be removed.

Held
There was no doubt at all that the judge was right to rule as he did. There were cases involving children in post-pubertal adolescent rebellion for whom it was very difficult for a guardian to act. Their wishes, feelings, opinions and position so conflicted with an objective view of their welfare that there had to be a

parting of the ways, and in those circumstances the system provided for two distinct and equally constituted litigation teams thereafter. That was, however, an extremely expensive solution, and at a time when the family justice system was obliged to seek economy wherever and whenever it could, orders granting separate representation were to be issued very sparingly. The instant situation was a perfectly standard one in which R's wishes were only one ingredient within the review of the guardian, and only one element upon which she had to report to the court. R had expressed feelings that accorded closely with the guardian's professional opinion, namely that his relationship with his mother should be maintained provided that it was safe to do so. The guardian had reported that fairly and there was nothing to substantiate M and F's submission that she was conflicted and had to drop out. The judge had exercised his discretion and had reached a conclusion that was within the ambit of reasonable judgment.