

Re E (A Child) [2011]

[2011] EWHC 3521 (Fam)

17/08/2011

Barristers

Henry Clayton

Court

Family Division

Practice Areas

Private Children Law

Summary

Judgment in intractable contact / parental alienation case, giving guidance on case management in such matters

Facts

By the time of the final hearing the child was 8 ½ years old and had not seen the father for 3 ½ years. There was evidence that the relationship between father and child had been positive up until and including the last contact. The father's application for contact was issued in October 2006. The child began resisting contact in January 2008. The Cafcass family support worker managed to facilitate a 5 minute contact in April 2008. Contact was suspended pending a fact-finding hearing, which took place on 24 April 2009. Thereafter, the final hearing was adjourned a number of times, and a second fact-finding was listed for 12 August 2010. The matter came before a district judge who decided that the listing would be utilised for a contested interim contact hearing. A contact order was made, but contact did not subsequently take place. The matter was transferred to the High Court on 15 November 2010 to enforce/define contact. Two reports from a child and adolescent psychiatrist concluded that there was no objectively comprehensible reason for the child's resistance to contact.

The mother's position was that contact should cease. The father asked the court to make an order for contact with further professional involvement. Mr Justice Hedley found that the child's opposition to contact provided a convenient cloak for the mother to shelter behind. Although the mother had not deliberately or maliciously manipulated the child's views she had allowed the child to absorb her attitude, and making it clear to the child that contact was her choice was an implicit encouragement to resist. The judge decided to order a professional assessment of direct contact. However, his Lordship suggested that, even without professional assistance, ordering the parents to make contact happen might be preferable to abandonment. The importance of the Guardian remaining involved was also reiterated.

Held

Hedley J commented that it is important to identify at an early stage those cases with the hallmarks of

intractability. In such cases it is important to have an opportunity to give evidence on welfare (rather than fact-finding) at an early stage. Judicial continuity is important, and the High Court cannot provide it. If the matter is transferred to the High Court it should not be transferred absolutely in the first instance, but rather for directions so that a new mind can be applied to the case.

Permission

Family Law Week 