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Re G (Children) (2012)

[2012] EWCA Civ 1233

04/10/2012

Barristers
Joy Brereton KC

Court
Court of Appeal (Civil Division)

Practice Areas
Private Children Law

Summary
A judge was not plainly wrong in deciding that the best interests of children from an ultra-orthodox Jewish family could be best served by being educated at a school of their mother's choosing which was orthodox but not ultra-orthodox and which would lead to a change in the lifestyle of the children, but would provide them with a wider education and greater career opportunities.

Facts
The appellant father (F) appealed against a decision relating to the education of his children (C).

F and the respondent mother (M) were from families which had for many generations been part of the Hasidic or Chareidi community of ultra-orthodox Jews. Their marriage broke down. F wanted C to attend ultra-orthodox schools whilst M wanted them to attend orthodox but not ultra-orthodox schools, where they could pursue higher education and wider career opportunities. M accepted that the change of schools she had proposed would involve a change of lifestyle. A CAFCASS report was produced which concluded that it was in C's best interest to reside with M and move to schools of her choosing. The judge accepted the CAFCASS report and held that notwithstanding the change of lifestyle, it was in the best interests of C to have the much fuller, rounded and more extensive education which was available to them at the schools proposed by M.

F submitted that the judge was plainly wrong in his decision about C's schooling. F argued that the judge failed to consider the law in relation to change of lifestyle, save for a fleeting reference to T (Minors) (Custody: Religious Upbringing), Re (1981) 2 F.L.R. 239 and failed to consider various criticisms that had been made of the CAFCASS assessment and should have departed from its recommendations and reasoning.

Held
The judge had not misunderstood or misapplied the law. He referred appropriately to Re T (Minors), correctly summarised the key principle and proceeded faithfully to apply it, Re T (Minors) considered.

There could be no criticism of the CAFCASS report; it was carefully reasoned and sensitive and a powerful analysis which the judge was entitled to accept. The dispute which the judge had to resolve was whether, on balance, M's argument based on education should prevail over F's, based on way of life. It was quite clear that the judge understood the significance of the issue and that it extended far beyond the narrowly educational. He recognised that M's proposals involved "a change of lifestyle". The judge's reasoning was based on four strands. The first focussed on educational opportunity; he was plainly entitled to conclude that the schools to which M wished to send C would provide superior opportunities for them to gain much fuller and wider education and thereafter much greater job opportunities. The second and third strand was his acceptance of the analysis by the report of the emotional impact on C and that although they might have difficulty making a decision to embrace M's lifestyle when they were older, they would be able to return to their religious roots within the sort of community that their mother had proposed. The judge was plainly entitled to proceed on that basis. Finally, the judge was plainly entitled to conclude that in his view, as shared with the CAFCASS report, on balance C's interests were best served by M's proposals. The court could only interfere if it could be shown that the judge was plainly wrong. Far from being plainly wrong, he was in all probability right in the decision to which he came (see paras 72, 76, 84-88 of judgment).