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Re O (A Child) (2012)

[2012] EWCA Civ 1576

05/12/2012

Barristers
Teertha Gupta KC

Court
Court of Appeal (Civil Division)

Practice Areas
International Children Law

Summary
A judge had been entitled to make an order allowing a mother to relocate to Ireland with her daughter even though it would mean reduced contact with the father. The judge had properly balanced the financial advantages of the relocation against the welfare needs of the child.

Facts
The appellant father (F) appealed against an order granting leave for the mother (M) to relocate to Ireland with their 9-year-old child (H).

F and M were both from Ireland and in their fifties. They had married briefly but had separated. M had well-paid employment with a bank and wanted to relocate from London to Ireland on the basis that she and H could have a better quality of life and that their relationship would improve. F and M were on bitter terms and informal arrangements for contact between F and H had been arranged in the past by H. Relocation would result in a considerable reduction in contact between F and H. M's case was supported by a CAFCASS officer. The judge weighed all the material facts relevant to H's welfare and the financial considerations and made an order for relocation. Before the order was perfected F had for a considerable time withheld periodic payments for H, but offered to pay the arrears, continue to make payments and to make a payment on account and sought a reconsideration of the decision. The judge directed that he would re-open the issue at a further hearing which would be limited to four hours with no examination-in-chief and cross-examination and for any additional matters to be dealt with by written statements. The judge decided that the benefits to H of relocating would be greater than the disadvantages. F appealed and at a directions hearing the judge refused separate representation for H and decided not to order a further report from CAFCASS. F later made a statement in which she recorded that she had made a substantial decision to abandon plans to work for her employer in favour of taking early retirement. She would get benefits including a £100,000 lump sum and an annual pension of £15,000. In addition, she would get the benefit of the sale of her home in London. F maintained that she was on holiday when the offer for early retirement was sent and she did not have the opportunity to deal with her accumulated post until after the hearing and had not at the time intended to enter into the retirement scheme.

F argued (1) that the judge was plainly wrong to refuse the application for an updated CAFCASS report and to refuse the request for separate representation for H and focussed too much on the financial aspects and too little on H's welfare; (2) M had not been frank about the offer of early retirement and a different result could have been reached if that information had been revealed. M's explanation should not be accepted on its face and the matter should be remitted for investigation.

Held

F's argument overlooked the limited nature of the second hearing which was not a new investigation but a review of the financial considerations. The CAFCASS officer had seen H when she was eight years old and H's feelings had not changed since then. The judge was correct to focus on financial matters but had not ignored H's welfare. (2) Knowledge of the offer retirement would have fortified the judge's conclusion on relocation. The offer would relieve M of financial anxiety and leave her free to look after H. Remission was always an order of last resort. The idea of embroiling H in a third trial was unthinkable in welfare terms absent some necessity of a fundamental nature in order to do justice and would be contrary to family finances.

Permission

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