

N v C [2013]

[2013] EWHC 399 (Fam)

14/01/2013

Barristers

Judith Murray KC

Court

High Court (Family Division)

Practice Areas

Financial Remedies

Summary

Application for financial relief by mother under Schedule 1 to the Children Act 1989 where the parties' child resided with the father. Claim dismissed.

Facts

M applied for housing and maintenance for the benefit of the parties' 12 year old daughter. The parties had a relationship in the late 1990s which came to an end in 2001. They had one child (P). They never married and initially F did not have parental responsibility. Following separation F agreed that M and P would live at one of two properties owned by F in London (Property B). In 2003 F applied for PR and during negotiations the parties signed a manuscript agreement confirming that M was the principal carer for P and that M and P's occupation of Property B should be regulated by a trust deed. It was agreed that M could occupy Property B until P was eighteen or finished full time secondary education, whichever was the later. It was further agreed that F would continue to meet P's school fees and pay maintenance for the benefit of P to be reviewed once M finished a college course in 2005. No trust deed was entered into at the time. In 2009, following a dispute about the repair of Property B, F sought to reactivate the issue of a formal document referred to in the manuscript agreement. Lengthy negotiations proved unsuccessful and M issued her application under Schedule 1 to the Children Act 1989.

M and P continued to reside in Property B until P moved to live with F in August 2011. In September 2011 F commenced proceedings seeking a residence and prohibited steps order. This application was compromised in an order dated 29th November 2012. No order was made on either application but it was recorded, inter alia, that save for periods of non staying contact with M, P would be in the care of F.

M sought to remain in Property B with the property to be put in trust until P reached 18 or ceased full time education. In addition she sought a lump sum of £200,000 to pay for renovations and substantial ongoing maintenance of £2200/month. She brought her claim on the basis either that P would return to live with her or that she must have a home to enjoy contact with P and the financial resources to run it.

F's total capital worth was about £3million. M had no capital of any substance.

Held

HHJ Hayward Smith QC, sitting as a Judge of the High Court, found that although there were no orders regulating the arrangements for P, the concepts of resident and non resident parent and the reality of the situation were relevant when considering whether the court had any jurisdiction to make a maintenance order. The court found that the bar imposed on the court's jurisdiction pursuant to s.8 Child Support Act applied to claims by a non resident parent against a resident parent. The learned judge rejected the submission that the court had jurisdiction by reason of F's net weekly income. The learned judge held that there was no jurisdiction to make a maintenance order in this case.

The court found that there was jurisdiction to make a financial order under Schedule 1 against a resident parent in favour of a non resident parent [*Re S (Child Financial Provision)* [2005] 2 FLR 94 considered] but that the jurisdiction has been rarely exercised and such an order would be unusual. In the present case there was no legal obligation to provide a home or to maintain the mother. The learned judge found that P was unlikely to return to live with M. F was providing a home for the child with him and his obligations relating to housing and maintenance related only to M in so far as they were of benefit to the child. There was no obligation to provide Property B as a home to enable M to have contact with P. P would continue to have contact with M wherever M resided. The court found that M was likely to be able to earn enough to provide for herself and had a much greater earning capacity than her present income.

The learned judge rejected the argument that M had a contractual right to remain in the property by reason of the manuscript agreement from 2004 as the agreement was expressly predicated on the basis that M was the principal carer for P.

The court warned against claims by a parent under Schedule 1 which are in reality a disguised claim for the benefit of the parent. The claims were dismissed.

Permission

Family Law Week 