

K v (1) B (2) P (A Child by his Guardian Ad Litem) (Leave to remove a child from the jurisdiction) (2006)

[2007] 1 FLR 333 : [2006] Fam Law 1032: [2006] EWHC 1783 (Fam)

19/07/2006

Barristers

Dermot Main Thompson

Court

Family Division

Practice Areas

International Children Law

Summary

As the application by a mother to take her four-year-old son to live permanently with her in the United States was genuine and motivated by her employment prospects and her mother's poor health more than by a desire to exclude the father, and as there would be a serious impact on the mother were she not able to go, and a seriously negative effect on the child were the present acrimonious situation with the father to continue, she would be granted conditional permission to go, as those factors outweighed the short-term upset for the child of seeing less of his father.

Facts

The applicant father (F) applied for a sole or joint residence order in respect of his four-year-old son (C). The first respondent mother (M), supported by the second respondent guardian, opposed that application and sought permission to take C to live permanently with her in the United States of America.

F was homosexual, and had met M through his sister with whom M had a long-term lesbian relationship. M and the sister decided to parent a baby and F provided sperm with which M impregnated herself. Although it had been agreed initially that F would be an uncle to the child, he declared his intent to play a parental role. Years of bitter acrimony between F and M followed, ending M's relationship with the sister and leading to over 20 court appearances, and allegations by M of sexual abuse of C by F, who twice faced criminal charges in that respect. Supervised contact between F and C resumed, but very serious tensions remained on both sides. F contended that he feared that M was coaching C to say negative things about him, and that unless M could positively endorse his relationship with C, the court should consider a shared residence order or sole residence order to him. M submitted that she wished to move to the US with C because she had a good job offer there with improved housing prospects, and faced bleak employment prospects in the United Kingdom; further, M's mother in the US suffered poor health

and needed her. M argued that she would provide generous contact to F, and that not going to the US would be devastating to her because of her mother and because of the continuing acrimonious relationship with F. The guardian stated that she was concerned that the level of conflict between F and M would seriously impact C in the future. Expert evidence from a child psychiatrist emphasised that the discord was liable to harm C, and that relocation was the only way to avoid hostility, and C's guardian agreed.

Held

(1) In the circumstances, a sole residence order in favour of F was out of the question. M had always been C's prime carer and there were no concerns about her day to day care. There was no proper basis in C's interest on which a change of residence from M to F could be considered. Further, the prospect of shared residence working when the parties could not talk to each other was very low indeed. The conflict between F and M did not permit of a shared residence order at this time, and the unanimous opinion of the experts could not be ignored and was decisive. F's application would, accordingly, be refused. (2) The genuineness of M's application, which was motivated by her employment prospects and her mother's health more than by a desire to exclude F, and the serious impact on M were she not able to go, were strong reasons to allow M to relocate. Further, there would be a seriously negative effect on C were the present situation to continue. The short term upset for C of seeing less of F was, in the circumstances, heavily outweighed by the prospects for the future with M in employment and a substantial reduction in acrimony. M would, therefore, be granted permission to relocate, conditional upon her fulfilling a number of conditions, Payne v Payne [2001] EWCA Civ 166, [2001] Fam. 473 applied. Those conditions included facilitating contact by F in the US, and the greater part of the proceeds of sale of her flat in the UK would be held for an indeterminate time to secure that.

Applications granted in part

Permission

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