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F v H & Anor

[2017] EWHC 3358 (Fam)

19/12/2017

Barristers
Judith Murray KC

Court
Family Division

Practice Areas
Private Children Law

Russell J allowed an appeal against a Circuit Judge's order for direct contact made on a 16.4 Guardian's application. Her Ladyship considered that the judge had been wrong to rely on the Guardian's conclusions and to effectively reverse her previous decisions on what amounted to 'flimsy evidence.'

This was an appeal from the decision of a circuit judge sitting at the Central Family Court to Russell J of the Family Division concerning B, a little girl aged four and a half.

The History
B had been the subject of private proceedings between her parents, on and off, between 2013 and 2017. Findings had repeatedly been made to the effect that B's Mother had sought to obstruct and prevent B's relationship with her Father (see paras 3 to 27). The Mother had almost constantly made allegations that the Father had sexually abused B, and frequently presented B for intimate medical examinations (sometimes in direct contravention of orders). In retrospect,

Russell J found:
"the harm caused to this child by her mother was significant. Not only was she found to have repeatedly [been] subjected to intimate examinations, solely at the behest of her mother, she was prevented from having uninhibited relationship with her father as an infant. On any view, the repeated invasive intimate examination, as found by the judge and set out in her judgment, were in themselves abusive and any long-term effects on B, along with any emotional trauma that may have been at the time, [which] has never been investigated or assessed." (para 37).

In 2015 the Mother abducted B to Israel in an attempt to prevent contact. She was made a ward of court, and eventually returned. By October 2015 B was living with her Father and having no contact with her Mother. The Mother then made several attempts to disrupt this arrangement and injunctive orders were made against her.

In January 2016 (in the context of the Mother's application to spend time with B) the court of its motion directed a psychiatric assessment of the Mother. At subsequent hearings the court reiterated the view

that such an assessment was necessary and was a precondition of any reintroduction of contact between B and her Mother. After months of non-compliance, the Mother eventually undertook such an assessment with a different expert, who did not read the court papers, relied on the Mother's self-reporting, and produced a report which the court later found to be "completely flawed" and "of no assistance" (see paras 27 to 29).

The Decision
In July 2017 B was joined to proceedings and a Guardian was appointed. The Guardian read limited papers, consisting of the 'flawed' psychiatric report and the parents' latest statements. She met with the Father and B briefly and with the Mother for two hours. She did not challenge the Mother's account of events.

At the next hearing, relying heavily on the Guardian's submissions, the Judge acceded to the Guardian's application for an order that there should be direct contact between B and the Mother, to be supervised by the Guardian herself. The Father appealed.

The Appeal
Russell J was highly critical of the Guardian's approach: the Guardian did not have the qualifications to assess the Mother's psychiatric state; she had carried out only a "cursory consideration of the history, evidence and court documents" (para 47); her view had lacked analysis and amounted to "flimsy evidence" (para 38); it placed the emphasis on the Mother, rather than on B herself (para 39). Russell J noted that the solicitor for the child had failed to include any separate analysis (para 44).

The judge's approach was also found to be flawed and she had failed, without adequate reason, to follow the course that she had previously set out (para 42). The judge, too, had placed excessive weight on the position of the Mother, as opposed to that of B (para 43). The judge had failed to consider the detail of the arrangements for contact, of reporting following contact, and to consider what might happen if contact were unsuccessful (para 46).

Russell J noted that there is guidance as to the circumstances in which courts can make an order for no direct contact (Re J-M (A Child) [2014] EWCA Civ 434 at paras 23 to 25), and that in all actions concerning children, it is the child's best interests that are the primary consideration (citing In ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4; [2011] 2 AC 166, para 23).

Russell J concluded:
"In a case such as this with a protracted, complex and convoluted history it is incumbent on the professionals who are called on to proffer advice and recommendations to the court, be they Cafcass officers or others concerned with child welfare, to fully inform themselves about the case and, at the very least, read through the judgments before they commence their investigations. Nor should they consider experimenting or trying out with contact for the child or children concerned against a background of previous harmful behaviour and abduction" (para 48).

The appeal was allowed.

To read the full judgment, please click here.