

G (Children: Intractable Dispute) (2019)

[2019] EWCA Civ 548

03/04/2019

Barristers

Cleo Perry KC
Andrew Powell

Court

Court of Appeal

Practice Areas

Private Children Law

This is the second judgment from the Court of Appeal in a long running private law Children Act dispute.

The Father had appealed a previous decision successfully during the course of the litigation: see, P-G (Children) [2015] EWCA Civ 1025. In that judgment, the Court of Appeal had set aside findings of fact made against the Father and said that the trial judge's reliance on (subsequently) discredited section 7 reports created "a strong prima facie perception of unfairness".

The case concerned two girls, who were 11 and 8 by the time of this second appeal. Their parents had separated in May 2013 when they were just 5 and 2 and litigation between the parents had been near continuous since that time.

The history of the case is therefore complicated and lengthy but it should be noted that, following the Father's successful appeal in 2015, the case had been afforded complete judicial continuity and was allocated to HHJ Handley throughout.

The themes of the litigation were, broadly, that:

1. The children were ambivalent about seeing their Father or expressed a wish not to see him. Some contact had taken place successfully, but other contact had not been successful and the girls had been distressed. By the time of the final hearing from which the Father appealed, no contact was taking place between him and the children.
2. The Father alleged that the Mother was not supportive of contact and that she was causing the children emotional harm. The Mother was found, in January 2017, not to have been giving the girls the emotional permission required for them to build a relationship with the Father and HHJ Handley further found that she was not "promoting and encouraging contact with the required drive or determination".
3. The Father did not trust the professionals involved in the case. This may have stemmed from his early

experience (prior to the first appeal) of section 7 reports prepared by the local authority, about which he complained. The independent review conducted by the authority found that the reporter was biased, knowingly included untrue information, and accepted the truth of the mother's allegations before the fact-finding process had taken place. However, the Father's subsequent mistrust of professionals extended to each Guardian or case worker, the psychologist assessing the family and the Judge himself. The Father's relationship with the NYAS case worker had broken down to the extent that HMCTS acted as a middle man for the transfer of documents.

4. The Father was found to have lost sight completely of the children's welfare. He had, for example, at times refused supervised contact even when the children had asked to see him, because he felt it was unnatural. HHJ Handley found in April 2018 that:

"The father lacks insight into the children's welfare needs. He is unable to prioritise the children's welfare above his own wishes and goals. He harbours a deep-rooted sense of hostility to the mother to the extent that his behaviour is harmful to her emotional and psychological welfare and in consequence is likely and almost certainly going to impact upon her parenting and hence be damaging to the children."

The Court at first instance had been assisted by, and relied upon, an assessment of the family by Dr Jo Stevenson, a psychologist. Dr Stevenson gave evidence at the Final hearing and the Judge found her to be an impressive and child-focused witness.

From 2015 to April 2018, the litigation continued, with two particularly important hearings: one in January 2017 when the Judge broadly favoured the Father's case and made adverse findings against the Mother and one in April 2018 in which the Judge found against the Father, made an order for very limited indirect contact only, and made a section 91(14) order against the Father. The Judge in his final order made it clear that the Court hoped that the Father would follow Dr Stevenson's recommendations and seek therapeutic intervention such that his relationship with the children might eventually be re-established. It was against this latter decision that the Father appealed.

The Father's grounds of appeal are summarised at paragraph 39 of the judgment, and separated into four strands:

- (1) Procedural issues of unfairness and delay:
- (2) Compartmentalisation and inconsistency:
- (3) Not pursuing all reasonable routes to maintaining contact:
- (4) A s.91(14) order was disproportionate:

The Court of Appeal ultimately dismissed the Father's appeal. Lord Justice Peter Jackson concluded that, "... since 2015 the Judge has diligently and sympathetically attempted to revive the father's relationship with his children but has been forestalled by the mother's earlier lack of support for contact and by the father's increasingly extreme attitude." After considering each strand of appeal in detail, the Court notes at paragraph 69 that:

"In the end, the Judge's fundamental findings

- (a) that the children would suffer emotional harm if they were placed with the father or required to have direct contact with him against their wishes, and

(b) that the father has completely lost sight of their welfare

effectively determine the outcome of the trial and of this appeal. They were conclusions securely based upon professional advice and upon the Judge's own very extensive knowledge of this family. They have certainly not been shown to have been wrong and nor has there been any serious procedural irregularity."

Permission

 **Family Law Week**