

R v G, H v Secretary of State for the Home Department

[2019] EWHC 3147 (Fam)

18/11/2019

Barristers

Christopher Hames KC
Michael Edwards

Court

High Court (Family Division)

Practice Areas

Court of Protection - Vulnerable Adult

The dispute between the parties at this hearing concerns the correct legal principles to be applied and the correct procedure to be adopted where one party to private law proceedings under s 8 of the Children Act 1989 seeks disclosure and inspection of documentation from the successful asylum claim of the other party, for use in the family proceedings. Given the issues raised in this case, I gave the Secretary of State for the Home Department permission to intervene on this question. The Secretary of State is represented by Mr Alan Payne, Queen's Counsel.

The proceedings concern the welfare of H, born in 2011 and now aged 8 years old. H is a party to these proceedings and is represented through his Children's Guardian by Mr Michael Edwards of counsel. The applicant, R, is the father of H and is represented by Mr Edward Devereux, Queen's Counsel and Ms Mehvish Chaudhry of counsel. The first respondent, G, is the mother of H and is represented by Mr Christopher Hames, Queen's Counsel.

It is important to note at the outset that the question of the disclosure and inspection of documents from the asylum process within proceedings concerning H has already been considered once by Her Honour Judge Corbett sitting as a Judge of the High Court (see R v Secretary of State for the Home Department [2019] EWHC 1509 (Fam)). However, HHJ Corbett's decision not to order disclosure and inspection, dated 24 May 2019, was taken in the context of proceedings between the parents brought under the Child Abduction and Custody Act 1984 for relief pursuant to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. Those proceedings were subsequently compromised between the parties.

Within this context, the Secretary of State initially contended that the issue of disclosure and inspection had already been determined by HHJ Corbett. However, in circumstances where the issue of disclosure and inspection now before the court arises in proceedings under the Children Act 1989 and where in those proceedings this court must hold a finding of fact hearing in which the disputed allegations of

physical and sexual assault and child sexual abuse that formed the foundation of the mother's asylum claim will fall to be determined on the balance of probabilities, no party sought seriously to dispute that this changed procedural and forensic context requires the question of disclosure and inspection of the asylum documentation to be considered anew.

Permission

 **Family Law Week**