

K v D (Parental Conflict)

[2015] EWFC 49

01/07/2015

Barristers

Judith Murray KC
Rebecca Foulkes

Court

Family Court

Practice Areas

Private Children Law

Summary

Judgment following final hearing in acrimonious private law Children Act proceedings concerning two children.

Facts

This was the final hearing in private law Children Act proceedings concerning two children, J and E, aged 12 and 10. The case is characterised by a number of unusual features, including the level of acrimony between the parents, described by the judge throughout the judgment but in particular in his summary of the evidence of the CAFCASS Officer in the case. She described both parents as being “intent on destroying each other” and stated that “the ante is being upped ever 5 minutes” (para. 5).

The Children Act proceedings took place against a backdrop of equally acrimonious, and extremely costly, financial remedy proceedings which are still ongoing. The judge takes the unusual step of commenting on some of the family’s financial arrangements (including the fact that although the family is “100% British it has no intention of paying tax here” (para. 7)) and the exceptionally high legal costs that both parties had incurred in both sets of proceedings.

The father is resident in Dubai and had formed a new relationship and had a third child, about whom he had never spoken to the children who were subject to these proceedings.

A further unusual feature of this case is that the mother had commenced a relationship with her solicitor (whose name and firm are redacted from the published judgment) shortly after she instructed him. As the father had defaulted on the order for maintenance made at an interim hearing in the financial proceedings, the mother had not paid any of her legal fees and her solicitor had, in fact, been providing financial support to her and the children. The solicitor had referred himself to the SRA, and the father’s solicitors had also referred him.

The judge also gives several instances of dates on which the father had hoped or expected to spend

time with the children but the mother and her solicitor had made alternative arrangements. The solicitor had also employed a private detective to follow the father, and the mother, her solicitor and the detective had dined together the night before the mother gave evidence in the final hearing.

In the judgment, Peter Jackson J makes findings in relation to two incidents of domestic violence perpetrated by the father against the mother (one in 2012 and one in 2013).

The CAFCASS evidence was that the children were resilient but vulnerable because of the tension between the parents and found transitioning between them difficult. They wanted to see their father (although J's expressed wish was that he did not) but the circumstances had made them anxious about doing so. They were particularly anxious about the violence perpetrated by the father and about their mother's financial situation, for which they blamed their father. There was no evidence that the father intended to remove them from the jurisdiction. The recommendation was that they should live with their mother and spend time with their father but without this involving any foreign travel for the time being to allow for a period of 'healing'.

The judgment is also critical of the father for leaving the mother and the children in a situation in which they were struggling financially. The children were aware that their school fees had not been paid. He is also criticised for not having been apologetic for certain aspects of his behaviour in the financial and Children Act matters.

The mother is also criticised for withdrawing her cooperation with supporting the children's relationship with their father and for allowing them to become too involved in the parental dispute. She is described as having become 'proprietary' about the children.

Held

Having applied the welfare checklist, the judge makes an order that the children live with their mother and spend time with their father in line with the recommendations of CAFCASS, but taking into account the practical limitations of the father's circumstances which limit his ability to have face to face contact with the children in this jurisdiction. He also orders both parents to attend a Separated Parents Information Programme, makes a family assistance order, and prohibits both from removing the children from the jurisdiction for a 12-month period without the permission of the other parent. The mother's application for all of the father's contact to be supervised is dismissed.

The judgment ends with the judge offering firm words of advice about the impact of the financial proceedings on the children and about the propriety, in the circumstances of this case, of the solicitor continuing to act for the mother whilst they remain in a relationship.

Permission

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