

Re H (A Child) (Contact) (2000)

LTL 27/6/2000 EXTEMPORE

27/06/2000

Barristers

Catherine Wood KC, MCI Arb

Court

Court of Appeal

Facts

1) Courts at all levels should not give up too easily in arranging for contact between a child and the absent parent. (2) Cultural difficulties, such as that faced in the present case where a stepfather took over responsibility for the whole family, were not be used as a means of avoiding contact with the absent parent.

Father's appeal from the order of HH Judge Tyrer made on 16 February 2000 that: (i) there be no orders on the father's applications for direct contact; (ii) the mother be committed in respect of breaches of previous contact orders; and (iii) the father have indirect contact with the child ('H') by means of cards, letters and presents. H was born on 15 October 1994 to Bangladeshi parents. The mother arrived in England in 1994 with the father following in 1995. The marriage was short-lived and the parents separated in November 1995. The mother had since re-married and lived with her second husband ('the stepfather') together with a child of that marriage and H. H was being brought up to believe that the stepfather was his father. There was a long history of proceedings, begun in 1997, which had resulted in orders for contact which had been arranged but then frustrated by the mother. At the Court of Appeal's request the hearing of the appeal was adjourned whilst reports were prepared from a contact centre where contact had occurred between the father and H in late 1999 and early 2000. That report made it clear that the limited contact that had occurred had resulted in a blossoming relationship between father and son. H had had a good time and the father had clearly known how to deal with him. However on the last occasion at which contact had occurred in February 2000 H had been accompanied by the stepfather. He informed staff at the centre that it would not be possible for further sessions to take place because the family was too busy. He mentioned that there was a hearing pending and hoped that the court would order H to live with his natural father. On being asked about this the stepfather said that the father's marriage to the mother had been arranged and that mother had no feelings for H. Although the judge doubted whether the mother loved H at all he noted the content of the court welfare officer's report which stated that H was settled with the mother. The mother was opposed to contact to the extent that she was prepared to go to prison. The judge considered that a pistol was being held to the head of the court but in the end made no order for direct contact. The father appealed.

Held

HELD: (1) The court was not prepared to accept failure because to do so would be inconsistent with s.1(1) Children Act 1989 and with Art.8 European Convention on Human Rights (a right to family life). (2) There was a perception that fathers did not get a fair deal from the courts, which were too biased in favour of mothers. Whilst that was an incorrect perception there was a group of cases where mothers' objections to contact could be considered. These were: (i) where there were acceptable reasons for not wanting contact such as in cases of serious domestic violence or abuse; (ii) where the father was behaving in an unreasonable way and was, for example, using contact for other reasons which might be adverse to the welfare of H; (iii) where there were other situations which might represent a bar to contact; and (iv) where proposed contact was detrimental to a child's best interests such as where the child did not wish to see the absent parent. The court's first task was to determine whether any objection to contact was well-founded. If so, the coercive powers of the court fell away. But on the evidence in the present case none of the objections set out above applied. (3) The problem in the present case was not with H nor with father but with the mother. There might be circumstances where the problem could not be overcome and it was in the interests of the child not to enforce contact, but that point had not yet been reached. (4) It would not be right for a court, at any level, to give up too easily in depriving a child of the right to contact with its father because of the importance of: (i) identity; and (ii) continuing relationship. (5) There were three possible outcomes to the present case. The bleakest was to order no contact. The next most drastic solution was to order a change of residence in favour of the father. The third, and most preferable solution, was to order continuing contact. (6) In the present case there were also cultural difficulties. In Bangladeshi society (and in others) a stepfather took over care of the whole family including stepchildren. A message could not be given to the Bangladeshi (or any other) community that a mother's unreasonable refusal to allow contact was a recipe for avoiding contact. Nor could a family's personal conveniences stand in the way. (7) In this case it was appropriate to make two side-by-side orders. Firstly indirect contact by way of cards and/or presents to be arranged by the Official Solicitor in order to remind H that the father existed and was looking forward to seeing him soon. Secondly, a consultant child psychiatrist was to be instructed to see every member of the family including the father and child together, to assess H's needs. The case was then to come back before a High Court Judge in November 2000.

Appeal allowed.

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