

Re M (Sexual Abuse Allegations: Interviewing Techniques)

[1999] 2 FLR 92

16/03/1999

Barristers

Michael Sternberg OBE KC

Court

Family Division

Facts

Shortly after divorcing the father, the mother alleged that the father had sexually abused the children, then aged 5 and 2. A medical examination of the daughter revealed an abnormality which raised concerns, although it did not confirm that she had been abused. The mother's experts expressed the opinion that at least one of the children had been sexually abused, relying on videotaped interviews with both children conducted by a consultant child psychiatrist. The father's experts, who had not had the opportunity of seeing the children but who had seen the videotapes, were critical of the interviews, conducted in the mother's presence, which had lasted a considerable time and during which a number of leading questions were asked. The court was not required to make any findings in relation to the allegations, as the parties came to an arrangement under which the father agreed to contact through a programme of therapy, although he continued to deny the sexual abuse. The experienced psychiatric social worker carrying out the therapy, which included two more videotaped interviews, concluded that sexual abuse had occurred and reported her concerns to the local authority. As a result the police arrested the father, although he was later released without charge. No further therapy took place. The children continued to talk about sexual abuse by the father, although some of the allegations made over the years, including a rape charge, were directly contradicted by the physical evidence. The father, who had had no direct contact with the children for over 7 years, made an application for defined contact which the mother resisted. At the hearing the mother's experts again suggested that the likelihood was that at least one of the children had been sexually abused by the father. Both the father's experts and the expert for the Official Solicitor again criticised the nature of the various videotaped interviews, none of which had complied with the Cleveland guidelines, concluding that although there was a possibility that the children had been sexually abused, it was a small one.

Held

Held - ordering indirect contact - sexual abuse had not been proved on the balance of probabilities in respect of either child. It was wrong to argue, as the mother had done, that the court should not make such a finding because it would distress the children, who would interpret it as meaning that they had not been believed. The children had not given evidence, and could not be expected to have done so

about events which happened so long ago when they were so young. The court had to consider impartially and objectively all the evidence presented to it, and to weigh its effect. The evidence upon which the mother relied was flawed and there had been a serious disregard of the requirements of the Cleveland guidelines. It was not, however, practicable or desirable to order direct contact with either child, in view of the strong opposition being expressed by the children to such contact. There ought to be indirect contact in the form of cards from the father, and school reports and photographs to the father.

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