

R v Plymouth Justices Ex Parte W

[1993] 2 FLR 777

18/05/1993

Barristers

Michael Sternberg OBE KC

Court

Queen's Bench Division

Facts

The parents were not married. Their child, J, was born in 1990 and was now 3. In June 1990 the mother stopped the father's contact to J, alleging that the father had assaulted her and her adult daughter. In 1991 the father made an application for contact which was dismissed. In 1992 the father made a further application to the family proceedings court for contact. At the hearing, the father initially stated that he had not been found guilty of theft and using threatening behavior. The father's previous convictions were then put to him and he admitted that his answer had been untrue. The magistrates then ordered that the case should be adjourned and should be reheard by a new bench because they might be thought to be prejudiced against the father. The mother applied for leave to seek judicial review. The application was adjourned for 2 weeks for the magistrates to make representations but they had not done so.

Held

Held - refusing the application -

(1) One aim of cross-examination was to show that the credibility of the witness was not to be relied upon. The magistrates could not be regarded as prejudiced in listening to the evidence of the father and coming to the conclusion that his evidence was unreliable when they realised that he had committed perjury. It was inappropriate for the magistrates to adjourn the case to be tried by a second bench.

(2) Despite the fact that the magistrates had come to a wrong decision, it would now be inappropriate to grant leave to apply for judicial review because nothing would be gained by it. In the circumstances the case should be transferred to the county court.

Permission

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