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Re N (A Minor) (Access: Penal Notice)

[1992] 1 FLR 134

27/06/1991

Barristers
Mark Johnstone

Court
Court of Appeal

Facts
The parents had a child in December 1985. They separated in 1988. The child remained with the mother and the father had access to him by consent. The first report on the family situation by a court welfare officer in September 1989 described the child as happy and excited on access visits, but later the mother refused access and, thereafter, worked on the child emotionally to the extent that he became entrenched in opposition to his father. At a hearing of the father's application for access in November 1990, the judge expressed in forceful terms his view that access was in the child's best interests and should take place, but by January 1991 he was obliged to conclude, with the utmost reluctance, that the only way to enforce access would be by imprisoning the mother and that he could not risk the emotional damage that that would cause to the child. He ordered that there should be no access to the child by his father until further order. The father appealed, contending that the judge should not have refrained at so early a stage from putting the court's powers to the test.

Held
Held – dismissing the appeal – it was well established that a defined access order endorsed with a penal notice putting a mother at risk of imprisonment was a weapon of last resort, and that the decision as to whether to bring that weapon into play was one for the judge hearing the case. In the present case, where the child had been so influenced by the mother as to develop a powerful opposition to seeing the father again, the court was presented with a human problem rather than a problem of enforcement. The judge had impeccably exercised his discretion in deciding that access was inconsistent, for the time being, with the child's best interests.