

IN RE J M (A CHILD) (PARENTAL RESPONSIBILITY) sub nom M v M (1999)

[1999] 2 FLR 737 : Times, May 25, 1999

23/03/1999

Barristers

Jane Rayson

Court

Family Division

Summary

It would not be in a child's best interest to grant a parent responsibility over that child where that parent was incapable of discharging parental duties under s.4(1) and s.3(1) Children Act 1989.

Facts

An application by the father for direct contact and parental responsibility of a child ('J') born in 1996. J lived with her mother. The mother and father had never been married nor had they lived together. The father had suffered from learning difficulties. In 1992 he had a motorbike accident and suffered brain injuries. His intellectual functioning deteriorated further since the accident and the most recent test that he underwent registered his IQ at 54. His capacity to understand and to solve problems was extremely limited and he had severe impairment to his memory, demonstrated by the fact that he could only remember half of what had occurred at court during the instant hearing on the preceding day. It was found that during the relationship there had been a number of violent acts by the father on the mother. The mother initially took J to visit the father frequently. However, when she was unable to take J to visit the father one day he threatened to kill her and to take J from her. The mother obtained a non-molestation order against the father and contact ceased. In October 1997 contact was made via a contact centre. Contact then resumed at the father's home with his father or brother in attendance until the mother again felt threatened and stopped all contact. In controlled circumstances it was found that the presence of the father upset J.

Held

HELD: (1) The welfare of J had to be the paramount consideration. Therefore in the circumstances indirect contact was ordered to keep the relationship alive, without forfeiting J's security. (2) An application for parental responsibility under Re H (Parental Responsibility) (1998) 1 FLR 855 was also subordinate to the welfare principle of the child. There was a high degree of commitment and significant attachment by the father to J, but ss.4(1) and 3(1) Children Act 1989 presupposed that a father was apt to be invested with responsibilities and was capable of exercising the rights of performing duties and wielding powers in respect of the child. From the evidence the father was far from able to exercise parental responsibility over another, and in fact required something akin to parental responsibility to be

exercised over himself. The proposition that any misuse of the parental responsibility order could be controlled presupposed the father's understanding of the concept of parental responsibility and the likely repercussions of misuse.

Application for parental responsibility refused. Indirect contact allowed.

Permission

Lawtel 