

## Re U (Care Proceedings: Criminal Conviction: Refusal to give Evidence) (2006)

**[2006] EWHC 372 (Fam); (2006) 2 FLR 690**

27/02/2006

### **Barristers**

Ruth Kirby KC

### **Court**

Family Division

### **Summary**

For the purposes of care proceedings, the Civil Evidence Act 1968 s.11(2)(a) applied to a subsisting conviction even when a criminal appeal was pending and thus the court could take an appellant to have committed the offence unless he proved the contrary.

### **Facts**

In care proceedings, the court had to decide whether, in light of the conviction of the father (U) for murdering his daughter (S), the Civil Evidence Act 1968 s.11(2)(a) applied for the purposes of determining whether the threshold criteria were met for his two other children. U and the mother (B) had originally both been charged with S's murder. The Crown accepted B's plea of not guilty to murder, but guilty to cruelty by neglect. She became a prosecution witness and U was convicted of murder. His appeal against that conviction was pending at the time of the instant hearing. On criminal counsel's advice regarding the appeal, U refused to give any evidence in the instant proceedings.

HELD: (1) Section 11(2)(a) applied to a subsisting conviction even when a criminal appeal was pending and thus a civil court could take an appellant to have committed the offence unless he proved the contrary. Whilst, in light of U's refusal to give evidence, he should, as a matter of law, be taken to have murdered S, the fact of his conviction would be left out of account, *Raphael (Deceased), Re* (1973) 1 WLR 998 Ch D considered. Nor would adverse inferences be drawn from that refusal, as U had been acting on counsel's advice. Nevertheless, on the facts of the case, it was clear that, on the criminal standard of proof, U was the perpetrator. (2) Parents in care proceedings were compellable witnesses and they could not even refuse to answer questions which might incriminate them, *Y (A Child) (Split Hearing: Evidence), Re* (2003) EWCA Civ 669, (2003) 2 FLR 273 considered. Accordingly, U's failure to file a statement and his refusal to give oral evidence or to answer any questions placed him in contempt of court. However, no sanction could be imposed, given that he was already in prison.

### **Permission**

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