

Re Pelling (Rights of Audience) (1997)

(1997) 2 FLR 458

24/03/1997

Barristers

Henry Setright KC

Court

Family Division

Summary

Application by a person unqualified in law, under s.27 and s.28 of the Courts and Legal Services Act 1990 for the right to conduct litigation in the context of Children Act proceedings.

Facts

An application by the mother in wardship and Children Act proceedings in relation to two children aged 10 and 13, that the leave for rights of audience granted to a Mr Pelling ('P') under s.27 and s.28 of the Courts and Legal Services Act 1990 be rescinded. The mother was represented by solicitors and counsel; she lived in the UK and had care and control of the children, who were wards of court. The father lived in Kenya. P was a mathematician with no legal training or qualification, who sought leave under the 1990 Act to conduct the litigation on behalf of the father. In support of his application he referred to his earlier experience of court proceedings, including an occasion when he had represented a housing association of which he was secretary. However the court was not made aware that the Court of Appeal had considered and rejected a similar application by the appellant in October 1994 in relation to another case. P was granted leave by a deputy district judge. Another case in which the court of appeal refused P leave (*D v S* (1996)) was thereafter reported and the mother now contended that the court was seriously and deliberately misled on the occasion when leave was granted. There was evidence that, in earlier hearings in which the applicant had used the order to represent the father, his submissions had been unhelpful and at times obstructive.

Held

(1) The discretion which was given by the 1990 Act, to grant rights of audience to the unqualified, should only be exercised in exceptional circumstances. The purpose of the law relating to legal representation was to protect the public. (2) The assistance that P had given was adversarial and out of accord with the spirit of the Children Act 1989. It was especially important in cases involving children that the legal representatives should be specially experienced. (3) P had seriously misled the court. It was also clear that he was pursuing a course of offering his services in litigation in which he was not sufficiently experienced and in respect of which he was not qualified. He was not insured for professional indemnity and could not carry out the manifest duties of a solicitor. It was therefore not in the interests of justice that P should continue to represent the father here. (4) It was the duty of any advocate to make the court

aware of relevant previous decisions or rulings, whether or not reported and whether or adverse to or supporting his case. The mother's application was allowed, the deputy district judge's order revoked and the implied renewed application for leave was therefore refused.

Permission

Lawtel 