

## T v T (2010)

### [2010] EWCA Civ 1366

01/12/2010

#### **Barristers**

Alex Verdan KC  
Sam King KC

#### **Court**

Court of Appeal

#### **Practice Areas**

Private Children Law

#### **Summary**

Although a recorder had not erred in the exercise of his discretion in granting a shared residence order in respect of two children in favour of their mother and father, who were in other relationships, it was appropriate to include the mother's partner in the order, who also had parental responsibility for the children, in the event that the mother died.

#### **Facts**

The appellants, the mother (M) and her partner (L), appealed against a recorder's refusal to restrict the parental responsibility of the father (F) for their children and refusal of L's application for a residence order jointly with M. M and L were in a civil partnership, and F was in a relationship with another man. The children (N and G), aged 7 and 10 respectively, lived primarily with M and L. F had parental responsibility for both children. Relationships broke down and proceedings were issued. G and N indicated to a CAFCASS officer (B) that they wanted increased contact with F. However, N also indicated that whilst she enjoyed seeing F she worried about staying overnight. B recommended to the recorder that N's wishes be taken into consideration and advised of the danger of pressuring her into doing something that she did not want to do. The recorder granted L parental responsibility and made a shared residence order in favour of M and F alone. He refused the application to restrict F's parental responsibility and L's application for a residence order jointly with M. F offered to agree to a residence order that included L as well as M and himself. M and L submitted that (1) the shared residence order was inappropriate as it was not conducive to the children's best interests; (2) the increase in time with F that the order provided for failed to take into account N's views, B's recommendations against the order and the likelihood of an adverse reaction from N; (3) if M passed away whilst the order was in force, F would be able to remove the children from L's care.

#### **Held**

HELD: (1) The recorder's finding that the children knew who their parents were undermined the appellants' argument that a shared residence order in favour of M and L alone was necessary to convey

that message to the children. The recorder was entitled to take the view that labelling was solely an issue for the adults. The court went too far in AR (A Child) (Relocation), Re (2010) EWHC 1346 (Fam), (2010) 2 FLR 1577 in saying that a joint or shared residence order was the rule rather than the exception even where the care given by each parent was decidedly unequal, Re AR doubted. Whether or not a shared or joint residence order was granted depended on a determination of what was in the best interests of the child. It had been established that it was not a prerequisite for a shared residence order that an equal amount of time was spent with each adult, nor was it necessary for there to be cooperation and goodwill between them, A (A Child) (Joint Residence: Parental Responsibility), Re (2008) EWCA Civ 867, (2008) 2 FLR 1593 applied. Nothing in the appellants' submissions undermined the recorder's determination of what was in the children's best interests and the decision reached was well within his discretion. The recorder had not allowed the observations in Re AR to dictate that there must be a shared residence order. He had correctly directed himself that what was right for the children was fact sensitive.

(2) The recorder accurately reflected N's position and had been mindful of B's evidence. The recorder differentiated between N and G in a way that recognised N's wishes and B's advice. He provided that the pattern of longer weekends that he introduced should start with shorter weekends. He dealt individually with N stating that if N was reluctant to stay more than one night F should not hesitate to return her to M and L, and provided the same for overnight mid-week stays. The recorder's misunderstanding in relation to B's evidence, namely that weekend stays should be tried for N at the same level as G but might need adjusting, was not sufficient in itself to undermine the exercise of his discretion. He had gained considerable insight into the case and there was nothing extraordinary about his order. It was easy to see the merits of an order which permitted both children to be treated the same unless N's needs proved different. Treating the children in the same way was one of the arguments advanced by the appellants. It could not be said that in accommodating the children's wishes to spend more time with F, the contact had been increased to an extent that would confuse them. The children understood their living arrangements and the status of the adults in their lives. The recorder had not made a material error and the order made was within the range of orders he was entitled to make in the exercise of his discretion.

(3) If not for F's offer to agree to a residence order that included L, the appellants' reasoning would not have been sufficient to interfere with the order. The appeal was allowed to the extent that the shared residence order was substituted with a residence order in favour of M, F and L.

## Permission

Lawtel 