

Re M (A Child) (2009)

[2009] EWCA Civ 1385 : [2010] Fam Law 452

02/11/2009

Barristers

Kate Branigan KC

Court

Civil Division

Practice Areas

Public Children Law

Summary

A finding of fact in care proceedings that a father had raped the mother of his child was overruled in the light of fresh evidence demonstrating that the mother had lied about the rape.

Facts

The appellant father (F) appealed against the findings of a judge in a fact-finding hearing arising out of care proceedings in respect of his child. The judge had conducted the fact-finding hearing in relation to allegations of, among other things, violence made by the second respondent mother (M) against F. The judge concluded that the allegations made against F had been made out. One of the findings contested by F was that he had taken a knife to M, thrown her on the floor and raped her. F was granted permission to appeal against that finding on the basis that fresh evidence, namely a recording of a conversation between him and M, showed that M had lied.

Held

HELD: The fresh evidence adduced by F raised serious concerns as to M's credibility. If the judge had had the benefit of hearing the recording, it would no doubt have had an impact on his finding in relation to the allegation of rape. F did not have a previous history of rape or sexual deviance and there was nothing to corroborate the allegation made by M. In fact, the relationship between M and F continued reasonably amicably after the allegation had been made. In the light of the fresh evidence, the finding of rape made against F could not stand.

Permission

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