

## Re A (Children) [2010]

**[2010] EWCA Civ 1490**

23/09/2010

### **Barristers**

David Bedingfield

### **Court**

High Court

### **Practice Areas**

Public Children Law

### **Summary**

Appeal by father in care proceedings against refusal by the judge to set aside findings of fact following recusal by the judge. Appeal allowed.

### **Facts**

At a finding of fact hearing in care proceedings the guardian had not taken a neutral stance and had instructed her counsel to support the mother's position and to reject that of the father. The guardian's counsel's submissions were accepted by the recorder and were a key factor in findings being made against the father.

Following that hearing and in advance of the disposal hearing, by chance it was discovered that the recorder had been instructed by the same guardian in another public law case. Those instructions had been live at the date of the finding of fact and were still current.

An application was therefore made by the father for the recorder to recuse herself from determining the outstanding issue of disposal and to set aside the findings made against the father. The recorder recused herself from any further hearing but refused to set aside the findings made.

### **Held**

The father appealed. The appeal was allowed and the matter listed for a re-hearing. The Court of Appeal's concern was the ongoing professional relationship between the recorder and the guardian. The Court indicated that it might have taken a different view if the relationship had closed and the guardian had taken a neutral stance during the fact finding.

Patten LJ was of the view that in order properly to apply the informed observer test for recusal on the ground of apparent bias, as set out by Lord Hope in *Helow v SSHD* [2008] 1 WLR 2416, it is incumbent upon the judge to explain in sufficient detail the scale and content of the professional or other relationship which is challenged by one of the parties, especially as the parties are not in a position to cross-examine the judge as to the relationship.

## Permission

Family Law Week 