

M (Children) (2013)

[2013] EWCA Civ 1147

20/09/2013

Barristers

Alex Verdan KC

Court

Court of Appeal (Civil Division)

Practice Areas

Private Children Law

Summary

A judge had failed properly to assess the risks of supervised contact between a father and his three young sons when refusing any contact to the father who had a history of domestic violence. The case was remitted to the judge for rehearing on the issue of availability of adequate resources, including accommodation and personnel, to supervise contact strictly and securely between the father and the three boys with a review thereafter.

Facts

The appellant father (F) appealed against a decision refusing his application for contact with his three sons aged seven, five and three respectively.

The respondent mother (M) had left the family home with the three boys and taken up accommodation in a women's refuge. She had been the victim of significant domestic violence over a prolonged period. The two elder boys had witnessed F's physical and verbal aggression towards M and other adults, and had been affected by it. F had criminal convictions relating to violent behaviour. On F's application for contact, the judge found that M was terrified of F, and that F minimised his behaviour and blamed M as the victim of his violence; he failed to show any lasting benefit from therapy and his behaviour was likely to destabilise the children's home and security, which was provided by M.

Held

The judge's assessment of the parents' characters, past behaviour and present attitudes was entirely dependent upon finding primary facts, and interpreting and drawing reasonable inferences from them. Her conclusions were justified and were unassailable on appeal. Despite her adverse assessment of F's character and M's vulnerability, there had to be careful scrutiny of the outcome reached. The judge's order was draconian. The prospect of the children having any relationship with F during their minority would diminish increasingly with the passage of time. Their welfare was paramount. A child's continuing relationship with a non-residential parent was highly desirable and contact should not be denied unless the child's welfare demanded it. Domestic violence was not, in itself, a bar to direct contact, but had to

be assessed in the circumstances as a whole, L (A Child) (Contact: Domestic Violence), Re [2001] Fam. 260 considered. The judge failed adequately to address why the children's safety and the management of M's anxieties could not be achieved under any circumstances of supervision. She might have been adversely influenced by F's expressed desire to press for unsupervised contact. The expert evidence was that supervised contact was possible. There was insufficient examination of whether the risks could be sufficiently guarded against by careful and professional arrangements for setting up the contact and for close supervision during it. The judge's order was disproportionate under the European Convention on Human Rights 1950 art.8(2). The case was remitted to the judge for rehearing on the issue of availability of adequate resources, including accommodation and personnel, to supervise contact strictly and securely between F and the three boys with a review thereafter (see paras 4, 11-28 of judgment).

Appeal allowed

Permission

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