

Re D (A Child) (2014)

[2014] EWCA Civ 315

26/03/2014

Barristers

Alex Verdan KC

Court

Court of Appeal Civil Division

Practice Areas

Private Children Law

Summary

A judge had been entitled to conclude, following a careful welfare analysis, that an unmarried father's parental responsibility for his son should be removed where the father had inflicted devastating emotional harm on the whole family by sexually abusing the child's half-sisters.

Facts

The appellant father (F) appealed against an order removing his parental responsibility for his son (D) on the application of the respondent mother (M).

D was born in 2004 and the parties were not married but F was named on D's birth certificate as his father. In 2009 F pleaded guilty to sexual offences committed against M's two daughters from a previous relationship. On his release, M successfully applied for an order that F's parental responsibility should cease. The judge found that D had suffered serious emotional harm as a consequence of F's actions and that he was at risk of further emotional harm.

F submitted that the judge failed to (1) distinguish P (Terminating Parental Responsibility), Re [1995] 1 F.L.R. 1048 to have regard to the Human Rights Act 1998 and the changing social norms in the intervening 18 years since Re P; (2) consider whether M had established the allegation that he was a sexual recidivist; (3) make a proportionate order or to take into account policy considerations that such applications should not become "a weapon in the hands of a dissatisfied mother".

Held

(1) Whatever the change in social norms since Re P, the concept of the paramountcy of the welfare of the child had remained intact as the governing principle to be applied. Re P could not be distinguished on the basis that F had not inflicted harm directly on D. F had inflicted devastating emotional harm on the whole family including D, and F could not be said to be capable of exercising his parental rights with responsibility, Re P followed. It was well established that the provisions of the Children Act 1989 were compliant with the European Convention on Human Rights 1950. To the extent that differences existed in

the statutory treatment of unmarried and married fathers, that difference should be construed as justified, *Smallwood v United Kingdom* (29779/96) (1999) 27 E.H.R.R. CD155 applied. The judge articulated the correct test and considered the key issues. He utilised the welfare checklist and reminded himself of the interference with art.8 rights which needed to be justified. His conclusion that, despite the need of every child to have a relationship with each parent wherever possible, D's welfare would be imperilled if F had any involvement in his life was unassailable on the facts and as a value judgment within a careful welfare analysis (see paras 18-19, 21, 25-26 of judgment). (2) M had satisfied the burden of proof of facts relating to F's alleged sexual recidivism (para.27). (3) The judge expressly considered the proportionality of the order. Since *Re P* had been decided, there had been no reported decisions of such an application becoming "a weapon in the hands of a dissatisfied mother" and the application was not being used as such in the instant case. The changed social conditions over the years since *Re P* had not led to any increase in such applications. There was nothing to suggest that there was a need to enhance the court's vigilance in that regard (paras 31-32).

Permission

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