

SMD v LMD [2014]

[2014] EWHC 302 (Fam)

14/02/2014

Barristers

Paul Hepher

Court

High Court (Family Division)

Practice Areas

Private Children Law

Summary

Application by father for contact with his daughter following findings of fact adverse to the father. No order as to contact. Section 91(14) order made

Facts

This was an application by the father for contact with his daughter, A, who is 8 years old. There had been previous findings of fact made in January 2013 reported as ***SMD v LMD*** [2013] EWHC 4611 (Fam). The court had found that the father had sexually abused A on at least one and probably more than one occasion. The father refused to accept this finding or any of the findings made against him and was seeking direct contact with A. The father had last had contact in 2010. A did not want to have direct contact with her father but had expressed a wish to have indirect contact with him. Further, the father had set up a website called "A's Website" which included a great deal of material about the proceedings, his beliefs about the findings and his desire to re-establish contact with A.

The mother invited the court, supported by the guardian, to make a s 91(14) Children Act 1989 order requiring the father to seek the court's permission before making an application for any section 8 order and to make that order until A is 16 years old. The mother also sought an injunctive order prohibiting the father from issuing or broadcasting any material which identified A as a child who has been subject to family law proceedings [the detail of which is set out at paragraph 26 of the judgment] and from maintaining "A's Website".

The court heard evidence from a consultant clinical psychologist who concluded that the father posed an elevated risk of sexual abuse in the future, would not be able to stick to limitations placed on indirect contact and was a risk of emotional harm to A. The guardian did not support indirect contact as she was of the opinion that there was a high risk that this could cause A emotional and psychological harm. The guardian supported the mother's applications for a s 91(14) order and the injunctive relief sought.

The court accepted the expert psychological evidence in respect of the father and found that the father

plainly represented a real risk of further sexual abuse of A but that there was an even greater risk that if the father were permitted to have contact with A, he would cause her serious emotional and psychological harm. The court also accepted the guardian's evidence that indirect contact had the potential to confuse and unsettle A. The court made no order for contact, whether direct or indirect.

Held

On the basis of the court's findings in respect of the father the court was satisfied that he would continue to make repeated future applications and that these would have an adverse effect on the mother and her parenting capacity. Therefore, in the wholly exceptional circumstances of the case the court made the s 91(14) order in the terms sought, until A is 16 years of age. The court also made the injunctive orders in respect of the website and publishing and broadcasting material in respect of A.

Permission

Family Law Week 