

Re W (Minors) [2016]

[2016] EWHC 2226 (Fam)

10/08/2016

Barristers

Alistair G Perkins

Court

Family Division

Practice Areas

Private Children Law

Judgment in which final orders are made in relation to an application by a father for a location order and guidance is given concerning the way in which the President's Guidance in respect of the duration of ex parte orders is to be interpreted.

This is a judgment given by Mostyn J in which he makes final orders in relation to an application by a father for a location order following the breakdown of his relationship with the children's mother. There were concurrent proceedings in the Central Family Court for child arrangement orders and an application had been made by the mother for a non-molestation order in the Family Court at Bow.

It is in relation to the latter application that Mostyn J's judgment is of wider significance for family lawyers. The mother had sought, and obtained, an ex parte non-molestation order which had been made for a period of one year, with provision in the order for it to be "considered at a further hearing on a date to be fixed by the court officer on request by the respondent". This approach, as the judge points out, clearly flouts the guidance given by the President in the President's Practice Guidance of 13 October 2014 in which it is made clear that the duration of an ex parte order prior to a review at an inter partes hearing should not normally exceed 14 days and that provision must be made for a specific return date.

Rather than direct his criticism at the district judge who made the order, however, Mostyn J uses his judgment to take particular issue with the note which prefaces the Guidance in the 2016 edition of the Family Court Practice ("the Red Book") which he describes at para. 10 of this judgment as "intemperate, disrespectful and legally wrong" and that "in effect incites the lower judiciary to ignore the Guidance and to continue with the bad practices that the Guidance was intended to eradicate". The note suggests that the Guidance is unworkable in practice and leaves victims of domestic violence without sufficient protection. Mostyn J emphasises the need to balance the protection of victims and the impact on respondents of an order being made ex parte.

Continuing his criticism of the editorial note, the judge makes it plain (at para. 11) that:

"It is for the higher courts to give guidance as to the interpretation of statutes and it is certainly within

the remit of the higher courts to specify how a discretionary power in a statute is normally to be exercised. And when the higher courts give such guidance in a decision, then that is binding on the lower courts - see the decision of the Supreme Court in *Willers v Joyce (No. 2)* [2016] 3 WLR 534 at para.5.”

He therefore uses this judgment to give just that guidance, with the clear intention of removing any doubt about the way in which the President’s Guidance is to be interpreted. An ex parte order made under the Family Law Act must specify a return date and the expiry of the ex parte order should normally coincide with that return date.

Permission

 **Family Law Week**