

CAN MOTHERS REPEATEDLY HINDER CONTACT?

One of the major battlegrounds in relationship breakdown is what happens to the children. In biblical times we had the judgment of Solomon. 'If there is a dispute as to "ownership" of the child, raise a sword and cut the child in two, giving one half to each'. Tempting solution, some might say, but hardly practical in these times.

CHILD GUILT

But these are difficult times. When partners split up, it is the innocent child who suffers most. The psychologists will tell you that often the child feels they are the reason that their parents have split up. Irrational on their part, but a conviction deeply held by the child. Had I behaved differently, they think, perhaps Mummy and Daddy would still be together. The child goes through a deep process of grieving.

Against such a background we, as lawyers, see parents jousting for "possession" of the child. "You left me", they seem to be saying, "So you can suffer. You will have contact when I say so."

FATHERS 4 JUSTICE

The campaign waged by Fathers 4 Justice has grievances like these as one of their main concerns. They say that the Courts don't listen to them, and don't give them the rights to which they are entitled when it comes to seeing their children. They say the Courts simply refuse to recognise their ongoing role in their child's life, regardless of why they split from their partners. They will give statistics which they say demonstrate that the Courts are very slow in enforcing orders for contact in the face of hostile mothers who are determined to obstruct such orders.

TURNING TIDE

But the tide is turning, and turning fast. We now have a recognition by the Courts that such obstructive behaviour should no longer be tolerated by the judicial system. And this is now backed by statute, namely the Children and Adoption Act 2006, which came into force in 2009. This Act provides for new enforcement provisions to curb the behaviour of mothers bent on obstructing the father's right to see their child, and the child's right to see their father.

COURT CHALLENGE

Fathers' rights in these kind of situations have recently been tested in the Courts. The Courts are sending out a clear message that children must not lose their relationship with their fathers. This relationship must be encouraged and not left to wither because of forceful objecting mothers, or the apathy of the Court. The message seems to be clear to mothers obstructing contact for no real reason – shape up or risk “losing” your child. In other words, if it is really called for residence will be changed from mother to father.

Such decisions are made to compel errant mothers to change their mind-set and their behaviour. The Courts want to get them to engage in the process of encouraging their child to see the father – if not they run the risk of the child living with Dad.

RE S

In November 2009 and then in January 2010 the Court of Appeal had to deal with two similar cases dealing with these issues. In the latter case, called Re S (a child), the facts were these. The parents split up in autumn 1997 after their son S was born – he was 18 months old when they parted. The father applied to the Court for contact in mid-1999, and there then followed more than 10 years of battles through the Courts. Contact orders were made in the father's favour, but were ignored by the mother. By the time of the Court hearing S had not seen his father since February 2006.

At the hearing in the High Court, the Judge found that the boy had become completely alienated from his father. So much so that the boy did not want to see his father, and certainly had no wish to live with him. A Child Psychologist gave a report to the Court. In it he said that “the child’s expressed wishes and feelings are irrational and should form no part in the Court’s decision making”.

This view weighed forcefully with the Judge, who went through a welfare checklist and the balancing exercise required by all Judges in such cases. In the end he found that the mother, whom he described as a good mother in other respects, had deliberately opposed contact between her son and his father, and when possible had undermined it. In his judgment he said that “traumatic though it may be in the short term, it is in the best interests of S’s long term welfare for him now to live with his father.”

APPEAL

An immediate appeal was put in by the mother and was fast forwarded to be heard in less than three weeks from the High Court decision. The Appeal Judges could not fault the High Court Judge’s decision. They turned the mother down. Residence was transferred to the father.

SHARED RESIDENCE

In my more recent experience, the Courts are now hearing applications for shared residence instead of contact only applications. This does not imply that shared residence means the child spends equal time with both parents. Usually in fact that is the exception rather than the rule. What a shared residence order does is to send out a clear message. The message is that both parents have equal rights. They have equal duties. They have equal responsibilities. Where the children are concerned, they have equal status. Mother does not have superior rights regardless of what she might think to the contrary.

BE WARNED

So be warned. If you are a mother who thinks you can deliberately and persistently obstruct your child's relationship with your former partner, then think again. The case of Re S shows that the Courts are now willing to flex their muscles. Residence may very well be transferred to the father as a means of last resort if the obstruction persists.

STRONG SIGNAL

For fathers, there is a strong signal from the Courts that they should not give up. If their former partners continue to resist reasonable attempts to see a child, then the Courts are now more likely to help. No application is ever easy, and the Courts may still be unwilling to transfer residence after weighing up all the factors of the case, and the welfare of the child. But the tide is turning more in favour of fathers.

ACTION

If you think you need help with family and children's issues, seek good legal advice. My firm has the coveted Lexcel award. Lexcel stands for "Legal Excellence". We operate Legal Aid and 30 minutes free first interview. So do get in touch on **01288 35 9000**.

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