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Unmarried father fails to prevent mother and children moving to Britain

B -v- O'R High Court Judgment was given by Mr Justice Roderick Murphy on May 15th, 2009 Judgment

An unmarried father of three children failed in his attempt to prevent the children's mother moving to Britain with the children, when he appealed a decision of the Circuit Court to allow the move.

Background

The parties were never married to each other. Both are now in other relationships, the mother with a British resident whom she wished to marry. There had been a number of court appearances relating to guardianship and custody issues. A section 47 report was ordered and Dr Brian Houlihan was appointed in May 2008 to prepare it.

In October 2008 , the case was heard in the Circuit Court by Judge Michael White over four days and a written judgment delivered. The father was appointed joint guardian of the children, with joint custody and primary care and control with the mother, with whom the children had been living. The judge also ordered that the children take up residence with their mother in Yorkshire and made other orders relating to education and maintenance of the children.

The father appealed the part of the order that related to the relocation of the children and the case was heard in February 2009. By agreement with the parties, the judge also met the eldest child.

In his judgment, Mr Justice Murphy considered the case law on the relocation of children.

“The court cannot proceed to determine the issue in a way which separates the issue of relocation from that of residence and the best interests of the child.” The interests of the child were paramount, he said.

He added that, when granting leave to relocate, the court must devise a regime which adequately fulfils the child's right to regular contact with the parent no longer living nearby.

He then considered the evidence of Dr Houlihan, who had concluded his report in July 2008 , before the Circuit Court hearing.

The father told him he believed that the eldest child did not want to move to England, but wanted to maintain his school, football and social activities in this jurisdiction. He said that if the child chose to live in England, he would cease legal proceedings.

The mother said she wanted to move to England with the children to be with her new partner, whom she intended to marry. She also intended to set up a business there, in addition to an existing business in Dublin. She knew her eldest child wished to remain because of his friends.

Dr Houlihan met the children and also visited the homes of both parents and the father's new partner and spoke with the children's paternal grandfather, who was an important figure in their lives. He reported that the eldest child related with excellent eye contact, honesty, sensitivity and freedom but was ill at ease around the move.

At home with the mother, all three children appeared relaxed, secure and happy and had a good relationship with each other.

In court he described the children as "delightful", they loved both their parents and their parents loved them. The eldest child was the spokesman for all three. He repeatedly said he wanted to remain in Ireland.

Referring to the mother's partner, Dr Houlihan said the longest time he had spent with the children was one week.

He thought he should have established more of a relationship with the children's father in order to better understand the elder boy's position. Such a life change event as the proposed move should have been better thought out. He said that the planned marriage to this man would be another stressful "life event" for the children.

If children were to move, then access should be as frequent and as close to the present arrangement as possible.

Where a mother was emotionally secure and was supported, it had a knock-on effect on the children, he said. He noted that she had intended keeping a house here in case things did not work out. It was critical that more preparation and consideration be given to the move.

He also said that if the primary custodian was so unhappy as to compromise her emotional welfare that would, in turn, compromise the welfare of the children.

The father argued that the emotional well-being of the mother should not be given a priori benefit at the expense of a continuing relationship between the children and both parents.

The mother said that apart from brief periods of limited support by the father, she had solely reared the three boys and had willingly borne the financial responsibility for their upbringing.

He had left in 2003, when she was pregnant with the third child, and was not prepared to support and maintain the boys properly, yet he wished to prevent them from being properly provided for by her and her partner.

Decision

Mr Justice Murphy said: "The court is of a view that the welfare of the children and of their mother, who have constituted a unit since 2003, is of paramount importance."

The custody was working well and the court should not lightly interfere with a reasonable way of life as selected by the mother.

He said he believed that the welfare of the children was best served by all three remaining with the mother and he affirmed the Circuit Court order permitting the move.

However, he added that the mother and her partner should have regard to the concerns of Dr Houlihan about preparing the children for the move.

The rights of the father were best regulated by reasonable access and he also affirmed the orders of the Circuit Court relating to contact with their father.

The full judgment is on www.courts.ie

John Rogers SC and Fiona Kerins BL, instructed by Reidy Stafford Solrs, Newbridge, for the appellant; Sarah Berkeley BL, instructed by Gallagher Shatter, for the respondent.