

A RE R (A MINOR) (RESIDENCE: RELIGION)

Court of Appeal

Purchas and Balcombe LJJ

4 September 1992

- B** *Residence – Child of parent who was member of a religious sect – Father withdrawn from his community and cut off from his child – Father requesting child’s return without success – Members of sect making application for residence order – Father also applying for residence and contact orders – Whether child to live within the doctrines and tenets of fellowship or to rehabilitate with father outside the fellowship – Whether doctrines and beliefs of fellowship relevant and should be taken into account – Effect of child’s wishes and feelings – Whether judge should have interviewed child*
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D The boy, now aged nearly 10, was born to a father who was a member of the Exclusive Brethren. There was no flexibility or leniency shown to an adult who offended against the concepts and doctrines of the fellowship. Two penalties were imposed: the first was that of being ‘shut up’, which was a temporary exclusion from the fellowship which could be swiftly removed on admission of fault and repentance. The second and more serious penalty was to be ‘withdrawn from’, which meant absolute ostracism from the fellowship including the member’s own immediate family. The father was withdrawn from after offending certain tenets of the fellowship. He then married a woman outside the fellowship and about 5 years after the birth of the boy concerned, the mother died of cancer. Before her demise, the family was received into the fellowship from which the father obtained employment. Following reprehensible conduct involving the harassment of a woman who had rejected his proposal of marriage, the father was withdrawn from for a second time. Attempts were made by members of the fellowship to obtain the father’s voluntary consent to their care of the child. The father signed a document agreeing to that effect, but adding that if the child should wish to return to him at any time, he should be allowed to do so. On the following day, he was told officially that he had been withdrawn from. On being withdrawn from the community, the father had little or no contact with the child. The sect members applied for a residence order, leave having been obtained. The father lodged his answer and applied for the return of and contact with his child. An order was made providing for the father to have both visiting and staying contact. Attempts by the father for contact failed and he had to return to court on more than one occasion. The sect members, whilst making no effort to assist, indulged in actions calculated to have an effect on the child’s conscience and split his emotions by deliberately assembling at the school and at the court for the handovers. The matter was resolved by an order providing for the boy to stay with his father for a fortnight, during which period the court welfare officer was able to make an impartial observation of the boy with his father. The report gave a favourable impression of the warm and positive relationship between father and son. Following harassment by members of the fellowship in various forms, the father moved to another address with his son. The judge found, inter alia, that during the struggle for possession, the boy had suffered considerable harm, that his emotional needs were clearly a matter of great concern and that although he held a deep and sincere conviction that he wished to stay within the disciplines and tenets of the fellowship, he also expressed the wish to be with his father. There were two courses open to the judge: either to commit the boy to a life within the fellowship, in which case he would be cut off from his father, or to rehabilitate the child with his father outside the fellowship. There was no middle course.

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After a full hearing, the judge made a residence order in favour of the father providing: (1) that the child should live with him; and (2) that upon the aunt's undertaking not to speak or communicate with the child in any way in relation to religious or spiritual matters or make any reference to the Exclusive Brethren as a religious group, that he should visit the aunt initially under the supervision of the court welfare service, later without supervision and finally for staying access. A second order provided for a local authority officer to be made available to advise, assist and, where appropriate, befriend both the father and the child and for the child to be examined by a professional and to receive treatment, where appropriate, concerning his emotional needs. No order was made on the applications of the sect members for contact and residence. They and the aunt now appealed.

Held – dismissing the appeal –

(1) It was no part of the judicial function to judge or to comment upon the beliefs, tenets, doctrines or rules of any particular section of society, provided that those were legally and socially acceptable and sincerely held. The only relevance of the beliefs and doctrines of a particular group of Christians was the effect those beliefs and doctrines had had and would have on the child concerned. It followed that the impact of the beliefs, tenets, doctrines and rules of that society upon a child's future welfare must be one of the relevant circumstances to be taken into account when applying the provisions of s 1 of the Children Act 1989. The provisions of that section did not alter in their impact from one case to another and they were to be applied in accordance with the generally accepted standards of society, bearing in mind that the paramount objective of the exercise was promoting the child's welfare, not only in the immediate but also in the medium and long-term future during his or her minority.

(2) The task of the judge was not to assess the depth of the child's convictions on religious and social matters or his desire to continue life within the fellowship. The fact that the convictions existed was one of the features which he had to take into account when considering the expressed views and feelings of the child which were not paramount considerations per se.

(3) A judge's decision whether or not personally to interview a child was above all a question for the exercise of a judicial discretion. The judge's decision not to interview the child could not be criticised, especially as he was fully aware of the strong views held by the child as revealed in the welfare officer's report.

(4) On the facts, the judgment was one of discretion and assessment after hearing all the evidence. It was a decision which was plainly right, the judge having completely satisfied himself that it was in the child's best interests to be with his father and provided the father and son received assistance and treatment in the form of a family assistance order from the social services to help them cope with the change in their lives. The appellate court would not therefore interfere.

Statutory provision considered

Children Act 1989, s 1

Cases referred to in judgment

C v C (A Minor) (Custody: Appeal) [1991] 1 FLR 223, CA

G v G (Minors: Custody Appeal) [1985] FLR 894, [1985] 1 WLR 647, [1985] 2 All ER 225, HL

T (Minors) (Custody: Religious Upbringing), Re [1981] 2 FLR 239, CA

APPEAL from an order made by Judge Woodford in the Ipswich County Court

Andrew Young for the appellants

Roderick Newton for the father

PURCHAS LJ: These are appeals from orders made by his Honour Judge Woodford on 18 June 1992 in respect of applications under the Children

A Act 1989 relating to a boy, D, who was born on 19 October 1982 and is therefore just short of his tenth birthday. The parties involved besides D are his father, an aunt, and a married couple, who, although in no way related to D, have played a not inconsiderable part in his life, Mr and Mrs W.

B The first order was a residence order. This provided that D should live with the father and further ordered, upon the aunt's undertaking not to speak or communicate with D in any way in relation to religious or spiritual matters or make any reference to the Brethren as a religious group, that D should visit the aunt at first under the supervision of the court welfare service, later without supervision and finally should enjoy staying access. (I interpose to say that when the transcript of the judgment is read, the operation of those provisions relating to access are further clarified.)
C The court also ordered that no order should be made on the applications of Mr and Mrs W for contact and residence. The second order provided that a local authority officer be made available to advise, assist and, where appropriate, befriend both the father and D.

D Mr and Mrs W and the aunt now appeal against those orders. The history and the material facts can be taken from the judgment, but it is first necessary to say something about an exclusive religious sect previously known as the Plymouth Brethren, but now preferring to be referred to as the Brethren or the Exclusive Brethren. All the parties concerned in these appeals are or have at some time been members of that sect.

E With two reservations not relevant to this judgment, Mr Young, who appeared for the appellants, accepted that the judge's description of the Brethren and their beliefs and activities is, generally speaking, accurate. I therefore turn to the judgment to extract such relevant parts to provide the backdrop to this appeal:

F 'The most important belief for this case is that the Brethren operate a very strict separatist rule – that is to say, they are not allowed to mix socially with anyone who is not in the fellowship, nor are they allowed to take a meal with them. The witnesses cited examples of this. The children at school are taken home for lunch and do not join in school meals. On the rare occasions when they go on school outings they must eat separately from their schoolmates. They are not allowed to take normal holidays, with the exception of children. The follow-on from this rule is that they are not allowed to watch television except where it is required by the school curriculum, listen to radio, records or use computers. They believe that they will not remain pure if they mix with those whom they believe impure, and Mr W read a quotation from
G St Paul's second letter to Timothy, chapter 2, verses 19 to 21.'

H I do not propose to read those verses into this judgment, but they show the foundation upon which anyone outside the strict tenets of the society are impure and contact with them is injurious to the Brethren. Continuing with the judgment:

'Clearly these are not the views of the majority of people in this country, but these are views which are sincerely held and which are strictly applied within the community. It is a community which holds much stricter standards of morality than the rest of society, and a community