

strength and validity of the judge's order. The necessity for careful monitoring and protection is demonstrated by the activities and conduct of the Brethren which led to the injunction being granted in August 1992, to which I have referred.

Finally, Mr Young submitted that if the court were not minded to allow the appeals of Mr and Mrs W in full there was a halfway house, ie the granting of contact orders. This, in my judgment, is a wholly unacceptable compromise and could only serve to strike at the root and purpose of the residence order which, on this hypothesis, this court had confirmed. It would exacerbate any confusion and stress being experienced by D and could only be seriously detrimental to his welfare.

The aunt who lives in London is on a different basis. The judge made a very carefully structured order for access in her case. It reflects the paramount necessity that nothing should be done that would inhibit or interrupt the very delicate and difficult process of rehabilitation for D. The judge has acknowledged, and this court is in no position to question it, that it will require careful psychological counselling and supervision by the welfare services to be provided under the second of the two orders that have been made, so that the bridge that is being built to allow D to rejoin society outside the fellowship in accordance with the judge's determination as to what is in his best interests should not be prejudiced.

It is encouraging to hear that the aunt has honoured apparently her undertaking given to the court. It is nothing less than I would expect from a member of the fellowship, who, as I have said, submit themselves to severe discipline and certainly, in my experience, have never been found to contravene orders of the court. That would be offensive and contrary to their own strict concepts.

She, however, seeks to be relieved of the undertaking not to discuss religious or spiritual matters, nor to make any reference to the Brethren. If that restriction was lifted, then her own religious disciplines would reassert themselves, and, free of an obligation to observe the law, the next requirement upon her would be to do her best to ensure what, in the view of the fellowship, is the best course for D. In my judgment (and it is no reflection on the integrity of the aunt) she will follow sincerely and genuinely the diktat which is uppermost at the time. It is therefore necessary to keep the legal diktat in place so as to ensure the safe progress of the rehabilitation of D. This is well within the capability of the aunt, who will honour the restriction and will enable D to benefit from some association with his family, which is clearly an important matter to him.

The judge in his order very carefully set a regime, and I read from the bottom of p 25 of his judgment in relation to this matter:

'She [that is the aunt] must be able to keep her visits purely social in nature. Nothing must be done to interfere with the residence order I have made. I say this firstly because she impressed me as a person who had charity and who loved the boy as himself, and not just as a member of the fellowship. If she can agree to such an undertaking, then I would envisage her to see him first under supervision, later without supervision, and finally staying access. All such contact' [and these are the crucial words] 'shall be at a time on the advice of whoever is responsible for supervising these two.' [That is, I take it to be, the father and D.]

A 'No such contact shall take place if the supervisor is of the view that such contact would be harmful to the child.'

I have taken the step of reading that part of the judgment out so that there can be no doubt whatever as to the meaning of the words of the contact order.

B At the conclusion of Mr Young's submissions it was suggested that the court might make some provision as to contact with the paternal grandparents with whom the aunt lives. For my part I see no objection to that, provided that their contact is firmly made subject to the same undertakings and control as applied in the case of the aunt. It may be a more appropriate course, I do not know; in fact it is probably already envisaged by the control put in the hands of the supervising officer that he should approve the first inception of such contact. Subject to those qualifications, I would be prepared to approve an extension of contact in that way.

C Apart from that, for the reasons that I have attempted to elucidate in this judgment, I would dismiss these appeals.

D **BALCOMBE LJ:** I agree that these appeals should be dismissed for the reasons given by Purchas LJ. I add some words of my own because of the strong feelings which the parties and D obviously have about this case. In general terms I would say that this is a classic case for the application of the principles laid down by the House of Lords in *G v G (Minors: Custody Appeal)* [1985] FLR 894, namely that this court should not interfere with the decision of the judge of first instance unless he or she has acted on wrong principles or is plainly wrong. Notwithstanding the detailed grounds of appeal, and the careful arguments of Mr Young for the appellants, there is in my judgment no valid basis for this court to interfere with the decision of Judge Woodford. Indeed I have little doubt that, had I been the judge hearing the case, I would have come to the same conclusion as he did. That, however, is irrelevant.

E The one specific point to which I refer is the attention which the judge paid to the wishes of D (aged 9½) and his refusal to see D in his private room. The judge referred to s 1(3)(a) of the Children Act 1989 which provides:

'... a court shall have regard in particular to—

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding) . . .'

G The judge then referred to the following passage in the court welfare officer's first report. The court welfare officer said this:

H "In interview with me (about this court case) D articulated his views quite clearly – and tearfully. He said that what he wanted was the love of the Lord Jesus, the fellowship of the Brethren and to live with his 'Grandma' and 'Grandpa' W. He neither wanted to live with his father nor to see his father. As he put it, he knew his father had done wrong and he felt wrong about being in his house. He also said he had always felt wrong about being in his house because when his father was of the Brethren, he was not a good Brethren. He also made me fully aware that he was aware that if he lived with his father he could have nothing to do

with the Brethren. He said very tearfully this was not what he wanted, as he had many friends and relatives in the Brethren.” A

The judge, having quoted that, said:

‘I have accepted in this case that D is old enough and intelligent enough for his wishes to carry great weight.

There has been a tendency in this case to say that the wishes of D should really be the paramount consideration; that is not the law.’ B

Mr Young did not submit to us that that was the law. He did, however, submit that it can never be right to force a child to abandon his religious beliefs. There is no such absolute rule. In the present case, for the reasons given by Purchas LJ, D’s religious beliefs would have prevented him from living with his own father (his only surviving parent) because his father has been withdrawn from by the Brethren. If the court were to be bound by D’s religious beliefs it would in the circumstances of this case amount to an abandonment of its duty, imposed upon it by Parliament, to decide what D’s welfare, viewed objectively, requires. C

After rejecting a suggestion that D had been brainwashed by the Brethren, the judge said (and I am now quoting extracts from a passage which has already been more fully quoted by Purchas LJ): D

‘What one must bear in mind is that he [D] has been within the enclosed community of the Brethren from the age of 4½. He has been taught their beliefs and their separatist doctrine virtually every day of his life since then . . . This doctrine of separatism is something he believes in with an extraordinary depth of feeling for a boy of his age . . . The question is whether his holding of such a view is of itself in this child’s best interests.’ E

I agree. I also agree that a judge’s decision whether or not personally to interview a child must above all be a question for the exercise of a judicial discretion with which this court can only interfere on the application of the principles I have already mentioned. I am quite unable to see how the judge’s decision not to interview D in the present case can be criticised, more especially as he was fully aware of the strong views held by D. F

I also agree with the order relating to contact proposed by Purchas LJ.

Contact to be extended to the paternal grandparents subject to the same undertakings and control as applied in the case of the aunt and subject to the approval and arrangements of the supervising officer. Appeals dismissed. No order as to costs. Legal aid taxation of respondent’s costs. G

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