

A ensure his retention thereafter.'

Of course, the importance of the obtaining of voluntary agreement to transfer of possession before the father realised what was going to happen to him is obvious. Thereafter, from what I have already said in this judgment, the contact between the father and his child, the father being withdrawn from, would be minimal if anything at all.

B On 27 March 1992 the matter came before his Honour Judge Barnett who made an order providing that the father should have contact, both visiting and staying contact, with D. This order did not succeed, and I refer again to the judgment to record the judge's assessment of the circumstances in which repeated efforts by the father were frustrated by D running away, resorting with the W's, the W's doing nothing positive to return him to the father in accordance with the court order. With that  
C general summary as introduction, I turn to p 23 of the judgment:

'There is one other matter to take into account in considering Mr and Mrs W's capabilities, and that is, that they both appear to lack any degree of charity towards D or his father. They have made no effort to make the whole series of incidents [and I interpose those are the incidents over the long history of the failed attempts at access in accordance with the court order] which have occurred since this case began less traumatic for this small boy, who must have suffered considerable harm during this struggle for possession. I understand that the Brethren can have no compromise in their doctrine as far as adults are concerned, but not when it comes to children as young as D. They could have ensured that the handovers ordered by the court took place smoothly without any distress to D, but instead they deliberately assembled at the school and at the court, knowing that this would have an effect on the poor child's conscience and split his emotions in two. This showed a lack of love towards this child that I found incomprehensible. [The father] may have been withdrawn from by the Brethren, but he showed much more love and concern for D's feelings than anyone else in this case. In considering their actions and Mr and Mrs W's evidence that "It is of great concern if a child leaves the Brethren", and in the evidence of concern in these sort of cases abroad, one could easily get the impression that they are more concerned with the membership than the individual child himself.'

I say at once that in his submissions on the appeal this passage was criticised by Mr Young. He said that the fellowship objected to the use of the word 'charity' in this context and that the fellowship had charity, generally speaking, and always had charity. On the question of the detailed conduct of the Brethren in the content of 'charity', Mr Young submitted that such were the strict tenets and doctrines and rules of the fellowship that conduct which would in persons outside the fellowship call for criticism and comment in the context outlined by the judge, the Brethren were to be excused because they were merely complying with their own strict doctrines.  
H

I have transposed Mr Young's submissions, but that is how I understood the burden of them to be. I find such a submission wholly unacceptable, because when analysed what is really being said is that the

conduct recorded by the judge, although in some degree explained because it is suggested that the Brethren were parents collecting their own children, the main burden of it was that while holding charity out towards D, nevertheless in obeying their own doctrines their charitable attitude towards D was translated into this harmful conduct. I do not find that an attractive submission at all, but I record it so that it should not be thought that I have overlooked Mr Young's very able and skilful submissions, not only on this aspect of this case, but throughout his address to the court.

That membership of the fellowship is of importance is clearly demonstrated by the events subsequent to the hearing. I have not overlooked Mr Young's submission that the expedition by the W's to Sussex where the father had been driven by the attentions of the fellowship in the Stowmarket area as alleged in his affidavit, and I have little reason to doubt the veracity of it, was said to be merely to assure themselves of D's welfare. I find that unimpressive, as indeed did the judges dealing with this matter. Injunctions were issued by his Honour Judge Barnett dated 7 May 1992 enjoining Mr and Mrs W from communicating or attempting to communicate with the father or D, from attending or attempting to attend or enter the home where the father and D had gone on their removal from the Stowmarket area after the hearing of the case, or approaching the school where the child was attending. That was an *ex parte* application. The W's swore an affidavit in response and on 24 August 1992, on an *inter partes* hearing, that injunction was continued.

I return now, however, to the ensuing events from the disrupted attempts at visiting and staying access. The father was forced to return to court on more than one occasion. I need not detail the number of occasions, but eventually the matter was resolved by an order of Mr Recorder Sennitt of 29 May 1992 that D should forthwith stay with the father and continue to stay with him until Monday, 15 June 1992. That enabled the father to have D without interference from the Brethren. That was the intention, but by 8 June 1992 Mr W had attempted to stop this with an application of his own to set aside the order of Mr Recorder Sennitt. He failed in that enterprise.

The access enabled for the first time an outside impartial observation of D with his father. On 12 June 1992 the court welfare officer spent some 4 to 5 hours with them. A full description of this occasion is in the documents. I do not propose to read it at length. It shows, however, that when away from the influence of the fellowship there was a good relationship being established. It is important to notice that, as things turned out, for something over an hour the welfare officer had D to himself when the parties were driving in two different cars to the Romney Light Railway Centre where the parties had decided to go. D asked to go in the court welfare officer's car. That gave the welfare officer an unrivalled opportunity of making an assessment of D. I read only extracts from the report:

'It was noticeable that he was wary of me asking any questions, and he did not raise any questions over the issue he knew I was there to report on. I stuck to a neutral conversation line and D proved to be an inquisitive, intelligent and humorous companion.'

Then when the parties got together again at the Romney Light Railway

**A** Centre the officer reported that the father was obviously slightly affected by the officer's presence. Referring to D, he said:

'He seemed quite at ease with his father. Not at all scared, apprehensive or upset about being with him. His father was generally indulgent and patient towards him throughout quite a tiring day, however, he exercised a quiet control and appropriate paternal dominance of will over D. Their body language was positive. They touched each other quite naturally, smiled at each other quite intimately and shared experiences, jokes, songs together . . .

**B**

D seemed to enjoy himself, he ate his lunchtime rolls with gusto, had no hesitation in asking his father for what he wanted – and seemed very comfortable.'

**C** Finally:

'Generally D and his father acted as any father and son might, albeit in a slightly awkward fashion. Given the history of the last 6 months, I was surprised at how relaxed this day out proved and was given no reason for concern over anything D or his father did or said to either each other or me.'

**D** That report was of course before his Honour Judge Woodford.

The judge's approach to the fellowship, their beliefs and rules is set out at the beginning of his judgment in these terms:

'The beliefs of this group of Christians are in some respects relevant to this case, but I stress that I have judged this case under the normal principles which apply in these courts in every case.'

**E**

I have no hesitation in saying that that is an impeccable approach to this problem. It is no part of the court's function to comment upon the tenets, doctrines or rules of any particular section of society provided that these are legally and socially acceptable. This was Mr Young's own submission, and I agree with it. However, I part company with some of the submissions made by Mr Young in certain contexts. The impact of the

**F**

tenets, doctrines and rules of a society upon a child's future welfare must be one of the relevant circumstances to be taken into account by the court when applying the provisions of s 1 of the Children Act 1989. The provisions of that section do not alter in their impact from one case to another and they are to be applied to the tests set out in accordance with the generally accepted standards of society, bearing in mind that the paramount objective of the exercise is promoting the child's welfare, not only in the immediate, but also in the medium and long-term future during his or her minority. This is well established. We were referred to the case of *Re T (Minors) (Custody: Religious Upbringing)* [1981] FLR 239, which, amongst other matters, held that:

**G**

' . . . it was not for the court to pass any judgment on the beliefs of parents where they are socially acceptable and consistent with a decent and respectable life; there was no reason why the mother should not espouse the beliefs and practices of Jehovah's Witnesses for there was nothing immoral or socially obnoxious about them.'

**H**

Then another finding: