

Change of Residence for Child whose Mother would not Comply with Court Orders

“Totally without merit”: These were the words of Mrs Justice Knowles in the High Court regarding the merits of a change of residence claim, Re C (A Child) [2018] EWHC 557 (Fam) in March 2018.

It is always better for parties who have separated to resolve their matters outside of Court. This is especially so when there are children involved. If, however, it is necessary to ask the Family Court for assistance then it is important to respect the Court’s decisions. This case makes for very sad reading and highlights the negative consequences of maintaining a hostile and combative relationship with your ex-partner and disregarding the authority of the Family Court.

Case Summary

This case was an appeal by a mother from the Family Court at Newcastle-Upon-Tyne in which His Honour Judge Wood had decided that a six-year-old girl should move to live with her father because the mother had consistently failed to support the relationship between her and her father.

Parents are encouraged to try and resolve disputes over the care of their children without the need to resort to Court. Schemes such as the Mediation Assessment and Information Meeting (MIAM) are an example of this. In this case, the recommendation does not appear to have been heeded, with excessive litigation leading to over 50 hearings. Such extensive litigation, should rightly be discouraged as it will not only have a negative impact on all involved, in particular the child, but it also creates a huge burden on the Family Court system.

It is unusual for the courts to resort to a full change of residence. They give the resident parent every opportunity to comply with court orders and prove they will promote a good relationship with the other parent. In this case the mother insisted that the daughter’s time with her father would be only ever be on the her terms. She refused to allow any progression to overnight contact or for the child to go on holiday with her father. Unless there are concerns regarding the welfare of a child then it is usual to expect separated parents to have both overnight and holiday time with their child. This may vary from case to case depending on circumstances of each particular family. But it is generally considered that this level of contact is necessary to ensure that both parents can play a meaningful role in the child’s life which is invariably in the best interests of the child.

The mother could or would not accept this and failed time and time again to comply with court orders. HHJ Wood felt that he could either give the mother yet another chance or order that the child live with the father. He chose the latter and it would then fall to the father make the child available to spend reasonable time with the mother.

The mother again appealed the decision on the grounds that there were a host of procedural irregularities. These included everything from her being unwell at the original hearing, to a lack of judicial continuity contributing to the parental conflict. She also appealed on the grounds that there had been a failure to order psychological reports of the child, and that HHJ Wood had not properly considered the welfare checklist set out in Section 1(3) Children Act 1989 in that he had not made specific reference to the child's wishes in his judgement. All grounds were dismissed by Knowles J who was very critical of the mother's attitude. She found that there were no procedural irregularities, that the case had benefitted from judicial continuity and that the mother had had an opportunity to raise her criticisms and ask for a psychological assessment during the proceedings but had only done so after the change of residence decision had been made. She also found that the fact that HHJ Wood did not specifically reference the child's wishes in his judgment was not sufficient to show a failure to apply the welfare checklist. Knowles J noted in particular that HHJ Wood had *"carried out a careful and thorough hearing in difficult circumstances and analysed the voluminous written evidence and oral evidence with great care"*. She concluded by urging the mother to reconsider her attitude towards the father and highlighted the damage that her position would do to her relationship with her daughter.

Commentary

This case is a timely reminder of the importance the Court places on both parents being involved in a child's upbringing and that this is for the benefit of the child. It is a warning about the consequences for parents who seek to exert total control over the relationship of the other parent in that their control, and indeed their child, may be taken away from them. The family courts have, in the past, been rightly criticised for being weak in the face of continual breaches by a primary residential parent of contact orders. At last we see a first instance judge and appeal court judge showing what should happen more frequently.

This case should give confidence to other "contact" parents to not give up, as so many historically have done nothing when family courts have made orders have been continually breached. It can rarely be in the best interests of a child to reside primarily with a parent who considers it appropriate to breach multiple family court orders.

When considering a judgment like this, it is difficult not to look back over the history of the case and consider what might have been done differently. Arguably, the courts could have taken a much firmer stance against the mother's disregard for court orders sooner. Was enough done to promote a more positive relationship between the parents in the early stages of the case? Had mediation taken place, would it have made any difference to the progress of the case?

What this case clearly shows is that maintaining a hostile relationship with your ex-partner and disregarding court orders not only creates further distress for all involved, but it can also lead to the very outcome which you have fought so hard to avoid.

There are many benefits of resolving matters outside of court. If parents are unable to resolve issues regarding the arrangements between themselves then there are many options to explore before resorting to court proceedings. As well as mediation, where a specially trained third party assists the parents in reaching an agreement, the parties could choose arbitration, where they appoint a trained family arbitrator to make a binding decision, or a collaborative approach, where everyone, including the lawyers, agree that matters will be resolved outside of court. This is in addition to traditional negotiations between lawyers which can still be an excellent way to resolve matters without the stress, expense and negative consequences of litigation.

The difficulty comes when one parent decides that, no matter what arrangement is settled on or how that arrangement was reached, they are going to disregard it and do as they please. In some cases, there may be nothing else to do but fight through until the end. Fortunately, such cases are not common and, with potential consequences of such an intractable attitude so starkly set out in this particular case, hopefully they will become even rarer.

If you would like to explore what options may be available to help you resolve any disputes you may have then iFLG can assist. Please contact enquiries@iflg.uk.com [2] or to speak to me directly you can email emma.nash@iflg.uk.com [3].

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