

Family Matters

From the Family Team at Tanfield

Welcome to the Spring edition of Tanfield Chambers' Family Matters. The Family Team has been busy since the last issue of this newsletter - we have seen many of you at our evening seminar series, and more recently at our very successful CPD Crammer Day.

In this issue there are articles covering a range of interesting topics, some familiar areas, others less so. Catriona Maclaren gives her thoughts on FDRs, Kerstin Boyd provides an insight into the bedding down of the Special Guardianship provisions and Timothy Shuttleworth shares his expert knowledge on the interplay between the Family and Youth Criminal Justice Systems.

On behalf of the Family Team may I take this opportunity to wish you a successful 2007.

Peter Hughes QC

Spring 2007

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CRAMMING IN THE CPD

We all know how busy both solicitors and counsel are, and finding time to gather together sufficient CPD can be a challenge for even the most organised of us. With this in mind the Family Team at Tanfield recently put together a series of evening seminars covering ToLATA (Gerald Wilson), Miller & Macfarlane (Olivia Murphy) and Costs in Ancillary Relief (Lucy Reed) and Schedule 1 Children Act (Catriona Maclaren). The seminars were followed by a CPD Crammer Day on 20 October covering a range of topics including an Update on Ancillary Relief (Dick Pears), Third Parties in Ancillary Relief (Gerald Wilson), Private Child Law Update (Lucy Reed) and Re: L Hearings and Domestic Violence (Laura Scott). Copies of the seminar notes which accompanied the CPD lectures can be downloaded from the Chambers' website.



Gerald Wilson



Laura Scott

Feedback has been very positive and we will be running more seminars in the near future for those of you who missed the first round. We welcome any comments on topics that you would like to see covered, Those most requested so far are pensions and yet more help with the right approach to Ancillary Relief cases.

We have received constructive feedback on two points in particular: firstly, the number of people our in-house conference room can comfortably accommodate. We will be reviewing our booking system to ensure that we manage the number of attendees carefully. Secondly, we will be investing in a sound system for future events.



Dick Pears



Lucy Reed

The Family Team

SPECIAL GUARDIANSHIP ORDERS

Kerstin Boyd

An SGO introduced by the Adoption and Children Act 2002 (brought into force December '05) provides an option for legal permanence for children who cannot grow up with their birth parents. Unlike adoption it does not remove parental responsibility and the legal link with the biological parents is preserved. However the ability to exercise that parental responsibility is extremely limited, and the guardian's duty to consult exists only in exceptional circumstances. It was introduced because it has long been recognized that in some circumstances, there is a strong desire not to break legal ties but nevertheless a need for a 'final solution'. Two categories the Law Commission had in mind were older children and kinship carers. In the recent decision of Mrs Justice Black in Re: M [2006] EWCH 2238 Fam the court had to consider the parental autonomy provided by an SGO in the context of kinship care. The court made an SGO in favour of the maternal grandparents of M, a 2½ year old child, who had been in their care since she was 3 months old. She had had contact with her mother but none with the father. Both parents were recovering drug addicts and wanted involvement in the child's upbringing. The child was of mixed heritage, the father being African Caribbean, the mother English. There was a background of hostility and a complex web of relationships. The court accepted there were real concerns about the grandparents' approach to issues of the child's identity and their attitude to potential contact with the father, and that it was understandable that the parents had opposed the appropriateness of an SGO in such circumstances. Nevertheless the court had to balance against this, the need for finality and security for M now. Mrs Justice Black concluded a residence order, even coupled with an

order under s. 91(14), would not provide the grandparents with the reassurance they required, and progress could only be made if there was 'finality'. The judge recognized there were only imperfect solutions, and was perhaps more confident in this case in making the order in the light of a very wide ranging and flexible package of support which was being offered by the Local Authority to address the issues of identity and areas of concern, as well as keep the issue of contact to the father under review. If that had no been available it is doubtful whether the order would have been made.

Kerstin appeared in the case of Re M, which is referred to in this article.

PRACTICE TIP- A SUGGESTION FOR PROCEDURE AT FDR

Catriona Maclaren

Whilst FDRs are useful for resolving Ancillary Relief applications quickly and cheaply, they can also place litigants under considerable stress. Particularly where the assets are modest, parties may be put under pressure to agree with strong words about the benefits of settling and dire warnings about the future costs. This approach can give rise to litigants leaving court unhappy with the deal that has been struck. I understand that the number of complaints arising from the conduct of FDRs is on the rise.

Where a good offer is received but the client is unwilling to accept advice to agree, some attempt at persuasion is perfectly

proper. If it is unsuccessful, the danger is that the parties leave court feeling that the time for negotiation has passed. Even if the talks continue, there is a risk of costs beginning to escalate as the timetable of preparations for trial kicks in.

REMINDER
***A new Practice Direction
on bundles is now in force
and covers ALL hearings
listed for 1 hour or more***

In such situations, it is worth considering an alternative to listing for final hearing. District judges can usually be persuaded to adjourn the case for a short mention, conducted by telephone, if appropriate. The idea is that, with a little breathing space, the parties will be able to see the sense of what is on offer. If there are minor pieces of disclosure outstanding, a fortnight may be enough time to obtain the missing documents and so put an anxious litigant's mind at rest. There is an expectation that active negotiations will continue before any further significant expense is incurred. At worst, if the negotiations go no further, all that has been lost is the cost of a short telephone hearing.

MAKING FAMILY CIRCUMSTANCES MATTER

Timothy Shuttleworth

For some time there has been considerable concern that too many children are prosecuted and brought before the youth court when the problem is not so much the dishonesty or even violent conduct of the child that gives rise to the offence, but the poor home circumstances or other social causes for which the child or adolescent cannot be held responsible. Has the Care system a role to play in the Criminal Courts?

This was the question raised in a recent paper entitled 'Needy Children in the Criminal system' produced by the Centre for Child and Family Law Reform.

It is often forgotten by non-lawyers that the aim of the Youth Court system is to prevent offending by children and young persons (see S.37 of the Crime and Disorder Act 1998). More particularly it is the duty of every court when dealing with a child or young person who is brought before it, either as an offender or otherwise, to have regard to the welfare of that child or young person and in a proper case

take steps to remove him or her from undesirable surroundings (see S.44 of the Children and Young Persons Act 1993 as amended).

The centre argues that a new power is essential for use in the Youth Court, the Magistrates Court and the Crown Court when a child or young person is tried there. It could be introduced by an amendment to the Children Act 1989 as follows: 'S.37 (1) (A) Where, in any criminal proceedings in which a child or young person under the age of 17 years stands trial for offences and it appears to the court that it may be appropriate for a Care Order or Supervision Order under S.31 of this Act to be made with respect to him, the court may direct the appropriate authority to undertake an investigation of the child's circumstances'.

Once a direction has been given to the appropriate Local Authority, those matters as set out in S.37 (2) and (3) would apply. Equally, upon making a direction under S.37, the court should have power to remit the case immediately to a Family Proceedings Court to consider whether an interim order is required. It is further proposed that the Criminal Court should be empowered to appoint a solicitor and guardian for the child. The information sought by the court should be provided within 8 weeks and upon the direction under S.37 (1). (A) being given, a date should be fixed in the Family Proceedings Court to enable that the court to consider the report when ready.

This in essence is the thrust of the Centre's paper and its proposals have been submitted to Government and in particular to the Department for Education and Skills. Whether Government runs with this issue remains to be seen, but ASBOs are not enough nor are they working sufficiently well save as a diploma in 'street cred'!

(Timothy Shuttleworth has been a member of the Steering Committee of the Centre for Child and Family Law Reform since its inception in 2001.) A fuller version of this article will be posted on our website.

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News in Brief

Key cases to watch out for:

Wilkinson v Kitzinger [2006] EWCA Civ 2022 (Fam) [2006] HRLR 36

Not giving Civil Partnerships the name 'marriage' had a legitimate aim that was 'reasonable and proportionate' and came within the margins of appreciation given to Convention States.

Morgan v Hill [2006] EWCA Civ 1602

Guidance re: financial claims brought under the Children Act 1989 against extremely rich fathers. The family procedures Rules Committee is likely to bring the procedure for Children Act claims into line with that for AR. Pending that change parties should seek agreed directions that financial information be exchanged via Forms E and that any questionnaires should be limited to those directed by the court. Further they should seek a direction for an appointment to be treated as a privileged occasion i.e. a quasi - FDR. Pending reform of the rules this can only be achieved consensually.

Kirklees MBC v S (Contact to Newborn Babies) [2006] 1 FLR 333

No principle of daily contact to newborn babies removed from their parents. Each case to be looked at on its merits; resource implications relevant.

Re X (EPOs) [2006] 2 FLR 701

Additional requirements to X Council v B for EPOs: without notice applications should be tape recorded and a full account of the proceedings should be provided to the parents regardless of whether or not they have requested that information.

H v L & Anor [2006] EWHC 3099 (Fam)

Exceptionally, where a father applying for contact was to act in person in respect of a fact finding hearing to determine accusations that he had sexually abused the now adult daughter of the mother of his child, and where that adult witness's mental health was fragile, it was appropriate for the Attorney General to appoint an advocate to cross examine that witness on his behalf.

Cases compiled by Mandy Short & Lucy Reed

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