

TANFIELD

PROPERTY & REAL ESTATE BARRISTERS



Michael Bailey

Year of call
1986

Michael Bailey qualified in 1986 and has always had a wide-ranging common law practice, from Divorce and Children to Property and Landlord & Tenant.

He now specialises in Public Law Children and Statutory Duty cases; Family and Divorce and Negligence (medical and professional).

Family

Michael is a qualified Family Law Arbitrator, trained mediator and takes Direct Public Access clients.

He has vast experience of public law care proceedings for parents, Local Authorities and Guardians. He has been led on many occasions: by Anna Pauffley QC, Peter Hughes QC, Richard Anelay QC, Judith Hughes QC, Paul Storey QC, Teertha Gupta QC as well as acting as leading junior counsel. His practice is also in private law: contact, residence, and domestic violence fact finding cases, as well as international abduction (Hague and non-Hague Convention and Brussels II(R)) and relocation cases abroad and in the UK; Schedule I Children Act child financial provision.

Michael also has a wealth of experience in High Court and Principal Registry of the Family Division trials and has appeared on a number of occasions in the Court of Appeal.

Administrative & Public

High Court & Court of Appeal: Local Authority duty of care to vulnerable children and adults; Court of Protection.

Matrimonial Finance & Divorce

Michael has experience of world-wide and UK freezing injunctions; setting aside dispositions; family partnership disputes; third party interests; pre-nuptial, pre-separation and post separation agreements; pension equalization; foreign marriages.

Trusts of Land & Appointment of Trustees Act 1996

Many contested hearings at CC level on behalf of unmarried litigant(s).

Personal Injury

High Court & County Court: Including medical negligence: misdiagnosis & delay in treatment; workplace injury (including MRSA settlement), occupiers liability, Road Traffic Accidents.

Professional Negligence

County Court: In area of divorce (barristers liability) and trusts of land (solicitors liability).

Notable Cases

RE (1) D (2) A (3) M (Children) [2018] EWCA Civ 386

The Court of Appeal (Moylan LJ, Peter Jackson LJ, Asplin LJ) held that a judgment that lacked structure, or was confusing, made a judge's reasoning harder to follow had increased the possibility of an appeal. It was obligatory in cases raising welfare issues to consider the welfare checklist, and to show that all the relevant factors had been considered. To omit any reference to it, or to relegate the exercise until after the court had stated its conclusion, also risked an appeal.

RE L (Relocation: Second Appeal) sub nom L v F [2017] EWCA Civ 2121

The Court of Appeal (Peter Jackson LJ, Newey LJ, Singh LJ) held that Russell J had erred when allowing a mother's appeal against a refusal of her application to relocate to Italy with her five-year-old child. The first instance judge had reached her decision in the context of all the evidence and with full awareness of the alternative options, and criticisms of her approach were misplaced.

D (Child) sub nom F v L [2017] 3 FCR 460: [2018] 1 FLR 375

Mrs Justice Russell sitting in the High Court allowed an appeal in relation to an application for permission to relocate a child outside the jurisdiction and a cross-application for a shared care child arrangements order, holding that the first instance judge had erred in not determining the care arrangements before the relocation application.

RE F (Child) sub nom F v (1) Buckinghamshire County Council (2) Carla Andrews (3) Craig Stillwell (4) Effie Stillwell (A child by her guardian) [2017] EWFC B19

A local authority was given permission to withdraw its application for a care order in respect of a very young child. Injuries found on the child upon her admission to hospital had resulted not from shaking by her parents as initially alleged but from a rare disorder known as Ehlers-Danlos syndrome type IV, a condition associated with easy damage to tissue and easy bleeding.

RE L (Habitual Residence: Domestic Abuse) sub nom Rotherham MBC v (1) J (2) K (3) L (By her children's guardian) [2016] EWHC 1844 (Fam)

A 17-month-old child born in the Ukraine to a Ukrainian mother and a British father was habitually resident in the Ukraine for the purpose of care proceedings. She had spent the first 13 months of her life in the Ukraine with her mother, who had submitted a visa application with the intention of moving permanently to the UK but had changed her views as a result of the father's abusive behaviour. There was no evidence that the mother or child had become integrated into the community in the UK at the time when protective measures were taken.

Sutton London Borough Council v (1) MH (2) RH (3) NH [2016] EWHC 1375 (Fam)

An application for a care order relating to a 16-year-old boy was adjourned where he had lost capacity to conduct the proceedings. An order was made restricting the mother's access to documents because she had previously disseminated information to persons not involved in the proceedings.

AD & AM (Children) (Fact Finding: Re-Hearing) [2016] EWHC 2912 (Fam)

In the light of new expert evidence the court reconsidered medical issues in relation to its previous finding that serious head and spine injuries suffered by a 10 month old baby had been non-accidental and caused by the mother; now finding that the spine injuries were of 'unknown cause'.

AD & AM (Fact-Finding Hearing) (Application for Re-Hearing) [2016] EWHC 326 (Fam) (24 February 2016)

In which Cobb J granted permission to re-open the NAI fact finding decision that he made in 2013 (see below). The re-hearing outcome is referred to above.

R (Fact finding), Re [2015] EWFC B97 (29 May 2015)

This was a fact finding hearing before HHJ Laura Harris in s31 Care Proceedings where non-accidental injury was alleged. An unusual feature in this case was that the Court, having heard various experts' evidence, made a direction that the matter be adjourned and a further expert instructed in relation to timing of injuries.

C (A Child), Re [2015] EWCA Civ 539 (10 June 2015)

Per Aikens LJ, Elias LJ, Ryder LJ. Looks at the requirements for an FPR Part 25 application for an expert to succeed. The father instructed this Counsel on a direct public access basis to appeal against a decision to instruct an expert in Children Act proceedings in which the father was a litigant in person. The appeal was successful and the matter sent back to the court for a rehearing.

Erlam & Ors v Rahman & Anor [2015] EWHC 1215 (QB) (23 April 2015)

Involving a petition aimed at the disqualification of the former mayor of Tower Hamlets. This Counsel was led by Duncan Penny QC. As is well known, Commissioner Richard Mawrey QC found in favour of the petition.

J (Discharge of A Care Order) [2014] EWFC B199 (20 November 2014)

The maternal grandmother applied for a discharge of a care order and defined order for contact pursuant to s34, s39 of the Children Act. HHJ Staite refused the application to discharge but the Local Authority agreed to an increase in the maternal grandmother's contact. Subsequently, the maternal grandmother has with the agreement of the Local Authority secured unsupervised and then overnight stays with her grandchild.

Re B (Placement Order) [2104] EWFC B180

A decision of HHJ Laura Harris following s31 Care Proceedings.

AD & AM (Finding of Fact: Non-Accidental Injury) [2013] EWHC 4859 (Fam) (19 July 2013)

Findings made by Cobb J in a non-accidental injury case at the fact finding stage of s31 Care Proceedings. At the welfare stage the children were returned to their parents care under a Supervision Order. A subsequent criminal prosecution against the mother was held to be an abuse of process for want or prompt disclosure. In 2016 (see above) an application was made to re-hear the findings of non-accidental injury based on the medical evidence obtained in the criminal proceedings.

Re M (A child) sub nom PM v (1) MB (2) M (A child) [2013] EWCA Civ 969

A parental responsibility order should normally be made on a father's application and it would be a rare case when it was not. However, an order was properly refused where there was clear evidence that a father was likely to misuse the order to seek to exercise control over the child and, indirectly, the mother.

Appointments

- Family Law Arbitrator (2014)

Publications

- Severance of Joint Tenancy & Trusts of Land update (2015)
- Re B & Re B-S, Public Law update: Seminar to Children Guardians (2014)
- Court of Protection & Testamentary Capacity: Seminar (2014)
- Capacity & Marriage: Seminar (2014)
- Bankruptcy in Divorce: Seminar (2013)
- Marriages with a Foreign Element: Seminar (2013)
- TOLATA: Relief in Sight?: Seminar (2013)
- Re J: Assessing "Real Possibility" Risk: publication (2012): Lexis Nexis
- Pre-Nuptial Agreements: what is left to Agree?: Seminar (2012)
- Occupiers Liability & Voluntary Assumption of Risk: Seminar (2011)
- Shortfalls, the Triad & Non-Accidental Injuries: Seminar (2010)
- Probate & Testamentary Capacity: Seminar (2010)
- Remedying the Breach?(breach of A8 ECHR): Tanfield publication (2009)

- Domestic Violence: FLA 1996, PAHA 1997 & DVCVA 2004: Seminar (2008)
- Child Protection & Disclosure: Seminar (2005)

Qualifications

- CI Arb
- GDL
- LLM (Human Rights)
- BA (Hons)

Memberships

- Family Law Bar Association