

Friday Family Law Roundup

Sometimes it can be incredibly difficult to keep up to speed on all of the news, case law and other updates in family law, so I've decided to compile a weekly roundup of all of the important bits you might have missed!

Here's your summary of important new legal developments in the world of family law over the last couple of weeks since the last roundup, the last one before Christmas!

Case Law

Re HTD and HTE (Children) (Temporary Removal from jurisdiction) (Malaysia and Hong Kong) [2023] EWFC 227 – <https://www.bailii.org/ew/cases/EWFC/HCI/2023/227.html>

- The substantive issues in the case were in relation to an application by the Mother to temporarily remove the children to Malaysia and Hong Kong, and applications by the Father for a Prohibited Steps Order to prevent removal from the jurisdiction, and an application by him for a Child Arrangements Order providing a shared live with arrangement.
- Of particular interest in this case, however, is the fact that the Mother, previously a litigant in person, had sought to fund legal representation by setting up a GoFundMe page, which the Court became aware of on the second day of the hearing.
- The Court noted that *“In that post the mother identifies herself and the children by name, including a photograph of the three of them. She publicises her accusations of coercive and controlling behaviour against the father, despite the fact that she no longer pursues those allegations in these proceedings. Although she does not name the father, anyone who knows the family will readily identify him. She also revealed details of the applications the mother is making in the family proceedings. By the time the webpage had been deleted on 1 December there had been 37 donations totalling £3,350.”* [9]
- The Court considered that doing so was a breach of s12 of the Administration of Justice Act 1960 and of s97(2) Children Act 1989, in addition to breaches of orders within the proceedings which carried the confidentiality warnings. The Mother's Counsel made the Court aware of the web page and indicated that the Mother was unaware that she was unable to publish details on the page.
- The Court took into account the Mother's breaches of those orders in refusing her application to travel with the children, and additionally noted that *“The public interest in the confidentiality of proceedings concerning the welfare of children is high. It is wholly inappropriate for a parent to publicise details of such proceedings and allegations concerning her partner online in the way that the mother did. The overriding consideration, however, is that committal proceedings would not be proportionate or consistent with the overriding objective. The mother has now apologised and taken down the offending webpage.”* [45]
- The Court ultimately decided that a further sanction for the Mother would not be appropriate even if the contempt of court was proven, and for the same reasons the Court indicated that a prosecution under s.97(2) Children Act would also not be in the public interest.

Re J (Habitual Residence: Acquiescence) [2023] EWHC 3141 (Fam)
- <https://www.bailii.org/ew/cases/EWHC/Fam/2023/3141.html>

- In this case the Father applied for the summary return of the child 'J' to Canada, alleging the wrongful retention of the child had taken place in May 2023.
- The case set out some key principles in relation to the acquiescence on the issue of habitual residence.

- The Judge set out the key principles to be taken into account when making a determination on the children's habitual residence:
- Part of the undisputed history to the litigation was that J had been to England a number of times before and integrated quickly, had travelled in December 2022 with the Father's agreement, and had been registered with a GP since January 2023.
- The Judge was satisfied that J had obtained habitual residence and that there had been a sufficient degree of integration, but also considered the Mother's alternative argument that the Father had acquiesced to J living in England.
- The Judge accepted that even if J had remained habitually resident in Canada, the Father's words and actions in around December 2022-January 2023, he had "*clearly and unequivocally led the mother to believe that he was not asserting or going to assert his right to the summary return of J*" and, therefore, "*justice requires that the father be held to have acquiesced by his words and conduct*" [49].

News

Manchester no longer needs prioritisation protocol in family court - <https://www.lawgazette.co.uk/news/manchester-no-longer-needs-priority-protocol-in-family-court/5118147.article>

- Cafcass introduced the prioritisation protocol during the pandemic to mitigate pressures on the Family Justice System
- Five courts remain under prioritisation, including three court areas in London and two court areas covering Essex, Suffolk and Norfolk.
- Cafcass said: 'Deactivation in Greater Manchester has been made possible by all partners at a local level working together to address the pressures on the family justice system.'

Assault by Litigant in Person on family court judge was not an isolated incident - <https://www.lawgazette.co.uk/news/lip-assault-on-judge-in-court-was-no-isolated-incident-say-insiders/5118119.article>

- A former judge and a union boss have both said there have been other examples of attacks on people working within the court.
- HM Courts & Tribunals Service said the incident was 'shocking' but 'extremely rare', and a review of the circumstances was underway. However, people using the court have suggested that breaches of security are increasing, particularly as the number of litigants in person rises.
- DJ Hickman at Milton Keynes Family Court suggested that violence in court is '*a lot more widespread than the MOJ would like to admit*'.

Cross-sector call to plug 'glaring gaps' in family legal aid when children are deprived of their liberty - <https://www.familylawweek.co.uk/cross-sector-call-to-plug-glaring-gaps-in-family-legal-aid-when-children-are-deprived-of-their-liberty/>

- The [Family Rights Group](#), is calling on Government to urgently adopt proposals put forward by the charity to reform a legal aid regime 'riddled with anomalies and injustices'.
- The FRG's analysis of legal aid in these cases has discovered many gaps, including significant disparity in parents' access to legal aid where their child is the subject of care proceedings.

Chambers News

Don't forget to sign up to our seminars and events in the new year. You can see them here on our website - <https://www.4bc.co.uk/news-events/events/>

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