

Friday Family Law Roundup

Wow, this week seems to have been a tough one and a long one for everybody I've spoken to! Hopefully this short insight into the latest family law news will brighten your day, if for no other reason than reminding you all that it's Friday! Here's your weekly roundup of all of the important bits in family law that you might have missed

Case Law

West Northamptonshire Council v KA & Ors [2024] EWHC 79 (Fam) –
<https://www.bailii.org/ew/cases/EWHC/Fam/2024/79.html>

- We now have some updating guidance from the High Court in relation to the approach to be taken for intermediaries in the family courts.
- Mrs Justice Leiven in this case decided that a profoundly deaf Mother required both deaf interpreters and a specialist intermediary, to be approved for the whole of the trial, but reiterated guidance from the criminal courts in *R v Thomas (Dean)* [2020] EWCA Crim 117 that an intermediary being appointed for a whole trial should be “exceptionally rare”.
- The principles for appointing an intermediary are repeated by Leiven J as follows [45]:
 - It will be “exceptionally rare” for an order for an intermediary to be appointed for a whole trial. Intermediaries are not to be appointed on a “just in case” basis. This is notable because in the family justice system it appears to be common for intermediaries to be appointed for the whole trial. However, it is clear from this passage that a judge appointing an intermediary should consider very carefully whether a whole trial order is justified, and not make such an order simply because they are asked to do so.
 - The judge must give careful consideration not merely to the circumstances of the individual but also to the facts and issues in the case;
 - Intermediaries should only be appointed if there are “compelling” reasons to do so. An intermediary should not be appointed simply because the process “would be improved”; *R v Cox* [2012] EWCA Crim 549 at [29];
 - In determining whether to appoint an intermediary the Judge must have regard to whether there are other adaptations which will sufficiently meet the need to ensure that the party can effectively participate in the trial;
 - The application must be considered carefully and with sensitivity, but the recommendation by an expert for an intermediary is not determinative. The decision is always one for the judge;
 - If every effort has been made to identify an intermediary but none has been found, it would be unusual (indeed it is suggested very unusual) for a case to be adjourned because of the lack of an intermediary;
 - In *Cox*, the Court of Appeal set out some steps that can be taken to assist the individual to ensure effective participation where no intermediary is appointed. These include having breaks in the evidence, and importantly ensuring that “evidence is adduced in very shortly phrased questions” and witnesses are asked to give their “answers in short sentences”.
- Ultimately it is reiterated that it is the advocates’ job to adapt to the witness in any given case, and not the other way around!

PJ v HB [2023] EWHC 3400 (Fam) –
<https://caselaw.nationalarchives.gov.uk/ewhc/fam/2023/3400>

- This case involved an appeal from a change in an interim Child Arrangements Order made after a Fact-Finding Hearing (FFH) which reduced the Father’s contact from fortnightly to once every 3 weeks, and removed all of his ‘holiday’ contact with the child.

- The issue at the FFH was that on one occasion at a contact handover the Father had either intentionally or accidentally struck the Mother causing a nosebleed. The Court found that the incident had been accidental, however the Father maintained after the FFH that the incident simply hadn't happened and that it was a fabrication by the Mother – he did not accept the Court's finding.
- As a result of the Father's non-acceptance, Cafcass recommended a reduction in contact to manage the risk towards the Mother. The Court accepted that recommendation and reduced the Father's contact, despite having found during the FFH that there was 'no risk' to the Mother and having reinstated the contact with the child on that occasion.
- On appeal, Deputy High Court Judge Cohen noted that "*A non-acceptance of a finding does not necessarily lead to a situation where the frequency of contact should be adjusted*" [19].
- In addition, the Judge considered what the Father had done since – he had attended a parenting course and taken some responsibility for the incident in order to move on.
- The appeal was allowed and the Father's fortnightly contact reinstated.

News

The Government response to the Private Family Law Consultation has been published today - <https://assets.publishing.service.gov.uk/media/65afd7761702b1000dcb10f9/early-resolution-consultation-response.pdf>

- The aim of the consultation was to try and resolve pressures on the family court system by providing options for early resolution of disputes.
- The key take-aways are as follows:
 - In 2022 there were 52,219 new child arrangement cases started. There were 39,423 applications for financial remedy orders, with 11,306 of these applications being contested.
 - As of June 2023, it is taking an average of 47 weeks for private law cases to reach a final order.
 - A full review of the Gov.uk online pages and court forms will be completed in the next 3 months.
 - A new pilot is going to be launched by Summer 2024, which will be specifically designed to offer earlier legal advice to families who are facing challenges in agreeing child arrangements. The report notes that: "*While we did not receive substantial evidence supporting this claim, the Law Society highlighted the fall in referrals to publicly funded mediation following the passing of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act in 2012 which removed most early legal advice from scope of legal aid.*"
 - Pre-Court parenting programmes are likely to be introduced so that parents can access these earlier in the Court process, rather than waiting for the Court to order attendance at a Cafcass recommended course. At this stage, the report does not commit to making this a mandatory requirement before attending court as had been suggested in the initial consultation.

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/>

Thank you to everyone who attended our Seminar with Jacqui Gilliatt yesterday. We hope you found it informative!

Sarah Barber