

Re N (McKenzie Friend: Rights of Audience)

Citation:

[2008] EWHC 2042 (Fam)

Date:

20.08.2008

Court:

High Court of Justice Family Division

Comment:

The mother and father were involved in various lengthy disputes concerning the child. In Children Act 1989, Sch 1 proceedings the mother was at first represented by solicitors and counsel, while the father appeared in person with the assistance of a McKenzie friend. On occasion the judge permitted the father's McKenzie friend to address him and to make submissions on technical points of law and procedure. Later, in Children Act 1989, s?8 proceedings, the mother's solicitors came off the record, and she also appeared in person with the assistance of a McKenzie friend. A different judge permitted both McKenzie friends to address her. However, by the time the s?8 proceedings came before the judge who had dealt with the Sch 1 proceedings, the father had obtained legal representation; his former McKenzie friend was now acting as his solicitors' clerk. The father's counsel objected to the mother's request that her McKenzie friend be allowed to speak on her behalf, examine and cross-examine witnesses and make submissions; counsel argued that the mother had not made an application for rights of audience at the start of the hearing, and had not given any notice of such an application, and that in any event there were no exceptional circumstances to justify granting rights of audience to the mother's McKenzie friend. The mother, supported by the child's guardian, argued that she had run out of money and could no longer afford the costs of legal representation, that this was an exceptionally emotionally fraught case which she could not present properly without assistance, that the father's use of a McKenzie friend had never been challenged, and that if the mother's McKenzie friend were not able to act for her she would have to request an adjournment to enable her to instruct new solicitors. Ultimately the parties reached agreement in relation to the s?8 proceedings but the McKenzie friend dispute had, in the meantime, been raised in the Sch 1 proceedings. It was agreed that although argument would be in chambers, to enable the father's solicitor's clerk to address the judge, judgement would be delivered in open court; however, the mother and guardian opposed lifting the reporting restrictions that still applied as a result of a review ordered in the s?8 proceedings.

Barrister:

Kate Hudson