

CORAM CONFERENCE- 1 NOVEMBER 2022

IT WAS THE BEST OF TIMES, IT WAS THE WORST OF TIMES: SURROGACY, GILICK COMPETENCE AND PARENTAL ALIENATION

Richard Beddoe's notes:

Parental alienation

What is it /how is it defined?

For working purposes use the CAFCASS definition: 'when a child's resistance/hostility towards one parent is not justified and is the result of psychological manipulation by the other parent'.

Doesn't matter if deliberate or malicious Re S [2020] EWCA Civ 568

Examples of it:

- a. portraying other parent in negative light
- b. suggesting the other parent does not love the child
- c. contacting the child excessively during contact
- d. making unfounded allegations, disobeying orders.

Take a step back – on the evidence can the child distinguish between their views and that of the other parent

To run the argument needs to be the dominant theme of the case. Not a small part.

Implacable hostility v Parental alienation. Not necessarily the same thing. Re B (a child) [2016] EWCA Civ 1088. Implacable hostility is usually with irrational and poor motives. One parent is implacably opposed but not necessarily mean a child has become alienated.

Also, not the same as estrangement where a child may have a proportionate or justified rejection of a parent.

What should court do when alienation has become key part of case?

Fact finding hearing.

Despite pressures in listing, the words of Munby P in 2004 (Re D) still hold

- a. court grasp nettle
- b. Resist temptation to delay
- c. Resist temptation to put contact on hold or direct supervision remember Re P (children) [2008] EWCA Civ 1431 – Ward LJ – ‘contact should not be stopped unless last resort for the judge and judge has grappled with all the alternatives’.
- d. Be sceptical of allegations that could have been made earlier

NB: There are many authorities from the highest judicial echelons saying that fact findings are necessary to establish DA (see PD12J) and allegations of alienation. What we don't have is guidance on what to do when there's no available court time...

Good point to make: President speech to NAGALRO in 2018, impact of severance of relationship with a parent is a kin to adoption -the most draconian orders a court can make.

Re S [2020] EWCA Civ 568:

- a. Obligation on the court to respond with exceptional diligence and take whatever effective measures are available
- b. Inaction probably reinforce position of the stronger party at expense of weaker party and the bar will be raised for the next attempt at intervention
- c. Not necessary to wait for serious, worse still irreparable, harm to be done before appropriate action is taken.

Ascertainable wishes and feelings of child

No requirement for a CG to directly ask the child: RE L [2019] EWHC 867 in which my chambers colleague Anarkali Musgrave appeared. The familiar situation of child presenting wholly negative views in the home of one parent not borne out by that child's presentation in the care of the other. Can cause emotional harm to enquire.

Perhaps an obvious question: if you ask an alienated child whether they want to have a relationship with the non resident parent – what are they going to say?

Parker J in Re: H [2014] EWCA Civ 733. A child said clearly to the SW that he wanted to stay living with the mother and not see the father. ‘Ascertainable’ is not the same as ‘expressed’. Look at actions rather than words. The ascertainable wishes and feelings of the child demonstrated by being happy to be with the father.

Should the Court appoint a rule 16.4 guardian?

Criteria within rule 7.1. Only minority of cases and involving significant difficulty. May struggle if already a SW because CIN. Really do have to argue complexity, child’s wishes in conflict with one or other of the parties, complex medical or mental health needs.

Timing: after fact find? Start of second set of proceedings?

Things to consider: can your client win them over, do you want delay, does the case need structure. But, be careful what you wish for.

So, moving forward.

1. Look early for signs of parental alienation
2. Push for an early fact find citing points/authorities above
3. Push for continuation of contact citing points/authorities above
4. If direct contact impossible, then indirect. Other family members.

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