B4/2006/1063, B4/2006/1063(A), B4/2006/1231, B4/2006/1231(A),

B4/2006/1253, B4/2006/1404, B4/2006/1405, B4 2006 1405(A)

Neutral Citation Number: [2006] EWCA Civ 1346

IN THE SUPREME COURT OF JUDICATURE

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM SWANSEA COUNTY COURT

(Her Honour Judge Parry)

Royal Courts of Justice

Strand

London, WC2

Wednesday, 20 September 2006

B E F O R E:

LORD JUSTICE THORPE

D (children)

(Computer-Aided Transcript of the Stenograph Notes of

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Official Shorthand Writers to the Court)

The Appellant appeared in person

The Respondent was not represented and did not attend

J U D G M E N T

(As Approved by the Court)

1. LORD JUSTICE THORPE: This morning there are a large number of applications listed for permission to appeal orders that have been made in this current year at Swansea County Court in proceedings between parents in relation to two children, D1 who was born in 1998 and D2 who was born in 2002. The judge who has charge of this highly conflicted, very complex, case is Her Honour Judge Parry. Interlocutory directions hearings took place on 22 and 29 November. Further hearings to settle directions to steer the case towards trial took place on 13 January and 24 March. These directions hearings had grown to such size and complexity that the judge reserved her judgment, which was handed down on 31 March and was of considerable length, given that all that was before the court were issues of directions. There were further hearings on 19 May, 24 May, 8 June and 21 June. The latest order in the County Court to be the subject of a permission application is the one on 21 June.

2. Mr D has told me that there have been some subsequent proceedings in the County Court. On 4 August there was, I think, a listing. He says that on 30 August the court issued some sort of order, the origins of which he does not understand.

3. These applications have all been ordered to be listed on a single occasion, obviously for the convenience of the applicant and to save the resources of this court. They were to have been heard on 7 September but it seems that they were taken out on the direction of a single Lord Justice, and that unfortunately led to the vacation of a fixture in the County Court on 18 September. So it can be seen that already the management of these complex permission applications has led to regrettable delay in the County Court.

4. The application numbered 2006/1063, for the record, is the application for permission to appeal the order of 31 March giving leave to the National Youth Advocacy Service (NYAS) to disclose papers to Professor Zeitlin and refusing Mr D's application for leave to instruct Dr Lowenstein. There were other case management directions given by the judge in that order.

5. We have the application numbered 2006/1231 which is for permission to appeal against the order of 19 May in which Mr D's application to remove Avery Naylor, the mother's solicitors, was adjourned to be considered on written submission. The judge on that occasion also ordered that Professor Zeitlin's evidence was to be taken by video-link. There were other orders made on that occasion refusing the father's applications for filing of evidence in relation to his application against Avery Naylor and in relation to an application for disclosure of Professor Zeitlin's notes.

6. The next application is numbered 2006/1253 which attacks the order of 24 May granting extension of time to Avery Naylor to file further evidence from the mother and refusing an application for a wasted costs order.

7. The application numbered 2006/1404 attacks the order of 8 June directing NYAS to file a draft letter of instruction to Professor Zeitlin and directing the filing of Mr D's bundle by 19 June.

8. The application numbered 2006/1405 is directed to the resulting order of 21 June refusing the father's application for the recusal of Judge Parry, approving the letter of instruction to Professor Zeitlin and adjourning the father's applications against Avery Naylor pending the ruling of this court.

9. There are ancillary applications which have been designated 2006/1063 (A) and 2006/1231 (A) by which Mr D seeks an order from this court for the removal of Professor Zeitlin and the instruction of a further expert, and the ancillary application 2006/1405 (A) which seeks a stay of paragraphs in the order made on 21 June.

10. The papers supporting these applications are very substantial. There are eight lever arch files in which there are to be found transcripts and judgments of the five hearings below. There are also five skeleton arguments which Mr D has lodged. I record that in their totality they run to 1500 paragraphs; the most substantial and latest of these skeleton arguments is 165 pages in length. I only have to say that to demonstrate that they are a complete negation of their descriptive title. The whole point and purpose of the skeleton argument is that it should be very succinct, a broad headline, and not a fully worked out written argument. Again today this is meant to be an oral hearing, but Mr D has read to me a 36-page written submission and it has taken him about one hour and 35 minutes to read it. All this is proof of a huge amount of work that Mr D has put into these applications, **but the overall impression that I receive is of a litigant in person with an obsessive conviction that he has been the victim of injustice in the court below long before the case has ever reached the essential trial**. No **doubt Mr D has some very good points; no doubt many of the allegations that he makes against the mother have evidential foundation**. But it is the function and purpose of the trial to evaluate his assertions and allegations and to uphold them where they are made good by evidence and argument.

11. The applications before the court today or perhaps, more narrowly, I should say **the manner in which the applications before the court today have been presented, is unprecedented in my experience**. **I have sat in this court for over 10 years and heard an innumerable number of applications for permission brought by litigants in person. It is not**

abusive of the right of application for permission, it is certainly completely disproportionate given that all the orders under attack are interlocutory orders.

12. What are the issues that have grown so large, both in the County Court and in this court? Much debate has taken place as to the expert appropriate to consider the issues. The selected expert, as my record of the proceedings below has already indicated, is Professor Zeitlin, who is of course a consultant, or honorary consultant, child and adolescent psychiatrist. **There has been - some years ago - a great deal of debate about whether or not there is a syndrome which was labelled "parental alienation syndrome" in the United States by the late Dr Gardner. That attracted a lot of criticism. Professor Bruch in California was one of the most ardent critics of the asserted syndrome**.

13. The point arose for this court **in the conjoined contact cases of L, B, M and H where the very expert whom Mr D wants to instruct - Dr Lowenstein - had given evidence to one of the trial courts. This court sought guidance from eminent mental health practitioners, and we received the report of Dr Sturge and Dr Glaser which made it plain that there was no medical syndrome in their professional opinion**. **That was an opinion adopted by this court. Mr D would like to resurrect that argument. It is for that reason that he wants Dr Lowenstein instructed. He makes the point that Dr Zeitlin is not an adult psychiatrist**. That cannot be disputed. The value that a child and adolescent psychiatrist brings to a judge's responsibility to decide a difficult case is an overall assessment of family dynamics. **The child and adolescent psychiatrist does not just focus on the mental health and emotional development of the children. It is his task to try and investigate and determine what is actually going on in the family, the emotional and psychological, the conscious and unconscious interplay between the family members.**

14. There are subsidiary issues in regard to whether the instructions to Dr Zeitlin are governed by the provisions of the Civil Procedure Rules (CPR) rather than the Family Proceedings Rules (FPR). Mr D wishes to argue that the judge should have applied the CPR and not the FPR. That seems to me an argument that has no measurable prospect of success. The Family Proceedings Rules are the principal governing instrument. Of course there have been for some time processes afoot to harmonise, since areas not covered by the Family Proceedings Rules are currently covered by the old Rules of the Supreme Court which are not subject to continuous review and up-dating as are the Civil Procedure Rules. We have a Family Procedure Rules Committee whose huge task it is to develop a new code, and a consultation exercise has just been launched to help them to find the right direction.

15. Other issues that have been canvassed below are, as I have already noted, application for the removal of the mother's solicitors, application for a wasted costs order against the mother's solicitors, applications for the judge to recuse herself, applications for extensions of time.

16. How am I to approach the determination of these several applications? **I am sure that I should adopt a broad brush approach. I must endeavour to find the wood and not to become too lost amongst the trees**. Obviously perfect standards of case management are seldom achieved and perhaps are not achievable. **What we have to live with is the concept of acceptable standards of case management. It will be rare indeed that an application for permission to appeal a case management decision taken by a circuit judge with experience in family proceedings will be accepted for full appellate review. So, as well as adopting a broad brush approach, I think it very important that I should always have in mind proportionality. In that context, it seems to me that what this case cries out for is a comprehensive trial of all the issues.** The interests of the parents - and above all the interests of the children - would be best served by that aim. **Nothing, it seems to me, would be worse for the children than for the dispute between their parents to be admitted to full appellate review only in relation to case management decisions**.

17. I do not know what time estimate would be required; certainly it would not be less than a day. Whether it would be possible to list the case within the Michaelmas term would have to be uncertain.

18. **I appreciate that it is important that Mr D should hold on to some confidence in the court and in the court's capacity to be fair in a trial proceedings. It would be plainly contrary to the interests of his children if he were to withdraw from the proceedings or to conduct them in pursuit of a vendetta that he may have either against the mother, her solicitor or against the judge**. **I can understand for a litigant in person that case management decisions seem very important, and indeed they very often are important. I can understand that if the litigant is convinced that case management decisions are fundamentally unjust or unfair, in the sense that they lack evenhandedness, then confidence in the much more important ultimate stage of trial may be undermined. But against that must be balanced the need to ensure that the normal progression through a succession of directions and appointments designed to prepare a case for orderly trial is not highjacked by one of the litigants so as effectively to frustrate the primary purpose, namely the trial of the issues.** Without a trial of the issues the children remain in an awkward limbo. Certainty is what is needed to enable the planning for the future and the management of the future to commence.

19. So for all those reasons I am in no doubt at all that the current applications individually and in their totality must be dismissed. Order: Applications dismissed