



IN THE FAMILY COURT

ON APPEAL FROM A DISTRICT JUDGE

Neutral Citation Number: [2023] EWFC 150

Case number: WD21P00084

Re GB (Part 25 Application: Parental Alienation)

Date: 30 August 2023

**Before
His Honour Judge Middleton-Roy**

Between:

‘AM’

Appellant

- and -

‘RF’

1st Respondent

**The Children ‘G’ and ‘B’
through their Guardian**

2nd and 3rd Respondents

Dr Proudman, Counsel for the Appellant
Mr Hankinson, Counsel for the First Respondent, on a licensed access basis by Dads Unlimited (a
registered charity)
Miss Furness, Counsel for the Second and Third Respondents, instructed by Reeds Solicitors

Hearing date: 30 August 2023

Approved Judgment

This Judgment was handed down orally on 30 August 2023

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HHJ Middleton-Roy:

1. The Court is concerned with two children, 'G' and 'B' who are twelve and nine years old respectively.
2. Their mother is 'AM'. The children's father is 'RF'. The children are parties to the proceedings through their rule 16.4 Children's Guardian.
3. The decision of the lower Court, which is the subject of this appellate Court's review, is a case management decision of a District Judge. His Order of 1 June 2023 permitting the instruction of an expert is the Order which is the subject of this appeal. The application seeking the permission of the Court to put expert evidence before the Court was made by the Children's Guardian, pursuant to Part 25 of the Family Procedure Rules 2010. The application followed assertions by the father that the mother has alienated the children against him.
4. In the Court below, 'AM' represented herself. 'RF' was represented then, as he is today, by Mr Hankinson of Counsel, on a licensed access basis. The children were represented at that hearing by Miss Kang of Counsel.
5. The Order of the Judge of 1 June 2023 permitted instruction of an expert, a psychologist, to undertake a global psychological assessment of the parents and of both children.
6. The mother filed an appellant's notice within the time permitted. Permission to appeal was granted by this Court on 25 July 2023, the Court determining on the papers that the appeal would have a real prospect of success.
7. At this substantive appeal hearing, all parties are legally represented. This ex tempore judgment was delivered orally at the conclusion of the hearing.
8. The Appellant's grounds of appeal assert that:
 - (i) The Judge was wrong to order a psychological assessment, which invites the expert to determine the factual matrix of disputed allegations, contrary to the President's decision in *Re C (Parental Alienation: Instruction of Expert)* [2023] EWHC 345 (Fam);
 - (ii) The Judge was wrong to order a psychological assessment of the parents and the children without considering the test of necessity under Part 25 of the Family Procedure Rules 2010; and
 - (iii) The judge failed to give any reasons for ordering a psychological assessment
9. The test on appeal is well established. The appellate Court will allow an appeal where the decision of the lower Court was wrong or unjust because of a serious procedural or other irregularity in the proceedings in the lower Court.
10. Every appeal will be limited to a review of the decision of the lower court
11. The appellate Court should not interfere with an exercise of a Judge's discretion, except if it is outside the generous ambit of discretion vested in the decision maker at first instance. We are here concerned with a judicial discretion and it is of the essence of such discretion that on the same evidence two different minds might reach widely differing decisions without either being appealable. It is only where the decision exceeds the generous ambit within which reasonable disagreement is possible and it is, in fact, wrong, that an appellate body is entitled to interfere.

12. Lamentably, this private law dispute between the parents regarding their children has been ongoing within the Court system for over two years. The background facts are largely not in dispute. The parents have separated. The children live with their mother. Presently, the children have indirect contact only with their father.
13. In the course of the proceedings, the Court already had the benefit of expert evidence in the form of a psychological assessment of the parents completed in April 2021 by Dr Lopez. The expert evidence identified that the mother did not then have a current mental health disorder. The expert concluded that the mother had felt the need to protect herself from the father. The father was considered to have limited insight into his ability to think reflectively and empathetically about his children. In the expert analysis of Dr Lopez, the father had elevated scores on the narcissistic and histrionic personality constructs. It was suggested he might use coercive anger to manage his feelings about relationships. Dr Lopez recommend that the father engage in psychodynamic therapeutic work.
14. In addition to Dr Lopez's psychologist assessment of the parents, the Court had before it reports from Dr Kraft, a Child and Family assessment prepared by the Local Authority, a section 17 assessment, a section 7 welfare report from Cafcass and two addenda welfare reports from Cafcass. Further, the Court conducted a fact-finding exercise in the course of parallel proceedings under the Family Law Act 1996. All of this was before a decision was made by the Court for the children to be joined as parties and a rule 16.4 Guardian appointed.
15. Following the appointment of a Guardian, the Guardian applied for permission to put further expert evidence before the Court, the father having raised with the Court his concern that the mother was alienating the children against him. The Guardian's application for expert evidence was supported by the father. The mother opposed further expert evidence being obtained. The lower Court heard submissions from all parties. An Order was made permitting the instruction of Dr Aurora to complete a global psychological assessment of the parents and the children, necessitating the expert to meet with the children. Further, the Judge approved the questions which the expert was ordered to address in her report.
16. The mother asserts in her first ground of appeal that the Judge was wrong to order a psychological assessment, which invites the expert to determine the factual matrix of disputed allegations. It is important to note that in the parallel proceedings under the Family Law Act 1996, a Recorder made findings on disputed facts but was not invited to make any factual determination in respect of the father's later assertions in these Children Act proceedings of parental alienation.
17. In Re C (Parental Alienation: Instruction of Expert) [2023] EWHC 345 (Fam) at paragraph 103, the President of the Family Division made the following observations following submissions from the Association of Clinical Psychologists-UK ("ACP"):

"Before leaving this part of the appeal, one particular paragraph in the ACP skeleton argument deserves to be widely understood and, I would strongly urge, accepted:

'Much like an allegation of domestic abuse; the decision about whether or not a parent has alienated a child is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist. For these purposes, the ACP-UK wishes to emphasise that "parental alienation" is not a syndrome capable of being diagnosed, but a process of manipulation of children perpetrated by one parent

against the other through, what are termed as, “alienating behaviours”. It is, fundamentally, a question of fact.’

...Most Family judges have, for some time, regarded the label of ‘parental alienation’, and the suggestion that there may be a diagnosable syndrome of that name, as being unhelpful. What is important, as with domestic abuse, is the particular behaviour that is found to have taken place within the individual family before the court, and the impact that that behaviour may have had on the relationship of a child with either or both of his/her parents. In this regard, the identification of ‘alienating behaviour’ should be the court’s focus, rather than any quest to determine whether the label ‘parental alienation’ can be applied.”

18. In the current case, one of the questions to the expert, approved by the lower Court, reads:

“Please comment on whether the attitude of the parents towards the other is a positive or negative one, and whether in light of your assessment a relationship between the children and the other parent is fully supported. If not, how can this be changed?”

19. It is plain to this Court that the attitude of the parents towards each other is a factual question for the Court to determine. It is not a question for determination by an expert assessment.

20. The lower Court further approved the following question to the expert:

“Please comment upon each of the parent’s ability to promote a healthy relationship between the children and the other parent, both in the past, currently and in the long term. If you believe that either parent has tried to alienate the children from the other parent, or has exhibited alienating behaviours, either deliberately or unintentionally, please comment on the impact upon the children; what work the parent or parents will need to undertake to remedy any such negative influence; timescales and cost.”

21. The expert was being invited expressly to provide an opinion about parental alienation. In the judgement of this Court, that is outside the expert’s remit. The decision about whether or not a parent has alienated a child is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist. It is the Court’s function to make factual determinations necessary to inform welfare decisions for the child, not to delegate that role to an expert. The identification of alienating behaviours should be the Court’s focus, where it is necessary and demanded by the individual circumstances of the case for the Court to make such factual determinations leading to final welfare decisions for the child.

22. In her second ground of appeal, the mother asserts that the Judge was wrong to order a psychological assessment of the parents and the children without considering the test of necessity under Part 25 of the Family Procedure Rules 2010. That ground of appeal must be taken together with the third ground, in which the mother asserts that the Judge failed to give any reasons for ordering a psychological assessment.

23. In Family Court proceedings governed by the Family Procedure Rules, an Order authorising expert evidence will only be made where it is “necessary” to assist the Court to resolve the proceedings justly, pursuant to FPR 25.4(3) for non-children proceedings and section 13(6) of the Children and Families Act 2014 for proceedings involving children. Such expert evidence will only be “necessary” where it is demanded by the contested issues rather than being merely reasonable, desirable or of assistance (*Re H-L (A Child) [2013] EWCA Civ 655*). This requirement sets a higher threshold than the standard of “assisting the Court.”

24. Section 13(7) of the Children and Families Act 2014 provides that, when deciding whether to give permission as mentioned in subsection (1), (3) or (5), the Court is to have regard in particular to:
- (a) any impact which giving permission would be likely to have on the welfare of the children concerned, including...any impact which any examination or other assessment would be likely to have on the welfare of the child who would be examined or otherwise assessed,
 - (b) the issues to which the expert evidence would relate,
 - (c) the questions which the court would require the expert to answer,
 - (d) what other expert evidence is available (whether obtained before or after the start of proceedings),
 - (e) whether evidence could be given by another person on the matters on which the expert would give evidence,
 - (f) the impact which giving permission would be likely to have on the timetable for, and duration and conduct of, the proceedings,
 - (g) the cost of the expert evidence, and
 - (h) any matters prescribed by Family Procedure Rules.
25. A recital to the Judge's Order records that the mother considered the expert assessment not to be necessary due to the large number of professionals the children have already been exposed to.
26. The application for expert evidence was an important application in this long running case. It required careful and anxious scrutiny. This experienced Judge was aware of the dispute between the parties on the issue of the instruction of the expert. He plainly had Part 25 of the Family Procedure Rules in mind, having referred to the relevant rule in the course of the hearing.
27. This appellate Court has the benefit of transcript of whole hearing in Court below. It was identified by Counsel for the Children's Guardian at that hearing that the main issue for determination was around the Guardian's application for permission to instruct an expert. The lower court heard submissions from all parties. The Children's Guardian, supported by the father, asserted that expert evidence was necessary. The mother raised a series of concerns. She did not agree that expert evidence was necessary. She made clear written submissions setting out her objections, querying the necessity of the instruction, elaborated upon further in oral submissions, including her concern that the children have already been exposed to series of professionals and that further exposure would be harmful.
28. There was a plain dispute between the parties on the question of whether a further expert should be appointed. There was further dispute between the parties as to the questions the expert should be directed to address. They were the issues which the lower Court was equipped to resolve. It was the Judge's role to adjudicate upon those issues.

29. It must be assumed that the Judge rejected each of the mother's submissions. It is widely recognised that Judges sitting in the Family Court, where the intense and unabating pressure of work is very great and resources limited, face enormous difficulties and challenges. Regrettably, with respect to this experienced Judge, no judgment was given by the lower Court in any form. The Judge did not engage in the arguments raised by the parties. No reasons were given by the Judge at all, addressing the test of necessity, in circumstances where information already before the Court below included existing expert evidence. No facts had been found by the Court on the disputed issue of parental alienation. There was no consideration by the Judge of the mother's assertion that the father had not completed the work recommended by the previous expert Dr Lopez. There was no consideration by Judge of the potential harm to the children of exposing them to another professional, where they had already been required to meet the Guardian and a Local Authority Social Worker. I reject the submission that the Judge's reasons can be implied or read holistically. There was, very regrettably, no determination by the lower Court of the key issue in dispute, namely, whether expert evidence was necessary, by reference to the relevant factors in section 13(7) of the 2014 Act. The omission of a judgment is significant. That was not simply a procedural error. Judgments are the means through which Judges address the litigants and the public at large and explain their reasons for reaching their conclusions. A judgment providing reasons for rejecting one party's submissions or preferring the submissions of another party was a fundamental aspect of the Court's duty to deal with the case justly.
30. In the judgement of this Court, each of the grounds of appeal are plainly made out. This Court must conclude that in reaching his decision to permit further expert evidence, this experienced Judge did not engage with the issues in dispute, did not adjudicate on the disputed issue by reference to the relevant legal principles and did not provide the parties with any reasons for granting the application. In this Court's judgement, the decision of the lower Court was wrong and must be set aside.
31. For these reasons, the appeal is allowed on each ground. The Order permitting expert evidence must be set aside. The application for expert evidence must be remitted for further hearing, when the Court will consider also the question of determining the disputed issue of whether any particular behaviour has taken place within the individual family and if so the impact that behaviour may have had on the relationship of the children with either or both of their parents, focussing on the allegations of 'alienating behaviour.' The action will be reallocated from the District bench to the Circuit bench and reserved to me.

His Honour Judge Middleton-Roy