

Responsible and shared parenting

Observations on the recent decision of the Court of Appeal in Re W (children) [2012] EWCA civ 9999

In a timely development for those following the Government's proposals to amend the law relating to children's relationships with their separated parents, Lord Justice McFarlane said last week that separated mothers and fathers had 'a responsibility and a duty' to put aside their own differences and help their children maintain contact with the other parent.

In making any decision about contact between parents and their children the court will always begin with the principle set out in s.1 of the Children Act 1989, which states that the welfare of the child involved will be the court's chief concern. The courts have long upheld the notion that it is usually in the interests of a child to have contact with both of their parents following separation, and that there must be strong evidence that doing so is not in the child's best interests in order for the court to decide against contact with one parent.

The case in question was an appeal against the decision of HHJ Marshall that the father be denied direct contact with his daughters, aged six and nine, because the mother would not be able to support contact with the father and would be adversely affected by any order to do so. In allowing the appeal, LJ McFarlane included in his judgement a postscript with some comments on the rights and responsibilities held by parents in the hope that this would 'give them a degree of prominence' so that they might be observed by separated parents making decisions about the care of their children.

LJ McFarlane emphasised the fact that the concept of parental responsibility in the Children Act does give parents 'responsibilities'. In relation to contact, 'where...it is plainly in the interests of a child to spend time with the other parent then, tough or not, part of the responsibility of the parent with care must be the duty and responsibility to deliver what the child needs'. At times, this will not be easy; parents must 'use their best endeavours to deliver what their child needs, hard or burdensome or downright tough that may be'. He went on to observe that 'it is not, at face value, acceptable for a parent to shirk that

responsibility and simply say “no” to reasonable strategies designed to improve the situation in this regard’.

Whilst none of these comments are particularly revolutionary they are significant in being made by a Court of Appeal judge at a time when the matter of parental contact and ‘shared parenting’ is under analysis from the Government and media. Recent proposals by the Government to amend the Children Act to include a reference to a relationship with both parents have been criticised, for potentially undermining the principle that the welfare of the child is the court’s primary consideration, and encouraging parents to focus on their rights rather than those of the child. LJ McFarlane’s comments are perhaps a timely reminder that parental responsibility includes responsible parenting, and that parents as well as the courts need to begin with looking at the child’s best interests rather than their own.

If you would like any advice on issues relating to the breakdown of your relationship or decisions relating to your children, please contact a member of our family team.

Nell Pearce-Higgins

Solicitor

+44 (0)20 8394 6352

Nell.Pearce-Higgins@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice. No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP. © Russell-Cooke LLP. August 2012.

www.russell-cooke.co.uk