

IN THE HIGH COURT OF JUSTICE  
COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM  
RECORDER SIMON BARKER QC  
BRIGHTON COUNTY COURT

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 01/12/2010

Before :

THE MASTER OF THE ROLLS  
LORD JUSTICE PATTEN  
and  
LADY JUSTICE BLACK

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Between :

T Appellant

- and -

T Respondent

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Ms June Venters QC and Ms Michelle Powell (instructed by Venters Solicitors) for the  
Appellant  
Mr Alex Verdan QC and Ms Sam King (instructed by Mischon De Reya) for the Respondent

Hearing dates : 8th November 2010

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Judgment

**Lady Justice Black :**

1. This appeal concerns two children. I will refer to them only as G and N. G is a boy aged 10, who was born in November 2000. N is a girl aged 7, who was born in April 2003.
2. I will refer to the children's mother as M and their father as F. M has a civil partnership with another woman, L. F has a male partner. Both of these relationships are stable and of long standing. The adults met when F advertised that he would like to become a father

and M and L, who wanted to have children, responded. The children have lived primarily with M and L, at least in the sense that they have spent most of their time there, but F has parental responsibility for both children and has been a presence in their lives through contact and in other ways. Unfortunately, relationships between M, F and L deteriorated and proceedings in court were eventually started.

3. In June 2010, after a hearing lasting several days, Mr Recorder Barker QC made an order regulating the living arrangements for the children. It provided for a shared residence order in favour of M and F and contained a schedule of the times when the children would be with each of them. Broadly speaking, the regular pattern was for the children to spend every other weekend with F, staying from Friday after school until close of play on Sunday or until the start of school on Monday. During the intervening weeks, when the children had not been with F for the preceding weekend, they would stay overnight on the Monday night with him. In the holidays, they were to spend more protracted periods with F. The Recorder described the totality of the arrangement as the children spending "a significant portion of the year" with F at his home "even though decidedly unequal" when compared with the time they were at M's home. Miss Venters QC who represents M and L has calculated that the order provided for the children to live with F for a total of 152 days per year, of which 110 occasions were to be overnight.
4. The Recorder granted parental responsibility to M's partner, L, who was an integral part of the children's lives. He refused M's application to restrict F's parental responsibility for the children and L's application for a residence order jointly with M. He provided for a review in 12 months time.
5. M and L appeal. They ask the court to set aside the shared residence order in favour of M and F and to substitute a joint residence order in their favour. If they cannot prevail on the court to do that, they seek an order granting residence to M, F and L. In the run up to the appeal hearing, F indicated that he was prepared to agree to a residence order in favour of the three adults and his leading counsel, Mr Verdan QC, made it clear to us in submissions that that was still the case. M and L did not feel that that would address the difficulties that they perceived there to be over the children.
6. Both sides sought permission to introduce fresh evidence at the appeal hearing about the present state of relationships between the adults and about how the children have been since the Recorder made his order. It was apparent that they were not in agreement as to what the facts are in this respect. Counsel acknowledged the difficulty for this court in resolving factual disputes in the context of an appeal. We did not consider that it was necessary to entertain the new material in order to determine the issues before us and we therefore declined to consider new statements from either side. We also ignored the postscript to Mr Verdan's skeleton argument in which he had set out F's case as to how matters had been going.
7. The grounds of appeal are set out in an extensive document but Ms Venters QC assisted us considerably by indicating, at the outset of the hearing, how she proposed to focus her argument. In summary, her criticisms of the Recorder's approach were these:
  - i) The shared residence order in favour of M and F did not reflect the reality of the children's lives. M and L were and always have been their primary carers, the children's "nuclear family" as Ms Venters put it. She submitted that the

Recorder should have made a joint residence order to the two of them recognising that and that he was wrong to grant a shared residence order to M and F which served to marginalise L.

- ii) The increase in the time spent with F for which the order provided failed to take into account N's views on the subject, the CAFCASS officer's recommendation against such an order in N's case, and also that it was foreseeable, Ms Venters submitted, that N would react adversely to the increase. More generally, she argued that the amount of time that the Recorder provided was to be spent with F was too much and was not in the children's interests.
- iii) The order was too complicated for the parties, who do not communicate well with each other, to manage.

### **Order too complicated?**

- 8. I will deal with the last of these points first, as it can, in my view, be despatched very shortly. I do not see the order as complicated in any way. Ms Venters identified neither areas of uncertainty as to what the order meant nor any gaps in it. It is certainly detailed but it needed to be detailed, precisely because the parties do not communicate well with each other. The Recorder was quite rightly at pains to map out arrangements for the next year as comprehensively as he could so as to avoid debates arising.

### **Fact finding inadequate?**

- 9. Before I turn to the first and second of Ms Venters' points, which are the main substance of the appeal, I will deal with a further complaint that was raised in the Grounds of Appeal but not expanded in oral argument, that is that the Recorder erred in not making findings that were relevant and necessary for the disposal of the issues between the parties. I do not intend to list every one of the matters to which reference was made in this regard but to concentrate on the more prominent ones.
- 10. It is said that the Recorder should have identified the principal issues in the case as being what the role of each of the adults was and with whom the children had their primary home. It is submitted that he should have found that M and L had made clear to F and his partner from the outset their intention that they would be the children's primary parents, albeit with F having some involvement by means of contact, and that F acquired parental responsibility only because they felt unable to resist his bullying and domination. These findings should then have been taken into account in his approach to the question of residence and parental responsibility.
- 11. It is also submitted that the Recorder, who was critical about F's approach to a road accident in which N had been involved at the end of a period of contact with him, should have gone further and found F to have lied about the incident. He should have recognised and taken into account that F's lying about such a serious issue to do with N's welfare was bound to damage M and L's view of F and to have implications for co-operation between the parties.

12. It is not necessary for a judge to make findings on every issue that is presented to him for determination or makes itself apparent during the hearing. What is required is that he should determine any factual issues that have implications for the decisions that he has to take in relation to the children.
13. In some cases, it may be relevant to make findings about the intentions of the parties when they embarked upon parenthood but this was not such a case and I do not see that the Recorder can validly be criticised for not making detailed factual findings about this aspect of the parties' dispute. He found it clear, on good grounds, that neither parent wanted "simply to be involved in the means of procreation". Thereafter, the fact was that F's involvement with the children had been considerable and spanned nearly a decade in G's case and 7 years in N's. He had had parental responsibility for each of the children from the very early months of their lives. Contact started from birth and was relatively regular, developing to include overnight stays apart from a hiatus between October 2008 and May 2009. Both children love M, F and their partners, as the Recorder found, and, as he also found, are enthusiastic about their lives in both households. The adults may be very concerned about issues of status such as who could and should be classed as "the parents" but those matters are not likely to be of particular concern to the children. The Recorder found that

"they know who their parents are, they know the role that L plays in their lives, and validation or labelling is an issue for or, more accurately, between the parents and adults, not the children."

Whatever the initial intentions of the parties when the children were conceived, things had moved on with time and the Recorder's orders had to accommodate the position as it actually was rather than the position that the adults wanted or had originally planned.

14. As for F's approach to the road accident, this was examined by the Recorder in some detail. He recognised that the issue was that F denied involvement in and contemporaneous knowledge of the incident. His finding was as follows
  33. Having listened carefully to all the oral evidence and having considered the documentary evidence, I have no hesitation in accepting that the incident occurred at the time when N was returning home from contact. Whether F was still present to witness the event or had driven off leaving G and N to cross the road on their own, which road is a narrow and not very busy road but one where vision is somewhat restricted, is unclear. However, either way F was neglectful of his responsibility to return the children home and either he lied about his knowledge of what had occurred or he showed little regard for what had occurred when he was subsequently informed of it."
15. The Recorder considered the significance of the incident. He took the view that F (and F's partner if he was there at the time) let N down when returning her after contact that day and that it was fortunate she was not injured in the accident but he did not regard what happened as indicative, of itself, of a likelihood that F is or will be generally neglectful of the children's welfare. Whilst he did not comment specifically on the impact on M and L of F's approach to the accident, there is no doubt that he did carry out a thorough and perceptive analysis of F and recognised his flaws and the effect that they had on others. He found F "at times, vague and also, more than at times, evasive in his answers to questions". He found that F "could be awkward and frustrating about even

trivial and straightforward matters" and was "not always by any means an easy person to deal with". He commented on what he classed as the "preposterous" approach taken by F's solicitors to a minor incident that had occurred whilst G was in M's care. He explicitly recognised the contribution that F had made to the difficulties with M and L, and found that he had "contributed in good measure to the breakdown of relations between the two households".

16. M and L complain that the Recorder's findings about F did not go far enough and he should have found that the way in which F exercised his parental responsibility undermined M and L and caused them distress, frustration and embarrassment. The Recorder could not, however, take a view about that in a vacuum. He had to examine the dynamics between the adults and this meant that he had to assess L and M as well as F, which he did. He was struck by the intensity of their distrust of and dislike for F and his partner. He was aware in reaching his assessment of them that they felt they had been lied to from the outset and he obviously took into account F's shortcomings and his part in the dynamics. He said that he was not saying that M and L's criticisms of F were all unfounded but he found that they "lacked balance". The CAFCASS officer gave evidence that M and L adamantly refused to recognise any role that F had or could or should play and the Recorder found that assessment confirmed by their oral evidence. Weighing up all the material available, he found that "the core problem is that M and L have become consumed by unrelenting negative views about F and have lost their sense of perspective."
17. It is very important to recognise that in making these assessments of the personalities of the adults and the situation in which they found themselves, the Recorder was drawing on the fund of information that is available only to the trial judge, who is not limited to a consideration of the documents in the case but can also observe the parties, in and out of the witness box, over a period of several days and weigh up the totality of the evidence. Nothing has been identified that would lead one to suppose that the conclusions that this Recorder reached on the material before him were conclusions that were not open to him.

### **Shared residence order inappropriate?**

18. Ms Venters does not argue that the Recorder was wrong in law in granting a shared residence order; she accepts that the children spend sufficient time with F to justify a shared residence order in theory. Nor does she identify any error in the principles relating to shared residence which the Recorder set out in his judgment. Her argument is that a shared residence order in favour of M and F was the wrong order to make on the facts of this case because it was not conducive to the best interests of the children.
19. A central strand of the argument relates to the position of L, whose role in the children's lives Ms Venters submits has not been properly recognised and who, in the context of a shared residence order to M and F only, would be marginalised by F. Ms Venters cited examples of how F had minimised L's position in the recent past, including seeking to exclude her from the proceedings relating to the children and to stop her from discussing matters with the CAFCASS officer.
20. Ms Venters also submits that, whilst the label given to the arrangements may not mean anything to the children now, it will be important, when they grow up, for them to see

that L had an equal position as their parent in the eyes of the law. She concedes that the order that she seeks, joint residence to the two women only, would transfer the inequality from L to F but she argues that this is justified by the factual reality and, indeed, necessary because F would use a shared residence order to interfere in the management of the children's day to day lives, which would be to the children's detriment because M and L will be unable to cope with it.

21. Ms Venters relies on authorities, still relatively few, dealing with non-traditional families which she says show that the reality of the situation needs to be reflected in the order made. She invites our attention to *Re D* [2006] EWHC 2 (Fam) and *TJ v CV, S and BA* [2007] EWHC 1952 (Fam).
22. There is, of course, no universal solution for cases of this type. They depend on their individual features and, as Hedley J observed in TJ, they are "shaped by the personalities, strengths and weaknesses of the individual human beings involved". The discretion entrusted to the individual trial judge is, accordingly, considerable and the task of an appellant seeking to show that he or she has gone sufficiently wrong in the exercise of it to justify an appeal court interfering is correspondingly burdensome.
23. It is important to appreciate that although the shared residence order referred only to M and F, the Recorder granted parental responsibility to L. It is only relatively recently that it has been possible to grant a free standing parental responsibility order to someone in her position but that can now happen by virtue of amendments to the Children Act 1989. In the past, joint/shared residence was sometimes granted in order to give parental responsibility to a partner who was not a biological parent but was fulfilling a parental role. Parental responsibility can be a difficult concept to grasp, particularly when it comes to the details of how it works in practice. However, the Children Act gives a very clear exposition of the broad concept. According to section 3(1), "parental responsibility" means "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property". One might, perhaps, be forgiven for thinking that someone who has been granted parental responsibility has truly been recognised as a parent of the child. In this case, three people have parental responsibility, M, F and L, and have thereby been recognised as parents; it seems to me that that probably accords with how things look at the moment from the children's point of view.
24. A "residence order" is "an order settling the arrangements to be made as to the person with whom a child is to live" (section 8(1) Children Act). A residence order can be made in favour of more than one person and, as section 11(4) provides, if the people do not live together the order may specify the periods during which the child is to live in the different households concerned.
25. The authorities over the last decade or so are clear that there can be a place for a shared residence order where it will serve the child's interests in a rather broader sense than simply fixing when he will be in which house. The principles have been concisely summarised quite recently by the then President, Sir Mark Potter, in *Re A (a child) (joint residence: parental responsibility)* [EWCA]Civ 867. He said, at paragraph 66:

"The making of a shared residence order is no longer the unusual order which once it was. Following the implementation of the Children Act 1989 and in the light of s 11(4) of that Act which provides that the court may make residence orders in favour of more

than one person, whether living in the same household or not, the making of such an order has become increasingly common. It is now recognised by the court that a shared residence order may be regarded as appropriate where it provides legal confirmation of the factual reality of a child's life or where, in a case where one party has the primary care of a child, it may be psychologically beneficial to the parents in emphasising the equality of their position and responsibilities."

26. In *Re AR (A Child: Relocation)* [2010] EWHC 1346 (Fam), Mostyn J said that a joint or shared residence order "is nowadays the rule rather than the exception even where the quantum of care undertaken by each parent is decidedly unequal". That, in my view, is to go too far. Whether or not a joint or shared residence order is granted depends upon a determination of what is in the best interests of the child in the light of all the factors in the individual case. However, it has certainly been established that it is not a pre-requisite for a shared residence order that the periods of time spent with each adult should be equal and nor is it necessary that there should be co-operation and goodwill between them and shared residence orders have been made in cases where there is hostility. Re A is an example of this as the parents were there said to be "at loggerheads".
27. What is profoundly disappointing is to see how, in practice, instead of bringing greater benefits for children, shared/joint residence can simply serve as a further battlefield for the adults in the children's lives so that even when the practicalities of how the child's time should be split are agreed or determined by the court, they continue to fight on over what label is to be put on the arrangement. This can never have been intended when shared/joint residence orders were commended by the courts as a useful tool.
28. Nothing that has been raised by Ms Venters undermines the Recorder's determination of what is in the best interests of these children and I am satisfied that his decision to grant shared residence to M and F was well within his discretion. He kept the consideration of the children's welfare "at the forefront of my mind and uppermost" and quite properly took into account the fact that the children genuinely regarded F as their parent, wanted to spend time in both homes and would be spending a significant portion of the year with F. The decision in relation to shared residence is set out relatively shortly in paragraphs 56 and 57 of the judgment but the foundation for that was the thorough and acute assessment of the whole situation which is to be found in the judgment as a whole. Although the only authority referred to by name is *Re AR* (above), it is quite clear that the Recorder did not allow Mostyn J's observations to dictate that there must be a shared residence order but directed himself, correctly, that "what is right for the children must turn on consideration of the relevant circumstances or, put another way, be fact sensitive".
29. The Recorder's finding that the children already knew who their parents are and the role that L plays fatally undermines Ms Venters' submission that it was necessary for M and L alone to have a shared residence order in order to give the children the right message. The Recorder was entitled to take the view that in this case "validation or labelling" was an adult issue.
30. As to M and L's fear that the shared residence order would provide F with a licence to meddle inappropriately in the children's upbringing, the Recorder's findings as to the dynamics between the adults, some of which I have set out above, show that M and L's

perspective on F was not balanced and he was entitled to take the view that a shared residence order would be more help than hindrance.

### **N's views/CAFCASS advice given insufficient weight?**

31. Although the primary focus of this ground of appeal is the alleged failure of the Recorder to take into account the advice of the CAFCASS officer about the level of N's contact and N's own views on this subject, Ms Venters indicated that M and L in fact consider that there should be a reduction in the time that both children spend with F. Their first preference would be for both children to have the same (reduced) contact with F, and they question whether it would give the right message to the children if they were treated differently, given the Recorder's acceptance that F is less able to demonstrate his love for N and may make her feel that she plays second fiddle to G. If their first preference is not accepted, they are happy that the children should see F midweek on alternate weeks but say that it should not be overnight, particularly in N's case, and they think that N should only ever stay overnight for one night at the weekend and G should stay only until Sunday night every weekend, rather than staying until Monday morning on alternate fortnights.
32. In the immediate run up to the hearing before the Recorder, the children had been staying with F on Friday night on a fortnightly basis and had longer staying contact in the holidays. Both children appeared to want extended periods with F in the holidays and the debate at the hearing before the Recorder centred on whether they should spend more time with him during term time, and particularly whether that time should include more overnight stays.
33. N said to the family support worker from CAFCASS in January 2010 that she liked spending time with her father but also said, "It's not good, the staying over bit. I always get worried about staying over". She was unable to give a reason for this. Asked if there was anything she would like to change, she said that she liked the time she spent with her father on Wednesdays after school and sometimes she liked the Fridays but "I get worried, I don't want to stay over any more, I would like to get picked up in the afternoon when I'm at Dad's and not stay over". The family support worker concluded that N was not ready for the same sort of extension of the arrangements as G was. G wanted to have more time with his father to stay over and to travel.
34. When the children saw the CAFCASS officer, Mr Bridger, on 15 May 2010, G was still clear that he wanted more contact with his father. N's position seems to have developed in some respects from January. She spoke of staying with her father as being "good" but said she would not want to extend it and that she missed M and L when she was away from them. On the other hand, she spoke about the contact being rushed and said she would like to return to M at a later time on a Saturday following the Friday night stay.
35. In oral evidence to the Recorder, Mr Bridger recommended that the court consider G spending more time with his father. As for N, his view was that her wish was not to spend any additional nights away from M and L and that her wishes needed to be taken into account. He said that he thought there could be a danger in putting pressure on N to do something she did not presently want to do. His evidence also included the following

points: that one had to realise that N would pick up any anxiety that her time spent with F was causing M and L; that there might well be a disadvantage to N in G having more time with F in that as she gets older she might feel that G is getting something (i.e. extra time with F) that she is not (see G13 of the transcript of Mr Bridger's evidence); and that when she sees G spending more time with F overnight, N may well want to spend more time there herself.

36. The Recorder accurately reflects N's position in his judgment at paragraph 29 where he says-

"N would like more time but not more time overnight although N was not able, or perhaps not willing, to articulate her reasoning which leaves open a range of possibilities".

He was plainly mindful of Mr Bridger's evidence on the subject of time with F, which he set out particularly at paragraphs 35 and 36 of the judgment.

37. He found Mr Bridger's impression of the children and their relationships with the adults clear and insightful and accepted it. He took from Mr Bridger's evidence that N felt "at home" at F's even though she did not wish to extend her overnight stays at present.
38. When he came to consider the future for the children, the Recorder put all of this evidence into the balance, including Mr Bridger's view that although G would have no difficulties with "a regular pattern of weekday in term times and overnight staying", N would be likely to have some difficulties, at least at present. He said, at paragraph 53, that Mr Bridger was clear that extending weekend stays to two or three nights would work well for G "and should be tried for N but it may need adjusting". Ms Venters submits that this reveals a misunderstanding by the Recorder of Mr Bridger's evidence because Mr Bridger never said that contact should be tried for N at the same level as G.
39. Mr Verdan could only point to one passage in the transcript (at G57) upon which the Recorder might have based his understanding; this passage seems to me more concerned with the question of shared residence than the amount of time that the children would be spending with F. It is no surprise therefore that Mr Verdan essentially conceded in argument that Mr Bridger was probably suggesting a slower approach to contact for N than for G. However, he submits that N's wishes and feelings were not determinative and that the Recorder was entitled to resolve the issue in accordance with the older child's wishes.
40. Whatever the Recorder made of Mr Bridger's evidence about whether contact should proceed in tandem for the two children, he, in fact, differentiated between N and G when he made his order and did so in a way which accommodated elements of both Mr Bridger's advice and N's wishes. His order is set out at paragraphs 60 and 61 of the judgment. He provided that the pattern of longer weekends which he was introducing should start with a weekend of the shorter type from Friday to Sunday only and he dealt individually with N's position by requiring that "on any weekend when N expresses a reluctance or appears to be reluctant to stay more than one night overnight, F must not hesitate to return her to M and L". Similarly, whilst providing for an overnight stay midweek, the Recorder built in the same proviso for an early return of N if she did not wish to stay overnight.

41. The Recorder was not, of course, bound by either Mr Bridger's or N's views though he was required to take them both into account and did, subject to the possible misunderstanding identified by Ms Venters which did not in fact translate into a rigid order in the same form for both children and was not, in my view, sufficient in itself to undermine the exercise of his discretion.
42. It is clear from the Recorder's judgment that he had gained a considerable amount of insight into the case himself, including an appreciation of N's wishes and feelings, and an understanding of the prevailing climate in relation to the adults. There was nothing extraordinary about his order; it is easy to see the merits of an order which permitted the children to be treated in the same way unless it proved necessary to respond to N's particular needs by an early return to M and L. Indeed, a need to treat the children in the same way was one of the considerations that, as I have said, was advanced on behalf of M and L in support of the submission that the children should both have their contact reduced by this court. Mr Bridger recognised that N's views may be reflecting the anxiety of M and L and also that they may change with time and when she saw G spending more time with F. There were overall quite sufficient factors to support the Recorder's exercise of his discretion in relation to the arrangements that he fixed for the children's time with F.
43. In the Grounds of Appeal, it is submitted that the amount of time that the children are to spend with F undermines the fact that their main home is with M and L. To a greater or lesser extent, both children wanted more time with F. It cannot be said that in accommodating these wishes, the Recorder extended contact to an extent that would be likely to introduce confusion for them. He found that they know what is what in relation to their living arrangements and in relation to the adults in their lives and he obviously did not think that this change to contact was going to affect that adversely. There is therefore no substance in this complaint.
44. Accordingly, in my view the Recorder did not make any material error in determining what time the children were to spend with F and the order that he made was well within the range of orders which he was entitled to make in the exercise of his discretion.

## **Conclusions**

45. I would simply have dismissed the appeal for the reasons I have given were it not for one matter. This matter was raised in the Grounds of Appeal and came to more prominence during argument in front of us but I am not sure whether it featured during the hearing before the Recorder. I refer to the question of what would happen to the children if M were to die during the currency of the shared residence order.
46. It was submitted on behalf of M and L that, in these circumstances, F would be able to remove the children from L's care and counsel seemed, in fact, to be in agreement that there would indeed be nothing (apart from good sense) to stop F from asserting that the children should immediately come to live full time with him as the last surviving holder of a residence order. It was apparent that the provisions of the Children Act in relation to the appointment of guardians did not provide an easy way in which to protect L's position and that the likelihood was that, in the event of a dispute with F, she would be forced to make an urgent application for an interim residence order in her favour if she

felt that it was in the children's best interests to continue to spend a significant amount of their time with her.

47. I would still not have treated this as sufficient to interfere with the Recorder's order had it not been for F's offer to agree to a residence order that includes L as well as M and himself. Such an order does seem to me to provide a means to avoid a distressing disruption to the children's lives at a time that would be acutely difficult for all concerned. It would at least ensure that the status quo with regard to living arrangements would continue until any issues could be sorted out in an orderly fashion by the court. Although no one expects there ever to be a need to rely upon it, the potential problem having been presented complete with a ready made solution, it would seem foolish not to address it and I would therefore be minded to allow the appeal to the limited extent that for the shared residence order in favour of M and F only, there should be substituted a residence order in favour of M, F and L. I emphasise, however, that it cannot be anticipated that considerations relating to what may happen in the aftermath of an untimely death will regularly tip the balance in favour of a joint residence order in circumstances such as the present ones. In many cases, there will be a profusion of much more pressing factors that dictate another outcome.
48. Apart from the alteration to the Recorder's order to which I have just alluded, I would dismiss the appeal. There was discussion during the hearing about the possibility of us ordering an earlier review than the Recorder had planned but I would not be minded to do that. If it is thought appropriate for the county court to consider the matter sooner, the parties can apply for an earlier directions hearing.
49. In parting with the case, I would invite the attention of all of the parties once again to what the Recorder said to them at the end of his judgment. He told them that they must put aside their differences and that if the adults do not manage to resolve things by communicating with each other, the children inevitably suffer and the adults may also pay the price when the children are old enough to be aware of what has been going on. It is a great shame that that sound advice does not appear to have been heeded. It is a tremendous privilege to be involved in bringing up a child. Childhood is over all too quickly and, whilst I appreciate that both sides think that they are motivated only by concern for the children, it is still very sad to see it being allowed to slip away whilst energy is devoted to adult wrangles and to litigation. What is particularly unfair is that the legacy of a childhood tainted in that way is likely to remain with the children into their own adult lives.

**Lord Justice Patten:**

50. I agree.

**Master of the Rolls:**

51. I also agree.