

A (A Child) [2007] EWCA Civ 899

Appeal against an order transferring residence from the mother to the father. Appeal dismissed.

Case No: B4/2007/0796
Neutral Citation Number: [2007] EWCA Civ 899
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CANTERBURY COUNTY COURT
(MR RECORDER PULMAN QC)
(LOWER COURT No. CT06C00362)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Friday, 15th June 2007

Before:
LORD JUSTICE WILSON
and
MR JUSTICE HEDLEY

IN THE MATTER OF A (a Child)

(DAR Transcript of
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Official Shorthand Writers to the Court)

MR CHRISTOPHER WALL (instructed by Messrs Boys & Maughan, Margate)
appeared on behalf of the Appellant Mother.

MR COREY MILLS (instructed by Messrs Clark Willis, Darlington) appeared on behalf of the Respondent Father.

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Judgment

(As Approved by the Court)

Lord Justice Wilson:

1. The subject of this appeal is a boy, S, who was born on 15 March 1999 and so is now aged eight. S is the non-marital child of the appellant mother, who is aged 43 and lives in Herne Bay, and of the respondent father, who is aged 45 and lives in Darlington. Prior to Sunday 1 April 2007 S lived with the mother; and, notwithstanding the difficulties which beset it, he had contact with the father. Since 1 April he has resided with the father and has been having contact with the mother. The transfer of residence took place pursuant to an order made by Mr Recorder Pulman QC sitting in the Canterbury County Court on Friday 30 March 2007. Upon making that order the recorder refused the mother permission to appeal and refused a stay of execution of his order, which provided for the transfer to take place two days later. By Notice of Appeal filed on 19 April 2007, the mother sought permission to appeal against the recorder's order for residence in favour of the father and included what, in the light of the transfer of residence which had taken place on 1 April, was a redundant application for a stay of execution. On 16 May 2007 Lord Justice Wall directed on paper that the application for permission be adjourned to be heard orally, on notice to the father and on the basis that, were permission granted, the substantive appeal should follow at once. We have today been conducting the hearing for which he provided; and at its outset we indicated that we would take a pragmatic course by there and then granting the mother permission to appeal, so that we might proceed at once to hear the substantive appeal.

2. The recorder faced, if not a very difficult decision, at least a very unpalatable one. S was and is very fond of the mother and, in all areas of his life other than in relation to his contact with the father, she had looked after him very well. Notwithstanding the logistical problems created by the distance between the two homes, the father had managed to have frequent contact with S; and there was evidence that his relationship with S was also excellent. Nevertheless, following the separation of the parents when S was only about a year old, there had been frequent proceedings in the Canterbury County Court in relation, in particular, to difficulties surrounding the father's contact with S. I calculate that the hearing on 14 and 15 March 2007, which led to the judgment delivered, and order made, on 30 March, was about the fourteenth hearing in relation to those matters; and Mr Recorder Pulman had presided over six of the more recent of them. By a series of judgments, the recorder, as I will explain, had made detailed

findings that the mother had continually sought to interfere with and to frustrate the smooth running of the father's contact with S; and notwithstanding warnings on the recorder's part that, were the mother to continue to seek to undermine contact, the court might have to consider changing the residence of S, the mother's course of conduct had continued.

3. In the event, at the hearing in March 2007, the recorder had before him a report upon the mother by Dr Anderson, a chartered psychologist, acting as joint expert by court direction. The report was to the effect that the mother suffered a personality disorder which rendered her incapable of controlling her emotions when confronted, directly or indirectly, by the father on occasions of contact; that, albeit that he, Dr Anderson, understood that S had not yet been harmed by the level of conflict generated by the mother, such would not remain the case; and that the continued parental alienation likely to be visited by the mother upon him and the attendant emotional pressure upon him would lead to significant psychological difficulties for him. The other expert witness before the recorder was Mr Vobe, an independent social worker commissioned to prepare a report because, I surmise, the mother had lost confidence in CAFCASS officers. It was the opinion of Mr Vobe, partly in the light of Dr Anderson's report, that S "must live with his father". It is thus necessary to note that the expert evidence, from two sources albeit interdependent, was unanimous in its trenchant recommendation to the court that it was in S's interests for his residence to be changed. It is also noteworthy that, by his previous judgments, the recorder had given clear warnings to the mother of the possible necessity for a change of residence were her course of conduct to continue. I have no doubt that, in circumstances in which a court is considering whether to transfer residence by reference to contact difficulties, however extreme, created by the residential parent, it is in the interests of the child for such warnings, and thus opportunities for change, to be given. By the time of the hearing in March 2007, however, there was expert evidence before the court, unchallenged by any other expert, to the effect that, as a result of her personality disorder, the mother was incapable of reforming her behaviour. The result was that, even if, which is debatable, it would otherwise have been appropriate to give the mother yet a further opportunity for change, it would have been pointless so to do.

4. It is important to explain in greater detail the nature of the problems which the mother was placing in the way of S's relationship with the father through contact. By a judgment given on 27 July 2005, such being about the eighth hearing of issues of one sort or another between the parents in the Canterbury County Court, the recorder was required to address why contact provided in an interim order dated 4 October 2004 had broken down. His finding was, in short, that the mother had deliberately decided to break the order in relation both to telephone contact and, so I infer, to face-to-face contact. He decided to make a further order for contact and

on this occasion to attach a penal notice addressed to the mother. In judgment, however, he noted that counsel for the father had declared that the father would not wish to enforce the order for contact by way of proceedings against the mother for contempt of court but, rather, by way of an application for a change of residence.

5. The mother's interference with the arrangements for contact persisted. In May 2006 the father did what he had intimated, namely to apply for a residence order. The recorder decided to consider the application in two stages, namely a fact-finding stage referable to the further alleged difficulties and an outcome stage to be constructed upon the basis of such facts as would have been found. In my view, particularly because it would not then have been obvious to the recorder that, by reason of her disorder, the mother was incapable of reforming any continued misbehaviour, it was, to put it at its lowest, appropriate for him to break his enquiry up into those stages and thus to provide her with further opportunities to improve her behaviour if it had been possible for her to do so.

6. The recorder seems to have presided over the first stage at a hearing spread out over about three days between June and September 2006 and culminating in a judgment given by him on 20 September 2006. It was a robust judgment, typical of the recorder. He introduced the problem as follows:

"The problem can be put simply. It is that [S's] mother professes to support contact but she is actually hostile to [S] seeing his father. So she puts problems in the way by various different devices set out below. Two of the nastier little devices are interrupting telephone calls and sending back presents sent to [S] by his father."

Then the recorder addressed detailed evidence in relation to about 14 occasions between July 2005 and January 2006 when the father had been due to speak to S by telephone and when, as the recorder found, the mother either deliberately failed to make S available to receive the call or unreasonably interrupted it. He also found that in August 2005, when the father travelled to Herne Bay to collect S for the summer holiday contact, the mother had created a violent scene in S's presence, including abusing the father, lashing out at him and dragging S behind her, and that she had unreasonably called the police, who had duly ensured that S was handed over to the father. The recorder also found that at Christmas 2005, when the father went to collect S for staying contact, the mother had again deliberately sought to impede the hand-over. The recorder concluded his judgment with the words:

"I have yet to hear the application for a change of residence. I would regard any problem with contact between now and the next hearing

as giving rise to considerable concerns to the mother's fitness to provide for [S]. To put it in another way, it would add weight to the father's application for residence."

7. At a pre-trial review on 17 November 2006 the recorder had before him the first report of Mr Vobe. He reported that he had conducted two interviews with the mother but that she had not been easy to interview, had been garrulous, and excitable and, so it appeared to him, "preoccupied with past troubles and a sense of injustice". He had also interviewed the father in his home in Darlington. He had observed S in each of the two homes and interviewed him at school. He reported that the mother had told him that contact reawakened her perceptions of domestic violence at the hands of the father -- not a point later to be pressed on the mother's behalf upon the recorder -- and that she had installed CCTV cameras outside her home in order to record any misbehaviour on the father's part in the future and had attached tape-recording devices to her telephone in order to record S's conversations with the father. Mr Vobe reported that S obviously enjoyed the father's company; that he had no concerns about their relationship; but that there also seemed to be an excellent relationship between S and the mother. He also pointed out that S had clearly indicated to him a preference for continuing to live with the mother. Mr Vobe recorded discussions with teachers at S's school, to which I will refer in [19] below, and with a social work assistant who had worked with S and the mother and who had observed that the mother could see nothing wrong with her conduct and blamed everybody else.

8. In his first report Mr Vobe described the dispute as "becoming almost a war of attrition" and he expressed perplexity at the mother's "preoccupation with fighting yesterday's battles" and her abandonment of rationality at times of handovers and of contact by telephone. He suggested that, were S to continue to be exposed to the mother's manipulation, it would have an increasingly deleterious effect upon his emotional development, which, in his words, "must not be allowed to happen". He rejected termination of contact with the father as "not an option" in that, so Mr Vobe suggested, it was essential that S should continue to have a relationship with the father as well as the mother. He recommended that, prior to reaching the grave decision to remove the child from the mother, a psychological opinion should be sought in relation to her, which would enable the court to discern whether she could, with expert assistance, modify her behaviour in a timescale compatible with the needs of S.

9. It was thus at the suggestion of Mr Vobe, and with the agreement of both parents, that, at the pre-trial review, the recorder directed that there should be the psychological report upon the mother which was in due course provided by Dr Anderson. Presumably picking up Mr Vobe's reference to the mother's attachment to her telephone of recording

equipment, the recorder ruled that she should no longer record S's conversations with the father.

10. On a date in January or February 2007 Dr Anderson attended the offices of the mother's solicitors in order to conduct his examination of her. He had already learnt that she was then refusing to comply with the direction by the recorder that she should disclose to him her medical records for the preceding year. In his second report to the court, dated 19 February 2007, Dr Anderson described at length a difficult interview with the mother: that at first she had declined to explain her background history to him as being none of his business; that she had stood up and begun to gesture wildly and angrily; that she had said that he should concentrate upon the father rather than upon her and that she was unwilling to cooperate with his assessment; and that later she had made only a token attempt to explain her background history to him. By reference both to the interview, which in the event lasted about two and a quarter hours, for more than half of which the mother's voice was, so he said, raised, and also to the documentation with which he had been provided, Dr Anderson reported that he had managed to conduct in relation to the mother the International Personality Disorder Examination (IPDE), linked to the ICD-10 classification of mental and behavioural disorders; and that in his view the mother satisfied six of the seven criteria referable to the diagnosis of a Paranoid Personality Disorder and three of the five criteria referable to that of an Emotionally Unstable Personality Disorder (Impulsive Type). Dr Anderson concluded that her personality disorders were "very serious".

11. Dr Anderson went on to report that, apart from her undisguised hostility towards the father, the mother held resentments against a CAF/CASS officer, her previous solicitors, and the recorder himself as being biased against her, and that she contended that, notwithstanding all the recorder's findings, she had never done anything wrong. Dr Anderson cited her attitude as an example of total lack of insight on her part into her own behaviour, such being (so he said) a personality trait associated with the personality disorders which he had diagnosed. He reported that in his view the mother's emotions at times of exposure, direct or indirect, to the father were uncontrollable. He continued:

"The overwhelming nature of a personality disorder is that a person suffering from [it] does not believe that she or he is responsible for any of the problems that arise as a result of [it] and does not see why she or he should make such a change. In other words, that person's sense of reality is significantly distorted. This description obviously fits [the mother]. I do not believe that [she] is capable of changing because [she] does not believe that there is any part of her behaviour that she either wants or needs to change... The fact of the matter is that I do not believe that, whatever form of intervention takes place,

[the mother] is capable of changing her behaviour over the span of her son's childhood."

12. Dr Anderson stated that, in that Mr Vobe had observed that, were the proposed psychological opinion to be such that a modification of the mother's behaviour was impossible, there would seem to be no alternative to a change of S's residence, he, Dr Anderson, fully supported the resultant conclusion that S's residence should indeed be changed. He then made the observations about parental alienation, emotional pressure and future psychological difficulties for S to which I have referred at [3] above.

13. Following receipt of Dr Anderson's report, Mr Vobe prepared a second report dated 2 March 2007. He confirmed that Dr Anderson's report had driven him to the conclusion that S should live with the father. He reiterated that S's wishes were otherwise but suggested that S lacked sufficient maturity to know where his best long-term interests lay. He observed:

"It may be that [S] would suffer initial upset were he to change residence. If his reaction is longer lasting, the services of the local CAMHS may be appropriate."

He suggested, by reference to her actions and to the personality disorder diagnosed by Dr Anderson, that the mother was incapable of parenting S sufficiently well and that, by contrast, the father had the requisite capacity. He stated that the present situation of S "must not be allowed to continue". He suggested that a Family Assistance Order should be made in favour of Darlington Borough Council.

14. At the hearing in March 2007 the father sought to complain of further, recent interruption on the part of the mother of his telephone contact with S. The recorder, however, discouraged ventilation of those complaints and was more interested to explore cross complaints by each parent in relation to the father's handover of S to the mother at the end of a period of face-to-face contact on 20 January 2007. The mother had filmed the incident with the CCTV equipment to which I have referred; and, in circumstances which the recorder was to conclude showed complete lack of insight on her part as to the damaging evidence against her which it contained, she had produced the video-tape of it and of other handovers to her solicitors, who, as part of their duty to make full, including adverse, disclosure in proceedings relating to children, had produced it to the court. The recorder watched the videotape; and indeed my Lord and I have also separately watched it and have today been supplied with a transcript of the speech recorded on it. The background to the incident was that the father returned S to the mother's home at about 8 pm, being one hour later than had been required by the order. He sent text messages to the mother to say that he and S were perfectly safe but that they would be late. The recorder made

no finding as to whether the father had a reasonable excuse for being late. At 7.08 pm the mother dialled 999 in order to inform the police that S had not been returned on time. Apparently familiar with her behaviour, the police took no action; there had certainly been no emergency to justify that call. Upon S's ultimate arrival with the father, as the CCTV footage shows, the mother was in what I can only describe as a white fury. She shouted foul abuse at the father, including calling him "a fucking arsehole"; grabbed from S a telescope which had been bought with money given to him by the paternal grandparents; threw it at the father's car; kicked the car; and got S into the house. It is clear that the recorder attached considerable significance to the fact that, only weeks prior to the second stage of the enquiry into residence, the mother was continuing to generate conflict with the father in the presence of S on so acute a level. My own reaction to watching the video-tape was, I am afraid, rather an emotional one: I felt sickened that the mother should have created so unpleasant a scene partly in the presence, and all in the earshot, of S and concluded that, if her disorder drives her to inflict such damage on a son whom she greatly loves, the situation is deeply tragic.

15. Much of the recorder's judgment dated 30 March 2007 is devoted to recital of the history and analysis of the views of the two experts, which really drove only one conclusion. Nevertheless the recorder then appropriately addressed the checklist in section 1(3) of the Act of 1989. He reminded himself that it was S's wish to live with the mother; that he had always lived with her; that he had always lived in the area of Herne Bay; that he was at school there and had friends there; and that, to date, he was a well-rounded normal boy who did not show emotional scars as a result of the mother's behaviour. The recorder accepted that, were residence transferred, there might still be problems at handovers between the parents for periods of contact with the mother but suggested that the difference would be that S would be residing in an environment in which he would be encouraged to think positively about, and to deal positively with, the non-residential parent. The recorder made comments about the likely nature of S's reaction to a change of residence which are the subject of a ground of appeal and to which I will refer in [18] below. He reminded himself that the mother was a good mother in all respects other than contact but found that, in relation to contact, her behaviour was "appalling". He found that the father was, generally, an "equally good" parent and that he had demonstrated during staying contact that he was well able to serve S's physical and emotional needs. He reminded himself that the father worked in the catering business, sometimes in the evenings, but that near his home lived the paternal grandparents, able and willing to help to care for S. He noted the argument of the mother's counsel that, notwithstanding the difficulties at hand-overs, the face-to-face contact ordered over the last two years had at any rate taken place. He reminded himself, however, that the problems had also struck at the right of S to speak to his father regularly on the telephone. By way of conclusion the

recorder stated that "this is not a case of intractable opposition to contact". I believe on balance that he thereby meant to convey only that, as counsel for the mother had pointed out, the contact with the father had at least occurred. Nevertheless he noted that there had been a long history of the mother's obstruction of contact at its beginnings and ends and, in the case of telephone contact, during it; and that, so Dr Anderson reported to him, the mother was not capable of changing her obstruction of it.

16. Such, then, were the circumstances in which the recorder concluded that it was in the long-term interest of S to live with the father. In addition to the residence order, he made a Family Assistance Order in favour of Darlington Borough Council for -- an odd period -- five months. Although the basis of their consent to such an order had been their offer to help to enable S to settle and to ensure that he was not in need of any sort of protection, the recorder's order specifically invited Darlington to assist with regard to any conflict during handovers.

17. I turn to the mother's grounds of appeal, elaborated in a lengthy skeleton argument, written first by counsel who represented her before the recorder and then helpfully amended by Mr Wall, who has represented her today. I would like to pay tribute to the adroit way in which Mr Wall has used his opportunity for oral argument succinctly to pinpoint the more arguable of the points made in the grounds and in the skeleton.

18. Mr Wall has conceded that the first point, actually drafted by his predecessor, was based upon a misunderstanding of the recorder's judgment. The recorder said:

"In my judgment, [S] will initially find the move difficult. He will no longer be living with his mother, nor near his friends and maternal grandparents and he will be changing school. There will be some home sickness. This emotionally stable boy will, in my judgment, within a few weeks find that he is otherwise easily able to overcome the initial home sickness or unhappiness. The long-term benefits to him of a move are a good deal more significant and they outweigh the initial homesickness."

The first point was to contrast that passage with an earlier passage in the recorder's judgment in which he had observed that S would be unlikely to find a change difficult. But, as Mr Wall accepts, the reference in the earlier passage of the judgment to the unlikelihood that S would find a change difficult is, on examination, clearly referable only to the projected change of school rather than to the overall change of residence.

19. The more important matter pressed upon us by Mr Wall, particularly in his written but also in his oral argument, is that, in the paragraph which I have quoted, the recorder failed to reflect the strength of the evidence as to the likely difficulties for S attendant upon a change of residence. In this

regard Mr Wall relies upon the views of S's head-teacher and another school officer, quoted in Mr Vobe's first report, to the effect that a change of residence would be "traumatic" for S, being a prediction with which Mr Vobe associated himself. In my view it would have been better for the recorder specifically to refer to that evidence, particularly if it had been specifically relied upon by Mr Wall's predecessor. But the mother's problem is that that evidence was collected, recited, accepted and weighed by Mr Vobe, who nevertheless came ultimately to the firm conclusion that there should be a change of residence; thus, in that way, allowance had already been made for the opinion of the school. Indeed it mattered not to the recorder's appraisal of S's best interests whether he was to describe the short-term effect of the move upon S as "difficult" or "traumatic" for his conclusion was that the long-term benefits of the move for S outweighed the short-term problems, however described.

20. The mother, by Mr Wall, complains that the recorder attached insufficient weight to various matters: to the evidence of her very good parenting of S otherwise than in relation to contact; to the evidence of the happiness of S at his school in Herne Bay; to the evidence of his wish to remain resident with the mother; to the evidence of his settlement with the mother (he having lived with her throughout his life); and generally to the status quo argument and the likelihood of disturbance following a change in it. As, however, I have explained, the recorder did refer to these features; and it is not enough on an appeal to this court for an appellant to complain that features which were weighed by the judge were not given sufficient weight. In my view the recorder demonstrated that he had those important features fully in mind but concluded – unappealably – that no amount of good parenting in other respects could lead him to tolerate, on behalf of S, a continuation of the mother's efforts to interfere with his relationship with the father.

21. Mr Wall complains that the recorder failed to pay sufficient regard to the likelihood of continued difficulty in relation to handovers even following a change of residence. I have pointed out that the recorder accepted the likelihood of that continued feature but drew the distinction, in my view valid, that at least in the father's household S would not be exposed to a continual atmosphere of hostility towards the non-residential parent. He also complains that the recorder either downplayed or ignored evidence that the father himself had contributed to the difficulties in relation to contact. In this regard Mr Wall asks us today, in the light of our recent study of the video-tape, to accept his submission that the father was much to be criticised for his reaction to the mother's explosion on 20 January 2007. All I can say, having been exposed to that evidence last night, is that I cannot accept that any significant criticism falls to be made of the father in relation to that incident. The mother also refers to evidence given by a friend of an occasion in February 2007 when the friend had tried to assist in relation to a handover but upon which, so the friend said, the

father had been abusive towards her. I can hardly recall a case in which, over the preceding two years, a judge had had a fuller opportunity than the recorder to gauge the respective responsibilities of each parent for the acrimony surrounding contact. It is impossible for the mother to persuade me to subscribe to any interference with the recorder's wholesale attribution to her of responsibility for it; or for her to make anything in this court of the point, considered by the recorder, that at least the face-to-face contact had taken place, notwithstanding the profound unpleasantness for S at its beginnings and at ends.

22. Then Mr Wall complains that, before taking so draconian a step, the recorder should have looked at mechanisms for avoiding all contact between the parents at handovers, such as by the use of contact centres as handover points. In truth, however, the mother had had a protracted opportunity in which to put forward proposals of that sort; and in his judgment the recorder concluded that, such was the compulsion within the mother to disrupt, she would succeed in causing trouble whatever practical arrangements for handovers might be made.

23. In his final written submissions sent to the judge following the hearing and shortly prior to 30 March, counsel then appearing for the mother invoked the rights of the mother and the child under Article 8 of the European Convention 1950. In my view the recorder was entitled not specifically to address that belated invocation, which, in my view, added nothing to the requisite analysis under section 1 of the Act of 1989. Indeed, in that the entire foundation of the problem with which the recorder had been wrestling for almost two years had been the mother's refusal to give any real degree of respect to the child's right to family life with the father, it was a reference which not only added nothing but arguably trained a spotlight upon the court's need to take action which would safeguard S's family life with the father without, so one profoundly hopes and trusts, sacrificing all his family life with the mother.

24. When making his directions on paper Lord Justice Wall indicated that this court would wish to know what has transpired since the recorder's judgment was given. His observation has led to the filing by each parent of a statement as to recent events. To the broad extent to which it is alone appropriate for us to note these matters, it seems that, by and large, the mother has telephoned S every Wednesday; that he has telephoned her on other occasions; that there was one occasion of visiting contact in Yorkshire on 12 May, at which S's collection at a contact centre proceeded smoothly but his delivery by the mother back to the father at a railway station proceeded somewhat less smoothly; and that S duly spent a week with the mother between 26 May and 2 June, at which there was a smooth collection of him by her in Yorkshire but a somewhat less smooth delivery of him by her back to the father at a contact centre in Kent. The mother also exhibits to her statement about four notes written by S to her, to which she asks us

particularly to have regard and in all of which he expresses a wish to return to live with her and says how unhappy he is. I suppose that, were we to need to weigh this evidence as would a court of trial, we should hear from the father about his perception of S's settlement in his home and about the circumstances in which those notes came to be written; and no doubt his counsel would urge upon us that, whatever the significance of their content, the fact is that the father did not prevent despatch of the notes. Although of course I am concerned to read prima facie evidence of continued unsettlement of S beyond the first few weeks to which the recorder referred, the fact is that, without some insight into what the mother has been saying to S, it is impossible for us to weigh this material. In the light of the pendency of proceedings in this court, as well as of the mother's apparently immutable drive to undermine the relationship of S with the father, it is impossible to imagine that she has said anything at all to S with a view to seeking to assist him to settle in his new home. Indeed, up to and including today, will have been hoping against hope that our determination today of her appeal would lead to his immediate restoration into her home.

25. In my view there is no ground upon which this court should interfere with the decision of the recorder.

26. I would add only this postscript. It relates to the failure of the mother to secure any stay of execution of the residence order in favour of the father prior to the hearing of this appeal. As it happens, I am of the clear view that, even in the event that S had today been continuing to reside with the mother, there would have been no ground for this court to interfere with the recorder's decision, driven as it was by the unanimity of expert evidence, from which Mr Wall has, for obvious reasons, stayed well clear in his oral submissions today; so even in that event, the order of the recorder would, following any appeal, have been implemented. Nevertheless it is in principle unsatisfactory that we should be considering criticisms of a decision only after it has been implemented. Giving judgment on the Friday, the recorder directed transfer of residence on the Sunday. He refused a stay of execution; and it is now clear that counsel then appearing for the mother asked him only for a limited stay of execution, say until the following Wednesday, which would, so counsel suggested, give the mother, through him, the opportunity to approach this court for a further stay of execution. The recorder refused the application for a stay until the following Wednesday; and I infer that, if asked even for a more limited stay, say even only until 4.00pm on the Monday, he might well also have refused that.

27. When a judge considers that a significant change in the arrangements for a child needs to be made in effect forthwith and learns that there is an aspiration to appeal to this court, he should in my view always give serious consideration to making an order which affords the aspiring appellant a

narrow opportunity to approach this court for further, temporary, relief before his order takes effect. No doubt the welfare of the child remains paramount; but, subject thereto, the judge needs to consider whether a refusal to afford a narrow opportunity for such an approach unfairly erodes the facility for effective appeal. If he decides to afford it, he can do so either by directing that the change in the arrangements should occur only at the end (say) of the following working day or by directing that the change should occur forthwith but that execution of his order be stayed until the end (say) of the following working day. The difference seems to me to be immaterial. When, however, a judge declines to take either of these courses, there remains the facility for the aspiring appellant to approach this court by telephone and no doubt usually on notice to the other party. The approach can even be made out of court hours, first through the security officers of these courts (on 0207 947 6260) and thence, through a Deputy Master, to a Lord Justice. He may decide to grant a stay, for example until the end of the following working day, in order to enable documents, such as a note of the judgment and draft grounds of appeal, to be faxed or emailed to the court, for his consideration of the merits of a further stay. Had such a course of action been taken in the present case, successive short stays might well have been granted and they would probably have precipitated not, in this case, an ultimately different result but at least an earlier dismissal of this appeal than that which I now propose.

Mr Justice Hedley:
28. I agree entirely with all that my Lord, Lord Justice Wilson has said, and presume to add a few words of my own, only out of recognition of the serious impact that the decision of the recorder and of this court has upon S and his family and out of deference to the arguments addressed to us by Mr Wall, on behalf of the appellant.

29. This case affords another vivid illustration of the inability of a court, in any jurisdiction, to protect children from all the consequences of the way their parents choose to behave. Where criticism of parenting is exclusively referable to issues of contact a transfer of residence will, of course, always remain the exceptional response, but there must be times when the court is able and seen to be willing to carry through a transfer of residence when all else has failed.

30. This case is distinguished by the degree of judicial continuity which was available to the parties. It is apparent by looking at the learned recorder's involvement in this case, that he has repeatedly made findings as to the frustration of contact: he issued the clearest of warnings; he was in receipt of compelling professional evidence suggesting that the mother lacked insight or the capacity to change and, of course, he had the impact of that video. In my judgment, its importance matters rather less as to what one precisely makes of it but as providing a vivid illustration of the mother's

lack of insight, or ability to change, when it is appreciated it is in the context of the judge having given the clearest possible warning that he would consider a change of residence were the difficulties not to abate.

31. In my judgment, the learned judge was fully entitled to follow what, admittedly, was a dramatic course; it was one that will bring real if transitory cost to the child but one in which, in my judgment, he was fully entitled to carry through. There was simply no real alternative and, had the judge not made the order that he had made, in effect, the court would be giving up on this family and allowing the mother to behave in whatever way she chose.

32. In those circumstances, I am of the view that the learned judge adopted the correct course here; an exceptional course it was, but one that was fully justified by the particular evidence available to the judge in this case, in the context of his profound understanding of this family, and of the issues that had divided them over the years.

33. I too, therefore, agree that this appeal should be dismissed.

Order: Appeal dismissed.