

A (Children), Re

Court of Appeal (Civil Division)

29 January 2015

Case Analysis

Where Reported

Unreported

Case Digest

Subject: Administration of justice **Other related subjects:** Family law

Keywords: DNA tests; Judges; Parentage; Procedural irregularity; Submissions to court

Summary: A judge's unrestrained and immoderate language when considering a child's application for a DNA test to enable a declaration of parentage had constituted a serious procedural irregularity. He had not allowed proper submissions and his premature threat of costs indicated a closed mind to the application. Appointment as a judge was not a licence to be gratuitously rude to those appearing before him.

Abstract: The appellant child appealed against the dismissal of her application for a declaration of parentage. Care orders had been made by consent in respect of the child and her four siblings. The child, aged 13, told her guardian that she did not believe that her father was her biological father. The child's parents each applied to discharge the care orders and, in the alternative, applied for more contact. At that hearing, the guardian applied for an order that a DNA test be carried out so as to enable a declaration of parentage under the [Family Law Act 1986 s.55A](#). All parties consented to that course. The judge dismissed the parents' applications and, when turning to the child's application, stated that she might want to put her crash helmet on. When told that the Legal Aid Agency would pay for the test, the judge told the child that she could pay, if she wanted to, and that he was half-minded to make an order to that effect. He then asked that if the child had told her legal representatives that the moon was made of green cheese, whether they would they have answered "yes, sir; yes, sir; three bags full". He went on to state that the lunatics had truly taken over the asylum, and that just because the lunatics had said that they wanted something did not mean that they should be spoon-fed. The judge stated that he was bitterly resentful at how much of his Saturday he had spent reading material that he described as "codswallop". He indicated that he was minded to make a costs order against the child. The judge held that there was no evidence to warrant the order and refused it. S submitted that the hearing had constituted a serious procedural irregularity.

Appeal allowed. It was not necessary to consider the merits of the child's application. A serious procedural irregularity had been made out. The judge had not allowed proper submissions and his premature threat of costs indicated a closed mind to the application. He had given no proper reasons for dismissing it. His approach went far beyond anything that could be characterised as case management. The judge's unrestrained and immoderate language had to be deplored. The appeal would be allowed and the application remitted. It was to be hoped that the judge would read the transcript of the hearing and be embarrassed. Appointment as a judge was not a licence to be gratuitously rude to those appearing

before him. It was to be emphasised that the instant comments related only to the instant matter.

Judge: Aikens LJ; Black LJ; King LJ

Significant Legislation Cited

[Family Law Act 1986 \(c.55\) s.55A](#)

Legislation Cited

[Family Law Act 1986 \(c.55\) s.55A](#)

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