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**Adoption Ruling – Some Lifestyles Simply Don't Fit with Parental Duties**

Perhaps the most momentous decision that a judge ever has to make is to separate a child from his or her natural family. As a family judge's ruling showed, however, some lifestyles are simply inconsistent with the duties of a parent.

Soon after a deeply troubled mother was delivered of a baby boy, the local authority launched care proceedings and placed him in foster care. His mother had a history of substance misuse and mental health difficulties. Her chaotic lifestyle exhibited a pattern of entering into abusive and violent relationships. The child's father had a serious criminal history, including convictions for violence together with firearms and drugs offences, and had only recently been released from prison.

Ruling that the child should be placed for adoption, the judge found that the mother's lifestyle simply did not fit with bringing up a baby. The father had expressed a desire to change, but that would take time and his son required a stable and loving home without delay. There was no possibility of the boy living with either of his parents and no other member of his natural family was available to care for him.

The judge emphasised that children should, wherever possible, be brought up by their birth parents, or members of their wider biological family, and that adoption orders must be absolutely necessary to be justified. On the evidence, however, that high threshold had been crossed. Paramount priority had to be given to the boy's need to be kept safe in a loving environment where all his needs were met.

The adoption order meant the loss of the boy's relationship with his birth family. The judge, however, directed the local authority to give a copy of his judgment to the boy's adopters so that it could be shown to him in later life. It was, he observed, hugely important that the boy should have information available to him that would enable him to make sense of his first few months of life.

We can advise you on all matters relating to family law, including those involving adoption proceedings.

**Partner Note**

A Local Authority v M and Others. Case Number: SE20C01704

**Air Passengers Triumph in Cancelled Flight Compensation Claim**

If you are an air passenger whose flight has been cancelled or significantly delayed you have a legal right to compensation – unless the airline can show that the delay or cancellation was caused by 'extraordinary circumstances'. The Court of Appeal analysed the meaning of that phrase in an important test case.

A flight from Milan to London was cancelled after the captain fell ill. Passengers were put on an alternative flight, but their arrival in London was delayed by about two and a half hours. Two of the passengers claimed compensation from the relevant airline under Regulation (EC) 261/2004.

Their claims were, however, rejected on the basis that the captain's illness amounted to an extraordinary circumstance within the meaning of the Regulation. The airline successfully relied on the fact that the captain was off duty when he fell ill and was certified as unfit to fly by a medical consultancy.

In upholding the passengers' challenge to that outcome, the Court found that it had jurisdiction to consider the matter on the basis that the Regulation continues to form part of domestic English law notwithstanding the UK's departure from the European Union.

The Court noted that the Regulation stood to be interpreted through the eyes of the consumer – to whom the reason for a flight's cancellation or delay is likely to be a matter of supreme indifference. The burden of proving that an extraordinary circumstance existed rested upon the airline.

Ruling that the captain's illness could not amount to such a circumstance, the Court noted that staff sickness and the need to accommodate it is commonplace for any business. It was a mundane fact of commercial life that could in no way be viewed as out of the ordinary. The possibility of the captain's absence was, by its nature and origin, inherent in the airline's pursuit of its activities.

Our expert team can advise you on any matter relating to consumer rights.

**Partner Note**

Lipton and Another v BA City Flyer Ltd [2021] EWCA Civ 454

**COVID-19 – Court of Protection Sanctions Vaccination of Vulnerable Adult**

Many of the most vulnerable members of society lack the mental capacity required to consent to being vaccinated against COVID-19. As a Court of Protection case showed, that fact can give rise to formidable legal difficulties.

The case concerned a care home resident, aged in his 30s, who lacked capacity due to lifelong severe learning disabilities, autism and epilepsy. His condition was such that it was impossible to discern whether he wished to be vaccinated or not. His father strongly objected to him undergoing the procedure.

The father said that he had no objection to the vaccine in principle, but contended that it was not the right time for his son to receive it. He asserted, amongst other things, that the vaccine in question had not been adequately tested. There was said to be a lack of data in respect of its effects on those with severe learning disabilities.

Concerned that the vaccine might interact badly with his son's other medications, the father stressed that some people had died after receiving it. Given his son's relative youth and the high survival rate amongst those who contract the virus, he questioned whether the risks of vaccinating him would be outweighed by the alleged benefits.

He agreed that his concerns were influenced by his conviction that his son's autism was linked to him having received the MMR vaccine as a child. Given his objections, the local NHS clinical commissioning group (CCG) applied to the Court for permission to vaccinate his son on the basis that it was in his best interests.

Granting the application, the Court noted that the father's genuine objections were founded on his love for his son. However, they had no basis in clinical evidence. The COVID-19 vaccine was approved for use in the UK and was highly effective in reducing infection rates and hospitalisations. The supposed link between autism and the MMR vaccine has been firmly and officially discredited.

The UK had one of the highest per capita death rates from the virus in the world and a high proportion of those deaths had occurred in care homes. The man was unable to comply with social distancing or hygiene measures and, if he contracted the disease, the consequence could be serious illness or death. Although he was seriously overweight, vaccination was not contra-indicated in his case.

Noting that there was overwhelming objective evidence of the advantage of vaccination, the Court authorised the CCG to make arrangements for the man to undergo the procedure. It emphasised, however, that its order did not permit the use of physical force or restraint in administering the vaccine.

**Partner Note**

NHS Tameside and Glossop Clinical Commissioning Group v CR [2021] EWCOP 19

**Family Judge Deeply Regrets Wealthy Ex-Couple's Inability to Compromise**

Judges often plead with divorcing couples to bury the hatchet rather than subject themselves to the financial and emotional self-harm of litigation. As a High Court case showed, however, such good advice is sadly not always heeded.

The case concerned a couple who worked together in their construction business and, from small beginnings, built up an enviable property portfolio. They had three children and, more than a decade after their separation, they remained legally married. They had obtained a decree nisi but no decree absolute.

Two years after their relationship ended, they reached an amicable agreement by which they sought to divide their assets. The husband retained the business, which had since prospered mightily. The current position was that he had a net worth of £12,450,000. The wife, whose net worth was £1,625,000, launched proceedings seeking at least £5 million from him.

Ruling on the matter, a judge observed that divorce proceedings could not have got off to a worse start: the couple had been separated for over nine years when the wife petitioned for divorce without any prior warning to the husband. He suffered the utmost hurt and distress as a result of her unnecessarily aggressive conduct. The judge, however, ruled that she should not be penalised for that.

He acknowledged that, were it not for the post-separation agreement, the wife would have been entitled to a substantial capital sum from the husband. The equal sharing principle would have applied to the case, albeit focused on the assets at the date of their separation and heavily discounted to take account of the husband's post-separation success in expanding the business.

The existence of the agreement could not, however, be ignored and the judge was not prepared to agree with the wife's assertion that the husband had cheated her. Overall, he found that it would be fair and reasonable to require the husband to pay the wife a £600,000 lump sum, or to transfer to her assets of equivalent value. He could well afford such a payment and, after making it, he would remain very significantly richer than the wife.

The judge noted that, more than once during the case, he had implored the couple to settle their differences rather than press ahead with a six-day trial. He deeply regretted their failure to take that course. Although they had been well served by their legal teams, their inability to compromise had caused untold damage to the whole family. They had incurred legal costs of at least £500,000.

If you are divorcing, a number of issues may arise on which sound legal advice is essential. We can ensure you are expertly advised and represented and can talk you through alternative dispute resolution options, to help mitigate the need for expensive and drawn-out court proceedings.

**Partner Note**

Horohoe v Horohoe [2020] EWFC 102

**High Court Rejects Divorcee's Bid to Annul Ex-Husband's Bankruptcy**

It is sadly true that bankruptcy proceedings are sometimes used by perfectly solvent individuals for purposes other than seeking to satisfy their creditors or manage their debts. However, as a High Court case showed, alleging such conduct is one thing and proving it quite another.

The case concerned a man who was adjudicated bankrupt on the petition of a friend and business associate. He was at the time engaged in divorce proceedings and, soon after the bankruptcy order was made, a family judge directed him to transfer his interest in the former matrimonial home to his ex-wife. The latter order was frustrated in that all his assets were vested in his trustees in bankruptcy.

The ex-wife accepted that he owed his friend a genuine debt and did not assert that his motive or purpose was to baulk her claim to his share of their former home. She applied to annul his bankruptcy, however, on the basis that he was not in fact insolvent when the bankruptcy order was made. She asserted that he and his friend had colluded in his bankruptcy by failing to declare all his assets and introducing inflated debts.

Rejecting her application, however, the Court found the man to be an honest witness. He had borrowed money from his friend to assist him in meeting the legal costs of his divorce. After he failed to repay the loan, the friend ran out of patience and petitioned for his bankruptcy. There was no evidence of collusion between them and the evidence supported a finding that, when the bankruptcy order was made, he was unable to pay his debts as they fell due.

If you are divorcing, a number of issues may arise on which sound legal advice is essential. We can ensure you are expertly advised and represented.

**Partner Note**

Lin v Gudmundsson and Others [2021] EWHC 820 (Ch)

**High Court Tackles Mother's Implacable Hostility to Paternal Child Contact**

The vast majority of mothers recognise that their children thrive best when they have a positive relationship with both their parents – but there are sadly those who are implacably opposed to paternal contact. A High Court case, however, strikingly underlined the consequences of such intransigence.

The case concerned three children whose parents separated when they were very young. Their mother had strongly resisted every attempt by their father to have contact with them. She had made grave allegations of domestic and sexual abuse against him, all of which were rejected by a judge.

She had threatened to abduct the children abroad and, although she had been found in contempt of various court orders, she had yet to be punished for her wrongdoing. The oldest child in particular was reluctant to see his father, but the latter asserted that that was due to the mother's efforts to alienate his children from him.

Following a hearing, however, a family judge ruled that the father should not see his children face-to-face and that his indirect contact with them should be restricted to letters, cards, gifts and photos no more than four times a year. Noting the extreme difficulty of establishing direct contact and the potential emotional harm that that process might cause to the children, the judge found that, given their youth at the date of separation, the father had never really had a relationship with them.

Ruling on the father's challenge to the judge's decision, the Court recognised that the issue of contact was highly stressful for the children, particularly as their mother had set her face against it. Whilst she had disobeyed some court orders, she had obeyed others, and the behaviour of the father had sometimes been wanting.

Upholding his appeal, however, the Court noted that judges should be reluctant to allow the implacable hostility of one parent to frustrate the contact rights of the other. In the long term, the children were likely to benefit from seeing their father and not enough had been done to see whether direct contact might be made to work. The Court directed a further hearing of the father's application for direct contact.

For advice on any issue involving family law, contact us.

**Partner Note**

F v M and Others. Case Number: FA-2020-000116

**Loving Parents of Deceased Baby Girl Exonerated by Family Judge**

When healthy children die or suffer serious injury, the finger of suspicion is very often pointed at members of their family. In one case, however, a judge found that a loving couple had nothing to do with the death of their 11-month-old daughter.

The little girl was given mouth-to-mouth resuscitation after being found unresponsive in the early hours of the morning. Her parents said that she had become entwined in a small fleecy blanket that had completely covered her head. After she died three days later, however, medical staff at Great Ormond Street Hospital said that they could not exclude the possibility that she had suffered a non-accidental injury.

The couple's two other young children were swiftly placed under police protection and removed from their care. The local authority's entirely proper response was to obtain emergency protection orders in respect of both of them and to place them in interim care. They had since been looked after by their paternal grandparents.

A galaxy of medical experts, in disciplines ranging from genetics to paediatrics and neuropathology, reported on the baby's condition but none of them found evidence of inflicted injury. There were signs of asphyxia, but no fractures or other external or internal marks of injury. In those circumstances, the council sought judicial permission to return the two children immediately to their parents.

Granting the application, the judge found it obvious that there was no reasonable prospect of establishing that the baby had suffered a non-accidental injury. Exonerating the parents, he noted that they were previously unknown to the authorities. They were clearly loving and attentive parents who had at all times behaved appropriately in unimaginably distressing circumstances. All the available evidence pointed in only one direction – that the baby's death was a tragic accident.

**Partner Note**

Thurrock Council v M and Others [2021] EWFC 22

**Neighbours Planning a Garden Development? You Are Not Powerless**

Domestic gardens, which many people view as the glory of British suburbia, present a tempting prospect to builders amidst burgeoning housing demand. As one case showed, however, objectors to such developments are by no means powerless.

The owners of a semi-detached house obtained planning permission to build a new four-bedroom home in its garden. That, however, was not the end of the matter in that the property's title deeds contained a restrictive covenant which forbade use of the proposed development site for any purpose, save that of a private garden. The covenant also prevented construction of buildings on the site other than a garden shed, summerhouse, conservatory, greenhouse or private garage.

With a view to implementing the planning permission, the owners applied to the Upper Tribunal (UT) under the Law of Property Act 1925 for an order varying or discharging the covenant. However, they faced concerted opposition from neighbours who opposed the development on various grounds.

The owners argued that the covenant impeded use of the site for a purpose that, in the light of the planning permission, should be deemed reasonable. They submitted that, since the covenant was created in 1960, the character of the neighbourhood had substantially changed due to increased housing density.

In rejecting the application, however, the UT found that the covenant still served a useful purpose and was not obsolete. It afforded practical benefits of substantial value or advantage to adjoining neighbours in that it protected them from overlooking, also preserving their views and the peace and quiet of their home.

For advice and guidance on planning disputes, please contact <<CONTACT DETAILS>>.

**Partner Note**

In the Matter of an Application under Section 84 of the Law of Property Act 1925 by Copleston and Another [2021] UKUT 18 (LC)

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