

Family & Matrimonial

“Dear Sam” – Re A (Letter to a Young Person)

Background

In this very recent English case, *Re A (Letter to a Young Person)* [2017] EWFC 48, Mr. Justice Peter Jackson, sitting in the Family Division on an application by the Father for removal of a 14-year old boy from UK to Scandinavia, delivered an extraordinary and inspiring judgment. The judgment features a letter to the young person, referred to in the judgment by the fictitious name of Sam, who was the subject of the proceedings.

The application was initially taken out by Sam, but after some preliminary skirmishing, the application was then taken over by the Father. The Father wanted to take Sam to live in Scandinavia with him and Sam wished to go with the Father. His Mother objected to the proposed move. In the end, the Court refused permission for the removal of Sam from UK.

Payne v Payne

The applicable legal principles for deciding relocation applications are laid down by the English Court of Appeal in *Payne v Payne* (2001) 1 FLR 1052, which is still the leading authority. *Payne* concerns a mother’s application to permanently remove the child from UK to New Zealand. In granting the mother’s application, the Court made it clear that the welfare of the child is always the paramount concern. Further, in deciding the relocation applications, the Court will consider if such application is genuine in the sense that it is not motivated by some selfish desire to exclude the other parent from the child’s life and whether the application is realistic, in that it is founded on practical proposals both well researched and investigated.

If the Court is satisfied that the proposals to relocate the child is genuine and reasonable, then the Court will further consider if the opposition from the other parent is motivated by genuine concern for the future of the child’s welfare or is it driven by some ulterior motive. The Court will also have regard to the extent of the detriment to the opposing parent and his or her future relationship with the child in the event that the application is granted.

Sam giving evidence in Court

One of the issues arose was whether Sam should give evidence at the hearing. Sam wished to do so and the Father supported that, but his Mother, step-father and a family court welfare officer disagreed. The Judge directed that Sam should give evidence briefly at the beginning of the hearing, but that he should not be questioned directly by either of his parents. Instead,

the Judge directed the Mother and the Father to each prepare five questions, which the Judge, not the solicitors, put to Sam. In this way, Sam did not have to be subject to direct questioning by either parent. But at the same time, he was afforded the opportunity for his voice to be heard.

While Mr. Justice Jackson, in coming to his decision, did not agree with Sam's expressed view, his Lordship nonetheless carefully acknowledged Sam's views and contribution to the process. The Judge said: -

"I was impressed with the way you gave evidence. You are of an age where your views carry a lot of weight with me, and I consider them in the light of your understanding of what has made things as they are."

A Letter to a Young Person

At the end of the hearing, Mr. Justice Jackson took the unusual step of writing the judgment in the form of a letter to Sam. In taking this approach, the Judge crafts the decision in age appropriate language and sensitively handles the difficult issues to allow Sam to understand how the Court has come to its decision.

While acknowledging Sam's views, Mr. Justice Jackson carefully pointed to him that he was under great influence of his Father, who, in the view of the Court, is troubled, not happy and self-centred down underneath. The Judge, in a very subtle way, suggested that the idea of these proceedings must come from the Father instead of Sam and deemed Sam's wish to live with his Father as a display of affection rather than an informed decision.

Further, the Judge considered that the Father's proposal to relocate Sam to Scandinavia is not well researched and investigated. The Court found that the Father's approach to relocation often varied and he failed to provide the Court proper information about where Sam would be living and going to school, where the money would be coming from, and what the arrangements would be for Sam to keep in touch with family and friends in England. In fact, the Father hasn't made a single enquiry about houses, schools or jobs in Scandinavia. The Court was also doubtful as to the Father's ability to provide Sam with a secure home and a reasonable standard of living. The fact that Sam does not speak the language and had not been to Scandinavia since he was 5 years old is also a great concern for the Court. On the other hand, the Court gently reminded Sam that he is doing well in his life at the moment. He has his school, friends, music, and two homes in England.

Being critical of the Father's manipulative behaviour, the Court dismissed the Father's application and made an order under section 91(14) of the Children Act that no further

application concerning Sam could be brought before the Court by anyone, including Sam, without the Designated Family Judge giving permission.

Conclusion

This innovative step that Mr. Justice Jackson has taken shows a gradual move in the involvement of children in family proceedings, whose welfare is often the paramount concern for the court. Here Sam has played a central role not only in the welfare analysis but also in the delivery of the judgement. The importance of Sam's welfare is reinforced throughout the letter and a clear holistic evaluation of the all the circumstances has been considered.

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Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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