

Case No: B4/2007/1781

Neutral Citation Number: [2007] EWCA Civ 1044
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM LEICESTER COUNTY COURT
(HIS HONOUR JUSTICE HALL)
Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday, 3rd October 2007

Before:

LORD JUSTICE THORPE
and
LORD JUSTICE DYSON

IN THE MATTER OF Z (CHILDREN)

(DAR Transcript of
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The **Appellant** appeared in person, assisted by a McKenzie Friend.

The **Respondent** appeared in person, assisted by her husband.

Judgment

(As Approved by the Court)

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Lord Justice Thorpe:

1. This is an application by Mr Z to appeal an order made by HHJ Victor Hall on 17 July. The ongoing proceedings between these parents came before Mrs Recorder Wilson on 1 May, when she made an order that the respondent mother file and serve a letter from her GP, confirming dates and numbers of her pregnancies and the outcome, together with details of any allegations made by the mother of violence on her by the father by 29 June. Now, it seems that in compliance, the mother, Mrs Z, wrote on 3 May to her GP asking for a report. It seems that a full report, with various enclosures, was certainly in her hands shortly after 11 June, and it seems that on 22 June she handed this material to her husband, and took a receipt from him for that delivery. However, he has told us this morning that the delivery was of little gain to him, because the material was subsequently taken into possession of the bailiff. So he wrote a letter on 6 July to the court, asking that it be put in front of some judge other than HHJ Victor Hall, who he had conceived to be unsympathetic to his cause. The letter of 6 July complained that the order of Mrs Recorder Wilson had not been complied with. The letter was nonetheless put in front of HHJ Victor Hall, who made an order on 17 July to this effect:

“Further compliance with paragraph 3 of the order of Recorder Wilson made on 1 May 2007 is set aside.”

2. The clerk in the family section wrote a letter to Mr Z on the same day, which contained the following words from the judge himself:

“There is not just a danger that the purpose of these proceedings will be forgotten; in fact, it has been forgotten. I cannot see how any of the documents sought by the father will advance his case in any way.”

3. That order of reasoning attracted a notice of application from Mr Z, with a skeleton argument in which he took the procedural point that rule 4.14 of the Family Proceedings Rules empowers the court to vary or revoke a directions order; but, by sub-paragraph (3), if the court is minded so to do of its own motion, it must have given the parties notice of that intention, and an opportunity to attend and be heard to make representations. Clearly, it seems to me, HHJ Victor Hall fell into unintended error in making his order of 17 July without regard to the provisions of that rule. His reasons for making the order that day may well be unimpeachable, but it does seem to me that it was not open to him to reach any conclusion without duly observing the requirements of the rule. The application for permission was listed before Anthony Hughes LJ on 30 August, when he made an unusual order, requiring the respondent to produce the material ordered by Mrs Recorder Wilson to this court, at a further hearing which he set for mid-September. I was in the court on that date, and, Mrs Z not appearing, I directed that the case be re-listed today, and that in the interim she be personally served with the order of the recorder, the order of Anthony Hughes LJ, and the order that this court made in September. That was duly done by a bailiff of the Leicester County Court, and Mrs Z has appeared today. She has produced to us eleven pages of medical report, and she has also produced to us a copy of a letter which she wrote to the Leicester Court on 26 September. That having been done, Mr Z now being in possession of the material ordered by the recorder, it seems to me that there is no need for this court to take any further part, and I would simply propose we make no order on the application.

Lord Justice Dyson:

4. I agree.

Order: No order on the application