



19 November 2009

## PRESS SUMMARY

### **In GB v RJB and GLB (In Re B (A Child)) [2009] UKSC 5**

*On appeal from the Court of Appeal Civil Division [2009] EWCA Civ 545*

**JUSTICES:** Lord Hope (Deputy President), Lady Hale, Lord Collins, Lord Kerr and Lord Clarke

### **BACKGROUND TO THE APPEAL**

H is a three year old child whose parents separated before his birth. From the date of his birth until very recently, H has lived with his maternal grandmother, GB. H's mother, GLB, lived with her mother and H intermittently at GB's home from the time he was born until July 2006. She left GB's home then and has not returned.

In November 2006, GB was granted, by consent, a residence order in respect of H. On the same occasion orders for contact were made in favour of H's father, RJB.

In May 2008, RJB applied for a residence order in respect of H. By the time the application was heard in the Family Proceedings Court in March 2009, RJB had married and his new wife was expecting their child. RJB's application, which was supported by H's mother, was refused. In making their decision, the justices noted that they had not found compelling reasons to disrupt the continuity of care that GB provided H.

RJB appealed the justices' decision. That appeal was successful in the High Court, the judge finding that the justices had been plainly wrong in making the residence order in favour of GB, having been distracted by the settled way in which H had been brought up by GB. In April 2009, the High Court made an order that H should reside with RJB.

The order of the High Court was appealed by GB in the Court of Appeal. The Court of Appeal dismissed the appeal holding that in giving disproportionate weight to the status quo the justices had made an error of law sufficient to entitle the circuit judge to overrule their decision. Applying *Re G (Children) (Residence: Same Sex Partner)* [2006] 1 WLR 2305, and in particular the observations in that case of Lord Nicholls, the Court of Appeal held that although a child's welfare was the court's paramount consideration, the court should always bear in mind that, ordinarily, the rearing of a child by his biological parent could be expected to be in his best interests.

### **JUDGMENT**

*The Supreme Court unanimously allowed the appeal by GB. In doing so, it reaffirmed the central message in Re G that, where in a case between private individuals a child's custody or upbringing is in question, the welfare of the child is the paramount consideration. The judgment delivered by Lord Kerr was the judgment of the court to which all of its members contributed.*

## REASONS FOR THE JUDGMENT

- A child’s welfare is the paramount consideration in the determination of the question of his or her residence. (Paragraphs [18]-[19], [32]-[37])
- The justices’ decision was not “plainly wrong”. They had recognised that H’s welfare was the paramount consideration and had carefully evaluated the evidence before them, correctly weighing up the various competing factors. For this reason, both the judge and the Court of Appeal had erred in overturning the justices’ decision. (Paragraphs [9]-[15], [37]-[39])
- Both the judge and the Court of Appeal misinterpreted *Re G*. When, in that case, Lord Nicholls said that courts should keep in mind that the interests of a child will normally be best served by being reared by his or her biological parent, he was doing no more than reflecting common experience that, in general, children tend to thrive when brought up by parents to whom they have been born. All consideration of the importance of parenthood in private law disputes about residence must be firmly rooted in an examination of what is in the child’s best interests. This is the paramount consideration. It is only as a contributor to the child’s welfare that parenthood assumes any significance. In common with all other factors bearing on what is in the best interests of the child, it must be examined for its potential to fulfil that aim. (Paragraphs [1], [17], [23]-[25], [32]-[37])
- Any discussion of a child’s right to be brought up by its natural parents is misplaced. The only consideration for the court is the child’s welfare; to talk of a child’s rights detracts from that consideration. (Paragraphs [18]-[19])
- In this case, there was reason to believe that if H’s bond with GB were broken his current stability would be threatened. Whilst RJB was assessed as capable of meeting H’s needs, he had recently undergone significant changes in his own domestic position and his arrangements were untested at the time the justices made their decision. In deciding where H’s best interests lay the justices were therefore right to give significant weight to maintaining the status quo in H’s living arrangements. (Paragraphs [40]-[41])

### NOTE

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.**

**Judgments are public documents and are available at:** [www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)