

THE JUDGMENT THAT DAME ELIZABETH BUTLER-SLOSS AND THE EUROPEAN COURT OF HUMAN RIGHTS DO NOT WANT YOU TO SEE

In the public interest and by virtue of Article 6(1) of the European Convention on Human Rights, **CONTACT** and its Editor now publish the Children Act Residence Judgment of His Honour Judge Goldstein of 21 August 1996 in *Pelling v. Bruce-Williams 94JS0001 (Bow County Court)*. The ECHR has no powers to punish for contempt but if her Ladyship the President, or the Attorney-General or Official Solicitor, wish to take contempt proceedings then we have a very simple defence: Article 6(1) states unequivocally and without qualification that "**Judgment shall be pronounced publicly**" and that is now the law of England by virtue of the Human Rights Act 1998. Further, if proceedings are brought, then the Act is retrospective.

MICHAEL JOHN PELLING v. VERONICA BRUCE-WILLIAMS: JUDGMENT

1. This is in many ways a strange case. The Father is a D.Phil. Oxon (Mathematics) with an impressive CV. The Mother is from Ghana - reasonably well educated there, but, with no academic qualifications. She is now permanently resident in Britain.

2. They have one child – the subject of these cross-applications: Michael Alexander Pelling-Bruce (known as Alexander) born 20/11/90, now 5½ - a healthy normal boy and a mixed-race child.

3. The father's personal circumstances are unusual. He has had four marriages - all with women from Ghana or Malaysia, all of limited education. No marriage has lasted very long. There is one child from the previous marriage, a girl, Suzy, now aged 15, now living with him, a girl whose relationship with her father was dealt with at some length in previous proceedings.

4. Despite his academic achievement he has never held down a job for very long. There have been periods of employment abroad, the most recent being in the Oman for about a year in 1991-2. Income into his home is limited. He now has two regular sources of income:-

a) As paid employee of a Housing Association netting some £3000 per annum;

b) As an unqualified Legal Adviser and McKenzie Friend working for his own business called Assistance to Litigants in Person or ALIP. His charges are £75 per day plus expenses. It is expanding, fulfilling a need particularly for those who are not eligible for Legal Aid. He also does a lot of work for and is Local Chairman of an organization called *Families Need Fathers*. No figures are available for this work because it is not yet full-time.

5. The mother clearly comes from a good family in Ghana. She had a child from a previous relationship about whom I heard very little. She has been living in England for a number of years and apart from a couple of years after Alexander was born has always worked. She is currently working as a secretary/PA for London Transport. Her salary is up for review shortly and she hopes to negotiate a new one between £18,500 and £19,000 per annum.

She has a claim for financial provision against the father, but that claim will be strongly resisted not only by him but by the previous wife who has a judgment in her favour secured on the matrimonial home from this Court which she has never enforced but which the father says with a certain Machiavellian menace she will, if the mother seeks to allege some financial interest in it. The father has paid very little by way of maintenance to his daughter Suzy and nothing for Alexander.

6. The parties met whilst the father was still married to his previous wife. It is not necessary to rehearse the details of what then occurred, but the mother was introduced into the matrimonial

home and usurped the former wife's position leading to the obvious emotional upheavals. After the divorce the parties married in the Oman during the period when the father had well-paid employment there. Alexander would have been some 18 months old.

7. Unfortunately the marriage soon became unhappy, the father accusing adultery, the mother unreasonable behaviour (although it must be said that of a fairly minor kind). Cross-decrees of judicial separation were granted. Both parties issued applications for a Residence order in their favour in respect of Alexander. A Court Welfare Officer's report was ordered.

8. In September 1995 the position was as follows:

- a) Both parties were living in the matrimonial home;
- b) Both had made application for Residence orders for Alexander;
- c) The mother was working full-time, the father was at home;
- d) The father was proposing to give Alexander home tuition every day;
- e) The mother had acquired a flat in Pinner where she would spend her weekends, sometimes with Alexander;
- f) Things between them had reached the lowest ebb;
- g) The father claimed that he was being harassed and indeed assaulted by a male friend of the mother;
- h) He also claimed that his mental health was being seriously affected.

The father therefore took out an ouster application in this Court, coupled later with an application that an interim Residence order be granted to one or other of them. In his affidavit in support of the ouster sworn on the 26th September 1995 at paragraph 8 the father said as follows:

"If the Court will not exclude the Respondent immediately then I would rather she be given an immediate interim Residence order so that she can move out with Alexander to her Pinner flat which is what she has always said she wants to do. That would not be for Alexander's welfare and I should regard it as a final order and withdraw my Residence application, because from my knowledge of the way the courts work it is extremely unlikely that he would ever come back once he had gone and been settled in Pinner and put in a school".

On the weekend before the ouster was due to be heard at Ilford the mother filed her affidavit in reply. To it she exhibited a number of letters written by the father to various members of the mother's family in Ghana.

The ouster hearing was due to take place at the Ilford County Court on the 4th of October 1995, but the father did not attend Court. Instead he telephoned and left a message with a member of the Court staff. This message has been the subject of much controversy as to its meaning and effect, but this much cannot be doubted: the Court interpreted it as a withdrawal of his application for a Residence order to Alexander, made an order in favour of the mother, as a result of which she left the matrimonial home with Alexander virtually immediately, and went to Pinner where she has lived ever since, enrolling Alexander in a local school. Contact to the father, although not without initial teething troubles is now satisfactorily established.

At the time he made his decision which resulted in the events described above, the father had not seen the Court Welfare Officer's first report which was certainly not unfavourable to him, but was influenced by what he described in the affidavit sworn on the 1st day of November 1995, in which he described the letters exhibited to the mother's affidavit in these terms: "I considered it irrelevant but felt it would prejudice my case".

He repeated in evidence his view as to the "irrelevant but prejudicial nature" of the letters exhibited to the mother's affidavit, but agreed that "my case" included not only the ouster but the application for Residence.

After a very short time the father made a fresh application for Residence. A preliminary objection by the mother that this was an abuse of process was not persisted in and the matter came before me some 9 months or more after the mother and child were settled in Pinner. A supplementary Court Welfare Officer's report was ordered to bring matters up to date.

9. It was accepted by the father that the onus was very much on him, given the previous history, to satisfy the Court that it was in the best interest of Alexander to uproot him again and transfer

Residence to the father. The father pursued his case in person with great skill and tenacity and the greatest compliment I can pay him is to say that I was happy to treat him equally as an advocate as well as a litigant.

10. The father opened his case to me and pursued throughout the evidence seven grounds for saying it was in Alexander's interest to change Residence, and I can do no better than rehearse those grounds, the mother's response to them, and my own observations upon them, because most if not all of them relate to and are relevant to the Welfare Check-List.

i) *"Presumption of fact that a boy's best interests are served by his being with his father after separation/divorce of parents"*. The father pursued this vigorously, arguing that too much lip-service is paid to the belief that mothers are better carers for children than fathers; that the evidence is mostly anecdotal and that research, in America particularly, has proved conclusively that boys fare better when cared for by their fathers. He argued that although in our courts it is true that there is no rule of law which states that young children should be brought up by their mothers, it is almost a presumption of fact which invariably finds favour with the Judges.

He argued further that he would advocate a boy and girl close in age to be parted on the separation of their parents, the boy going to the father, the girl to the mother. As a proposition this is clearly, in my view, untenable because it eliminates entirely the considerations imposed upon the court by the Children Act and the need to look at the welfare of a child as an individual in the context of the Check-List.

If the father were right, in every case where there were no special circumstances the court starts from the position that a boy must be placed with the father unless.. . That is not a position I intend to adopt.

ii) *"Education (general and academic) and Values"*. The father's plan is to educate Alexander privately at home until he is 7; he then wishes him to take a competitive entrance examination to Chigwell School. If he is successful, father will finance the fees from his income, from ALIP and letting one or more rooms in the matrimonial home. His case is that the literature on the subject (some of which was presented in evidence) reveals that children who are privately educated are better educated and more socially adjusted and advantaged. He urges that it is vital that Alexander's educational progress is monitored by him at all stages. He complains about the new school mother has placed Alexander in, and says he has regressed since leaving Forest Gate. He made it quite clear, however, he will not pay a penny towards the boy's education if he remains with his mother. Both parties agree that Alexander is a bright child. The father thinks he is clearly gifted but it is too soon to be sure of that.

Mother too, would like if possible to send the boy to a public school, she has in mind Merchant Taylors or Haberdashers, but is conscious of the need for him to win some sort of scholarship; otherwise she says there are good state schools in the area. She does not believe the father will be able to maintain private education because of all the other calls upon his time. That, anyway, he is only really qualified to teach Mathematics and Science and a boy of that age requires the company of children of a similar age at school. He is good at games and should be encouraged in all areas of education.

I think that it would be difficult for the father to maintain the 3 hours per day he says he would provide for his son by way of home education given his other commitments. Even if I am wrong about that, I am not persuaded that for Alexander the attractions and advantages the father claims for home education are sufficiently strong to compensate for the company of his peers which Alexander clearly enjoys at his present school. Nor am I satisfied that the intense bombardment of knowledge which I have no doubt the father, however well meaning, intends, is necessary or desirable for a boy of this age.

I have grave reservations, in any event, about whether either of the parties will ever be able to afford the sort of education they would like their son to have (even if they pooled their resources, which they clearly are not going to do). I say this even if he were to win a scholarship. The fees and extras are usually beyond the reach of people, regrettably, on this scale of income.

iii) "*Culture - Enabling Alexander to benefit from two Cultures*". The father intends (whether as part of home-based education or not) to take Alexander to Ghana to sample and experience the culture of that country and to learn its language. He also says he will introduce him to his mother's family, although how welcome the father would be must be a matter of some doubt. This is a laudable aim, but the practicality of it (especially the financial aspects) would have to be looked at carefully. The mother states that she would be the obvious person to do this. She would be welcomed by her father and she will apply to do it one day in the summer holidays. She says that financially she is just as able to do it as the father.

On the broader aspect of culture and race the father insists that Alexander be referred to as and treated as a mixed-race child. This may well be politically correct but Alexander clearly looks from the photographs of him that I have seen to have a predominantly black skin, and in the troubled times in which we live is likely because of that to be the subject of racist taunts and abuse. The mother acknowledges this and says that as a black person herself she is better able to prepare him for racism and comfort him from experience, should it unfortunately occur.

I do think the mother has a more practical and realistic approach to Alexander's colour and although the father, from a purely logical and intellectual point of view may have a point, his approach will not assist his son.

It follows therefore that on this ground the father has not satisfied me that he has made out a case for change.

iv) His fourth point is "*Religion*". This case is no different from so many cases. Both mother and father have religious beliefs (although not the same), both are regular church attenders and both will allow their son to make up his own mind about religion when he is old enough. The father complains that the Church that the mother attends has no other ethnic minorities worshippers save for one Asian gentleman (a fact denied by the mother but confirmed by the Vicar). Mother complains that the Church that the father attends with Alexander, the Aladura Church, is not a church at all but, as she describes it, an occult with practices allowed within it of which she disapproves. There she says, he would be the only white person. Father confesses an interest in the unusual, the mysterious, the supernatural and mother says that this interest in this particular Church is typical of this enquiry. In addition in some of the letters which the father described as prejudicial, the father was writing to the mother's family in Ghana enquiring about practices which can only be described as supernatural. The father sought to suggest the enquiries were on the mother's behalf but that is clearly not correct.

I do not consider that at this stage of Alexander's development that the vexed question of religious upbringing is of very great relevance. The greater I considered its relevance the lesser would I consider the father had made out any case for change.

v) The next point he makes is "*Environment and Financial Provision for Alexander*". By environment the father means a straight comparison not so much between Forest Gate and Pinner as such but between the location of the accommodation available to Alexander. His main point is that his house is near a park in a quiet road whereas the mother's flat is on a main road. The mother says there are many green areas near her flat and that she who has first-hand experience of both areas says Pinner is by far the more attractive. I have no reason to disbelieve her.

As far as financial provision is concerned the father puts his case as boldly as this. If Alexander lives with his mother he will live in an atmosphere of debts and poverty whereas if he lives with him it will be in an atmosphere of comfort. He sought to prove in cross-examination that the mother was insolvent. The father's submissions must be considered in the context that he himself has never made financial provision for Alexander and boasts that he never will and also that there is bound to be the most acrimonious squabble over the house in Avenue Road. I would not like to predict the outcome but I am sufficiently satisfied about the mother's prospects as to reject his proposition stated above. The facts are actually quite different. Mother has (apart from the time she had off to have Alexander) always worked, held down responsible positions and tells me that she is negotiating an increase in the salary which goes with her current position as a secretary/PA to a figure of between £18,500 - £19,000 per annum. She does have a lot of expense, it is true, but she

seems to be coping adequately. Alexander is clearly a very well cared-for boy. If I were forced to speculate on who is likely to be in a better long-term financial position I would choose the mother.

vi) His sixth point is undoubtedly his strongest; it concerns the *"Mother's Hostility"* to him which she has at times manifested by being very difficult about Contact [access]. This hostility was commented upon by the Court Welfare Officer in his first report, although he found that by the time he came to make his second report a lot of that hostility had evaporated, mainly because the parents were no longer living together. This relaxing of tension was apparent during the hearing and although it would be foolish to suggest that these parties will be able totally to forget the past for the sake of Alexander and refrain from making hurtful remarks about the other in front of him I do not consider that the mother will now depart from what she clearly realizes is the importance of Alexander seeing a great deal of his father and enjoying not only his company but the enormous benefits the father can give him. Should she resile at all from this position she is aware that the father, as he describes himself, is a tenacious litigant and will certainly pursue her through the Court.

vii) His last point is entitled *"Justice Between the Parties and the Moral Welfare of the Child"*. He bases his moral welfare argument on the following:-

- a) The mother tired of him and resolved to bring the marriage to an end;
- b) She committed adultery which was found to be proved although she denied it;
- c) She waged a violent and vicious war of attrition on him which culminated in his health being affected and his judgment being impaired which resulted in his withdrawing his Residence application in October 1995.

He submits as a result of this that an adulteress who has been responsible for the break-up of a marriage should never have the full-time care of a child, on purely moral grounds.

This argument, which is very outdated in any event, has to be considered in the full context of the facts of this case, which are:-

- a) The father of course committed adultery with the mother during his marriage to the previous wife;
- b) The father admitted to the mother a sexual relationship with another woman whilst she was pregnant with Alexander;
- c) The father clearly made amorous advances to the mother's younger half-sister;
- d) The father during the marriage got himself involved with a very young girl in Ghana and appeared to make her think he would marry her;
- e) In a proposed marriage contract sent to the mother's father, the father advocated his having junior wives and concubines as long as they were "overseas" but did not give the same rights to the mother;
- f) The so called irrelevant but prejudicial letters reveal a distinctly lax sense of moral integrity on the part of the father.

There is no doubt in my mind that the mother would be a far greater influence for moral good on Alexander if one were viewing it under the Check-List.

11. It follows therefore that far from making out his case for change the father's case has had the effect of persuading me that the course of events which resulted from the father's actions in 1995 have brought about a situation which is entirely in Alexander's best interests.

I am encouraged in that view by the Court Welfare Officer. Although he was subjected to some criticism by the father I am bound to say, for my part, I found his reports well researched, totally objective and most important of all, exhibiting total understanding of the issues likely to confront the court if the hearing were contested. I derived great assistance from the reports. I quote two examples from his report of the 2nd of October 1995:-

"Whilst there is a logic and orderliness about Dr Pelling, enabling him to systematically assess, plan and work through a course of action such as Alexander's home education there is also a lack of warmth in the way he relates. His cold and legalistic manner buys him few close friends, I suspect, and such a rôle model may not be a healthy one for Alexander to emulate. Furthermore, his assertion that husbands have an inherent dominance within the marital relationship seems to

me to advocate women as second class citizens and Alexander's sometimes derogatory comments and behaviour towards his mother over recent months can perhaps, in part, be explained by this".

"My primary concern with Ms Bruce-Williams is what seems to be her almost complete disregard for Dr Pelling as a significant figure in her son's life. Whilst verbally acknowledging that Alexander loves his father, her own extreme negation of him as a person, coupled to her determination to win this battle will, I suspect, effectively mean that she would almost inevitably remain hostile to father-son contact and engender within Alexander a similar negative attitude towards his father. This will be damaging to Alexander's identity of himself, particularly as he grows up into manhood".

This succinctly encapsulates the problems and prior knowledge of them was of great help to both parties and the Court in addressing them. In his second report the Court Welfare Officer correctly comments upon the marked lessening of tension between the parties since their separation, and upon the difficulty of deciding the case by reference to the Welfare Check-List. It is a credit to his insight that both mother and father sought to address many of the issues raised in those two reports.

12. I should say a little about the mother. She is clearly a determined woman, not as easily dominated by the father as the Court was able to observe that the previous wife was. She has a work record in this country of which she can be proud.

As I have remarked earlier Alexander appears to be thriving since the making of the Order in October 1995 and the mother who works a considerable distance from Pinner manages to combine effectively her dual rôle as principal carer and sole supporter of Alexander. The father in a restrained cross-examination brought out one or two things which the mother will need to address in the future but failed to create any impression on the Court when he sought to establish her as an inadequate parent.

13. There was a great deal of paper-work in this case and the hearing lasted the best part of six days. I could not possibly deal with every allegation and cross-allegation. Counsel for the mother in her very helpful submissions attacked the father's attitude to women in general which certainly seems old fashioned, if not feudal, despite his vehement denial that he is in any way anti-woman. She also described him as a manipulative individual and pointed to the obvious way his former wife and their daughter are completely under his domination. The father stated that the Children Act has destroyed the age-old concept that the father is the head of the household and insists that his orders be obeyed. Mother says he takes that to extremes and over-protects Alexander. Father too complains about her chastisement of the boy.

I quote these few typical examples of dispute to illustrate the enormous amount of time this case has taken up and the vast amount of paper it has generated to explain why I do not attempt to adjudicate on every complaint, which even if it were possible given that it is the father's word against the mother's would have extended this judgment to quite unacceptable proportions. It is also frankly unnecessary because my decision is clear and unequivocal. The best thing to happen in Alexander's best interests is that he should remain with his mother as per the order of the 4th of October 1995 and have generous access to his father which is to be alternate weekends Friday after school to Sunday 7pm and half the school holidays.

As far as costs are concerned, although in children cases it is often appropriate to make no order, in this particular case I am quite satisfied that this second hearing of the Residence application so soon after his abandonment of the first puts it into the category of costs following the event. However, given that it was the first time the applications were heard on their merits and the father had some valid points to put before the Court I have decided that the proper order is that the father pay one half of the mother's costs, to be taxed if not agreed. There will be Legal Aid Taxation for the mother with Certificate for Counsel.

S.A. Goldstein, 21 August 1996

COMMENT ON JUDGMENT

Having read it, you may well be left wondering why the Courts all the way to Europe were so desperate to keep the Judgment secret. The secrecy laws are there not to protect children or the privacy of the parties but to protect the Judiciary, the Court Welfare Service [now CAFCASS], and their corrupt Family law system from scrutiny and exposure. They are there to protect the mother-custody default from being overthrown and to silence the voices of the growing ranks of embittered fathers. The above Judgment does illustrate the importance of public scrutiny to remedy the destruction of family life by the Judges, of whom Goldstein is typical.

Goldstein thinks that it is a *very outdated argument* that adulteresses who break up marriages should be held to account for their behaviour and should not be allowed to profit from it by walking out with children followed by large-scale property transfer.

Goldstein typifies the approach of the English courts to *expert evidence* in the way he ignored the US research of Professor Warshak and others which proves the benefit of children being in the custody of the same-sex parent after divorce/separation.

Goldstein is also typical in his *adulation of Welfare Officers*, who have no real training for their job and who nearly always recommend mother custody. These Officers can nearly always find some fault with a father and extrapolate it into an excuse to favour mothers. Thus in a context which was cold and legal Dr Pelling (who had published correspondence attacking the then Court Welfare Service) is attacked for being coldly legalistic and not showing enough warmth to the Welfare Officer, hence he is not a suitable male rôle model for his son.

Goldstein betrayed a *prejudice against home education*, repeating the myth that children taught in that way become socially disadvantaged. In his typically cavalier approach to evidence he ignored the expert evidence provided to the contrary. He also betrayed ignorance about the possibilities of access of children to private education when the parents' means are limited.

Goldstein is also what might be called an *inverted racist*, considering his approach to Alexander being a mixed-race child. Of course had the mother been white and the father black it would have been a very different story.

Goldstein finally took the easy way out adopted by so many judges of opting for the *status quo*. Whatever the long-term considerations for a 5½ year old boy being robbed of his father's upbringing they can usually be minimised by the handy *status quo* argument if the child has been in the mother's care for some time.

Goldstein is also the subject of an **OfJudge Report** in this Issue of **CONTACT**. Critics may say that all this is the product of an aggrieved father's bitterness but all we would ask in the end is that you, the reader and member of the public, be allowed to judge for yourself. Let the press and public go to the courts themselves and witness judges such as Simon A. Goldstein in action. The trouble is: you are not allowed to, not in Family proceedings. You'll only witness Goldstein in action there if you, poor sod, are on the receiving end of his justice.
