

[2016 Gib LR 239]

**IN THE MATTER OF C (PROHIBITED STEPS ORDER:  
BAPTISM OF CHILD)**

**B v. E**

COURT OF APPEAL (Kay, P., Potter and Rymer, JJ.A.): October  
6th, 2016

*Family Law—children—prohibited steps order—order preventing baptism  
of child by Catholic mother against wishes of atheist father (with parental  
responsibility)*

The appellant appealed against a decision of the Supreme Court to issue a prohibited steps order.

The appellant (“the mother”) and the respondent (“the father”) had a child (“C”), aged four and a half. C lived with the mother, who was a Roman Catholic. He attended a state Christian school and would attend another such school in due course. The mother had arranged for C to be baptized, in accordance with her family’s strongly held religious beliefs, without notifying or consulting the father, who also had parental responsibility for the child.

On the application of the father, who was an atheist, the Supreme Court made a prohibited steps order preventing the mother from causing or permitting C to be baptized without his written consent or further order of the court but she was otherwise free to involve C in her faith. The mother

appealed and sought to adduce fresh evidence from a Catholic priest. The priest's statement referred to the significance and importance of Holy Communion in the Catholic faith and outlined the usual progress of education of young Catholic school children by way of preparation for their first Holy Communion. The priest did not know C or his parents.

The mother submitted that (a) the judge had been wrong to give determinative weight to the father's general anti-religious sentiment; (b) the judge had failed to give due or sufficient weight to the father's acceptance that C could be taught about the Roman Catholic Church and could be involved in its beliefs, ceremonies, traditions, events, activities and teachings; (c) the judge had failed to give due weight to the fact that, if not baptized, C could not be involved in the principal ceremonies and traditions of the Church; and (d) the judge had erred in finding a genuine risk that baptism would foreclose or limit C's future decisions.

The father objected to the admission of the priest's statement because no good reason had been given for its late submission and the issues with which it dealt had been apparent and relevant well before the trial.

**Held**, dismissing the appeal:

(1) The judge had not erred in the exercise of his discretion and the appeal against the prohibited steps order would be dismissed. He had not erred in taking into account the father's view and it could not be said that he had effectively adjudicated between the mother's and father's beliefs, finding in favour of the father's atheism and positive anti-religious stance. The judge's position was simply that, for the purposes of the task before him, the father's atheist belief should be accorded equal standing and respect to the mother's religious belief. For valid and clear reasons, the judge did not accept that the father's attitude was unreasonable or contrary to C's welfare. The judge had taken into account the father's acceptance that C could be taught about the Roman Catholic Church and be involved in its beliefs, ceremonies, traditions, events, activities and teachings. The judge had given due weight to the fact that C would not be able to be involved in the principal ceremonies and traditions of the Church, and Holy Communion in particular, if he were not baptized. The judge had plainly been right to find that there was a genuine risk that baptism was likely to foreclose the question of C's religious faith. The Supreme Court judgment was conscientious and comprehensive. The judge had acknowledged the difficulty of the decision but there was no error of principle in either his reasoning or the result and the appeal would therefore be dismissed (para. 31; paras. 34–37).

(2) The statement of the Catholic priest would not be admitted. No good reason had been given for the late submission of the statement and the issues with which it dealt had been apparent and relevant well before the trial. It added nothing by way of substance to the evidence that had already been available to the judge (para. 33).

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**Cases cited:**

- (1) *G (Children), Re*, [2012] EWCA Civ 1233; [2013] 1 FLR 677; [2012] 3 F.C.R. 524; [2013] E.L.R. 25, applied.
- (2) *G v. G*, [1985] 1 W.L.R. 647; [1985] 2 All E.R. 225; [1985] FLR 894, applied.
- (3) *Ladd v. Marshall*, [1954] 1 W.L.R. 1489; [1954] 3 All E.R. 745, distinguished.

**Legislation construed:**

European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, November 4th, 1950; Treaty Series 71 (1953)) (Cmd. 8969), art. 9:

“1. Everyone has the right to freedom of thought, conscience and religion . . .”

*C. Gomez* and *J. Daswani* for the appellant;  
*C. Pizzarello* for the respondent.

1 **POTTER, J.A.:** This is the mother’s appeal from a judgment of Butler, J. dated July 8th, 2016, whereby pursuant to the Children Act 2009 he granted to the father of the 4½-year-old male infant C a prohibited steps order, prohibiting C’s mother from causing or allowing C, who attended Notre Dame, Gibraltar, state Christian school, to be baptized without the written consent of the father or further order of the court, with the proviso that the mother be otherwise free to involve C in any normal religious and family ceremonies and to introduce C into her faith and beliefs (that decision is reported at 2016 Gib LR 187).

2 As found by the judge, the mother is a practising Roman Catholic member of a devout wider family of Roman Catholics. The father on the other hand is, as the judge described him, “vehemently anti-religious and believes that religion has been responsible for a great deal of harm.” Nonetheless the judge also observed: “He is not alone in holding those views and is entitled to respect for them.”

3 The parties’ relationship began in April/May 2011. C was born on March 6th, 2012, when they were living together in Gibraltar with the mother’s two sons by a former relationship: L born April 6th, 2003 now 13½, and M born September 21st, 2005 now aged 11.

4 The parties did not marry but the father has parental responsibility for C. They now live apart having finally separated in May 2015, when C was aged three and at which date they were and had for some time been living in Spain, sharing the care of C, the father being either unemployed or working from home. When he moved out, the parties continued to share the care of C until August 2015, in which month the mother moved back to Gibraltar with C and the father went to England on an extended visit to his parents in London where his father was in poor health.

5 On his return he tried to contact the mother but she did not respond and, according to the father, told him he could not see C again. Lawyers were instructed by both parties but agreement could not be reached and the father issued a summons for a contact order which came before Butler, J. on February 9th, 2016. In relation to that matter there were substantial allegations and counter-allegations aired before the judge as to which he found it unnecessary to make detailed findings for the purposes of the discrete issue which is the subject of this appeal. That issue relates simply to the question of the religious upbringing of the child C in circumstances where the mother is a practising Roman Catholic from a Roman Catholic familial background, and the father has no faith. In recounting the background to the case, and the stage which had been reached in relation to the issue of contact at the time of his judgment, the judge summed up the matter in this way (2016 Gib LR 187, at paras. 4 and 5):

“4 . . . I do not intend for the purpose of this discrete application to rehearse or make findings in detail about the cross-allegations. There seems now to be some improvement in the parties’ relationship. I am particularly concerned that the parties should now, if possible, concentrate on C’s future and his best interests and should do everything possible to enable him to enjoy his childhood happily with his estranged parents working in harmony for his best interests . . . contact has been progressing well. Indeed the mother has not only agreed and accepted considerable flexibility to fit in with the father’s variable shifts but has accepted more generous contact than that which I had ordered. Furthermore, she told me that she feels that C needs more contact with the father. In this I am satisfied that the mother is genuine and that she is very much acting in C’s best interests. It is well known that I take allegations of domestic violence extremely seriously, especially when children are involved directly or as witnesses. Nevertheless, it is not suggested that there has been any physical violence since the parties separated and I do not think that it would be helpful to dwell upon such matters when considering this particular application. Suffice it to say that it is very much to the credit of the mother that she is now promoting contact as it appears she is. There was no indication from her oral evidence that she feels that C is now at risk with the father.

5 Having made those observations, I am bound to say that it is clear to me that the father has extremely entrenched and inflexible views and has a particularly forceful character. I find generally that he has been a difficult man for the mother to deal with and that he has at times been unreasonable with her.”

6 Turning then directly to the issue before him and the question of the child’s religion and proposed baptism, the judge said (*ibid.*, at para. 6):

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“The father’s views relating to religion are clear. He is vehemently anti-religious and believes that religion has been responsible for a great deal of harm. He is not alone in holding those views and is entitled to respect for them. The mother, on the other hand, is a Roman Catholic Christian to whom her religion is of significant importance. Her parents (particularly her father) are particularly religious and her wider family is also Christian. Her father has a religious shrine at home and they have brought up the mother and her siblings as committed Christians. C’s half siblings have been brought up as Christians, were baptized and have gone through the various stages of acceptance into the Christian faith.”

7 At para. 8, the judge recorded that the matter had come before him as an application by the father for a prohibited steps order, when he learned that the mother had arranged for the child to be baptized without informing him of such intention.

8 He summed up the parties’ positions as follows (*ibid.*, at paras. 9–10):

“9 It is significant that the father does not seek an order going beyond prohibiting the mother from causing C to be baptized. He recognizes that the mother’s family holds deeply Christian beliefs and that the mother intends to teach C about her beliefs and to involve him in Christian ceremonies and traditions. His concern (which I accept is genuine) is that C should not have his choice made for him before he is of an age at which he can decide for himself which, if any, religion he wishes to adopt and follow. He recognizes that C will no doubt be influenced by his maternal family’s beliefs and traditions but feels strongly that baptism and thereby formal entry into a particular faith should not be undertaken without C’s informed consent and wish at an age at which he can properly understand what is happening.

10 The mother wishes, with equally genuine conviction, that C be baptized because that accords with the strongly held beliefs of her family, including herself. C attends a state Christian school and will be attending another state Christian school in due course. She feels that C will feel excluded from the traditions and different from his half siblings, other members of her family, school friends and school traditions if he is not baptized. She is not a regular church-goer herself but has been brought up to believe that her prayers will be heard and answered whether in church, at home or elsewhere . . . The mother says that when C is old enough to decide for himself she will support him, whatever religion or belief he wishes to follow.”

9 At para. 11 of the judgment, the judge turned to the legal principles which he was obliged to follow in considering the problem before him. Having referred to the various authorities in the field, he recorded the

agreement of counsel to an eight-point formula which he then recited. In my view his words amounted to a correct statement of principle and I therefore repeat them here:

“(a) The overriding consideration is the welfare of the child, which is paramount.

(b) Each case depends upon its own facts. The decision in each case is likely to be fact-sensitive.

(c) Parental responsibility is equal; the primary carer of the child does not start with advantage.

(d) The court will not choose between religions (save in rare cases where the tenets of a particular religion are clearly contrary to public policy and/or the welfare of the child in the circumstances of the particular case).

(e) A religion is not to be preferred by the court simply because it is the chosen faith of the majority. Respect for all religions is essential, including minority faiths (save as indicated above).

(f) For these purposes, atheism or agnosticism should be accorded equal standing to other beliefs. It is not for the court to engage in philosophical or theological analysis or comparison of such beliefs.

(g) All the circumstances of the case (including those in the Children Act welfare checklist) must be taken into account.

(h) Those circumstances include the actual or potential effect on the child of the effect on each parent of the court’s decision, one way or the other. There is, however, no particular status or weight to be given to this consideration beyond the facts of the individual case. It is one of the considerations to which the court should have regard and in some situations will weigh more heavily than in others.”

10 Then following on (*ibid.*, at para. 12):

“To those principles I add the following observations. Whilst parental responsibility is equal, in appropriate circumstances it may legitimately be found in the best interests of the child’s welfare that the child should be allowed to follow the traditions, culture and beliefs of the family of his primary carer, other considerations being equal. It is not only the child’s immediate welfare which is paramount but also his medium to long-term welfare. I must not make an order unless I find that it would be better for C that I do so than that I make no order.”

11 So far as authority was concerned, at para. 13 of his judgment, the judge turned to the words of Munby, J. in *Re G (Children) (1)* ([2012] EWCA Civ 1233, at para. 27), which are apposite to this situation:

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“Evaluating a child’s best interests involves a welfare appraisal in the widest sense, taking into account, where appropriate, a wide range of ethical, social, moral, religious, cultural, emotional and welfare considerations. Everything that conduces to a child’s welfare and happiness or relates to the child’s development and present and future life as a human being, including the child’s familial, educational and social environment, and the child’s social, cultural, ethnic and religious community, is potentially relevant and has, where appropriate, to be taken into account. The judge must adopt a holistic approach.”

At para. 35, Munby, J. said:

“Religion—whatever the particular believer’s faith—is not the business of government or of the secular courts, though the courts will, of course, pay every respect to the individual’s or family’s religious principles. Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (the European Convention), after all, demands no less. The starting point of the common law is thus respect for an individual’s religious principles, coupled with an essentially neutral view of religious beliefs and a benevolent tolerance of cultural and religious diversity.”

At para. 36:

“The court recognises no religious distinctions and generally speaking passes no judgment on religious beliefs or on the tenets, doctrines or rules of any particular section of society. All are entitled to equal respect, so long as they are ‘legally and socially acceptable.’”

12 At para. 80:

“[O]ur objective must be to maximise the child’s opportunities in every sphere of life as they enter adulthood. And the corollary of this, where the decision has been devolved to a ‘judicial parent,’ is that the judge must be cautious about approving a regime which may have the effect of foreclosing or unduly limiting the child’s ability to make such decisions in future.”

13 At para. 82, Munby, J. continued:

“I have viewed this dilemma as one where I have tried to assess in which situation the children will have the most choices . . . in the future, and the most choice about how they wish to live in the future.”

14 Finally so far as the law was concerned, at para. 14 of his judgment, the judge correctly turned to and considered the question whether a prohibited steps order would contravene either party’s rights pursuant to

art. 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and rightly decided that no such contravention would be involved on the grounds that the order would be made for the legitimate aim of protecting and promoting the welfare of the child.

15 At the end of his summary of the legal principles applicable, which I consider to have been impeccable, the judge set out his findings and conclusions.

16 He immediately acknowledged that the circumstances of the case were finely balanced on the basis that both parents have been and intend in future to be involved fully in C's upbringing, albeit it was intended that the mother remain primary carer (2016 Gib LR 187, at para. 15).

17 The judge was impressed that in her oral evidence the mother had not exaggerated and had appeared reasonable. While it had taken time for her to adjust to a traumatic period following the separation, and albeit the father had submitted her to overbearing behaviour in the past, both parties were now adopting a more conciliatory and understanding approach (para. 16).

18 Each parent is capable of meeting C's physical needs and the mother was well capable of meeting his emotional and other needs. So far as the father was concerned, while aspects of his generally inflexible attitude remained unresolved, the mother had not suggested that the child was likely to come to any harm in his care (para. 17).

19 The judge moved to consider (at para. 18) the specific question of baptism. He stated that he did not consider that C would be likely to suffer any serious harm whether baptized at this stage of his life or not. This is because he was satisfied that the mother would do everything to ensure that he did not suffer if his full acceptance into her church and faith were postponed until he could make his own informed choice.

20 The position was the same so far as his maternal family was concerned, who would be at pains to include him in all their family activities. The mother was well capable of explaining the child's situation to him as he grew up. As there will be a significant number of children of different religions at the child's school who, like him, would not take part in Roman Catholic communion, the mother would be able to explain the decision to C, and to enable him to grow up with a balanced outlook capable of embracing others from different philosophies and ideas.

21 The judge acknowledged that the mother was herself bound to be upset that C could not be baptized. However, having heard her evidence, he stated that he was convinced that no "knock-on" adverse effect would occur so far as the child was concerned.

22 The judge went on to state (at para. 19):



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“The father wisely concedes that there should be no greater restriction on the mother involving C in the religious events, activities and teachings of their faith. The decision will be taken out of her hands at this stage by my order and I am sure that the mother and her family will cope admirably with it. I note that in Mr. Daswani’s skeleton argument he suggests that the mother has been having vivid dreams of C being trapped in hell and not knowing where to go, whilst she is present trying to guide C and show him the right direction. It is also suggested that the mother feels that he would go to hell if something were to happen to him. I have not, however, heard any evidence from the mother to support that part of Mr. Daswani’s skeleton argument. If the mother’s beliefs were such as to lead her to have such fears for this innocent child I should be particularly concerned but her oral evidence gives me reassurance. I hope that, if necessary, she will be given suitable comfort and reassurance by her family and her Church. It is perhaps significant that the mother has not sought previously to have C baptized.”

23 The judge moved to consider carefully (at para. 20) the genuineness and validity of the father’s position and in particular—

“... (a) whether his application arises from genuine concern for C’s welfare rather than his own intolerance and wishes, and (b) whether he might be inclined to use my order as a point scored against the mother and her family. I believe that his application is genuine. It accords with the approach that the aim should be to ensure that C should be able and free to make his own decisions when of sufficient age and understanding. No doubt he will regard the inclusion of C in Christian festivals and teachings as indoctrination but he has notably kept his application within its very specific bounds. It would be potentially very damaging and upsetting for C’s parents to be competing in his mind and each to be attempting to persuade C that the other is wrong. A great deal of sensitivity will be required of these parents and their parental responsibility in this regard is substantial. There is a risk that C will be caused confusion and emotional harm unless both parents are able to deal with relevant issues with tolerance, understanding and goodwill. In that way C will benefit from the diversity of his parental influence.”

24 The judge continued as follows (at paras. 21 and 22):

“21 It may be thought that baptism would in these circumstances make little difference. I do not agree. It would amount to entire acceptance of the mother’s beliefs to the exclusion of the father’s, or at least it would so seem to him. I think that he would therefore resent the baptism. He has the legitimate view that, whilst he would not stand in the way of C’s involvement and participation in the

Christianity practised by the mother and her family, C should not feel, when he comes to make his decisions, that they have already been made for him. He will be less open to alternatives, including his father's opinions. He might feel that having been baptized he would be rejecting the faith chosen for him rather than simply choosing not to follow his maternal family's lead. The mother holds her Christian beliefs very deeply. The father's fear of risk that C's religious future will be a *fait accompli* if he is baptized now is genuine. I do not think that the mother's or more importantly the child's life will be adversely affected to a material or disproportionate extent as a result of the order which I propose to make. Certainly, the mother will be able to cope with it and to ensure without significant difficulty that the child will do so.

22 If I had thought that the father's application was simply an example of his wish to exercise control over the mother and C, the balance may have been different. He does have strong views. But it is accepted that the views which have led to this application have been expressed by him throughout the parties' relationship."

25 The judge set out his conclusion as follows (at paras. 23 and 24):

"23 It is these points which in my judgment bring the balance down in favour of making a prohibited steps order in the very particular circumstances of this case. I emphasize that this conclusion should not be regarded as applicable in all cases or even as a starting point. There will be kaleidoscopic considerations in every case. I hope that it will be rare for parents to have to seek court assistance on such issues and that in the great majority of cases parents will be able to reach a sensible accommodation in the interests of their child. I emphasize too my hope that as C grows up his parents will be able to encourage him to make his own choices. That does not mean that they should not express their own views and beliefs and faiths, provided that they do so sensitively and without denigrating those of the other parent. The father may become more mellow as time passes by. Even if C is still young, it may be that if he expresses a real wish to follow, embrace and be part of his mother's faith the father will give him full permission and assistance as appropriate. There should be no element of competition between the parents for C's mind. C's life should never be regarded as a matter of winning or losing as between his parents. Indeed the mother has not 'lost' in this application. She has presented her deeply held wishes in her oral evidence with restraint and a degree of tolerance. With goodwill and understanding, this loved child will develop into a well-rounded, tolerant, understanding and happy man with much to offer. The welfare report included in my bundle is positive in many respects and the mother says that she trusts the father to 'do the best

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for' C. The father has said that C worships the mother and that the father would never take that away from him.

24 In many cases it will be in the interests of a child to be brought up fully within the faith of the family of the primary carer and there will be no justification for interference with that course. It is with some reservation that I have reached my conclusion in this case. The restriction involved in my order is limited, though important to both parties. The right of the child to be free as he develops to make his own choices is subject to the right and duty of those with parental responsibility to make choices for him until he can choose for himself. Where there is a conflict between the views of separated parents or others with parental responsibility, the court must act as impartial judicial reasonable parent. My view in this case is that the child will be happier knowing that the views of neither parent have prevailed over him and that the parents are tolerant of each other until he can make his own decision. Subject to the specific limitation which my order involves, however, the mother will be free to involve C in all her beliefs, ceremonies and religious activities. I hope that the relationship and trust between the parties will have improved by the time C reaches the age at which he might be confirmed and that the parties will be able to approach that issue with sensitivity and understanding, putting aside their own wishes in favour of stability and happiness for C."

26 The judge then pronounced his order (at para. 26):

"My order is that the mother be prohibited from causing or allowing C to be baptized without the written consent of the father or further order of this court but that she be otherwise free to involve C in any and all religious and family ceremonies and to introduce C into her faith and beliefs."

27 Whilst it is almost invariably the case that decisions in relation to the welfare of a child involve a multiplicity of factors to be taken into account (as so eloquently expressed by Munby, J. in *Re G (Children)* (1), see paras. 11–13 above), it is equally the case that the decision of an experienced family judge, who has heard the evidence and has sensibly taken into account and carefully weighed all the relevant factors and rival submissions before reaching his decision, will rarely be open or amenable to reversal on appeal.

28 In this judgment I have quoted at some length from the decision of Butler, J. in respect of C, because it seems to me that is precisely the difficulty faced by the appellant in this appeal. Before reverting to the grounds of appeal, which I stated shortly and to which I shall turn, it is important to emphasize that, in the light of the issue before me relating to the welfare of the child, the judge's task in ruling on that issue involved

the exercise of a judicial discretion, having taken into account the evidence and demeanour of the parties and the arguments advanced before him. To quote from the headnote to the report in *The All England Law Reports* of *G v. G* (2) ([1985] 2 All E.R. at 225), which was a decision of the House of Lords in relation to the custody and supervision of a child:

“The principles applicable to the Court of Appeal’s jurisdiction when reviewing a judge’s exercise of discretion in cases involving the welfare of children were the same as those which applied to the Court of Appeal’s general appellate jurisdiction. Having regard to the fact that in such cases there were often no right answers and the judge at first instance was faced with choosing the best of two or more imperfect solutions, the Court of Appeal should only intervene when it considered that the judge at first instance had exceeded the generous ambit within which judicial disagreement was reasonably possible, and was in fact plainly wrong, and not merely because the Court of Appeal preferred a solution which the judge had not chosen.”

29 As stated by Lord Fraser of Tullybelton in that case (*ibid.* at 228):

“I entirely reject the contention that appeals in custody cases, or in other cases concerning the welfare of children, are subject to special rules of their own. The jurisdiction in such cases is one of great difficulty, as every judge who has had to exercise it must be aware. The main reason is that in most of these cases there is no right answer. All practicable answers are to some extent unsatisfactory and therefore to some extent wrong, and the best that can be done is to find an answer that is reasonably satisfactory. It is comparatively seldom that the Court of Appeal, even if it would itself have preferred a different answer, can say that the judge’s decision was wrong, and unless it can say so it will leave his decision undisturbed.”

30 Nonetheless, in this appeal it is indeed asserted not that the judge made any error of law or that he left out of account any relevant consideration, but rather that he erred in the exercise of his discretion in coming to the conclusion which he did. The grounds of appeal read as follows:

(i) The learned judge erred in taking into account the respondent’s general anti-religious sentiment when considering whether C should be baptized.

(ii) The learned judge failed to give due or sufficient weight to the respondent’s acceptance that C could be taught about the Roman Catholic Church and be involved in its beliefs, ceremonies, traditions, events, activities and teachings.

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(iii) The learned judge failed to fully consider or to give due weight to the fact that, if not baptized, C cannot be involved in the principal ceremonies and traditions of the Church. He will miss the sacraments and in particular Holy Communion, the sacrament which C's contemporaries at school were involved in the beliefs, ceremonies, traditions and events and activities and teachings of Roman Catholicism and prepare for and take at the age of seven.

(iv) The learned judge erred in finding a genuine risk that baptism would foreclose or limit any decisions which C may take in the future.

31 Turning to ground (i) of the appeal, it is submitted for the mother that the judge was wrong to give determinative weight to what is described by Mr. Gomez in his skeleton argument as the general anti-religious sentiment of the father. Mr. Gomez submits that in doing so the judge effectively adjudicated between the different belief sets in favour of the father's atheism and positive anti-religious stance. However for the father it is submitted, and I accept, that that is a mischaracterization of the judge's position, which I have already quoted from para. 6 of his judgment and which was simply that, for the purposes of the task before him, the father's resolutely atheistic but sincere belief should be accorded equal standing and respect to the mother's religious belief. It is right to observe that in this respect the father sought to place no barriers or hurdles so far as C's religious activities or exposure to Catholic teaching or beliefs were concerned, save to postpone a decision in respect of the baptism until the point when C could be regarded as old enough to form and express his own views or desires in that respect, whether as a matter of dawning faith or the social pressures of those friends at school who were being prepared for the taking of Communion in a few years' time. In response to the father's position as I have stated it, Mr. Gomez's submission boiled down to this, namely that the father, having conceded that C could participate in such religious instruction as was provided to the children of parents who wished them to be brought up as Roman Catholic, was, by objecting to C's baptism as a step to that end, adopting an attitude which was (a) unreasonable and (b) plainly contrary to the welfare of C. However the judge did not accept that view for valid reasons clearly expressed at para. 21 of his judgment which I have already quoted in full at para. 24 above.

32 As to grounds (ii) and (iii) of the appeal, a complaint is raised that no enquiry as to the crucial importance of the sacrament of baptism was undertaken by the judge although it is acknowledged that he was not asked to do so. In this connection, Mr. Gomez, who appears for the appellant, has sought to adduce fresh evidence from a Catholic priest, Father Derek Alvarez, in the form of a statement dated September 26th, 2016 as to the significance and importance of Holy Communion in the Catholic faith and which outlines the usual progress of education in that faith of young

children. It appears to be offered by way of *expert* testimony as to the processes of instruction of children generally. I say that because Father Alvarez does not profess to know C or any of the parties involved. He simply describes the process of the religious education of Catholic school children by way of preparation for their first Holy Communion at the age of seven or eight.

33 Miss Pizzarello for the father objected to the admission of the statement on the grounds that no good reason had been put forward for its submission at this late stage given that the issues with which it deals were always apparent and relevant at a time well prior to the trial below. In that respect she is plainly correct and indeed Mr. Gomez has produced no good reason for the late adduction of such evidence. I do not consider that it should be admitted at this stage on *Ladd v. Marshall* (3) grounds, however generously such grounds have developed and been applied in family cases. The forensic purpose of the evidence appears to be to obtain, through the evidence of a priest, express confirmation of the matters which were all available to be, and appear in any event to have been, canvassed by way of submission at the hearing before the judge below. Having described the early civil scriptural teaching which at the age of four and a half a child such as C will first have started with fellow Catholic pupils at school, and having explained that such learning will progress towards preparation for Communion at seven or eight, the statement concludes by ventilating concern as to the risk that C may experience an eventual feeling of exclusion. It adds nothing by way of substance to the matters already available to the judge in evidence. Having said that, and on that basis, I would hold it inadmissible. Accordingly I do not consider that grounds of appeal (ii) or (iii) are established.

34 In respect of ground (ii), the judge took account of the matters there raised at paras. 10 and 18 of his judgment.

35 In respect of ground (iii), again at para. 18 of the judgment, the judge specifically took into account and dealt with the matters raised.

36 In respect of ground (iv), as it seems to me, the judge was plainly right to find a genuine risk that in the context of the issue which had arisen between the parties (each of whom was concerned as to what was best, not simply for the short but also for the medium and long-term future of the child), baptism was likely to foreclose the question of the child's religious faith.

37 In my view the judgment below was both conscientious and comprehensive. The judge acknowledged himself the difficulty of the decision; however, I find no error of principle in either his reasoning or the result and I would therefore dismiss the appeal.

C.A.

CELECIA V. ATT.-GEN.

38 **RYMER, J.A.**, I agree.

39 **KAY, P.**, I also agree.

*Appeal dismissed.*

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