



PUMP COURT

CHAMBERS

SIMILAR FACT EVIDENCE

LESLIE SAMUELS QC





“I thought your wife wasn’t contesting the divorce.”

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“The divorce judge wasn’t very impressed with either of us. Our dog got custody of the kids!”

THE QUESTION

Fact-Finding:

How marked is the shift in approach to "similar fact" evidence of domestic abuse in Children Act proceedings?

How can you expect the judges to react?



Issues

- 1) Is the similar fact evidence admissible?
- 2) If it is admissible, should it be admitted?
- 3) If it is admitted, what evidence is it that the party adducing the evidence is seeking to prove?

Admissibility

Children (Admissibility of Hearsay Evidence) Order 1993

Part 23 Family Procedure Rules 2010

Practice Direction 12J

O'Brien v Chief Constable of South Wales Police [2005] UKHL 26,
[2005] 2 AC 534

Should the evidence be admitted?

Second part of two stage test:

Re S (A Child) [2017] EWCA Civ 44. [2017] 2 FCR 184

R v P (Children: Similar Fact Evidence) [2020] EWCA Civ 1088

Court's power to control evidence, Rule 22.1 FPR 2010

What are you seeking to prove?

What form is the evidence in?

Or, perhaps, what is it that you are seeking to prove i.e. facts or propensity?

R v Mitchell [2016] UKSC 55

As applied in R v P [2020] EWCA Civ 1088

Conclusions

- 1) Similar fact evidence is admissible if relevant.
- 2) Whether it is to be admitted will be a case management decision to be decided on the basis of the interests of justice. Factors such as the importance of the evidence, its probative value, the timing as to when it becomes available and whether the evidence is first hand or hearsay are likely to be relevant.
- 3) There is a distinction between proof of propensity and proof of the underlying facts. Propensity must be determined in the round and in combination. It is not necessary for the court to determine each individual allegation.



"The worst part was her VICTORY DANCE!"



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