

IN THE SOUTHAMPTON COUNTY COURT

CASE NO:99D1278

BETWEEN

JAMES COLTON

PETITIONER

-and-

SHEELAGH WINIFRED COLTON

RESPONDENT

JUDGEMENT

I am asked to make a preliminary finding in ancillary relief proceedings as to a specific allegation of conduct relied upon by the wife, namely that the husband has sexually abused the wife's two daughters.

To assist me decide the issue I have had the benefit of reading the affidavits, and of hearing the witnesses set out below: -

Petitioner
Mark Thompson
Fleur Thompson
Tracey Fawcett

Respondent
James David Gore
Tracey Jane Gore

The burden of proof is on the wife. It is agreed between the parties that she has to prove the allegations, not beyond reasonable doubt, but on a balance of probabilities. I have been referred to the cases of *re G* and *re W* which further explain the kind of proof needed. In *re W* the court said that the more serious the allegation the more convincing the evidence had to be to tip the balance and the standard of proof had to be commensurate with the serious nature of the issues raised. Allegations of sexual abuse in civil proceedings have to be proved to a standard beyond a mere balance of probability (though not to as an exacting standard as the criminal standard). In *re G* it was similarly held that a higher degree of probability was required in these cases. I take those indications to add up to the proposition that I should not find the allegations proved if I am only satisfied that the scales tip marginally in the wife's favour. I need to find that there is good reason to favour her evidence. However the husband cannot escape a finding merely, as he could in a criminal case, because I am left in some doubt.

This case, unlike many other matrimonial and civil cases, does not rely on my having to decide whose genuine viewpoint or recollection is the most likely to be correct but on who is telling the truth. There is no way, if the husband is correct in his denials that the girls are mistaken; I cannot escape the conclusion that they must have made up the allegations. Likewise if the girls are correct, there is no way the husband can have forgotten the incidents took place or been mistaken in his recollection.