4PB, 6th Floor,
St Martin's Court,
10 Paternoster Row,
London, EC4M 7HP
T: 0207 427 5200
E: clerks@4pb.com
W: 4pb.com

Re M'P-P (Children)

[2015] EWCA Civ 584

11/06/2015

Barristers
Ceri White

Court
Court of Appeal (Civil Division)

Practice Areas
Public Children Law

Summary
A decision revoking care orders and a placement order in respect of two young children, and replacing them with special guardianship orders which would involve the children moving to Belgium to live with a paternal aunt with whom they had no existing relationship, was set aside. The judge had failed to properly engage with the effect on the children of moving them from the care of their foster carer, who was their primary, and only, attachment figure, or with the value to them of maintaining that relationship.

Facts
A foster carer appealed against a decision that two children (B and E) should live with their paternal aunt.

B, who was two-and-a-half years old, had been the subject of care proceedings from the age of two months and had been placed with the foster carer from that age. He was subsequently made subject to a full care order and a placement order. E, one-and-a-half years old, had been with the foster carer from birth, and the local authority had applied for a care order and a placement order. An interim care order had been made. The foster carer wanted to adopt both children, a position supported at the first instance hearing by the local authority and the children's guardian. That was opposed by the children's parents and the aunt, who put herself forward as an alternative long-term carer for both children under a special guardianship order. The children's mother, who had eight children, all of them subject to care proceedings, had mental health problems and the father was unable to provide a home for either child. The aunt lived in Belgium and had only met the children once, during a supervised contact visit prior to the hearing. The judge conducted an analysis within the structure of the welfare checklists contained in the Children Act 1989 and the Adoption and Children Act 2002. He listed the pros and cons of placement with the foster carer and the aunt respectively, and concluded that a placement with close family was inherently desirable and a practical and manageable plan. He recognised that the children would suffer some disruption, but said that they would, importantly, maintain links with siblings and family. He also referred to the fact that that outcome was supported by both parents. He revoked the care orders and placement order and indicated that special guardianship orders would be made in favour of the aunt.

Held

The appeal raised the question of the relative weight to be attached to opposing issues of “status quo” and “family” in proceedings relating to a child. The importance of full weight being given to the importance of a family placement, unless it had been established that it would be so contrary to a child’s welfare that a long-term placement in public care or adoption was necessary, had been stressed in a range of recent decisions, B (A Child) (Care Proceedings: Appeal), Re [2013] UKSC 33, [2013] 1 W.L.R. 1911 and B-S (Children) (Adoption: Leave to Oppose), Re [2013] EWCA Civ 1146, [2014] 1 W.L.R. 563 considered. Less had been said about the weight to be afforded to what family lawyers had historically referred to as the “status quo argument”. Factors relating to the status quo fell to be considered where the court had to have regard to “the likely effect on [the child] of any change in his circumstances” under s.1(3)(c) of the 1989 Act, D v M (A Minor) (Custody Appeal) [1983] Fam. 33 considered. Following enhanced understanding of the neurological development of a young child’s brain, the importance of a child’s attachment to their primary care giver was underpinned by knowledge of the underlying neurobiological processes at work in a baby or toddler’s developing brain. In the context of “attachment theory”, the wording of s.1(4)(f) of the 2002 Act, which placed emphasis on the “value” of a “relationship” that the child might have with a relevant person, was particularly important. The circumstances which might contribute to what amounted to a child’s status quo could include a range of factors, many of which would be practically based. However, within that range, the significance for the child of any particular relationship was likely to be a highly salient factor. Each case would necessarily turn on its own facts. In the instant case, the judge had not properly engaged with the effect on the children of moving them from the care of their primary, and only, attachment figure, or with the value to them of maintaining that relationship. Although, when summarising the evidence, he had recognised the nature of the attachment established, the strength of the attachment and the value of that relationship did not appear in his subsequent analysis, save that the attachment was referred to as assisting the children in making the transition to care with the aunt. In the context of “change”, the changes listed by the judge were all practical, environmental or cultural, whereas the most important change for a two-and-a-half-year-old child was likely to be the fact that his “mother” had dropped out of his life. There was no indication that any regard had been given to the effect on a child as required under the welfare checklist, when the fact that the children had established a strong and entirely beneficial primary attachment to the foster carer should have been at the top of the list. The judge’s reference to the establishment of “a family life together” that was entitled to “proper and full weight” had the ring of an argument based on rights rather than the more important context of the children’s welfare and their emotional reality. The judge’s analysis was therefore fundamentally flawed. The final care order and placement order for B and the interim care order in respect of E would remain in force. The applications would be remitted to be reheard before a different judge (see paras 46-56 of judgment).

Permission

Lawtel

To read the judgment click here.