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# U (Children)

## [2015] EWCA Civ 334

09/04/2015

**Barristers**
Brian Jubb

**Court**
Court of Appeal (Civil Division)

**Practice Areas**
Public Children Law

**Summary**
Appeal by father against the refusal to adjourn an application for a re-hearing of care proceedings in which care orders were made in respect of four children and placement orders in respect of two of them.

**Facts**
This was an appeal against a case management decision of HHJ Wilding refusing the father's application for an adjournment of his substantive application to revisit findings made within care proceedings, and dismissing his application for a re-hearing. A fact-finding hearing had been held to consider the following issues:

i) Whether the children had been physically abused their parents;
ii) Whether ZU had been sexually abused by her father;
iii) Whether the children had been present during and had witnessed domestic violence;
iv) Whether the parents had failed to protect the children from harm.

Following extensive oral evidence, the judge made findings of physical and emotional abuse and domestic violence. Preferring the evidence of ZU and a community worker, the judge also found the allegations of sexual abuse of ZU proven. At the time of the fact-finding hearing, the father had yet to be charged by the CPS. The father was later acquitted in the criminal proceedings.

The father sought to re-open the findings of sexual abuse made in the care proceedings on the basis that ZU had admitted under cross-examination during the criminal trial that she had made up the allegations after she met the community worker and had started a relationship with him. The transcript of the judge's summing up to the jury was not available when the father's application came to be heard by HHJ Wilding. The application was adjourned by consent as the local authority did not accept the father's account of the summing up. At the adjourned hearing, the transcript of the summing up was still unavailable. Having weighed up the need to ensure justice for the parents and the children and the need to achieve finality and avoid delay for the children, HHJ Wilding refused the father's application for a

further adjournment.

King LJ, delivering the judgment of the Court of Appeal, sets out the law governing appellate reviews of determinations in care proceedings at paragraphs 29 to 32 of the judgment. The learned judge went on to say:

"The court must be astute, as was the judge in the present case, to factor in to the balancing exercise the effect an interlocutory case management decision will, or may have, on the case as a whole."

## Held

Concerning the balancing exercise conducted by HHJ Wilding, King LJ noted the statutory requirement to conclude care cases within 26 weeks of starting, and that the adjournment sought by the father would engender a further 5 months delay. HHJ Wilding had recognised that the father could do no more than put forward assertions in support of his application in the absence of the transcript of the summing up. This was a classic example of any decision made in the circumstances being "imperfect".

In reaching his conclusion, HHJ Wilding had properly summarised the father's allegations concerning ZU's admission; had taken the father's case at its highest in conducting the balancing exercise; and had taken into account the prejudice to the father of not having the transcript of the summing up.

The father's counsel's submissions that the whole case had turned on the findings of sexual abuse were rejected by the Court of Appeal. There were other extensive findings that would not be undermined by a finding that ZU was a malicious liar. There had been ample evidence for the judge to reach the other findings.

For the reasons given at paragraph 46 of the judgment, King LJ concludes that HHJ Wilding was entitled to determine that the balance lay in favour of refusing the father's application for an adjournment. He had conducted the appropriate balancing exercise and his conclusion could not be categorised as wrong.

In relation to the substantive application, having applied the test set out in Re ZZ (Children)(Care Proceedings: Review of Findings) [2014] EWFC 9, HHJ Wilding had concluded that the father had no ground, let alone solid ground, for revisiting the findings. The judge had pointed out that he had seen and heard the evidence of witnesses and he had been alert to the father's case that ZU had ulterior motives. HHJ Wilding found that there was no suggestion that the other findings made would not stand against the parents. Even if the father had passed the first limb of the Re ZZ test, there remained adequate unchallenged evidence on which to found the orders made in respect of the children.

Agreeing with the analysis of HHJ Wilding, the Court of Appeal dismissed the father's appeal.

## Permission

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