

Re H (Children) [2015]

[2015] EWCA Civ 115

25/02/2015

Barristers

Matthew Persson

Court

Court of Appeal (Civil Division)

Practice Areas

Public Children Law

Summary

Appeal in public law children proceedings, by father whose main arguments revolved around the judge's treatment of the evidence of a clinical psychologist which he said had been allowed to assume disproportionate importance. Appeal dismissed.

Facts

The proceedings concerned children aged 14 and 12, and commenced in the private law arena during which a judge made observations about the way in which the father had undermined the children's relationship with their mother. The parties were subsequently given permission to jointly instruct clinical psychologist Dr Gough to carry out an assessment of the parents and the children.

Dr Gough's view was that the children had suffered significant harm and were continuing to suffer emotional abuse. She advised therapeutic work for the mother and the children, and that, to protect the children from further emotional harm, the current contact arrangements be suspended with the father having only supervised contact for a period.

Dr Gough was extremely concerned about the impact of her conclusions on the father's psychological state. There was concern for the children if the report were filed, as it was due to be, when they were staying with their father. The guardian's solicitor applied without notice, and a hearing took place at which Dr Gough gave evidence about how the father might react. She expected at a minimum he would place the children under great psychological pressure and, in addition, there was a risk that his response would be to commit suicide, possibly involving the children in this. The judge delayed service of the report until the children would be back with the mother and ordered the report to be served on the parties at court.

The case subsequently moved into the public law arena and at a later date ICOs made on the basis the children remain at home with their mother. After a lengthy final hearing Her Honour Judge Robertshaw made care orders (the children lived with their mother and had limited supervised contact with their

father).

HHJ Robertshaw accepted Dr Gough's assessments of the family as "sound, accurate and reliable" and found her evidence to be well reasoned, balanced, truthful and cogent. She found that the father had become transfixed with the idea that the mother was alienating the children from him, and was intent on destroying their relationship with their mother and ensuring they live with him. The Judge recognised the level of contact proposed by the LA for the father was low (once a month for approximately 6 to 9 months whilst the children and their mother continued therapy). She concluded that if the children were not subject to care orders, if they moved to live with the father or if contact was unsupervised or at a greater level at that time, the harm they had suffered would continue and be compounded, the progress they had made be undone, the therapeutic process be undermined, the mother's parenting capacity adversely affected and undermined, and the children's relationship with their mother harmed.

The father appealed to the Court of Appeal on a number of grounds. His main argument revolved around HHJ Robertshaw's treatment of Dr Gough's evidence which he submitted had been allowed to assume disproportionate importance. It was argued that the only way he could effectively challenge Dr Gough's conclusions was by adducing his own psychiatric/psychological evidence so he should have been permitted to commission a further assessment and to adduce a report from a psychiatrist who had examined him for his employers.

Lady Justice Black (with whom King LJ and Sir David Keene agreed) considered that HHJ Robertshaw was entitled to refuse the father permission to instruct another expert. Sometimes a further expert does have to be instructed notwithstanding that it will be disruptive for the children but this was not such a case, and the refusal to permit the instruction of another expert did not prevent the father from challenging Dr Gough in cross-examination (at length).

A particular concern of the father's was Dr Gough's view of his suicidal thoughts and their potential implications for the children but the value of any new report on the father alone would inevitably have been limited by the difficulty that the psychologist would have faced in giving a convincing view as to the risks at the time of Dr Gough's assessment. It was suspected that the most that could have been achieved would have been an assessment of the state of affairs at the time of the new psychologist's examination, and it would have been open to the father to have sought a further consultation with Dr Gough to obtain an updated opinion.

One could well see why the judge did not admit the report from the psychiatrist who had examined the father for his employers. HHJ Robertshaw's explanation was not faulted where she said that he had not been involved with the proceedings, had seen none of the documentation, his examination of the father was not focused on the matters subject to these proceedings, and he did not consider his examination in the light of concerns about the children, the mother or the father's behaviours.

Held

The Court of Appeal was not persuaded by complaints made about the without notice hearing and its procedure.

It was not accepted that the way the judge considered Dr Gough's evidence in her judgment was window dressing or rationalisation of her long held view of the case. Moreover Dr Gough's view and the judge's own conclusions were consistent with and supported by other features.

The judge produced a most thorough judgment, drawing together all the strands of the evidence, which included not only the matters which told against the father but also those which counted in his favour

including the very important fact that the children wished to see their father far more frequently and extensively, and missed him. It was quite clear the judge's decision was not based upon an unquestioning acceptance of Dr Gough's evidence.

Permission

Family Law Week 