

## Re W (A Child) (2005)

**[2005] EWCA Civ 649**

26/05/2005

### **Barristers**

Rex Howling KC

### **Court**

Court of Appeal

### **Facts**

A judge was given an opportunity to reconsider her decision not to approve a care plan proposing adoption where she had failed to explain the basis upon which she rejected the evidence of two psychiatrists and the child's guardian to the effect that the child's current carer lacked the capacity to meet the child's needs in the long-term.

The appellant local authority (L) appealed against the decision dismissing its application for a care order in respect of a child (W) being cared for by his aunt (X). W was a seriously damaged and needy child. He had been living with X for a year. X was in her early 20s and had a child of her own. Under the care plan on which the local authority's application was based, W was to be moved to an adoptive placement. X wished to continue caring for W. Among the evidence before the judge was that of three psychiatrists. The expert evidence was that, once permanently placed, W would need psychotherapy for an extended period of time. X had belatedly accepted that W required on-going therapy. Two of the experts, as well as the guardian, were of the view that X lacked the capacity to meet W's needs in the long-term. The evidence showed that X came from a highly dysfunctional background. The judge concluded that there were more risks than benefits to W in the long-term, as well as in the short-term, if the care plan were approved. The local authority argued that the judge's decision was wrong because she had failed to follow unanimous expert advice, backed by the evidence of the social worker and the guardian, to the effect that X did not have the capacity to care for a child as damaged as W in the long term. Further, the judge had failed to explain why she had not followed the expert advice.

### **Held**

The judge had disagreed with the analysis of two psychiatric experts and the advice of the guardian. However, she had wholly failed to explain the basis upon which she rejected the evidence of those three persons. The point went to the heart of the case because, if the judge had accepted the expert and professional evidence, the almost inevitable consequence would have been that it was in W's best interests to be removed from X's care. The judge should be given an opportunity to reconsider her decision in light of the instant judgment and of a further short investigation by one of the psychiatrists, if available, and by the guardian.

Appeal allowed.

**Permission**

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