

Re F (Children) (2010)

[2010] 2 FLR 1455 : [2010] Fam Law 1053 : [2010] EWCA Civ 826

15/06/2010

Barristers

Kate Branigan KC
Brian Jubb

Court

Court of Appeal

Practice Areas

Public Children Law

Summary

An interim care order was set aside because it was in breach of both limbs of L-A (Children) (Care: Chronic Neglect), Re (2009) EWCA Civ 822, (2010) 1 FLR 80. Care had to be taken that the need to avoid delay in care proceedings did not mean that cases were progressed at a speed that prevented a proper consideration of options for permanency in cases where the outcome was not immensely promising. Fairness to parents was a matter that the court had to keep in mind at all stages of the proceedings.

Facts

The appellant parents (P) appealed against an interim care order granted in favour of the respondent local authority concerning their baby twins. P's one-year-old disabled daughter had been taken into care a few weeks before the twins were born. A judge had determined that, although there were few welfare issues in the case, P could not safely parent children unless psychological therapy work was undertaken on a voluntary basis. Care proceedings were issued in relation to the twins within a couple of days of their birth. P contested the proceedings, asserting that they did not need therapy and were perfectly competent to parent without. At the hearing of the local authority's application for an interim care order, a district judge refused the application and granted leave to P to instruct an independent social worker. The local authority's appeal was heard three days later and in the absence of a transcribed judgment, counsel submitted an agreed note for the approval of the district judge. The district judge did not approve the agreed note and the appeal judge therefore decided to re-hear the case. Having done so she granted the application for an interim care order and refused P's application for leave to instruct an independent social worker. P submitted that in accordance with the dicta in L-A (Children) (Care: Chronic Neglect), Re (2009) EWCA Civ 822, (2010) 1 FLR 80, the judge had determined issues that ought to have been dealt with at a final hearing and had simply assumed that as they had been judged unsuitable to care for their disabled daughter, they were also unfit to care for the twins. They maintained that they could have no effective case to advance unless they were given permission to instruct an independent

social worker. The local authority argued that P's past failings inevitably made them unsafe long-term carers for the twins and that there was no realistic prospect of change. It maintained, as supported by the guardian, that an independent social worker had no contribution to make.

Held

HELD: (1) The interim care order had to be set aside because the judge had fallen into error. She had focused on issues that ought to have been determined at a final hearing and had too easily reached a conclusion that P's history in itself was determinative. That was a breach of the first proposition in *Re L-A*. In finding that a refusal of the order would be to expose the twins to the risk of emotional harm, the high test in the second limb of *Re L-A* had not been met, *Re L-A* applied. In a case where there were no welfare concerns and no doubt as to P's ability to care for the twins on a day-to-day basis, and given that there would be a final hearing in about five months' time, the judge's elevation of emotional harm to justify the separation of parents and children did not begin to meet the high threshold set by the authorities. (2) An independent social worker had an obvious role to play in the case; to assess what P needed, to find out what was available locally and to ascertain within what timeframe the service could expect to deliver benefit. That was especially so as P had little obvious ability to assess available therapeutic services, to determine which was appropriate and to gain access without independent means to do so. P were required to enter into an undertaking acknowledging their duty to co-operate. (3) (Per Hedley MJ) It would have been desirable for the district judge to have been pressed to provide the corrections to his judgment instead of the case being re-heard afresh. Also, trial judges would need to be astute to ensure that the need to avoid delay did not mean that cases were progressed at a speed that prevented a proper consideration of options for permanency in cases where the outcome was not immensely promising. Finally, although the welfare of the child was the paramount consideration, fairness to parents was a matter that the court had to keep in mind at all stages of the proceedings. (4) (Per Sir Nicholas Wall) It was important to consider whether the continued removal of a child from the care of parents was proportionate to the risk of harm to which they would be exposed if they were allowed to return to the parents' care, *B (A Child) (Care Proceedings: Interim Care Order)*, *Re (2009) EWCA Civ 1254*, (2010) 1 FLR 1211 and *B (Children)*, *Re (2010) EWCA Civ 324*, (2010) Fam Law 576 considered.

Permission

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