

## Re D (Children) (2011)

**[2011] EWCA Civ 1743**

14/12/2011

### **Barristers**

### **Court**

Court of Appeal

### **Practice Areas**

Public Children Law

### **Summary**

A judge had erred in making different contact orders in respect of the mother and father of a child at an interim care hearing because it was inappropriate and impossible for her to make any findings of fact on the respective culpability of the parents at that stage.

### **Facts**

The appellant local authority appealed against an interim supervision order made in respect of the older child (R) of the first respondent mother (M) and second respondent father (F) because of injuries caused to their baby (P). P was taken to hospital for bruising and scratches to her face, where it was discovered that she had a skull fracture and a healed rib fracture. When M and F were told about P's injuries the hospital records showed that M had turned to F and asked what he had done. The local authority commenced care proceedings, and R and P were put into foster care pending a fact-finding hearing to determine the cause of P's injuries. At an interim care hearing an interim care order was made in respect of P and an interim supervision order for R. The judge decided that F could have supervised contact and M unsupervised contact with R. In coming to that decision the judge said that she was making no findings about who had caused P's injuries, but she found M's automatic reaction at the hospital persuasive as that of a protective mother, and that her subsequent separation from F demonstrated her ability to prioritise the children over F. There was no evidence of any harm being caused to R, who was thriving. The local authority submitted that it was illogical for the judge to treat the parents differently having accepted that they were both possible perpetrators. F submitted that both parents should be treated as a manageable risk and therefore he should have unsupervised contact, and that the judge could only have concluded in the way she did by deciding that he was more culpable than M.

### **Held**

It was clear that the judge was aware that it was inappropriate and impossible to make findings at that stage, but at times she seemed to have formed a view that F was more culpable and that M posed less of a risk. She should have proceeded on the basis that the injuries were unexplained. Her decision was vitiated by her approach in deciding that one parent posed more of a risk than the other, and that

decision was integral to her judgment: she had made it clear that she had granted M more contact because she had separated from F. Since the judge had exercised her discretion on the wrong basis, it was appropriate to substitute an order that M and F should have the same level of contact with R pending the fact-finding hearing.

### **Permission**

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