

## C (Care: Contact)

**[2012] 2 FCR 325; [2011] EWCA Civ 1774**

13/10/2011

### **Barristers**

Ruth Kirby KC  
Michael Edwards

### **Court**

High Court

### **Practice Areas**

Public Children Law

### **Summary**

Appeal against orders under Children Act 1989 s 34(4) excusing the local authority from making further contact provisions in respect of two children, and against their mother under s 91(14) of the Act. Appeal dismissed.

### **Facts**

This an appeal by the mother against an order of HHJ Rundell pursuant to ss34(4) and 91(14) of the Children Act 1989. The two boys who were the subject of care proceedings were aged 13 ½ and nearly 12 years old. It was asserted on the mother's behalf that the judge had been plainly wrong in making the orders and had erred in the exercise of his discretion. The appeal was dismissed.

The Court of Appeal considered two matters which are of particular interest: firstly the conclusions of the judge in respect of the boys' wishes and feelings, having met boys face to face during the proceedings; and secondly a challenge to the judge's case management of the matter when he refused twice to give permission for a psychological assessment of the children and the appellant had not taken full opportunity to appeal the decisions.

The background to the appeal is that the LA issued care proceedings in respect of the children in May 2007 when the mother alleged that her then partner had smacked one of the boys. A psychological assessment of the mother concluded that she had personality difficulties. It was agreed that the children should remain in the mother's care subject to a number of safeguards, one of which was that the boys should not have any contact with her then partner. Despite this agreement the LA found the partner at the mother's home during an unannounced visit and the children were removed from the mother's care in January 2008.

In October 2008, following a deterioration of the mother's behaviour, a care order was made which provided for limited contact between the mother and the children [four times a year with each boy

separately for two hours per session]. Although the children had previously had a good relationship with the mother, the children were indicating that they no longer wished to see the mother and contact did not take place.

The mother made an application to the county court for contact and sought permission to instruct a psychologist to assess the children. Permission for the assessment was refused. The mother issued a notice of appeal and permission to appeal was refused on paper. The mother did not pursue this application any further.

The matter came before HHJ Rundell in December 2010 and the parties came to an agreement to reinstate contact. However, the boys' response to the plans was hostile. Contact did not get off the ground and in May 2011 the judge made s34(4) and s91(14) orders. In his judgment, the judge said that he was 'impressed with the strength of [the boys'] views'.

On appeal, it was argued on behalf of the mother that the judge had placed too much weight on the wrong factors, in particular: the mother's behaviour prior to making the care orders in 2008; the psychiatric report on the mother; and the boys' wishes and feelings in expressing the view that they did not want to see their mother. It was also argued that too little weight was placed on the fact that the boys had both absconded from their foster placement at the time of the May 2011 hearing.

Counsel for the mother asserted that it was impermissible for the judge to use the meeting with the boys to assess the strength of their feelings. Baron J commented that the judge was indicating that he had been able to assess the strength of feeling having met with the boys. This was not evidence gathering but simply an inevitable consequence of having seen the boys [paragraph 28].

The second ground of the appeal was that the judge had erred in the exercise of his discretion in the management of the case by twice refusing permission for a psychological assessment of the boys. The mother had appealed the first decision and permission was refused on paper and an oral application was not pursued. A renewed application was made which was refused. This decision was not challenged. Baron J said that where there is an opportunity to appeal matters and that opportunity is not taken [or fully taken] it is not a matter for the court to seek to put it right.

## **Held**

The challenge to the s91(4) order fell away as the court found that there was no error in respect of the contact order made by the court.

## **Permission**

Family Law Week 