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Re P (Children) (2012)

[2012] EWCA Civ 401

07/03/2012

Barristers

Court
Court of Appeal (Civ Div)

Practice Areas
Public Children Law

Summary
There had been procedural unfairness in a judge's decision to make a placement order in respect of a child where the child's aunt and her husband, who were willing to care for him, had not been invited to engage with the court proceedings and therefore did not attend the hearing or submit any evidence. Given the significance of the decision for the child, the judge should have adjourned the matter to allow them to take part.

Facts
The child (X) was almost four years old. Care proceedings had begun in 2009 in respect of all five minor children of the family. In relation to X there was evidence of a significant failure to thrive, and when he was aged about one he was taken into foster care, where he remained. After a judicial fact-finding process and a multi-disciplinary assessment, it was decided that the four older children could be in the home but subject to intensive support. It was decided that X should not return to live with P. By that time a couple (B), who were X's aunt and her husband, had expressed their willingness to provide a home for him. The local authority conducted an assessment of B, the result of which was essentially positive. The afternoon before the relevant hearing P's solicitors called B and told them that they should attend, but at short notice they could not, due to work commitments. At the hearing P applied for an adjournment so the court could clarify B's position. The local authority and guardian opposed that. The judge gave a short judgment in which he referred to the assessment of B, and the fact that B had not attended or intervened or sent a statement to court or applied to intervene. He said that as the proceedings had already been very lengthy, X could wait no longer for a final decision. He made a placement order. P appealed against that decision, and B attended the appeal at the court's invitation.

Held
The procedure had fallen short of what was sufficient, for B's interests and above all for X's. It was a watershed decision for X and a procedurally sound approach was needed. The judge had been factually entirely correct in what he said about B's lack of involvement before the hearing and their absence at court, but in order to place substantial weight on their absence it was necessary for the court or the local

authority to have given a timely warning to B that they should engage with the hearing. That was not done. It would have been entirely possible at earlier hearings in the proceedings for the court to invite them to attend at the next one. Further, B had been entitled to think that the local authority was still considering X's placement with them and would be in contact with them. There had been no process at all to engage B. Although it seemed that the judge had considered whether to adjourn, he did not refer to that issue in his judgment. The issue was whether to press on or to allow a relatively short adjournment, of perhaps a month or two, to allow B to take part. That balancing exercise had not been at the forefront of the judge's mind. He was making a draconian order and the process needed to be fair and proper, so a comparatively short adjournment was both necessary and proportionate. The case would be remitted to a different judge. Although there were many advantages in a case being retained by a judge who had been steeped in it for a long time, in this case the judge had expressed in very strong terms his view that a placement order was required, so a new judge was needed.