

## S (A Child) [2013]

### [2013] EWCA Civ 1073

20/08/2013

#### Barristers

Joanne Brown KC

#### Court

Court of Appeal (Civil Division)

#### Practice Areas

Public Children Law

#### Summary

Appeal by mother against care and placement orders on the basis that the judge's orders were disproportionate. Appeal allowed and orders overturned.

#### Facts

In this judgment, decided before *Re B-S*, the Court of Appeal overturned care and placement orders following an appeal by the mother of a one year old. The focus of the appeal was whether the orders had been disproportionate. It was argued that the judge had not had sufficient information about the options for supporting the mother with the care of the child. The mother had learning disabilities. The case illustrates the difficulties of divisions within local authorities, as the adult team was supportive of the mother, whilst children's services did not agree. The services had failed to work together to properly assess the mother's needs.

#### Held

The Court found that the judgment did not convey any real sense of the fact that the placement order should be a last resort. In relation to the order, the trial judge had said the following:

"The effect on her of that is that she will of course break the bond with her mother, she will have to form new bonds. The reassuring thing, from my point of view, is that she is young enough perhaps to not know as much about it as if she were a two, three, four or five-year old. Therefore, whilst the effect on her would be disturbing, the effects, I am satisfied, would not be long-term." [para 36]

"The effect on her [of adoption] is ....that of course she will no longer be a member of M's family joint responsibility will be extinguished [sic] and that could have a damaging impact on her identity and emotional wellbeing. However, becoming an adopted parent [sic] will provide her with a permanent substitute family. It will provide her with people who are legally responsible for her and therefore they will be fulfilling parental responsibilities. If there is to be any contact that can be by letterbox so that she will, in the end, be able to know what her parents and her mother is like [sic] and will have access in the

future if she wishes to contact her mother. Her protection is more important at the end of the day than having contact with or remaining with her family.” [para 37]

The Court found that was not sufficient recognition of the orders that the judge was proposing to make, which were of huge consequence. The judge had not justified how it was established that the child’s welfare required adoption.

This judgment has since been added to by the judgment in *Re B-S*, which confirms and expands upon the observations above.

## Permission

Family Law Week 