

LA v (1) MF (2) CY (3) RN (4) N (2013)

[2013] EWHC 1433 (Fam)

24/05/2013

Barristers

Private: Marcus Scott-Manderson QC
Rex Howling KC
Deirdre Fottrell KC

Court

High Court (Family Division)

Practice Areas

Public Children Law

Summary

A local authority was granted placement orders in respect of three siblings where the mother's deception regarding the father's assault on a fourth child, for which he had been convicted, as well as regarding his abuse of her and one of the other children, coupled with her inability to empathise with the children, made the risk of future harm unacceptable and unmanageable. The continuity, stability and reunification of the siblings afforded by the proposed placements were important welfare considerations.

Facts

The applicant local authority applied for care orders and placement orders in respect of four children (C1, C2, C3 and C4).

The applicant local authority applied for care orders and placement orders in respect of four children (C1, C2, C3 and C4). C1, C2 and C3, who were between four and seven years old, were the children of the respondent mother (M) and father (F), who were both originally from Cameroon. It had been thought that F was father to C4, the eldest child, but DNA tests showed that they were unrelated. When F and M separated in 2010, F remained the children's primary carer, although in 2011 M travelled to France with all four children, seemingly to try and settle there, but returned after three months. F then assaulted C4 and all the children were taken into care. F was convicted of the assault, and both F and M were convicted of child cruelty. Although M and F accepted the local authority's care plan for C4 they opposed the applications in respect of the younger children. Until the instant hearing, M denied that she, C3 or C4 had been emotionally or physically abused by F. A psychological assessment found that M's deception made the risk of future harm to the children unmanageable. The social worker accepted that M could provide the daily practical care for the children but was concerned that she did not have the ability to protect them from harm.

M submitted that C1, C2 and C3 should be (1) returned to her care either in England or France; (2)

alternatively, placed with T; (3) alternatively, placed in a more culturally appropriate foster placement in France.

Held

The right to family life was engaged under the European Convention on Human Rights 1950 art.8 and the court was rightly aware of the draconian nature of the orders being sought, Kent CC v B (A Child) [2004] EWHC 411 (Fam), [2004] 2 F.L.R. 142, B (Children) (Care: Interference with Family Life), Re [2003] EWCA Civ 786, [2003] 2 F.L.R. 813 and C and B (Children) (Care Order: Future Harm), Re [2001] 1 F.L.R. 611 applied. Whilst M's practical day-to-day care was not in issue, the evidential foundation for her failure to protect the children in the past was clearly established and the consequent future risk was strong and compelling. Whilst M now accepted that C3, C4 and she herself had all been assaulted by F, it was inherently improbable that it had taken her 18 months to recall the events concerned, particularly when she had been separated from F for some time and had been receiving support in that period. M also lacked empathy with the children, which was deeply disturbing. Further, as there was still no credible account of what had gone on in the past, it would be very difficult to manage future risk. The deception as to what had happened, coupled with the risk of recidivism as described by the psychologist and the inability to empathise with the children meant that to restore them to M's care would put them at an unacceptable risk due to her failure to be able to protect them from significant harm. There were no steps that could be taken in an appropriate timeframe to manage that high risk. M's evidence as to her current social and financial position was vague and unhelpful and she had only just begun counselling, which could take years to bring about sustainable change. Although it was against the wishes of C1 and C2, the balance was firmly against returning the children to live with M (see paras 76, 78-79 of judgment). (2) A placement with T would not meet the children's welfare needs. Whilst T was a family member, C1, C2 and C3 did not know her and her commitment to them was not supported by her actions. She had not attempted to contact them since they had been in care and showed little insight into the effect on them of a move to live with her. Further, there was a concern that M saw placement with T as a stepping stone for a return of the children to her care (paras 81-82). (3) A placement in France would not meet the children's welfare needs: they did not speak French as their first language, C1 and C2 were extremely well settled and C3 was due to join them at their placement. Continuity, stability and the reunification of the siblings were very important welfare considerations (para.84). (4) C1, C2 and C3's welfare could only be met by there being a care order. Only such an order would secure their emotional development and educational needs bearing in mind their young age (para.82). (5) Their lifelong welfare needs required a placement order and in those circumstances M and F's consent were dispensed with pursuant to the Adoption and Children Act 2002 s.52(1)(b) (para.89).

Applications granted

Permission

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