

## Re H-C (Children) (2014)

**AC9101331**

21/03/2014

### **Barristers**

Jane Rayson

### **Court**

Court of Appeal Civil Division

### **Practice Areas**

Public Children Law

### **Summary**

A court in the family justice system should not readily contemplate sending a case for a re-hearing unless it was established to be necessary on the facts of the case and there was no alternative. In the instant case, where the process before the magistrates and a circuit judge was flawed, the case was remitted for a re-hearing so that a clear set of factual findings could be made in relation to the neglect suffered by the children.

### **Facts**

The appellants (P) appealed against a care order made by a judge in respect of their three children.

The children had been placed in foster care, following concerns that they were suffering neglect at home with P, and had been the subject of care proceedings in the magistrates' court. The magistrates heard oral evidence from two social workers and the guardian but P had chosen not to give oral evidence. They had been assessed as having a low IQ and learning disabilities but did not lack litigation capacity. In their judgment, the magistrates found facts verified from the papers and formed an adverse view of the oral evidence. They decided that the children should return home to P and made a supervision order. The local authority successfully appealed against that decision in the county court where the judge overturned the magistrates' decision and made a care order in respect of the children. He was critical of the magistrates' approach and found that their conclusions were not supported by the evidence.

### **Held**

(1) The magistrates' decision was flawed. The facts they had found verified by the papers had been provided by the local authority and not agreed by P. It was difficult to see how the facts could have been verified. It was inexplicable for them not to have asked P to give evidence. Parents giving evidence in court faced a stressful encounter but the family courts were well-equipped to make it as easy as possible for them. The magistrates were at a serious disadvantage as a result of P not giving evidence. It was P's opportunity to put their case before the court and to set out their version of disputed facts so that the court could then make reliable findings of fact and make the difficult decision on the children's welfare.

The magistrates' approach to the threshold criteria was flawed as they had focused on P rather than the children. In the absence of understanding the factual matrix under which the magistrates were operating, it was hard to see how they made their decision which resulted in confusion. (2) The judge was also in error. He had misunderstood the magistrates' findings in relation to the threshold criteria and their reasoning. He fell into an erroneous understanding of the factual background due to the confusing nature of the magistrates' judgment. The process before the magistrates and the judge was flawed. (3) A court in the family justice system should not readily contemplate a re-hearing unless it was established to be necessary on the facts of the case and there was no alternative. That was the position in the instant case. The findings of the judge and the magistrates were set aside and the matter was remitted for a re-hearing so that a clear set of factual findings could be made including the degree of neglect suffered by the children.

Appeal allowed

**Permission**

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