

F (No 2 Welfare – Approved) [2014]

[2014] EWFC 34

08/09/2014

Barristers

Henry Setright KC
Teertha Gupta KC

Court

Family Court

Practice Areas

International Children Law
Public Children Law

Summary

Judgment in care proceedings concerning the welfare of seven year old girl of Zimbabwean and American parents. Care returned to her mother; interim care order and an order preventing contact with the father to continue until the child's departure from England at which time there should be a child arrangements order providing for her to live with her mother.

Facts

This judgment follows the final hearing in protracted care proceedings concerning the child, Amanda. At a previous hearing, following the case being remitted on the successful appeal of the father on the issue of habitual residence, Mr Justice Peter Jackson found that the court had jurisdiction to make orders concerning Amanda's welfare. That judgment can be found [here](#).

The father did not appear and was not represented at this final hearing. He asserted that his health did not permit him to participate in this hearing. This was rejected by the learned judge who found that that the father, who had a week before been in front of him in person, absented himself of his own free will.

The mother continued to reside in South Africa with Amanda's younger brother, I. In the week before this hearing, she was able to travel to the UK to meet Amanda for the first time in four years.

Since August 2013, the local authority's plan had been to place Amanda in the care of her mother. There had been a lengthy delay due to the challenge to this court's jurisdiction, in circumstances where no party sought for the case to be dealt with in another jurisdiction.

Held

Peter Jackson J considered that the threshold criteria pursuant to s.31 of the Children Act 1989 were met in this case at the relevant time, and that the harm that Amanda was suffering or was likely to have suffered was attributable to the care given to her by her father in the following respects:

- (1) He failed (and still fails) to recognise that Amanda's needs are separate and distinct from his own.
- (2) In August 2010, he separated her from her mother and siblings, with the intention of doing so indefinitely, and in doing so deceived the mother. As a result, Amanda was deprived of contact with her mother until September 2014 and of contact with her siblings R and H (ongoing) and has never met her brother I despite having been in the same country, South Africa, for two months from August 2012.
- (3) He encouraged Amanda not to trust others, including her mother.
- (4) His lifestyle and attitudes caused Amanda to be socially and emotionally isolated from her own family and from broader society.
- (5) He travelled continually with her from April 2012 so that she had no home, friends or school.
- (6) Amanda's education was significantly delayed in her father's care.

In considering the issue of placement, Mr Justice Peter Jackson reiterated that only as a last resort can the child be placed outside of her family. The learned judge analysed the factors in the welfare checklist which impacted upon Amanda's welfare at paragraphs 41 to 55 of the judgment. The assessment of Amanda's guardian, her social worker and an independent social worker, concurred that a resumption of life with the father would be disastrous for her. The father had refused to have contact with Amanda since 2013 due to the imposition of supervision requirements.

In a detailed report, a South African social worker recommended that Amanda be reunited with her mother and siblings.

In summary, the father was found not to have the ability to meet Amanda's needs for emotional stability and security. Whilst the father had been psychiatrically assessed as suffering from a delusional disorder, given the wealth of other information it had not been necessary to rely on the diagnostic conclusions.

In contrast, the mother was found to have had the ability to overcome considerable difficulties in order to meet her children's emotional and educational needs. Expert immigration advice confirmed that the mother was likely to be able to remain in South Africa with her children, but in the less likely case that this was not possible, she could return to Zimbabwe with them.

Peter Jackson J also found that there was a risk in future that Amanda will suffer harm as a result of the father's actions and attitudes, and that any future unregulated involvement by the father in Amanda's life is likely to be seriously and damagingly disruptive. There was a real threat of a further abduction by the father.

In conclusion, the learned Judge found the threshold conditions met and that it was in Amanda's best interests to be placed with her mother in South Africa, and for her not to have contact with her father in the current circumstances.

An interim care order and an order preventing contact with the father were made until the eve of Amanda's departure from England. At that point a child arrangements order, providing for her to live with her mother, would take effect.

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