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Re L (Children) (2017)

[2017] EWCA Civ 2173

20/12/2017

Barristers
Alex Verdan KC

Court
Court of Appeal

Practice Areas
Public Children Law
An application for permission to appeal an order refusing a mother permission to oppose adoption applications: whether the Judge at first instance had reached the correct decision in determining the changes made by the mother did not amount to a change in circumstances for the purposes of s 47(5) of the 2002 Act.

This matter came before the President and MacDonald J in the Court of Appeal in November 2017.

Background
NL, born in September 2008 and TL born in November 2011 were made the subjects of final care orders on 26 April 2013 and placement orders on 8 July 2013 by Her Honour Judge Davies. The concerns that led to that decision were around the parents' own experience of childhood, the violence that had taken place throughout the mother's life, the father's criminal history and significant history of drug and alcohol abuse, the domestic violence that had occurred between the parents and what, Judge Davies was satisfied, was the mother's dishonesty about her relationship with the father in early 2012 and a lack of insight on how this impacted upon the children.

Furthermore, the mother was assessed in the proceedings by a clinical psychologist, Dr Stevenson, who opined that she required considerable therapeutic intervention to address her own difficulties to see whether she could make the necessary changes required to safely parent the children. This was to include twenty sessions of cognitive behavioural therapy (CBT). The mother had not accessed this therapy at the time of the final hearing.

The mother did not attend the final placement order hearing and the children were placed with their prospective adopters on 12 September 2013 and an application was made by them to adopt the children some two years later in August 2015. This was opposed by the mother who lodged her application the following month.

The final hearing of the mother's application for permission to oppose the making of adoption orders was held some ten months after that application was issued and over 2 days whereby oral evidence was

heard from the social worker, mother and Children's Guardian. The reasons for this extremely unfortunate delay were threefold: (i) difficulties in the mother securing legal representation; (ii) difficulties with the availability of the Children's Guardian; and (iii) an opportunity for the mother to file evidence from her treating therapist who was reported to have told the mother that she no longer needed CBT as recommended by Dr Stevenson.

At that final hearing, Her Honour Judge Brown concluded that whilst the mother had made positive efforts to address her difficulties, she had not complied with the recommendations of Dr Stevenson (see paragraph 26 of the judgment). This, in the Judge's view, was central to determining the mother's application and thus it was refused. Furthermore, no evidence was provided by the mother from her treating therapist to support her case that she no longer required CBT.

The mother issued her Notice of Appeal in August 2016 supported by 11 grounds summarised as follows:

33. ….The first five grounds and ground eleven assert, in sum, that s 47 of the Adoption and Children Act 2002 is unlawful based on a contended for incompatibility with the ECHR and accordingly the learned judge was wrong to conclude that the mother needed permission to oppose the adoption application and wrong to apply s 47 of the 2002 Act. Grounds six to ten assert, in sum, that the learned judge was wrong to consider the evidence before the court to be reliable, and to conclude on that evidence that there was no change of circumstances that met the first leg of the test under s 47 of the Act and, further, that the learned judge fell into error when she applied the prospect of success test contrary to the principles articulated in Re B-S [2013] EWCA Civ 1146 at [74(i)].

McFarlane LJ refused permission on paper on 16 November 2016. The mother, as she was then entitled to do under the rules, renewed her application for permission to appeal orally and a hearing took place on 22 December 2016 whereby directions were made seeking, amongst other matters, clarification from the treating therapist about whether in her view 20 sessions of CBT are still required to be undertaken by the mother.

The matter was heard on 17 February 2017 and judgment adjourned until 15 March pending a statement from the mother and the local authority. The Senior President of Tribunals hearing the matter confirmed the refusal of permission to appeal on grounds one to five and eleven, relating to the contention that s 47 of the 2002 Act is incompatible with the mother's ECHR rights. With respect to the grounds asserting, in sum, that the learned judge was wrong to consider the evidence before the court reliable, and to conclude on that evidence that there was no change of circumstances and that the learned judge fell into error when she applied the prospect of success test, the Senior President of Tribunals adjourned the permission application to a full court. In doing so, he observed that he considered it difficult to say that anyone had analysed what purpose the twenty sessions of CBT were intended to achieve and whether by passage of time, counselling and other life changes that purpose had been satisfied or was no longer relevant. The Senior President of Tribunals was troubled that the learned judge had not directed an assessment of the mother.

Therefore, by the time the matter came back before the court the local authority had commissioned a further assessment of the mother and children by Dr Stevenson and there was a parenting report of the mother and her new partner in respect of their young child which the court was asked to consider in this matter.

In refusing the appeal MacDonald J sets out from para 50 onwards his views that the appeal has no prospects of success. He reached the view that the totality of the information before Judge Brown "demonstrated that the issue of the extent to which the mother had engaged with recommended

therapeutic interventions to address those aspects of her psychological functioning fundamental to her capacity to meet the needs of the children was indeed central to the question of change of circumstances for the purposes of s 47(5) of the Act".

In the circumstances, there was no proper basis for suggesting that Judge Brown had been wrong to focus on the extent to which the mother had complied with interventions recommended by Dr Stevenson, and in particular the CBT, as the primary benchmark against which a change of circumstances fell to be measured.

Permission