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RY v Southend Borough Council

[2015] EWHC 2509 (Fam)

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Barristers
John Tughan KC
Sally Bradley

Court
High Court Family Division

Practice Areas
Public Children Law

Summary
Cross applications for an adoption order and the return of the subject child to local authority care pursuant to section 35(2) Adoption and Children Act 2002

Facts
The case concerned a young child SL, who had multiple physical and developmental impairments arising from her birth. She had been placed for adoption with RY, a single female prospective adopter who also suffered from mobility and other disabilities (about some of which a degree of scepticism had been previously expressed by her own mother and latterly by medical professionals).

The competing applications (the adoption application was first in time) arose as a result of a growing body of concerns emerging about RY's care of SL which prompted the local authority to seek SL's return to its care. By the time of the hearing, she had been returned to foster care on an interim basis, by agreement.

In considering the basis on which the placement had been founded, Mr Justice Hayden quoted from the positive social work assessment and set out, in its entirety, RY's own account, written for that assessment, of the her day to day life and ability to 'cope'. Although he found her to be confident, eloquent and articulate, neither document addressed her capacity to parent a child with a physical disability as the child became older and heavier. His Lordship concluded (and the local authority accepted) that there had been a failure to obtain and review RY's medical records and, as such, a failure to have sufficient regard to the relevant regulations and guidance.

The explanation proffered for the default (broadly, political pressure to avoid delay and financial sanctions against adoption agencies that did not perform, had been a major factor) was not something the court could evaluate. As a statement of the obvious though, matching criteria for any child, let alone those with SL's level of vulnerability should never be compromised. The matching of RY and SL had been

‘ambitious’.

The local authority did not however (rightly) put its case on the basis of the impact of RY’s disabilities, relying instead on a series of factual “premises”, the factual elements of which were largely accepted by RY, who, instead, took issue with the interpretation thereof.

The findings sought centred on the manner in which RY dealt with SL’s medical issues. It was said that she repeatedly refused nursing observations, rejected dietetic advice, refused medication and treatment, was unable to consistently accept medical advice, requested or insisted on her own treatment methods and focussed on unnecessary medical procedures. In addition, she ‘suctioned’ SL inappropriately, made repeated requests for her to have sedation despite being warned it could impede her respiration and administered oxygen inappropriately and without having the proper training.

Before considering the facts of the case, Hayden J set out the legal framework, including the provisions of s.1 and s.35 of the ACA 2002. He cited the analysis of Charles J in DL and ML and the Newham LBC [2011] EWHC 1127(Admin) that, as the application of s.35 required the application of s.1 of the Act, s.35(2) was not incompatible with Articles 6 and 8 ECHR. Accordingly, the s.1 criteria were equally applicable to both the adoption and the s.35 applications.

He also considered the issue of RY’s parental responsibility. There was agreement that RY and SL had a family life sufficient to engage ArtIcle 8 with RY relying on the grant of parental responsibility contingent on the child being placed pursuant to s.25 as a factor of importance when evaluating the Article 8 rights. The statutory guidance, however, was clear that the exercise of that parental responsibility was intended to be limited and could be circumscribed by the adoption agency.

In this case, matters had not been helped by the pro forma document used to delineate the extent of RY’s parental responsibility, which was criticised by Hayden J as “not…a model of pellucid clarity.”

In any event, the court did not need to determine whether RY had deliberately overstepped her authority as the substantive issue was whether or not her behaviour had caused or risked harm to SL.

Lastly, on the legal framework, RY contended that ‘harm’ in s.1 ACA 2002 should equate to the definition of ‘significant harm’ in s.31(2) CA 1989 so that there would be no unfair differential between the bar to removing a birth child and a child placed for adoption.

Hayden J observed that Article 8 was a ‘broad spectrum’; justification for interference which was fact specific and might result in a higher bar for a birth child than for one whose prospective adopters had not yet been fully evaluated or obtained full parental responsibility. The correct analogy was with s.1 not s.31(2) of the CA 1989 and there was a qualitative distinction between the two situations. Noting that in his opinion the distinction between ‘harm’ and ‘significant harm’ was largely illusory, the court would, nonetheless, approach the matter as if “significant harm” applied.

Turning to the evidence, the facts themselves were largely undisputed, with RY’s case being predicated on her being unfairly castigated for not accepting a “doctor knows best” approach and with the local authority (supported by the guardian) relying on a number of medical professionals, asserting that she had a “distorted perception” and a pattern of failure to work with professionals.

The report of the Consultant Paediatrician which was quoted from at length in the judgment, was identified as a model of good practice to be followed by others; it identified all the key issues, enumerating both the behaviours of RY and the harmful effects of these upon SL, leading Hayden J to conclude that, for whatever complex reasons, RY had become ‘invested’ in SL being viewed as more ill

than she was.

There was no need to go through the Scott Schedule. RY's case involved there having been 'misunderstanding' and confusion across the board with diverse professionals rather than, as pointed out by the guardian and accepted by the court, an inescapable pattern of failure to work with professionals.

Held

The court, considered and then rejected all RY's alternative accounts of the undisputed facts, some of which the learned judge highlighted in the judgment by way of example of RY's 'bizarre' behaviour which had, he concluded, 'spiralled out of control'.

Having taken into account the positive elements he had identified in RY, Hayden J nevertheless considered the balancing exercise was not even "remotely" delicate; RY presented a real and serious risk to SL. Accordingly, he would grant the local authority application and dismiss her application to adopt.

RY had serious issues to address and whilst it was to be hoped that she would do so, it would not be safe to place a child or vulnerable adult in her care.

Having dealt with the main application, the court then went on to consider issues of anonymity and the balancing of Article 8 and Article10 rights. Having conducted a survey of the relevant case law, the learned judge considered the President's view set out in The Process of Reform [2013] Fam Law 548. In this case, there would be no identifying link between the prospective adopter and the child that might risk causing disruption to her care so argument based on that assertion was not "well rooted". RY was, nevertheless, intensely vulnerable and any publicity might undermine the therapeutic help she needed; this weighed more heavily than the competing arguments and thus (although this might need revisiting if circumstances changed) the balance currently fell in favour of anonymity.

Permission

To read the judgment click here.