

W (Adoption– Reunification)

[2015] EWHC 2039 (Fam)

22/07/2015

Barristers

Chris Barnes

Court

High Court Family Division

Practice Areas

Public Children Law

Summary

Hearing following Court of Appeal setting aside care and placement orders. Adoption order not granted and child returned to live with biological parent and siblings.

Facts

Russell J was concerned with W, a 2½ year old girl, who was made subject of care and placement orders in September 2013. Mr and Mrs A (with whom W had been placed for 16 months) applied for an adoption order under s.46 of the Adoption and Children Act 2002 (ACA 2002).

W had three older full siblings (aged 11, 8, and 6) who remained living with their father during the original care proceedings. At the conclusion of the care proceedings, the older siblings remained with their father with supervision orders and W remained in foster care and care and placement orders were made. In December 2014, the father was granted permission to oppose the making of an adoption order and in May 2015, the Court of Appeal allowed the father's out of time appeal against the care and placement orders (see Re H [2015] EWCA Civ 583).

The decision for the court was whether the welfare of W was best met by reunification with her birth family or by being adopted by Mr and Mrs A. Russell J summarised the history of the proceedings in detail and concluded that the factual matrix leading to the final orders in the care proceedings was at the lower end of the threshold criteria necessary to make a care order enabling removal of a child from her parents and siblings.

The case law requiring a proportionate approach was rehearsed, including the decision of Re B [2013] UKSC 33 and subsequent cases. An adoption order could only be made if it is justified having given paramount consideration to W's welfare throughout her life and the provision of s.1 of the ACA 2002. The court can only make an adoption order if it is necessary – it is not enough to be better for this child to be adopted than to live with her birth family.

When balancing the options of W returning to live with her father and siblings and being adopted by Mr

and Mrs A, the court noted that the As care of W had been of a high standard and it was accepted that W is settled, thriving, happy and healthy. However, Russell J concluded that, at the time of the original care proceedings, the decision for W to remain in state care with a plan for adoption was, at best, finely balanced. This was underlined by the Court of Appeal's decision to set aside the care and placement orders. Had the principles of Re B been followed in the original care proceedings, it was highly likely that W would have been placed at home with support.

There were undoubtedly risks in moving W from the As to her birth family, including that she would experience distress and perhaps suffer trauma for a period. However, this possible harm to W is likely to be short to medium term and is capable of being overcome with appropriate professional support. This was balanced with the likely considerable difficulties if W remained with the As and later tries to come to terms with the circumstances of her adoption and the knowledge that she alone of her siblings had been denied the opportunity of being brought up within her own family and that her adoptive parents were party to that denial. The difficulties that W would encounter as an adopted person where the Court of Appeal had set aside the placement order would affect her throughout her life and would impact her sense of belonging and identity.

Held

Russell J concluded that the father is capable of supporting W through a distressing short-term transition and that the difficulties are not sufficient to deny W her place within her family of origin. The facts of this case do not amount to a situation where "nothing else will do". The fact that W has been with the As for 16 months and is settled may mitigate against a move in the short-term, but it cannot form the reason for W to remain in an adoptive placement when balanced against her welfare for the rest of her life. The local authority has an obligation in law to bring about reunification and to provide the help, support, advice and assistance necessary to so do.

Russell J considered it regrettable that the older siblings' views were not put before the court as their Article 8 rights were engaged and the court should have had regard to their wishes and feelings pursuant to s.1(4)(f)(iii) of the ACA 2002. In the absence of direct representations from the siblings, the judge assumed that they would want their sister to live at home with them and their father.

Permission

Family Law Week 

To read the judgment click [here](#).