

Re H (Children) (2015)

[2015] EWCA Civ 583

11/06/2015

Barristers

Kate Branigan KC
Chris Barnes

Court

Court of Appeal (Civil Division)

Practice Areas

Public Children Law

Summary

In terms of relief from sanctions there was no basis for treating family proceedings any differently from other civil cases. In determining whether to grant a parent an extension of time in which to appeal against the making of a placement order, the court could consider all the circumstances of the case, which included the merits of the underlying appeal.

Facts

A father appealed against a judge's refusal to grant him permission to appeal out of time against the making of care and placement orders in respect of his daughter (W).

The father and mother were living apart and W, at two-and-a-half, was the youngest of their four children. The mother accepted that she could no longer care for the children, who had been living with their father. At the final hearing in September 2013, the district judge directed that the three older children should remain with their father under supervision orders. However, he concluded that care and placement orders should be made in respect of W. The father was advised by counsel that he had no grounds of appeal. Nevertheless, he filed his own notice of appeal 20 days outside the 21-day time limit specified in the Family Procedure Rules 2010 r.30.1(1)(b). His application for permission to appeal out of time was, however, refused on the papers and he did not renew it orally. W was placed with prospective adopters, who issued an adoption application in May 2014. The father obtained permission to oppose the adoption application and, pursuant to r.4.1 of the Rules, renewed his application for permission to appeal out of time against the care and placement orders. The judge refused to grant permission to appeal, approaching the application as one for relief from sanctions to which r.4.6 applied. He considered the father's appeal to be arguable, but held that he had given no good reason for the delay.

While the local authority sought to uphold the refusal of permission, it conceded that the father's proposed appeal was unanswerable. It indicated that if the appeal went ahead, it would not oppose the setting aside of the care and placement orders. The father submitted that the judge had erred by failing

to evaluate and weigh in the balance the merits of his proposed appeal.

Held

The local authority's concession was well made. It was clear that, if allowed to proceed, the father's substantive appeal had to succeed. The question was how that informed the decision about relief from sanctions. Pursuant to the Children Act 1989 s.32(1), care proceedings had to be concluded within 26 weeks of issue. The court had a limited power to extend time if necessary to deal with the case justly. In exercising that power, it had to consider the impact of the delay on the welfare of the child to whom the application related. Extensions were not granted routinely, and they required specific justification. While the statutory provisions did not expressly apply to appeals, the timetable for any appeal had to be compatible with the general principle that delay was likely to prejudice the welfare of the child. In that context, the 21-day time limit for filing notices of appeal took on an enhanced importance. As a matter of law, if no notice of appeal was lodged in time, the local authority was entitled to regard any placement order as valid authority to proceed with placing the child for adoption. If that process had to be put on hold to accommodate a late application for permission to appeal there would plainly be an impact on the child's welfare. While that was inevitable in a system which permitted appeals to be made out of time where justified, every effort had to be made to avoid it. Judges making care and placement orders had to spell out the need to file any notice of appeal within 21 days; the courts had to strive to process applications for permission to appeal with the utmost efficiency; and the fact that an application for permission to appeal was out of time was to be regarded as a significant factor by a court deciding whether to grant relief from sanctions (see paras 25-26, 29-30, 33-35 of judgment). While r.4.6(1) did not specify that the underlying merits of the appeal were to be considered on an application for relief from sanctions, the court had to have regard to all the circumstances of the case. In that context, it could consider the underlying merits, with the caveat that "all the circumstances of the case" were to be given less weight than the two factors specified at CPR r.3.9: the need for litigation to be conducted efficiently and at proportionate cost, and the need to enforce rules, practice directions and orders. In that respect, family cases were to be approached no differently from ordinary civil cases. The instant case was, however, exceptional. The two r.3.9 factors were outweighed by the concession that the district judge's decision to make care and placement orders was unsupportable, and the fact that the father had been given leave to oppose the adoption application. In refusing to grant permission to appeal, the judge had underestimated the merits of the proposed appeal. Moreover, the fact that W's welfare was to be re-investigated at the contested hearing of the adoption application made it entirely right that the instant court should set aside the care and placement orders (paras 36-46).

Permission

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