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Z-O'C (Children) [2014]

[2014] EWCA Civ 1808

25/02/2015

Barristers
Private: Oliver Jones
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Court
Court of Appeal (Civil Division)

Practice Areas
Public Children Law

Summary
Appeal against supervision orders allowed on basis that there should have been further assessment of the parents

Facts
This was a successful appeal against the decision of HHJ Wilding to make supervision orders in respect of a 7-year-old girl and a 15-month-old boy.

The underlying concern had been one of long-term neglect which was said to be the result of a lack of parenting capacity and low motivation. At trial the local authority sought care orders for both children, planning for the elder child to remain living with grandparents and for the younger to be adopted. The trial judge had had three pieces of written evidence before him: (i) a psychological assessment which concluded that motivation could not be measured, but that the father had a capacity to compensate for the mother's need for support, and that there was a possibility that the parents could "enhance their parental skills to a level that would allow good enough parenting"; (ii) a negative parenting assessment which appeared to have been compiled without the authors having had sight of much relevant material; and (iii) the report by the children's guardian who had been appointed late and had only met with the parents once and observed contact once.

At an interim review hearing counsel for the mother had sought a direction for the instruction of an independent social worker to complete a parenting assessment. Counsel had argued that the court would otherwise be left with a serious deficit in the evidence. This application had been refused by a District Judge, who instead provided for a family group conference to explore the issue of further support. That conference never took place.

At trial the judge found fault with the negative parenting assessment and thus with the guardian's report which had relied on it. As the Court of Appeal described, the judge was left with only the psychological report and the oral evidence of the parents on which to base his welfare judgement. Though he made a

number of adverse findings the judge largely accepted the evidence of the father about his motivation, bolstered by the positive comments in the psychological report. On this basis the judge determined that the local authority had not made out their case that "nothing else would do" and made a supervision order, requiring the care plan to be changed to one of rehabilitation to the parents' joint care, for both children. The guardian appealed, supported by the local authority.

Held

In a lead judgment delivered by King LJ the Court of Appeal allowed the appeal on the basis that,

"[…] the judge, having discounted the welfare evidence filed, was, as was recognised at trial by counsel, left without essential evidence to enable him to carry out the welfare evaluation. Without parenting assessment evidence in the broadest sense the judge was left without the material he needed with which to compare the benefits and deficiency of each realistic option" (para 57)

In particular, the judge had failed to fully consider the welfare implications for the older child, separately from those of the younger. The implication was that further evidence should have been sought, irrespective of delay. King LJ noted with approval that when seeking the independent social worker report counsel for the mother had relied on Re NL (A Child) (Appeal: Interim Care Order: Facts And Reasons), and Pauffley J's observations that, "Justice must never be sacrificed upon the altar of speed". The matter was remitted to the designated family judge for the area for consideration of further assessments. Finally, the Court condoned the judge's approach of asking counsel for the local authority and the guardian at the hearing of their application for permission to appeal whether they sought clarification on any particular issue, in line with the comments made in Re A & L (Appeal Fact Finding) [2011] EWCA Civ 1205, [2012] 1 FLR 134 by Munby LJ (as he then was). The Court did not however accept counsel for the mother's submission that their negative reply precluded them from raising such issues on appeal.

Permission

Family Law Week