

Re G (A Child) (2015)

[2015] EWCA Civ 119

20/02/2015

Barristers

John Tughan KC

Court

Court of Appeal (Civil Division)

Practice Areas

Public Children Law

Summary

On an application to revoke a placement order, the judge had erred in finding that there was no sufficient change in circumstances within the meaning of the Adoption and Children Act 2002 s.24(3). She had not seen a transcript of the placement hearing, relying instead on an unapproved note, and she had not made any findings on the disputed factual issues relevant to her decision.

Facts

The appellant mother appealed against the refusal of her application for leave to apply for the revocation of a placement order made in respect of her six-year-old son (J).

The mother sought to revoke the order, which had been made by a deputy district judge in August 2012, on the basis that there had been a change in her circumstances within the meaning of the Adoption and Children Act 2002 s.24(3). There was no transcript of the August 2012 hearing, but an agreed document recorded the basis for finding the threshold criteria satisfied. The judge hearing the mother's application for leave did not see that document. Instead, she relied on notes of the hearing prepared by counsel for the local authority. Those notes did not purport to be a note of the judgment, they had not been created for use in any future hearing, and they had not been approved by the deputy district judge. They also contained disputed assertions about the mother's conduct at the hearing. The judge correctly directed herself that the test was a two-stage one: whether there was a sufficient change in circumstances and, if there was, whether to exercise her discretion to grant leave. Although the judge identified several potentially significant areas of factual dispute as to the existence of any sufficient change in circumstances, she made no findings of fact. Nevertheless, she found that there had not been a sufficient change in the mother's circumstances and that it was therefore unnecessary to go on to the second stage.

The mother submitted that the judge had erred in finding that there had been no relevant change of circumstances; proceeding on the basis that the disputed assertions about her conduct were true; and failing to take account of the fact that the adoption panel had not approved the match between J and his

prospective adopters.

Held

(1) Quite apart from the issues raised in the grounds of appeal, other aspects of the procedure adopted on the mother's application for leave were of great concern and were capable of infecting the outcome. The judge had been disadvantaged by seeing neither a transcript nor the agreed threshold criteria document, and she had been wrong to rely on counsel's unapproved notes. In the absence of the agreed threshold criteria document she could not have established the true baseline without reconstructing the evidence available in the court below. Even if she had been able to satisfactorily reconstruct the situation at the time of the making of the placement order, she would not have been able to form a valid judgment about the asserted change in circumstances without making findings on the disputed facts. Since it was difficult to argue that the mother's evidence, if accepted, did not amount to a change in circumstances, the judge must have implicitly found against her. She had also accepted a submission by the local authority that any relevant change in circumstances was lessened in weight by virtue of the fact that it was recent, and in doing so she had set the bar too high. While the sustainability of any change and the impact on J was open for consideration at the welfare stage, the mother's change of circumstances passed the first stage. For that reason, her appeal would be allowed on the basis of her first two grounds of appeal (see paras 19-22 of judgment). (2) (Obiter) The issue raised in the mother's third ground had been determined in P (A Child) (Adoption Order: Leave to Oppose Making of Adoption Order), Re [2007] EWCA Civ 616, [2007] 1 W.L.R. 2556. The change in circumstances specified in s.24(3) was not confined to the parent's circumstances. There were unlikely to be many situations in which a change in the child's circumstances alone would be sufficient to open the gateway, and it was not suggested that there had to be an in-depth analysis of the child's welfare needs at the first stage. However, a court charged with evaluating the sufficiency of a parent's change of circumstances could not disregard a change in the child's, Re P considered (para.23). (3) The order refusing M's application would be set aside and the application would be remitted to a different judge (para.26).

Permission

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