

## M (Children) [2014]

### [2014] EWCA Civ 1753

29/01/2015

#### **Barristers**

Paul Hepher

#### **Court**

Court of Appeal (Civil Division)

#### **Practice Areas**

Public Children Law

#### **Summary**

Parents successfully appeal against the making of a special guardianship order in favour of foster carers

#### **Facts**

Following concerns about the mother's misuse of alcohol and the father's inability to control his temper, the two subject children were removed from the parents to foster carers where they remained throughout the proceedings and to whom special guardianship was ultimately granted. A parenting assessment of the parents was completed and resulted in a plan for gradual rehabilitation of the children to the parents' joint care. During this rehabilitation process, there were incidents of the mother drinking and one reported incident of verbal abuse between the parents. This incident of domestic violence ended the rehabilitation plan and the father separated from the mother. Each parent then put themselves forward to care solely for the children.

A child psychologist provided three separate reports in the course of the proceedings, the first supporting the rehabilitation plan. The subsequent two reports however provided a pessimistic prognosis that either parent would be able to care for the children. The psychologist concluded that the father had a limited understanding of a child's emotional needs and had difficulties in providing consistent, reliable parenting. Concerns were also raised by the psychologist, social worker and Guardian that the elder child stated that she did not want to be cared for by the father. Of note, at the final hearing the father's anger management issues were no longer a prominent factor.

Prior to final hearing the judge acceded to the father's application for further assessment, concluding that such an assessment was necessary. The original parenting unit completed this second assessment, albeit with different social workers involved. This assessment concluded that the father was not able to meet the children's emotional needs. The judge was later highly critical of the second assessment on the basis that the author had not considered the first positive parenting assessment and was unable to explain why there was a change in the father's ability to parent. The judge concluded that the second assessment was inadequate and placed little reliance on it. The judge however relied on the final

evidence of the social worker and the Guardian as well as the child psychologist. The judge adopted the professional's reference to the father's inability to provide "emotional attunement", although on two occasions stating that this was "an elusive concept". He stated that the father's ability to care for the child was a finely balanced case but concluded that the children could not be cared for by him. The judge stated that the mother's case had caused him less difficulty, relying on the psychologist's conclusion that there was a substantial risk of relapse in her alcohol condition.

A special guardianship order was made in favour of the foster carers. Both parents appealed.

## Held

McFarlane LJ endorsed Black LJ's judgment in *Re: B* [2014] EWCA Civ 1172 at para 66:

"The more finely balanced the decision in a case, the more exacting must be the judge's approach to the evidence, the more precise his findings of fact on pivotal matters and the fuller the explanation of his route to his determination."

McFarlane LJ agreed with the trial judge that the father's case was finely balanced and accordingly there was a need to give a precise evaluation of the advantages and disadvantages for the children being placed with the father. However he concluded that the judge failed to do this, instead simply stating his conclusion which lacked the necessary analysis and failed to address the welfare checklist in full which would have assisted such analysis. The analysis by the trial judge was accordingly unreliable and insufficient to justify an order which permanently separated the children from the care of the father. McFarlane LJ went on to consider the mother's appeal. Although it was accepted that the judge was entitled to rely upon the potential risk of relapse into drink, he had not conducted a proper analysis, instead relying only on the statistical figures provided by the psychologist.

Accordingly, both parents were granted permission to appeal and their appeals allowed. The matter was returned to be heard in front of a different Circuit Judge. Further submissions would be heard, if requested, as to a need for further parenting assessment of the father.

McFarlane LJ commented on the length of time in which it took for judgment to commence, two months after the close of oral submissions and the length of time for judgment to be completed, a further three weeks thereafter due to insufficient time at court on the first day of judgment. This three month judicial delay had particular significance given the father's application at final hearing that further time (approximately 3 months from the time of oral evidence being heard) be given for him to complete work by way of video interactive guidance, was refused by the judge on the basis that it was outside the children's timescales.

## Permission

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