

Re K & H (Children) (2006)

[2007] EWCA Civ 1898

20/12/2006

Barristers

Paul Hepher

Court

Civil Division

Facts

A judge had erred in granting an interim care order removing two children from their father, as he had applied the wrong test in respect of the risk of harm the children faced.

The appellant father (F) appealed against the decision of a judge to remove his two children (C) under an interim care order applied for by the respondent local authority. F had been subject to police involvement with regard to his use and possession of drugs. The local authority sought care orders in respect of C and a social worker was assigned to the case. In her report, the social worker expressed complete satisfaction at the arrangements between C and F and stated that C were thriving in their environment. During the course of proceedings the local authority maintained that C needed to be removed urgently from F because of his drug use and its associated dangers. The judge made clear that he was opposed to such a course of action, but upon hearing the evidence of the guardian and the police, he changed his position. In his judgment he stated that he was not prepared to accept that it was necessary to find an immediate and significant risk to C before approving the local authority's application, as it was too high a standard, and that reasonable grounds for believing that harm was likely was a sufficient test. F submitted that the judge had erred by applying the wrong test in law when considering the risk posed to C.

Held

HELD: It was apparent that the judge had inadvertently applied the wrong test in his consideration of the local authority's application. At an interim stage, the removal of children from their parents was not to be sanctioned unless it was in the interests of the child's safety, and a high standard had to be met, H (A Child), Re (2002) EWCA Civ 1932 and M (Children)(Care Order: Removal), Re (2005) EWCA Civ 1594 , (2006) 1 FLR 1043 applied. The judge had rejected the approach taken in those authorities and applied a test in determination of a different question. Once it was demonstrated that a discretionary decision rested upon the application of an incorrect test, it manifestly could not stand. Further, it was plain that C were firmly aligned with F and did not want to be removed. It was important that the court heeded their wishes and feelings. An order was substituted to the effect that C would reside with F and could not be removed from the household without an application to the court, save in emergencies.

Appeal allowed.

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