

B County Council v L & Ors (2002)

[2002] EWHC 2327 (Fam)

07/11/2002

Barristers

Private: Jonathan Cohen QC
Charles Hale QC

Court

Family Division

Facts

Where an assessment of parenting ability had been terminated early and without good reason, a further assessment was ordered before a full care order could be considered.

Application by a local authority, supported by the children's guardian, for care orders in respect of a brother and sister ('B' and 'E') and an order under s.34 Children Act 1989 ending contact between the parents and the children following placement with prospective adopters. The court had previously been concerned with B, when he was aged 11 months, in May 2002 and those proceedings had not been determined by the time E was born in July 2002. Shortly thereafter the court ordered that a residential assessment be carried out at a hospital to consider the possibility of the parents caring for E. Following disclosures by the mother that she had previously harmed B the residential assessment was terminated because the hospital could not provide 24 hour supervision due to other heavy staff commitments. The parents now sought interim care orders and an assessment at a different hospital of their parenting ability in respect of E with the possibility that that assessment could be expanded to include B.

Held

HELD: (1) In exercising powers under s.38(6) the child's welfare was an important but not the paramount factor. At the heart of the court's decision-making process in deciding whether to seek further evidence prior to making a care order was the question of whether the court could conclude, on the existing evidence that it had sufficient information to make a properly informed and procedurally fair decision. (2) The balancing of the competing factors was a judgmental exercise to be carried out in the particular circumstances of each case. In this case the assessment had been terminated for pragmatic reasons, namely the lack of staff. This was not a valid or reasonable reason and the termination was unfair to the parents and the children. The report prepared by the hospital was based on an incomplete assessment, however, the report failed to recognise this and had made a recommendation on incomplete evidence. There were a number of inconsistencies in the report as well as reasoning from events which could have supported other conclusions and a number of unsupported statements. (3) The decision of the Court of Appeal in *Re C (Children) (residential assessment)* (2001) EWCA Civ 1305 made it plain that if the local authority sought to rely on a funding argument that argument had to be supported by appropriate evidence not only as to its inability or difficulty in providing funding but also as to the lack of funding

elsewhere. The local authority had failed to adduce sufficient evidence for the court properly to refuse to direct an assessment on funding grounds. (4) Given the findings in relation to the termination of the assessment and the funding arguments an assessment of the parents and of E ought to be ordered unless there was some compelling reason not to do so. A failure to order an assessment would mean that the court was making a decision on incomplete evidence and was refusing to take up a course of action that could facilitate family reunion. (5) In the circumstances, an interim care order and a further assessment would be ordered in respect of E. B's medium to long-term welfare would be best served by the making of an interim care order pending the result of the assessment in respect of E, at which point a decision would be made whether there ought to be an assessment in respect of B also.

Order accordingly.

Permission

Lawtel 