

Re F-H (Children) (2008)

(2009) 1 FLR 349; [2008] EWCA Civ 1249

10/09/2008

Barristers

Alex Verdan KC
Alistair G Perkins
Barbara Mills KC

Court

Court of Appeal

Summary

It had been inappropriate for the court to decline to conduct a pre-arranged fact-finding hearing in relation to allegations of child sex abuse on the basis, among other things, that the mother of the children believed the allegations. Although the threshold for the requested care order could have been reached without the findings, it was necessary to make them before deciding on the best future programme for the children.

Facts

The appellant local authority (L) appealed against a judge's refusal to conduct a pre-arranged fact-finding hearing into allegations of sexual abuse which arose during care proceedings. L had issued the proceedings in respect of the four youngest children of the first respondent mother (M). As part of those proceedings a fact-finding hearing was arranged to investigate allegations that M's eldest son (X) had sexually abused his four younger siblings. Before the start of the hearing X asked the judge to reconsider the need for the court to enquire into the allegations made against him. The judge accepted X's application and concluded that such an enquiry would be "unnecessary, inappropriate and disproportionate" in view of M's belief that the allegations were true and her acceptance that she had failed to protect her children. In giving reasons for declining to conduct the hearing, the judge stated that it would be difficult to determine the facts in relation to the allegations and that she was reluctant to do so whilst they were being investigated by the police. Furthermore, she believed that the threshold criteria required for the requested care order could be met in the absence of any finding in relation to the allegations.

Held

HELD: It was a valid exercise of the court's discretion in family proceedings to decide at the outset of a pre-arranged fact-finding hearing that it was not necessary to conduct it. However, the judge had failed to act cautiously before putting the chosen forensic course into reverse. Difficulty in determining facts relating to the allegations should not have contributed to the abandonment of the hearing, B (Children) (Sexual Abuse: Standard of Proof), Re (2008) UKHL 35, (2009) 1 AC 11 considered. Moreover, the

prospect of criminal proceedings against X should not have dissuaded the judge from conducting the hearing. In light of the different standards of proof, the result of any ensuing criminal proceedings would not have automatically obviated the need for an analogous enquiry in family proceedings. A later admission had been made by M that she no longer knew whether she believed the allegations against X. Her earlier belief that the abuse had taken place was an entirely insufficient foundation for the future work of the court in deciding the best future programme for the children. Furthermore, the fact that the allegations of abuse did not need to be considered before a conclusion could be reached that the court had the power to make the care order in no way supported a conclusion that they did not need to be considered before deciding whether the best outcome for the children was to make such an order; it was significant that M and her three youngest children wanted to be reunited. Accordingly, it was necessary to find facts as to whether the four children had been sexually abused by X.

Appeal allowed

Permission

Lawtel 