

Re C (Children) (2009)

[2009] EWCA Civ 959; (2010) 1 FLR 895

10/07/2009

Barristers

Ruth Kirby KC

Court

Civil Division

Practice Areas

Public Children Law

Summary

A judge had fully considered the threshold requirements when imposing a care order in respect of two children who had been removed from their mother and placed into foster care by the local authority. There had been no breach of the European Convention on Human Rights 1950 art.6 and art.8 in removing the children, and the whole process had been fair.

Facts

The appellant mother (M) appealed against a care order made in relation to her two children. M had separated from the children's father and he had no contact with them. The children were apparently happy and well cared for by M until she started a volatile relationship with a new partner (H) who had a criminal conviction for common assault of his former partner. M left the children in H's care while she went away. When she returned, she reported to the police that one of the children had a bruise in the shape of a hand. The respondent local authority became involved, the children were put on the child protection register and care proceedings were initiated. M made various additional allegations of violence on the part of H. Successive interim care orders were put in place under which the children lived with M, provided H had no contact. M failed to comply with that condition, despite being warned by the court that the children would be removed if she failed to do so. Eventually, a social worker who visited the home was sufficiently concerned by H's presence, M's aggressive behaviour and the volatile situation that the children were temporarily taken into foster care where they remained after that time. A final care order upheld the removal of the children with contact arrangements in place between M and the children. M contended that (1) as a matter of law, the threshold requirements had not been met and the judge had failed to take into account her good parenting before she became involved with H; (2) the local authority had overreacted by removing the children; (3) the whole process breached the European Convention on Human Rights 1950 art.6 and art.8.

Held

HELD: (1) It was impossible to say that the judge was wrong in coming to the view that the threshold was met. He had seen the case on many occasions and was aware that H had been in and out of contact with

M and the children and that he had a history of violence and had hurt the children in the past. If M had taken up with him again, as she had done before, the children could well have suffered significant harm before protective measures had been put in place. If nothing else, there was a likelihood of significant harm at the point when proceedings were issued. (2) It was not outside the local authority's discretion to form the view that removal of the children was a reasonable response, even though the interim care plan provided that the children would live with M. M had been found to have allowed a man in the house who presented a risk. She had agreed that H would have no contact with the children and was warned that a breach would lead to their removal. Her response to a reasonable social work check was a gross overreaction, which took place in front of the children. It was clearly an overheated, volatile and risk-laden atmosphere for two young children and the social worker could not be criticised for taking the view that the children's interests demanded that they be in a place of safety and calm whilst everything had time to settle down. The matter was in court the following day and under court review afterwards. (3) There was no breach of art.6 or art.8 in the entire process. At every stage, there was objective judicial control of the local authority's decisions and there were numerous hearings before the judge where the children had a guardian in place. The process was fair as to substance, procedure and as to the discretions vested in the trial judge.

Permission

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