

Re T (Children) (2001)

[2001] EWCA Civ 1345

23/07/2001

Court

Court of Appeal

Summary

An unsuccessful appeal from a judge's decision that the removal of a child injured by her father from the family did not necessitate the removal of her sibling.

Facts

Local authority's appeal from a decision of HH Judge Catlin on 11 April 2001 made in care proceedings concerning two children ('J' and 'H'). J was born on 29 July 1997 and H on 12 March 2000. In June 2000 H sustained serious injuries and fractures to her ribs and left femur disclosed by a skeletal survey on 21 August 2000 after which H was passed to the care of her maternal grandparents. J remained with her parents ('M' and 'F' respectively). At that stage there had been no evidence to explain H's injuries. However, in February 2001 in the course of consultations with a doctor, F admitted responsibility for the injuries explaining them as a product of profound jealousy and frustration, distinguishing his relationship with H to that he had with J. Those admissions were referred to two doctors ('D1' and 'D2') who accepted the descriptions of F's actions as capable of having caused H's injuries. The issues for the final hearing were: (i) whether the threshold criteria had been met for J and H; (ii) how H's physical injuries were caused; (iii) whether H should be returned home; and (iv) whether F should stay out of the family home. On the first day of the hearing D1 asserted his misgivings and the judge concluded that both parents should give evidence about what happened to enable D1 to determine whether F's actions caused H's injuries. After that evidence D1 agreed with D2 that F's account was medically credible. The parents also gave evidence on the family relationships, including evidence that F's relationship with J was straightforward and uncomplicated. After the conclusion of the first day the parties sought to agree a statement of facts relevant to the threshold criteria and the second day was spent negotiating the terms of that document on which agreement was reached on all but three paragraphs. The parties presented that result to the judge on the third day and no further evidence was called, although the judge offered the opportunity to resume or commence oral evidence. Accordingly, the judge's determination was made on the submitted written evidence and on the oral evidence of M and F. The judge recorded that the hearing was to determine whether the threshold criteria was met concerning the two children and noted that there was no evidence that J had suffered at the hands of F, concluding that he could not find that J was likely to be injured by either parent. The local authority submitted that the judge could not have concluded on the parents' slender evidence that there was no need for protective action regarding J and that the very grave injuries suffered by H would inevitably lead any judge to conclude that the court's protective function had to be maintained at least until the disposal hearing.

Held

HELD: (1) It was easy to find shortcomings in the court's process but with hindsight there was very little evidence before the court on whether the threshold criteria was met in respect of J. However, there should have been a deeper investigation on 11 April 2001. (2) The judge dealt with the submissions adequately and while it was possible to criticise the arrangement of material within the judgment, that in itself would not amount to a flawed judgment. It would be wrong to adopt an over-analytical approach to an extempore judgment in the circumstances facing the judge. (3) This court was loath to remit this case to the county court for a retrial on fuller evidence because that would inevitably lead to significant additional costs and delay. The essential question was whether the judge saw and heard enough of the parents to trust them and it was inconceivable that he would have made the decision he did if he felt that course would expose J to a measurable risk. Further, the local authority was not precluded from reopening the issue of J's safety at the disposal hearing.

Permission

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