

Re J (A Child) (2010)

[2010] EWCA Civ 946

25/05/2010

Barristers

Ruth Kirby KC

Court

Civil Division

Practice Areas

Public Children Law

Summary

Where a child had been placed in the care of her extended family but the family subsequently changed its mind about allowing her mother informal contact, the mother's application for formal contact was remitted for full reconsideration as the court had refused the application without considering its merits.

Facts

The appellant mother (M) appealed against an order upholding the refusal of her application for contact with her youngest daughter (B). M suffered from psychiatric ill health. Her two eldest children were being cared for by their grandmother and M's sister (X), but remained in contact with M. Following care proceedings taken by the first respondent local authority, B had also been placed in X's care, but M's first application for formal contact had been dismissed summarily on the basis that the local authority's care plan envisaged that future contact would be arranged by X. M's second application for contact with B was also refused. In reaching that decision, the justices referred to the fact that M's first application had been dismissed, and agreed with the local authority's contention that since that first decision was made there had been no change of circumstances. However, by the time of the second application, X had indicated that they opposed contact.

Held

The instant case was not a straightforward one which was entirely without merit. The care plan quite clearly envisaged that there would be ongoing direct contact to be made by the family informally. However, at the time of M's second application for contact, X had indicated that they were not prepared to countenance any direct contact at all. There was therefore, contrary to the views expressed, a change in circumstances which needed to be examined. M thought that she was going to get some continuing contact one way or another. It was now being denied, yet at no point in the sorry history of the case had her objection to the change been determined on its merits. M's first application was summarily dismissed, and the ruling by the justices was peremptory and not well reasoned. They had made no reference to the special background features of the case, namely that it involved a placement within the family, and they did not appear to have had regard to the need for managing the complex family

relationships. Further, scant attention had been paid to the fact that M's contact with her other children was satisfactory. It was not known why, in such a complex family situation, it had been decided that no contact at all should be allowed with B. Hypothetical questions arose as to whether M would be precluded from attending her other children's birthdays because X would be there with B. If the family could not manage their complex family dynamic themselves, the court had to intervene and regulate. M's contact application would therefore be remitted to the county court for full reconsideration on its merits

Permission

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