**4PB**, 6th Floor,
St Martin's Court,
10 Paternoster Row,
London, EC4M 7HP
T: 0207 427 5200
E: clerks@4pb.com
W: 4pb.com

# Re J (A Child) (2009)

## [2009] EWCA Civ 1210 ; (2010) 1 FLR 1290

29/10/2009

**Court**
Civil Division

**Practice Areas**
Public Children Law

**Summary**
Where a McKenzie friend assisting a mother in care proceedings had been allowed by the judge to argue in favour of a further assessment, it was wrong to then refuse to grant her rights of audience to conduct the final hearing.

**Facts**
The appellant mother (M) appealed against an order refusing to grant her McKenzie friend (X) rights of audience to conduct the final hearing in care proceedings relating to her youngest child. M had 10 children. The first respondent local authority had brought care proceedings in relation her youngest child following the failure of a residential assessment which had been carried out immediately after he was born. M was assisted in the care proceedings by X after parting company with her lawyers. During the proceedings the judge had allowed X to argue that M's capacity to care for her child should be further assessed by an independent social worker. However, the judge declined to grant the assessment on the basis that it was not in the public interest to spend further money carrying out an assessment by an independent social worker who would not be in a position effectively to contradict psychiatric and psychological evidence from previous assessments that M was not in a position to properly care for her children. He also declined to give X rights of audience to conduct the final hearing. M appealed against that decision and against the judge's refusal to allow a further assessment.

**Held**
(1) It was important to be child focused when looking at either independent assessments by social workers or at applications under the Children Act 1989 s.38(6). It was not a question of the mother's right to have a further assessment; the question was whether the assessment would assist the judge in reaching a conclusion or the right conclusion in relation to the child in question. In the instant case, the judge had exercised a discretion and had done so appropriately on all the facts available to him. It could not be said that his conclusion was plainly wrong. Furthermore, since he had based himself on the latest authority on the point and considered the matter carefully, it could not be said that he had erred in law.
(2) The judge had been concerned about X because she was associated with a well-known Member of Parliament, who in turn was the principal motivator of an organisation which sought to investigate family cases and was often highly critical of the family justice system. However, X wished to represent M on the merits of her application. She was not making, nor was she seeking to score, any form of political point.

Furthermore, the judge had imported into his judgment a number of unwarranted factors relating to X; he appeared to think that she was a professional McKenzie friend when she was not. There was also an illogicality by the judge; on the one hand he had allowed X to speak and advocate the application for an assessment, whilst on the other hand he had denied her the ability to represent M on the substantive application. It was important that, whatever the ultimate decision, M should feel that she had been represented to the best of her ability. There was no more emotive issue than taking children away from their parents and it was important that M should have the opportunity to be represented as she wished. M wanted X to represent her and that option was likely to save time and effort. It was clear that X would represent M in the application on the basis of its merits and the merits of M's opposition to it, and the case would be determined on its merits by the judge. Accordingly, it was appropriate to grant X rights of audience before the judge.