

In the matter of C (A Child) sub nom AL v (1) JH (2) C (A Child by her Guardian) (2011)

[2011] EWCA Civ 521

06/05/2011

Barristers

Private: Marcus Scott-Manderson QC

Court

Civil Division

Practice Areas

Public Children Law

Summary

Parental contact was vitally important and there was a need to demonstrate very good grounds if it was to be suspended. In the instant case, the expert evidence all pointed to the conclusion that contact should be suspended and there was no reason for the judge to depart from that evidence. Rather than abandoning contact, the judge's order was part of an ongoing process to make contact work.

Facts

The appellant mother (M) appealed against an order that there be no direct contact between M and her three-year-old daughter (C) until further order and, under the Children Act 1989 s.91(14), that M might not make an application for direct contact without leave for 18 months. The relationship between M and C's father (F) broke down. M attempted suicide in 2008. A residence order was granted in favour of F and supervised contact was ordered between C and M at a contact centre. During the proceedings a fact-finding hearing was conducted which rejected M's allegation of rape against F and found it to have been made maliciously. Expert reports were prepared by a consultant psychiatrist, a clinical psychologist and a family centre director following assessments. The contact centre refused to arrange any further contact between M and C following M's aggressive and argumentative behaviour. Supervised contact resumed three months later but was suspended pending the final hearing. At that hearing, F's evidence was that, at several contact sessions, M had lost control of her emotions and failed to put C's needs above her own. The expert evidence was that M was emotionally fragile and her judgment became impaired during episodes of intense anger, which happened frequently, and that affected her ability to meet C's needs. C's guardian's recommendation was that contact should be suspended. The judge found that F had done his best to keep M in C's life. He further found that M needed to undertake psychological therapy before contact with C could be resumed. M submitted that the judge (1) had been wrong and premature to suspend contact in the absence of any cogent, exceptional reasons for doing so and the consequence was that the judge had abandoned any possibility of a relationship between C and M; (2) should have directed the appointment of a further expert to undertake a family assessment before making an order.

Held

HELD: (1) The judge's starting point was correctly his recognition of the vital importance of contact and the need to demonstrate very good grounds if it was to be suspended. Contact between a parent and child was to be terminated only in exceptional circumstances where there were cogent reasons for doing so and when there was no alternative, *Gnahore v France* (40031/98) (2002) 34 EHRR 38 ECHR applied, *P (Children) (Contact Order), Re* (2008) EWCA Civ 1431, (2009) 1 FLR 1056 followed. Contact was to be terminated only if it was detrimental to the child's welfare, *M (A Minor) (Contact: Supervision), Re* (1998) 1 FLR 727 CA (Civ Div) followed. Where a judge at first instance had exercised his discretion, an appellate court could only interfere if the judge had exceeded the generous ambit within which reasonable disagreement was possible and was, in fact, plainly wrong, *Piglowska v Piglowski* Unreported November 3, 1997 CA (Civ Div) applied. The judge referred to the European Convention on Human Rights 1950 and to the welfare checklist and there was nothing to show that he did not have the key principles in mind. He approached the case with great care and his conclusions were firmly founded in the evidence. The expert evidence all pointed in the same direction and there was no reason for the judge to depart from it. Rather than abandoning contact, the judge's order was part of an ongoing process to make contact work. There was evidence that the delay in the resumption of C's relationship with M would be advantageous in the long term when M had addressed her problems and the judge was entitled to conclude that breathing space was needed for 18 months. As part of that overall process the judge was entitled to make the s.91(14) order (see paras 40, 44, 46-47, 60, 62, 64-65, 67-69 of judgment). (2) The judge was entitled to proceed without requiring a further family assessment. He had all the information and expert assistance he reasonably required to make the important decision to suspend contact. There was more than enough evidence to justify his decision and a further assessment would not have led to a different outcome (paras 70-71).

Permission

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