

MG and another v A Local Authority [2011]

[2011] EWCA Civ 745

28/06/2011

Barristers

Private: Amanda Barrington-Smyth

Court

High Court

Practice Areas

Public Children Law

Summary

Applications by mother and one of her children for permission to appeal against interim care order on the grounds that it was effectively a final order. Held that the judge had mis-directed himself, the permission was granted and appeal allowed.

Facts

The mother and one of her two children, JJ, thirteen years old, appealed the decision of the circuit judge who made an interim care order in favour of the second local authority. The Court of Appeal granted permission to appeal, allowed the appeals and interim care orders were made in favour of the second local authority but such being predicated on the basis of the two children living at the maternal aunt and uncle's home until the final hearing.

The two major issues in the proceedings were the mother's fragile mental health and the relationship between the mother and the father. The first local authority's care plan was for the children to be placed with their mother in the second local authority's area (although the Court of Appeal noted the transfer of the allocation between the local authorities failed to take place adequately). The following hearing was concerned with the second local authority's care plan that the children should be removed from the mother's care. At that hearing, the judge treated it as a final hearing despite making interim orders and the effect on the mother was to deny her the opportunity to argue her case at a final hearing.

Held

The Court of Appeal held that despite the judge being addressed by the advocates as to the relevant authorities he made what he understood to be final orders, although for the reasons he gave he acknowledged that they must be labelled as interim. Thus he mis-directed himself to such an extent that the Court of Appeal had to interfere with his decision.

The Court of Appeal went on to state that the judge had clearly had a change of heart because at a further directions hearing he allowed the mother to file further evidence. In the meantime, the Court of

Appeal ordered that in the best interests of the children, while interim care orders should be granted, the children should live with their maternal aunt and uncle (upon the recommendation of the Guardian) until the final hearing later in the year.

Permission granted and appeal allowed.

Permission

Family Law Week 