

# A County Council (Applicant) v (1) K (2) C (3) T (By the Child's Guardian HT) (Respondents) & (1) CAFCASS (2) Anonymous Referrer (3) T (4) Nagacro (Interveners) (2011)

**[2011] EWHC 1672 (Fam)**

04/07/2011

## **Barristers**

Jo Delahunty KC

## **Court**

Family Division

## **Practice Areas**

Public Children Law

## **Summary**

Where there was an irrevocable disagreement between CAFCASS and the court-appointed guardian in care proceedings, neither had the final say; it was for the court to make the final decision. Guidance was given about the appropriate procedure for engaging the court and about the proper conduct of any out-of-court discussions.

## **Facts**

In a dispute concerning the appropriate living arrangements for a two-year-old boy (T) who was the subject of care proceedings, the court was required to determine the role of CAFCASS and the need for transparent communication between agencies involved with safeguarding children. The local authority had proposed that T be placed in foster care pending assessment of his parents' capacity to care for him. The parents (P) and T's guardian (G) opposed removal. The Family Proceedings Court accepted that T should remain at home and an interim care order was made. When the social work team returned to their office after the hearing, their conversations about the case were overheard by an agency employee who was not involved in the case and who had formerly worked for CAFCASS. She sent an anonymous email to CAFCASS to the effect that G had "blocked" T's removal from the family home and that the interim care order was insufficient to protect him. After contacting G the next day, CAFCASS informed the local authority that it had concerns about the case and G's conduct of it. It also notified the court that G's recommendation was unsafe and that T should be removed from home. It requested that G be de-appointed. A court clerk terminated G's appointment without notice. The local authority requested the court to reconsider its decision to allow T to remain at home. As the challenge to the earlier decision was not an appeal and was not supported by new grounds of risk, the case was transferred to the instant court. P submitted that it was unfair for the court to revisit the question of T's placement when the

request to do so had not arisen out of concern for their parenting, but only out of a series of events which had been far from transparent and in which G's independent role had been wholly undermined. They maintained that unfairness and collusion had prevented a fair decision-making process.

## Held

(1) It was important to remember that CAFCASS was principally a court advisory service and its role was different to that of a court-appointed guardian, who was also an advisor. Only the court could revoke or change a guardian's appointment; only the court could make a binding decision about a child. Like the judiciary, CAFCASS sought to cherish and preserve the independence of the guardian under a tandem model that remained a child's best protection against poor social work practice. The fact that a guardian had unprecedented powers of access to local authority documentation under the Children Act 1989 s.42 supported that view. There was nothing unhealthy or wrong about a disagreement between professionals in care proceedings, but the crucial thing was that the process should be both transparent and fair. CAFCASS as a body had to monitor the quality of work undertaken by guardians. That was an important function and part of its general structure, but it had to be balanced against a guardian's independence and it did not mean that the guardian's views should be subservient. Where there was an irrevocable disagreement between them, neither had the final say; it was for the court to determine. The proper course in that situation was for CAFCASS to apply to intervene and for its views, together with those of the guardian, to be placed before the court, each providing an explanation why the other should not be preferred. In the instant case, CAFCASS had been complicit in the shocking failure to notify P of events and it had adopted a decision-making role that was reserved for the court (see paras 41-44, 65, 106-114 of judgment). (2) Where discussions about a live case took place outside of the court room, they should be (a) rare, (b) strictly necessary for the proper progress of the case; (c) minuted and (d) disclosed to all parties and be made available to the court if required (paras 115-116). (3) The conduct of the anonymous agency employee, whilst plainly reprehensible, was a matter between her and her employer. The local authority proposed to ensure that employees in the area of child protection were trained in, and reminded of, appropriate whistleblowing procedures, including how to access and utilise them (paras 50, 97, 100-102).

## Permission

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