

R v (1) A Local Authority (2) B (3) ABC (By Her Children's Guardian) (2011)

[2011] EWCA Civ 1451

06/12/2011

Barristers

Jane Rayson
Andrew Powell

Court

Court of Appeal

Practice Areas

Public Children Law

Summary

A district judge had not erred in the exercise of his discretion in refusing an application for a second expert to be instructed in care proceedings.

Facts

The appellant father (F) appealed against a supervision order made in respect of his two-year-old daughter (C), the third respondent. Because of concerns about C's mother's parenting abilities and because F was known to have two cautions for having had sexual intercourse with underage girls, the first respondent local authority had begun care proceedings in respect of C. It was agreed between the parties that an expert (E) should assess the risk posed by F to C. E's report indicated that there could be a risk when C was older. F applied for a second expert to be instructed. The district judge decided to hear F's evidence and that of E and then decide whether a second report was necessary. Following the evidence, the district judge concluded that a further report would not take the case any further and would delay finalising the case. He ordered that C should live with her mother under a supervision order and that F could have supervised contact with C. F argued that the district judge had erred in refusing his application for a second expert.

Held

The district judge had not erred in the exercise of his discretion. He had been perfectly entitled to proceed to hear oral evidence before ruling on F's application. An application of the guidance issued by the President of the Family Division on case management decisions and appeals demonstrated that the district judge had exercised his discretion appropriately. The district judge had asked himself the crucial question of whether he needed the additional report to enable him to make a fair and proper decision. His behaviour had been transparent. He had had regard to the timetable for the case and his duty to bring it to a conclusion without delay, particularly given C's age. It had, furthermore, been for the district judge to determine issues of fact and credibility between F and the expert (see paras 19-21, 28-29 of

judgment). Family proceedings relating to children were unique in the control judges had over expert evidence. No expert could be instructed without judicial permission. A judge decided each application for a second opinion on its merits by reference to the criteria set out in the overriding objective, Practice Direction (Fam Div: Family Proceedings: Experts) (2008) 1 WLR 1027 Fam Div and the Family Procedure Rules 2010, Practice Direction cited. The critical questions remained whether the report was necessary for the judge to deal justly with the case and what the additional expert would add to the case. There had to be a good reason to justify further reports, K (Local Authority: Expert Evidence), Re (2007) EWHC 3289 (Fam), (2008) 2 FLR 707 applied (paras 33-34).

Permission

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