

Re EN (A Child) (2007)

[2007] EWCA Civ 264

28/03/2007

Barristers

Paul Hopkins QC

Court

Civil Division

Summary

A judge in care proceedings had not erred in his evaluation of the factors that had to be taken into account in deciding to refuse an application by a grandmother for a special guardianship order. Also the judge had been entitled to make an adoption placement order and to refuse an order for contact.

Facts

The appellant paternal grandmother (K) of a child (E) appealed against the refusal of her application for a special guardianship order and the making of a care order and placement order. E had been admitted to hospital suffering from various forms of non-accidental injury. He was later discharged from the hospital and placed into the care of K. The local authority then started care proceedings following a demand by E's mother (M) that E be returned to her care. The injuries were found to have been perpetrated by M. K applied for a special guardianship order. Her case was not supported by either an independent social worker or the children's guardian. A report from a psychologist stated that although on balance an adoptive placement was preferable, there was a possibility of a different outcome if K was able to relocate and break all family ties. K was prepared to implement such a plan. The local authority initially proposed adoption outside the family, but subsequently supported K's application. The judge concluded that the benefits to E of a new future in a replacement family outweighed the advantages of staying with K. He held that E was at risk of further physical harm from M and long-term emotional harm because of the unresolved conflict between the two sides of the family. The judge dismissed K's application, invited the local authority to reconsider its care plan and subsequently made a care order. He then made a placement order and refused to make a contact order. K argued that the judge had erred (1) in his evaluation of the factors that had to be taken into account; (2) in his evaluation of the expert evidence and had been wrong in preferring adoption outside the family; (3) in making a placement order and in refusing contact.

Held

(1) It was for the judge to evaluate the various factors that pointed in favour of maintaining E's placement with K and the factors that pointed in favour of adoption outside the family, just as it was for him to strike the ultimate balance. The judge could not be faulted for his analysis and evaluation of the various factors that had to be put in the balance or the way in which the balance should finally be struck. The judge had been presented with compelling evidence that the future risks of emotional harm were

very real and unacceptably high. He had given cogent reasons for concluding that he could not be satisfied that K would be able to make the physical and emotional break, set up an appropriate new home for E and safeguard E in future. Accordingly, the appeals against the refusal of the special guardianship order and the making of the care order were dismissed. (2) The judge had well in mind the shortcomings in the reports of both the social worker and the children's guardian. His approach did not fail to take account of the differences between the welfare checklists in the Children Act 1989 and the Adoption and Children Act 2002 and he had properly evaluated the lifelong effects for E in making the placement order. (3) The judge had been entitled to decide that the appropriate provision for contact had been made within the care plan and that it was not necessary for the court to make an order for contact under s.26 of the 2002 Act.

Permission

Lawtel 