

McC (A Child) [2012]

[2012] 2 FLR 121; [2012] EWCA Civ 165

19/01/2012

Court

Civil Division

Practice Areas

Public Children Law

Summary

Judgment on a preliminary application to adduce fresh medical evidence in the context of an appeal against final care and placement.

Facts

The proceedings concerned a young baby who was taken into interim care at the age of 10 weeks, having suffered a number of injuries. A fact-finding hearing took place in October 2010 at which it was found that the injuries were non-accidental and that the parents were the only possible perpetrators. At the welfare hearing, which took place in March 2011, care and placement orders were made.

Thereafter, the child was placed with prospective adopters and an application was made for her adoption. However, in October 2011 the mother, appearing in person and assisted by a McKenzie friend, applied for permission to appeal the welfare judgment. At the oral hearing permission was not given, but the application was adjourned to be heard with appeal to follow and a number of directions were made.

Shortly thereafter, the mother's McKenzie friend obtained employment as a paralegal and the mother secured public funding through the same firm. Shortly before funding was obtained the mother's solicitors approached an expert witness in the US, Dr Barnes, seeking a report. A preliminary report was duly obtained but not filed or served until the morning of the appeal hearing.

Held

In refusing the application to admit the report, Thorpe LJ referred to (a) the failure of the report to satisfy the conditions in *Ladd v Marshall*; (b) the flawed manner of production of the report; (c) the failure to obtain permission to release documents to the expert or for the expert's instruction; (d) the manner of instruction; and (e) the lack of notice to the other parties. His Lordship pointed out that there is an obligation on an appellant to seek permission from the court before releasing documents and instructing experts to provide reports for the purposes of an appeal or application for permission. Reference should be had to the FJC's recently published Guidelines for the Instruction of Medical Experts from Overseas in Family Cases, which by extension apply to appellate proceedings. Rimer and Smith LJ agreed.

Permission

Family Law Week 