

Re I-A (Children) (2012)

[2012] EWCA Civ 582

21/03/2012

Court

Civil Division

Practice Areas

Public Children Law

Summary

In finding that a man had sexually abused his 12-year-old step-daughter, the judge's judgment was so fatally flawed that it could not stand. She had failed to address the evidence of the step-father or the child's mother at all, or to deal with the child's manifest lack of credibility. The finding that abuse had occurred was set aside.

Facts

The appellant father (F) appealed against a judge's finding that he had sexually abused his 12-year-old step-daughter (K).

The family concerned consisted of a mother (M), K, who was her daughter from a previous relationship, F and the couple's son (L). The respondent local authority had become involved when K told teachers at her school about incidents within the family, including domestic violence. A risk assessment under the Children Act 1989 s.47 was ordered and a social worker appointed. K told the social worker that she had been sexually abused by F. The police investigated, but no action was taken. F moved out of the family home to prevent K and L from being removed from M's care. He was allowed supervised contact with the children at weekends. The investigation within the family proceedings culminated in a trial. The judge heard evidence from social workers, the relevant police officer, and F and M. She accepted the local authority's case that F had abused K, and rejected the case advanced by F and M. The judgment did not mention, let alone weigh critically, the evidence of F and M, only the local authority's evidence. F applied to the judge for her to deal with points of crucial importance seemingly overlooked in her judgment and, in due course, she issued an "afterword" to her judgment. That recited the nature of the evidence given by F in summary form, but lacked any critical analysis of it, and failed to deal with any summary or analysis of M's evidence.

F contended that the judgment was so flawed that it could not stand.

Held

(1) F's attack on the judgment was forceful and revealed many fatal flaws. There was no evidence that F had sexually abused K other than her assertion. It was a fact that K's allegations in respect of domestic violence within the family and against her had been retracted, and a fact that allegations of sexual

victimisation made by K against two boys in her school had been investigated by the police, who noted inconsistencies in her account, and they were retracted by her. K had partially retracted the allegation of sexual misconduct by F. It was a fact that, on many instances, K had devised fantasies and told stories at school, and embroidery of that sort had been her style and character since she was a young child. On any view, the positive case against F was unsustainable. Given the nature of K's accounts, it was particularly important that the judge should have focused closely on the evidence of F and M, and dealt with it fully and critically in her judgment. The failure to deal with it at all was such a fundamental one that her conclusion was unsustainable. The judge's afterword did not even begin to shore up the deficiencies in her judgment. Accordingly, her finding that F had abused K had to be set aside. (2) (Per Etherton, L.J.) The judge had been concerned with determining the truth of grave allegations of a sexual nature. In order to carry out that task, she was required to conduct an investigation and set out her conclusion following a detailed and conscientious examination of all the evidence. The pattern of persistent lies told by K severely undermined her credibility. The judge had made no attempt to deal with F's evidence refuting individual allegations made by K. Overall, it was impossible to uphold the judgment, given its failure properly to address F's evidence and weigh against it K's allegations in the light of her manifest lack of credibility. (3) Given the evidence available at trial, it would be futile and disproportionate to order a retrial. The court therefore ordered that the judge's findings be set aside, and that was to be an end to the matter.

Appeal allowed

Permission

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