

Re S (Children) (2012)

[2012] EWCA Civ 847

17/05/2012

Court

Civil Division

Practice Areas

Public Children Law

Summary

A judge had been entitled, in the course of care proceedings, to exclude a mother as a possible future carer for her two children. The judge had taken account of positive reports as to her parenting ability in the past but had rightly given weight to an assessment under the Children Act 1989 s.37 which expressed concerns as to the mother's care existing just prior to the issue of proceedings.

Facts

The appellant mother (M) appealed against a decision excluding her as a possible future carer for her two children (S).

Reports on M's parenting had been compiled by the first respondent local authority in 2006 and 2008. They regarded her parenting capacity as excellent. A further report in 2009 recorded M's emotional warmth and interaction with S. In September 2010, however, S passed into local authority care by voluntary arrangements under the Children Act 1989 s.20 and the local authority sent M a letter explaining its high level of concerns for S arising from incidents of domestic violence, M's level of supervision over them and her persistent cannabis use. A report of November 2010 recommended that M would require support and information if she was to resume care of S. The court ordered an assessment under s.37 of the Act. The subsequent report referred to a number of concerns over M's care of S. Two weeks later, the local authority applied for care orders, with the ultimate intention of obtaining placement orders for S's adoption. At trial in November 2011, the question whether the threshold for granting a care order under s.31 was crossed was no longer live, M having made certain concessions, and the essential matter before the judge was which of several future management options would best promote S's welfare. The author of the s.37 assessment was cross-examined and the judge recorded her acceptance that prior to the issue of proceedings, M had functioned well as a parent, but also her opinion that, since then, M had given her reason to understand that there was domestic violence in the relationship between M and S's father. The judge excluded M as a possible future carer, but left open the possibility of S's uncle caring for them. The matter was adjourned pending assessment of the uncle, but he then withdrew. M appealed against her exclusion from S's future care. In January 2012 the local authority was granted care orders but the placement order application was deferred pending M's appeal.

M contended that ruling her out as a future carer was a disproportionate intervention and plainly wrong

given the strong evidence of good-enough parenting before proceedings began, and that the judge had erred in failing to give sufficient weight to that evidence. The local authority, supported by the second respondent guardian, submitted that the judge had been entitled to find that, whilst the older reports showed positive signs, when more intensive assessments were undertaken, they showed that M was in no condition to care for S. The local authority served a respondent's notice expressing support for the judge's reasoning and conclusion. The guardian also served a respondent's notice, relying on the local authority's contentions.

Held

The judge had considered the earlier positive reports about M's parenting and had had regard to them when making his choice between the care options for S presented by M and those presented by the local authority. Those earlier reports did not, however, present the full picture. It was crucially relevant that the s.37 assessment concerned the facts and circumstances as they were immediately preceding the issue of proceedings. In reaching his conclusion that M should be excluded as future carer of S, the judge had explained himself comprehensively in a judgment which was a model of conscientious care. There was no real force in M's criticism of the judgment and her attack on it had no prospect of success. (2) (Per curiam) Respondents' notices which simply asserted their support for the conclusion arrived at by a judge for the reasons he had given were entirely superfluous.

Appeal dismissed

Permission

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