

Re C (A Child) (2012)

[2012] EWCA Civ 1281

25/07/2012

Barristers

Andrew Powell

Practice Areas

Public Children Law

Summary

A recorder's order that a small photograph of a child be sent to her father once a year was set aside where it was based on a misunderstanding of the expert evidence and where there had been an inadequate consideration of the child's welfare.

Facts

The appellant local authority appealed against a recorder's order that a passport-sized photograph of the child (C) be sent to the respondent father (F), who was in prison, once a year.

C had been abused by F. The recorder ordered that there be indirect contact between C and F which would include a small photograph of C to be sent once a year. The recorder had not given reasons for making that decision and later provided an addendum judgment which stated his reasons as being that C had retained a close relationship with F's family, F was a living presence in C's mind and, in reliance on the expert psychological evidence, that indirect contact would assist C's therapy.

The local authority submitted that the recorder's decision went against the evidence of the social worker, the guardian and the expert psychological evidence which had been that any indirect contact should have been in consultation with C's therapist, and not to assist C's therapy.

Held

The background to the case suggested that the seemingly innocuous provision ordered by the recorder paid scant regard to the interests and rights of C whose welfare was paramount, and ignored the preponderance of evidence which went against that request. The recorder had not correctly understood the expert evidence and accordingly his conclusion rested on the shakiest of foundations. There had been an inadequate consideration of C's position. It might amount to a violation of her rights that, without any benefit to her or need in her, she was the participant in a process which might be impossible for her to understand in years to come as she acquired an understanding of her past and of the sort of father that she had. The recorder's order was insufficiently or erroneously reasoned and was set aside.

Permission

Lawtel 