

LA v (1) X (2) T (3) R (Respondents) & (1) DJ (2) PJ & SJ (Interveners) (2011)

**[2012] 2 FLR 456 : [2012] Fam Law 392; [2011] EWHC 3401
(Fam)**

09/12/2011

Barristers

Dorothea Gartland KC

Court

High Court (Family Division)

Practice Areas

Public Children Law

Summary

The lack of a scheme for the provision and funding of intermediaries to assist child witnesses to give evidence in family cases required urgent attention.

Facts

The first intervener in care proceedings, being the relevant child's maternal grandmother, applied for an order that the child's uncle (J) should be permitted to give oral evidence.

A fact-finding hearing was due to take place for the purposes of deciding whether the threshold criteria under the Children Act 1989 s.31 were met. The local authority alleged that there was a risk of significant sexual and emotional harm as a result of sexual abuse and behaviour involving, among others, the child's mother and father. J, who was 17 and suffered from Asperger's syndrome, had given an ABE interview in which he made allegations of inappropriate sexual behaviour with him instigated by the mother and involving the father. The mother's case was that those allegations had been made as a result of "influence, suggestion and distortion" on the maternal grandmother's part. The grandmother wanted J, her son, to give evidence to the effect that that was not the case.

Held

(1) The balancing exercise required to be carried out in accordance with the guidance issued in W (Children) (Family Proceedings: Evidence), Re [2010] UKSC 12, [2010] 1 W.L.R. 701 justified the conclusion that J should not give evidence, whether orally, through a written statement or in a pre-recorded interview, Re W applied. Although he was 17 and wished to give evidence, there was real doubt as to whether he had fully understood the consequences to him of doing so. The psychologist who had seen him had been concerned about the impact on him of feeling the blame if he gave evidence and it did not go the way he thought. In addition, the preparation that would be required to facilitate his giving

evidence that would assist the court in the determination of the truth meant that his testimony would in all likelihood be of limited, if any, evidential value. Moreover, the areas that he would have to be asked about would need to cover an extensive period of time and would involve abstract concepts of time, which he had real difficulties with. Further, this was not a case where his evidence on the relevant issues was critical: the court had material available to it from many other sources, in particular the evidence from the maternal grandmother (see para.33 of judgment). (2) It seemed to be the case that, although the use of intermediaries had been considered at the highest level, no scheme had yet been made available for family cases (unless there was a direct link to a criminal case in which the witness was involved), and there were real obstacles to the funding of such support. That situation required urgent attention; otherwise, the court would be asked to undertake a balancing exercise without the ability to put in place what it might determine was the required support to minimise the harm to a child in giving evidence. If the court was unable to consider relevant evidence, that might have implications under the European Convention on Human Rights 1950 art.6 and art.8 (paras 42, 44).

Permission

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