

Re C (Children) (2012)

AC9700974

14/11/2012

Barristers

Rex Howling KC

Court

Court of Appeal (Civil Division)

Practice Areas

Public Children Law

Summary

Judgments given at different hearings by the same judge in a family proceeding should be read together, even if one judgment did not mention another. Taking into account the contents of all three judgments in care proceedings concerning two children, the judge had been entitled to make an order under the Children Act 1989 s.34(4) empowering the local authority to suspend contact between the children and their father.

Facts

The appellant father (F) appealed against an order under the Children Act 1989 s.34(4) empowering the respondent local authority to suspend contact with his two children.

The children were aged nine and four. They had lived with F and their mother (M) until the local authority had obtained an interim care order and placed them in foster care in 2009. At a hearing in May 2012 the judge held that the children could not return home and considered the issue of contact. The judge heard evidence that F had had some very successful contact with the children, but that he had also said thoughtless and damaging things to them. The judge found that F had been unable and unwilling to accept the criticisms made of him, and that he was not prepared to acknowledge that his conduct was so damaging to the children as to undermine the foster placement. At a hearing in July 2012 the judge made a final care order. M had signed a contact agreement for contact six times per year, but F had refused to sign. The judge attempted to broker an agreement between F and the local authority without success. She was concerned that F had attempted to secretly record his contact, but more concerned that he had been making comments to the children seeking to undermine the foster placement. She considered that at the forefront of F's mind were his own battles with the local authority. She granted the local authority's application for a s.34(4) order.

F argued that (1) contact had never been the focus of the July hearing, the application for a s.34(4) order had not been issued in advance as it should have been and was not supported by evidence or witnesses, he only heard about the application the day before the hearing, he had not been given time to prepare,

and he had not appreciated the gravity of such an order; (2) the children's relationship with their parents was of fundamental importance and the order failed to preserve that, and an order under s.34(4) should only be made in exceptional circumstances, which were not present.

Held

(1) From the material before the appeal court it was clear that F knew in advance that the local authority would be applying for a s.34(4) order. He also knew the basis on which it was applying, which were matters within his own knowledge so he would have been capable of dealing with them. There was no doubt that F understood the importance of such an order. It had been open to F address each issue raised by the local authority, which the judge had given him the opportunity to do, or to seek an adjournment. The judge had put to F that he was not behaving in contact sessions and was attempting to undermine the foster placement and that she might make a s.34(4) order. The impression of the exchange between the judge and F was that F was seeking to focus on his legal rights and his grievances against the local authority, and the judge was trying to focus on the children's welfare. There was nothing wrong with the procedure. (2) The decision to make a s.34(4) order did not just rely on events between the May and July hearings, there had been problems with contact before the May hearing. The judge's three judgments had to be read together. A judge in family proceedings built up knowledge of a family over time. It was helpful if a judge referred to parts of earlier judgments, but a failure to do so did not mean that the earlier judgments should not be incorporated. On the facts, the judge had been entitled to make the order. Further, the order did not provide for no contact, it gave the local authority power to suspend contact if appropriate. That was not an inappropriate order in the instant case.

Permission

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