

# RE S (A CHILD) (2005)

**[2005] EWCA Civ 735**

19/05/2005

## **Barristers**

Judith Murray KC

## **Court**

Court of Appeal (Civil Division)

## **Practice Areas**

Public Children Law

## **Summary**

In care proceedings, where a judge was faced with applications going to to the determination of both the status of care and of an application to adopt the proper procedure was for him first to determine the care order application, or the application for the discharge of the care order, before proceeding to consider either the adoption or the freeing order application.

## **Facts**

The appellant local authority and the appellant guardian ad litem appealed against a decision made in care proceedings that a mother should have sight of information concerning the prospective adopters of her child (S). A care order had been made in respect of S. There had been three cross applications listed together for hearing in the court below: an application by the mother (M) to discharge the care order, an application for a freeing order by the local authority, and an application for a residence order by the maternal step grandmother (G). The local authority's search for prospective adopters for S had resulted in only three families being identified, of which two had been eliminated on further enquiry. The judge ordered anonymised details of the remaining family to be disclosed to M; being unpersuaded by the local authority's argument that disclosure would result in the loss of the prospective adopters. The issues for determination in the instant appeal were the procedure to be adopted in respect of cross applications in care proceedings and the extent to which fairness and rights to a fair trial oblige the disclosure of information to a parent opposing a freeing order application. The local authority argued that the judge had (1) erred in his procedural approach to the three applications; (2) failed to give proper weight to S's age, his urgent need for a settled future in a stable family, and the threat of interference by the father, whose release from prison was imminent.

## **Held**

The judge had plainly fallen into procedural error. Where a judge was faced with applications going to the determination of both the status of care and of an application to adopt the proper procedure was for him first to determine the care order application, or the application for the discharge of the care order, before proceeding to consider either the adoption or the freeing order application, D (A Child), Re (1999) 2 FLR

49 and M (A Child) (Care Order: Freeing Application), Re (2003) EWCA Civ 1874 , (2004) 1 FLR 826 applied. In the instant case the judge should have determined M's application first, and then G's application which would have stood or fallen with M's application. Only then would it have become necessary for him to consider the freeing order application. (2) The judge had erred in deciding that information concerning the prospective adopters should be disclosed to the mother. He had given insufficient weight to S's strong and urgent need for a placement in a new family and had equally given insufficient weight to the threat posed by a dangerous father, S (A Minor) (Adoption Application) (Disclosure of Information) Re, (1993) 2 FLR 204 applied. The instant case was even stronger than that in Re S as it was not concerned with a specific application to adopt by specific adopters, but a freeing order application essentially focusing on the concept of adoption. The matters the judge had sought to disclose to the mother did not demonstrate any disability in the prospective adopters. The freeing order application should be determined without the disclosure of the judge's summary of facts descriptive of the potential adopters. That information would remain within the appraisal of the judge and the guardian and, to the extent that it was of any relevance, it could safely be tested within those boundaries.

### Permission

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