

F (Children) [2012]

[2012] EWCA Civ 1793

15/11/2012

Barristers

Jane Rayson

Court

Court of Appeal (Civil Division)

Practice Areas

Private Children Law

Summary

Appeal by mother against an order changing the residence of two sons. Appeal dismissed.

Facts

This case was an appeal brought by the mother. The case concerned two boys aged 14 and 12. The older boy was diagnosed as being on the autistic spectrum. The boys lived with their mother and were educated at a local school. The decision of the judge of first instance changed the residence of the boys to the care of the father and involved a change of school.

There were a number of difficulties facing the Court of Appeal in considering this case. There was no approved transcript of the judgment, no transcript of any part of the evidence or the submissions made by the parties. The county court judge had heard oral evidence from the Cafcass officer but there was no note of this evidence. The mother chose not to give evidence, as she did not want to be cross-examined by the father who appeared in person.

Counsel for the mother raised three main points. Firstly, the wishes and feelings of the boys, which were fully canvassed in the Cafcass Officer's report were not able to be interpreted by the judge to take into account the older boy's difficulties. It was submitted that this had made the balancing exercise carried out by the judge flawed as he failed to take into account the boy's wishes and feelings in accordance with 'his age and understanding', as required by s1(3)a of the Children Act. Secondly, the judgment did not engage with the impact on the boys of the change in residence and change of school. Thirdly, ensuring that the education provision for the older boy was right was crucial, given his particular needs. There was information provided at the trial by the mother about his educational provision but there was no indication that there was any information by the father as to what would be provided by the new school.

Held

McFarlane LJ said that there was just not enough material before the court to understand the approach

taken by the judge took when deciding the case. McFarlane LJ considered adjourning the appeal to obtain transcripts but decided against this course. He considered the information provided by the mother at the appeal that the arrangements that the judge put in place in respect of contact, the possibility that support provided to the older boy at his new school may not meet his educational needs and that the father's partner was not as available to care for the boys as had been anticipated. Given the matters raised, it was the view of the appeal court that a review was justified and that the matter should go back for a review before a local judge. The appeal was dismissed, as there was not enough material before the court to persuade the Court of Appeal that the county court judge had been in error.

Permission

Family Law Week 