

Re C (A Child) (2013)

[2013] EWCA Civ 431

25/04/2013

Barristers

Alistair G Perkins

Court

Court of Appeal (Civil Division)

Practice Areas

Public Children Law

Summary

The court set out mandatory steps to be taken where there was an application to the Court of Appeal for permission to appeal against the making of a placement order or other consequent order

Facts

The appellant father (F) appealed against the refusal of permission to be joined as a party and permission to oppose an adoption order to be made for his son (C) and against a subsequent final order for adoption.

F had a sexual relationship with the mother (M) while she was with another man. C was born and, because M was unable to care for him, he was taken into care and fostered. When F questioned M she denied his paternity. Two years later F resumed the relationship with M and they had a second son. F became aware of adoption proceedings in relation to C and contacted the local authority who agreed to a DNA test which confirmed F's paternity. F immediately applied for permission to be joined in order to oppose the adoption proceedings. The judge below refused F's applications, finding that C had already had to deal with the move to his adoptive parents from foster care, where he had been for the first three years of his life, and that any further delay caused by the inevitable requirement for F to undergo assessments was contrary to C's welfare. That finding outweighed C's right to be brought up by his natural father and with his brother. F appealed, but there was a delay of five weeks in obtaining the transcript, required for F's counsel and for the Legal Services Commission to allow funding. A final adoption order was made without notice to F while he was waiting for his application for permission to appeal to be heard.

Held

F submitted that the judge had erred in her assessment of the factors in the Adoption and Children Act 2002 s.1(4) and s.1(4)(f), particularly the effect on C of losing the chance of living with his relatives, and she had been disproportionately influenced by the possibility of delay and by F's immigration status.

F had never had a relationship with C, indeed had never even seen him. Furthermore C had now been

with the adoptive parents for two years and it was inappropriate to disturb that relationship (see para.37 of judgment). The judge had displayed no error of law or approach either from the perspective of domestic law, or from that of Strasbourg. Her exercise of discretion was neither flawed nor wrong and she had not been unduly influenced by other factors as submitted (para.38). With regard to F's rights under the European Convention on Human Rights 1950 art.8, a judge who properly applied s.1 of the 2002 Act, as the judge below had done, would normally also comply with the requirements of art.8, *YC v United Kingdom* (4547/10) [2012] 2 F.L.R. 332 applied (para.41). The decision rendered the appeal against the final order academic but it was quite clear that even as a non-party, F had locus to challenge it. Whether he would have succeeded was moot, but it was difficult to justify the making of the final order in the full knowledge that permission to appeal was pending (para.46). In every case where there was an application to the Court of Appeal for permission to appeal against the making of a placement order (or other consequent order) the following steps had to be taken: (i) the appellant's notice had to be filed as soon as possible; (ii) the appellant's advisors had to give careful thought to including any appropriate application for a stay or other interim relief; (iii) if a transcript of the appealed judgment was not available then a note of the judgment (even if unapproved) was required and the transcript had to be ordered immediately; (iv) the court appealed from had to deal with the application for a transcript immediately; (v) respondents to any application consequential upon the placement order had to immediately inform both the appellant and the Court of Appeal of (a) the making of the application, and (b) the date(s) of any hearing (para.48). In addition, the Master of the Rolls and supervising Lords Justices were urged to alter the current practice of waiting for a transcript before putting a completed bundle before a Lord Justice as it was inappropriate in those cases where the delay could not be afforded (para.49).

Permission

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