

C (A Child) [2009]

[2009] 1 FLR 1425; [2009] EWCA Civ 72

02/01/2009

Barristers

Brian Jubb

Court

Court of Appeal (Civil Division)

Practice Areas

Public Children Law

Summary

Appeal by guardian against decision to place a child with his paternal grandmother rather than for adoption. Appeal dismissed.

Facts

The child's mother and father were separated and had drug problems which meant that it was very unlikely that either would be able to provide a home for the child or his older half-sister. The two children were currently in short term foster care and the local authority's plan was to leave the older child in foster care while seeking adoption for the younger child. The guardian supported that plan but the paternal grandmother was joined to the proceedings and sought a residence order supported by all the other parties, including the half sister. The trial judge dismissed the local authority's application for care and placement orders and made the residence order instead.

Held

The local authority appealed on the grounds that the judge's conclusion was plainly wrong on the primary basis that it was wrong to leave the proceedings on the basis that "the family will rally round if and when the grandmother's circumstances disable her from continuing to act as his primary carer". However Wilson LJ, while accepting that the circumstances were unusual, dismissed the appeal because i) the residence order was in favour of a member of the child's wider family, and the law is biased in favour of such placements; ii) most importantly, the grandmother had a good relationship and substantial track-record of commitment to the child in very difficult circumstances; iii) the grandmother was sincere in expressing commitment to the idea of substantial continuing contact between the child and his half sister.

Permission

Family Law Week 