

Re C (A Child) (2013)

[2013] EWCA Civ 1257

18/10/2013

Court

Court of Appeal (Civil Division)

Practice Areas

Public Children Law

Summary

A judge in family proceedings had made it difficult for readers of his judgment, which was linear in form, to see that he had in fact conducted a balancing exercise in order to make a crucial choice between a home for a child with his maternal grandmother or adoption by strangers. However, he had engaged sufficiently with the core, long-term welfare decision in the case and his decision was proportionate and, in the context of the child's welfare, was not wrong.

Facts

The appellant (G) appealed against a care order and a placement order made in respect of her grandchild (X).

X was born in October 2011 to very young parents, aged 15 and 17. In the early weeks of his life there were causes for concern about his safety, which led to a residential assessment being undertaken. In July 2012, the first respondent local authority was granted an interim care order allowing X to be placed with foster carers. G, the maternal grandmother, who was registered blind, intervened in the proceedings asking the court to make a special guardianship order for X pursuant to which he would have been placed with her. The judge was satisfied that X was at risk of significant harm, and concluded that the threshold criteria in the Children Act 1989 s.31(2) was clearly satisfied: there was no dispute about that at the hearing and no challenge to it on appeal. The issue which the judge had to decide concerned what, if any, order was appropriate in consequence of the threshold having been crossed.

G submitted that the judge had failed to conduct a balancing exercise evaluating the pros and cons of a placement with G against the pros and cons of adoption. G argued that at no stage did the judge confront in an effective way the need to sanction a placement for adoption only where that was proportionate to all the circumstances: where nothing else would do.

Held

As a matter of structure the judge had made it difficult for readers of the judgment, which was linear in form, to see that he had in fact conducted a balancing exercise in order to make a crucial choice between a home with G or adoption by strangers. Further, where a court was seized of both an application for a care order and an application for a placement order, the instant court questioned the

wisdom, when making a care order in the middle of the process of evaluating the ultimate question of whether or not a placement for adoption order was to be made, of approving a care plan for adoption by reference to the welfare provisions in s.1 of the 1989 Act. Any judge who was aware that he or she would be considering whether or not to make a placement for adoption order, would have been wise only to have approved a care plan for adoption where such a plan seemed likely to meet the welfare requirements of the Adoption and Children Act 2002 s.1 and s.52. It was a consequence of the linear structure that G was ruled out at a stage when the judge was solely considering the welfare checklist in s.1(3) of the 1989 Act. He then went on to make the care order and to approve the care plan for adoption, and it was only after that point that the judge made reference to s.1(2) of the 2002 Act and to the enhanced welfare checklist in s.1(4) with its focus on the whole life nature of an adoption decision. The 1989 welfare checklist had, by reason of s.1(4) of the 1989 Act, to be used when the court was considering making a care order under s.31 of that Act. A linear judgment, which unnecessarily compartmentalised the decision-making into discrete and separate stages, with the 1989 Act provisions alone being used to approve a plan for adoption, in some cases might have prevented the evaluation of what was ultimately the one issue in the case, the choice between family placement or adoption, as a whole, and for that evaluation to have been undertaken with the tailor-made adoption-focussed welfare checklist in s.1 of the 2002 Act at the forefront of the judicial mind. In the instant case, despite the unhelpful structure of the judgment, the court found that the judge had had the relevant long-term factors in mind. He had engaged sufficiently with the core, long-term welfare decision in the case and, despite understanding all that G had to offer X, the adverse findings that the judge made against her had to stand. Accordingly, the judge's decision was proportionate and, in the context of X's welfare, was not wrong, B (A Child) (Care Proceedings: Appeal), Re [2013] UKSC 33, [2013] 1 W.L.R. 1911, G (A Child) (Care Proceedings: Welfare Evaluation), Re [2013] EWCA Civ 965, [2013] Fam. Law 1246 and B-S (Children), Re [2013] EWCA Civ 1146 applied (see paras 28-34 of judgment).

Appeal dismissed

Permission

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