

Re I (A Child) (2012)

[2012] EWCA Civ 1765

20/11/2012

Barristers

Dermot Main Thompson

Court

Court of Appeal Civil Division

Practice Areas

Public Children Law

Summary

A judge had not erred in failing to consider making a special guardianship order as opposed to a placement order or in declining to make a contact order in circumstances where a child's foster parents were supportive of ongoing, regular contact between the child, her father and paternal grandmother. The judge had adequately considered those issues given that they had not been properly canvassed before him.

Facts

The appellant father and paternal grandmother (F) appealed against a decision made in respect of the appropriate care plan for a child (X).

X was cared for by foster carers. The judge had made a placement order in spite of F's argument that such an order would violate their rights to family life under the European Convention on Human Rights 1950 art.8. The judge acknowledged that X's foster carers were in favour of F having continuing contact with X, and in light of that he decided that making a contact order was not justified and would be unhelpful.

F did not dispute that the foster carers should act as X's long-term carers, but submitted that the judge had failed to consider (1) making a special guardianship order as an alternative to a placement order; (2) making a contact order in their favour, or had exercised his discretion incorrectly in that regard.

Held

(1) The thrust of F's argument before the judge was that he should not make a placement order because that would violate their art.8 rights. They did not argue that a special guardianship order would be more proportionate than a placement order and or that it would have a lesser impact on their art.8 rights. The fact that F had not argued that point was reflected in the fact that the judge had barely touched on the issue in his judgment. The judge was not obliged to deal with the point more explicitly than he had given that the point was simply not before him. (2) It was plain that the judge had recognised his judicial duty

and had carried out the appropriate balancing exercise, which led him to conclude that it was better for X not to make a contact order. The judge's reasoning was impeccable given that the issue of contact had barely been raised before him. The judge was entitled to have regard to the advantages and disadvantages of making a contact order and was obliged to have regard to the Adoption and Children Act 2002 s.1(6), namely not to make the order unless he considered that making it would be better for X than not doing so.

Appeal dismissed

Permission

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