

B (Minors) (1998)

AC9500041

29/07/1998

Barristers

Dermot Main Thompson

Court

Court of Appeal

Practice Areas

Public Children Law

Summary

The judge had considered the effect on the child of any delay and balanced that against the alternative effect of the possibility that the child might be reunited with his mother or be placed with his brother, and had not faltered in forming the view at an interlocutory stage that the door should not be shut and locked against the mother.

Facts

L's appeal, by his guardian ad litem, from the order of HH Judge Peppitt QC made on 21 May 1998 whereby it was ordered that, the proceedings in respect of the two children, L and D, be consolidated and, K being designated as the local authority for L in place of local authority B. The appeal was based on a technical decision whether local authority B should be the designated authority in charge of the care of L, or whether local authority K should continue to be the designated authority in charge of L's care. Local authority B had formed the view that L had very pressing and immediate needs, and took an adverse view to the prospect of the mother caring for L. Accordingly, local authority B sought the return of L's care to them so that L's future could be decided by the local Family Proceedings Magistrates' Court within the next six weeks. However, local authority K was of the opinion that the mother had some prospect of taking on the care of L's half-brother D, and had looked into the possibility of a place being made available in a residential unit for the assessment of her abilities as D's carer. At the hearing before HH Judge Peppitt QC, both authorities were represented and forceful argument on their behalf was presented. The judge decided that, even though the mother's prospects of caring for D seemed remote, there was a ray of hope that she might be able to care for him. That being so, the judge felt that it was in L's interest that his future be determined at the same time as D's, namely after the period of assessment which was to be carried out by local authority K. The judge ordered that, the proceedings in respect of L and D be consolidated and, local authority K be the designated authority in charge of L's care. Local authority B appealed, contending that, the judge failed to consider the effect of any delay on L and, the effect of the judge's order was that he was putting the interests of L second to those of D.

Held

(1) It was clear that the judge had considered the fact that delay in considering L's future could be seen as being detrimental under s.1(2) of the Children Act 1989. However, the judge felt that the determination of L's future should be decided once the period of assessment of the mother and D had been carried out, especially since there could be a chance that the mother would be able to care for D and, therefore, L might also be brought back into her care. (2) If the mother rose to the daunting challenge and met it, there would be enormous benefits for both L and D in being reunited with their mother and in developing a sibling relationship not yet fully established between them. (3) Although nobody was very optimistic about L returning to the mother, the judge had formed the view that the door ought not be permanently shut on the possibility of the mother being able to care for the children. The judge had given a carefully considered judgment in which he considered the effect on L of any delay and balanced that against the alternative effect of the possibility that he might be reunited with his mother or be placed with D. However, the judge had not faltered in forming the view at the interlocutory hearing that the door should not be shut and locked against the mother. (4) The judge was not wrong to refuse to come to a final conclusion as to the placement of L. It was not the function of the court to prejudge the outcome of the case. Since the case involved very difficult questions involving the family, it justified a senior judge to have the opportunity to consider as a whole the position of the entire family. It was necessary to consider which option would be best for each child. Moreover, the welfare of each child was a paramount consideration. Accordingly, the judge had been correct to order the proceedings to be consolidated.

Appeal dismissed.

Permission

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