4PB, 6th Floor,
St Martin's Court,
10 Paternoster Row,
London, EC4M 7HP
T: 0207 427 5200
E: clerks@4pb.com
W: 4pb.com

Re J-A (Children) (2014)

[2014] EWCA Civ 936

09/07/2014

Barristers
Ceri White

Court
Court of Appeal Civil Division

Practice Areas
Public Children Law

Summary
A judge in care proceedings in relation to two children aged eight and five, had not erred in refusing to adjourn his decision pending an assessment of the mother's ability to care for them in the light of steps she had taken to improve her position. His decision that it would be in the best interests of the children to be placed with their father with the protection of continuing local authority intervention under the care orders had been carefully considered and had taken into account the impact of protracted delay on the children.

Facts
The appellant mother (M) appealed against orders made in October 2013 in care proceedings in relation to two children (C) aged eight and five.

The judge had refused M's application for an assessment by an independent social worker, instead making care orders with a care plan that they should live with their father (F) who would be supported by his parents. M and F were married in 2005 and their relationship ended in 2006. M began to cohabit with another man (Y) in February 2010. Interim care orders were made in June 2012 following an incident in which C's half-sibling (X), then aged nine months, sustained non-accidental injuries. The judge found that they had been caused by Y and that M had failed to protect X. M had remained in a relationship with Y despite his repeated violence, resulting in C suffering emotional harm and X being seriously injured. The judge also found that M had lied about the continuing relationship and that she had kept back what she knew of the circumstances of X's injuries. He also made serious findings against F in relation to events during his relationship with M, but concluded that the findings should not preclude him being considered as a carer. A hearing, leading up to a judgment in May 2013, examined the circumstances in which X came to be injured and led the judge to rule out M as a carer for any of her children. In October 2013, both the local authority and C's guardian were recommending placement with F, living in his family home with his parents and with the support of his extended family, on the basis that there would be a care order and further work would be undertaken with him. The judge took the view that whether M had yet told the truth about what happened to X was critical and went to the heart of her capacity to care for the

children. He remained unsatisfied by M's explanations and did not consider it was right in the circumstances to adjourn for an assessment of her if C could plausibly be placed with F's family.

M submitted that the judge had erred in refusing to adjourn the decision pending an independent assessment of her ability to care for C in the light of steps she had taken to improve her position, in approving a placement with F when that was not in C's best interests, and in prematurely handing the case over to the local authority under final care orders.

Held

The judge was not wrong to rule out M without giving her the chance of a further assessment. He very properly looked again at her position at the time of the October hearing, not relying solely on what he had concluded in his May 2013 judgment, looking for evidence of change in what he was entitled to regard as the crucial issue of her veracity about what had happened to X. Having heard her oral evidence, he found it, if anything, even more unsatisfactory. He did not disregard the points made in her favour, but they were outweighed by her failure to make any progress at all in that critical area. The case amply demonstrated the benefits of judicial continuity. The judge was in the best position to determine whether there had been any material change and whether M could now care for C safely. He had to evaluate that in the light of all the evidence, and that was what he did. He was not wrong to continue to regard a placement with M as carrying significant risks for C, and to be so pessimistic about the chances of an independent social work assessment producing any evidence that would support such a placement that he did not feel matters should be delayed for one to be carried out. In respect of a placement with F, it could not be argued that no reasonable judge could have entrusted children to someone who had behaved as F did in 2006, particularly as the local authority and the guardian endorsed such a step, whereas they did not endorse a placement with M. The judge's thinking as to the respective claims of M and F was clear from his judgments, and the Court of Appeal would not interfere with his decision to place C with F and to hand over to the local authority, given that he had carefully considered what problems/potential problems were still to be assessed, the reliability of the local authority, as well as taking into account the impact of protracted delay on the children. The judge had a delicate balance to strike, having before him only options which were flawed. His opportunity to evaluate the parents and all the rest of the evidence spanned some months. A great deal was conveyed in such a process which was not evident from reading the papers and listening to submissions. The Court of Appeal would not lightly interfere with a court's decision in such a difficult situation, and particularly not where a judgment demonstrated that a judge had recognised and had well in mind the relevant features of the case. The judge was impressed with the evidence that C were showing signs of being affected by the protracted uncertainty and he was able to take an option, supported by the local authority and the guardian, that would resolve that speedily. The judge could not be criticised for allowing that factor to weigh heavily in his considerations, and particularly not where he had been unable to find signs of change in M in relation to a crucial aspect of the case (see paras 38-40, 47-50, 55, 58, 61, 63 of judgment).

Permission