

Re G (A Child) (2014)

[2014] EWCA Civ 1173

15/08/2014

Barristers

Cyrus Larizadeh KC

Court

Court of Appeal

Practice Areas

Public Children Law

Summary

In refusing contact between a child who had been placed in long-term foster care and her mother, father and older sister in the United Kingdom in favour of contact with her two younger sisters who had been put in an adoptive placement abroad, the judge had erred by failing to take into account the future effect of refusing contact with her UK family on the child.

Facts

The appellant father (F), mother (M) and sister (L) of a child (E) all appealed against a contact order in relation to E.

In addition to E, M and F who had had an affair and were no longer together, had three other children (L, B and C) aged 10, 15, six and three respectively. In May 2012, E, B and C were subject to full care orders authorising the local authority to place them for adoption and were all to be placed together. Prior to July 2013 E, B and C had lived together and then B and C were placed together with an adoptive family living outside of the United Kingdom, and E was placed in long-term foster care in the UK. L lived with F and his wife. After their placements, there was an issue as to whether E should maintain regular face-to-face contact with M, L and F or whether priority should be given to E having face-to-face contact with B and C, of which the guardian and local authority were in favour. The judge prioritised E's relationship with B and C, and made orders under the Children Act 1989 s.34(4) authorising the local authority to refuse contact between E and her UK family members. The judge took into account that the contact records showed that E displayed displeasure at contact with F, his wife and L; that they would see E once every six weeks; that M's direct contact with E had ceased from May 2012; that F had denied the paternity of his children; that the prospective adopters had maintained their wish to promote a relationship between B and C and E, including through direct contact; the local authority and the guardian gave precedence to E's relationship with B and C over and above her relationship with M, F and L; and that the report which looked at the relationship between E and B and C should have health warnings attached to it. Since December 2013, there had been no contact between E and any other member of her family.

The appellants submitted that the judge had failed to determine whether, in two or three years, the importance to E of maintaining contact with B and C justified having no direct contact with her family in the UK; the judge failed to assess the potential for contact via social media to cut through any arrangements put in place in an unstructured, unplanned and unknown manner; the judge had failed to evaluate what would happen if face-to-face contact with B and C failed; the assessment of the impact on E of the loss of relationship with her UK family members had not been sufficiently thorough.

Held

The instant case was difficult and unusual, and the judge had a wide discretion. However, the judge had failed to take into account the future effect on E. There was inadequate information on E's present wishes and feelings on the issue of contact, or what her feelings might be or the value to her two or three years down the line if she maintained contact with B and C or if she maintained regular contact with M, F and L. There had been insufficient evaluation of the potential for unstructured social media contact. The assertion that the adopters could manage the risk, coming from the guardian's report of what the adoption social worker had said, was an insufficient basis upon which to understand what would occur in such a situation. It could not be said, as the judge had thought, that if face-to-face contact between E and B and C failed that it was likely that contact with F and L would be re-established. There had been an absence of consideration of the impact on E that no contact with her family in the UK would have. The default position for long-term foster placements was for existing familial relationships to be maintained through direct contact. Once her placement ended she would be entitled to re-establish contact with her family in the UK but would not have had any contact with them for seven to eight years. Artificial termination of contact during that time was likely to be counter-productive and inhibit the development of a sense of E's identity within her family. Accordingly, the s.34(4) orders, save in respect of M, would be set aside and the issue of contact would be considered by a different judge (see paras 34-37 of judgment).

Appeal allowed

Permission

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