

Re F (A Child) (2014)

AC9201158

21/08/2014

Barristers

Jane Rayson

Sally Bradley

David Bedingfield

Court

Court of Appeal (Civil Division)

Practice Areas

Public Children Law

Summary

A judge had not erred in making a placement for adoption order rather than a special guardianship order in relation to a child aged almost two. The need to provide the child with security over and above that of a special guardianship order had been established on the evidence and the judge had conducted a sound balancing exercise.

Facts

The Official Solicitor, as litigation friend for a mother (M), appealed against a placement for adoption order relating to M's daughter (B), who was aged almost two.

B had two half-brothers (N and J), who were aged 12 and 10 respectively. M, who was the mother of all three children, was an in-patient in a mental hospital. She had originally been able to care for N and J herself, but the local authority removed them and placed them in the care of her half-brother and his wife (X). Since then, N and J had lived with and been cared for by X. M then gave birth to B, who was also placed in X's care. Applications were made for a care order for B and an order authorising the local authority to place her for adoption. Whilst the plan was for B to remain living with X, the issue was the appropriate legal structure of the care order, namely, whether B should continue as a foster child living in X's home, whether there should be a special guardianship order (SGO), or whether X should adopt B. The plan was for N and J also to be adopted by X. However, the application for their placement for adoption was delayed and the court accordingly had only B's welfare before it. The judge considered that the same court should determine the interests of all three children on the same occasion, but decided to continue. X expressed concern that, whilst M was grateful for B's placement with them, there was potential for her to change her mind and apply to be their carer. The judge concluded that a placement for adoption order was justified as it was in B's interests. The issue was whether he had erred in making the order.

The Official Solicitor submitted that an SGO was the right order to meet B's welfare needs. He argued

that life would carry on for B, N and J in the same way as it had previously; they would continue to receive a high standard of care from X and the fact that an SGO would evaporate on B's 18th birthday, whereas an adoption order was for life, was not an important factor as the relationships entered into would endure. Accordingly, an adoption order was not required. The Official Solicitor contended that the judge had given insufficient weight to the skewing of the family relationships if an adoption order was made.

Held

Provided a judge had carefully considered the facts, made appropriate findings in relation to them and applied the welfare checklists contained in the Children Act 1989 s.1(3) and the Adoption and Children Act 2002 s.1, it was unlikely that the Court of Appeal could properly interfere with the exercise of judicial discretion, particularly in a finely balanced case, S (A Child) (Adoption Order or Special Guardianship Order), Re [2007] EWCA Civ 54, [2007] 1 F.L.R. 819 followed. The manner in which the statutory provisions applied depended on the facts of the case and judicial assessment of proportionality, P (A Child), Re [2014] EWCA Civ 1174 followed. The slight distinction between the terms of s.1(1) of the 1989 Act and s.1(2) of the 2002 Act flagged one of the differences between an SGO and an adoption order. The SGO was for childhood, whilst an adoption order was for life and was irrevocable. For a child and adult to know that relationships established by adoption were for life was an important factor. The judge had considered all of the factors for and against adoption and had conducted a sound balancing exercise before coming to his conclusion. He had not erred and his conclusion was not disproportionate to B's needs; the need to provide security over and above that of an SGO had been established on the evidence. A further important factor was the fact that the plan for adoption would render all three children full siblings. It was not a major factor, but it was in their interests to know that they had equal status as regards each other and X. The placement for adoption order had been fully justified.

Appeal dismissed

A judge had not erred in making a placement for adoption order rather than a special guardianship order in relation to a child aged almost two. The need to provide the child with security over and above that of a special guardianship order had been established on the evidence and the judge had conducted a sound balancing exercise.

Permission

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