

W (Children) [2014]

[2014] EWCA Civ 1303

12/08/2014

Barristers

Sally Bradley

Court

Court of Appeal (Civil Division)

Practice Areas

Public Children Law

Summary

Appeal by mother against placement orders in respect of the youngest three children of a sibling group of nine. Appeal dismissed.

Facts

This appeal arose from care proceedings involving six children, although the appeal concerned only the three youngest children, girls aged 6, 4 and 2. The children were part of a sibling group of 9, the eldest three not having been the subject of proceedings. The judge had made final care orders in respect of all six children, and placement orders in respect of the youngest three.

During the course of the hearing, it had become apparent that the children's current foster carers would consider putting themselves forward as either adopters or special guardians for those three children. The mother had sought an adjournment until it could be known whether these were viable options but this course of option was rejected by the judge who favoured the local authority's care plan to assess the foster carers alongside the time-limited search for adopters for the youngest three children.

The focus of the appeal, however, was on the judge's conclusion in her judgment that Dr Butler, the child and adolescent psychiatrist, who had been instructed to assess the children, had concluded in her oral evidence that nothing other than adoption would meet the needs of these three children.

The second issue concerned the reasons for the Guardian's apparent change of position. In his final report, he had opposed the making of placement orders as there was the possibility of the three children remaining together in their current foster placement. In the judgment, however, the judge records his position as being that the placement orders were required regardless of whether the option of the current foster carers as adopters came into fruition.

Unfortunately no transcripts were available of the evidence of the Guardian or of Dr Butler.

The mother's appeal was that firstly, the evidence of both Dr Butler and the Guardian had focused on the priority of keeping the children in their current stable placement and that the judge should have reflected

this; secondly, that the proper course was to adjourn whilst the position of the foster carers was explored; thirdly, that there was no clue in the judgment as to why Dr Butler and the Guardian had apparently changed their minds and fourthly that the judge had not explained how she had reached her own conclusions from the evidence that she had heard.

Held

McFarlane LJ, giving the lead judgment of the Court of Appeal, dealt first with the suggestion that the judge had misinterpreted the evidence. Noting that there had been no complaint about inaccuracy in the immediate aftermath of the judgment, and that the original grounds of appeal, as drafted, did not make this complaint, and further that the Guardian's position in the appeal was that he agreed with the judge's summary of his evidence, this ground was found not to be made out.

With regards to the suggestion that the judge had not given reasons, there had been no attempt to go back to the judge and ask her to explain her reasoning. It was clear from the judgment that she had aligned herself with the reasoning of Dr Butler in particular and so her reasons, though shortly stated, were adequate.

The judge had not been in the position of the judge in *Re A (Children)* [2013] EWCA Civ 1611, that is, of contemplating adoption but only in very narrow circumstances. She was satisfied, as were the experts in the case, that only adoption would do. Therefore, she would not be justified in law in adjourning the case to oversee further assessment of the foster carers to ascertain whether they could be the adopters.

The unanimous view of the Court was therefore that the appeal should be dismissed.

Permission

Family Law Week 