

Harrow London Borough Council v (1) Zainab Rasul (2) Mohammed Afzal (3) Farah Afzal (Through Her Childrens Guardian) (4) Nazma Rasul (5) Ali Rasul (2014)

[2014] EWHC 3837 (Fam)

18/11/2014

Barristers

Rex Howling KC
Alistair G Perkins

Court

Family Division

Practice Areas

Public Children Law

Summary

A placement order in relation to the one-year-old daughter of long-standing drug users was refused where the local authority had taken a linear approach to the child's care and had failed to weigh the disadvantages of adoption against the benefits of the child being raised by her maternal grandparents. The child deserved an opportunity to be raised within her natural family, and the risk of interference by the parents was managed by making appropriate injunctions.

Facts

The applicant local authority applied for a final care order and a placement order in respect of the third respondent (C), the one-year-old daughter of the first and second respondents (M and F).

Both parents were long-standing drug users. F suffered from a drug-induced mental and behavioural disorder. C was made subject to police protection within hours of her birth following an incident involving F at hospital. Once discharged, C and M went to live with M's parents. M and F did not co-operate with the local authority or social services and continued to use drugs. When C was four months old, they abducted her to Spain. The family was missing for one month. Legal proceedings secured C's return, and M and F received suspended sentences for abduction offences. Drug rehabilitation orders were also made. M and F then supposedly separated. The local authority favoured C being placed for adoption. An assessment acknowledged that M's parents would be able carers, but ruled them out because they had not been frank about the risks presented by M and F. Another adverse factor was that they had known of the plan to take C to Spain but had not tried to prevent it. F did not seek to be C's carer in the short term, but was in favour of M caring for C at her parents' home.

Held

(1) Both parents loved C deeply, but neither was a suitable carer. F posed a real risk of harm to her. He was volatile, impulsive, and likely to remain a drug abuser in future. He had wholly unrealistic expectations of resuming care of C within the next year. He and M had separated only as a ploy for the purposes of the proceedings. They were not emotionally or psychologically separated. M was a vulnerable individual, who was likely to be controlled by F. She did not see him as a risk to herself or to C. While she had made attempts to abstain from drugs, she had chosen them over C, and would do so again. She would not put C's needs first (see paras 32-37 of judgment). (2) The local authority had taken an entirely linear approach to C's care, excluding all family placements so that adoption was the only option. It had not considered the disadvantages of adoption, which was a serious lacuna in the decision-making process and wholly inadequate for a plan as final and draconian as adoption. The ability of M's parents to care for C had been assessed as very positive, yet there had been no assessment of the degree of risk of M and F seeking to disrupt such a placement. Nor had that risk been balanced against the grandparents' ability and readiness to support C's placement and seek help where necessary. M's parents accepted that they had made mistakes. They had not set out to lie or be unco-operative; they were honest, hardworking people who had struggled to accept their daughter's lifestyle, but who had quite properly tried to support her and found it difficult to accept criticism of her. Their desire to protect C and put her first, while putting M second, was clear from their evidence. Knowing that they would lose C to an adoptive family if they did not do so had had a very big impact on their understanding of the case. A placement with M's parents carried risks, particularly a risk of abduction or interference by M and F. However, adoption was not a risk-free process either. The issue was whether the risks could be managed. The risk of the placement breaking down had to be weighed against the benefit to C of maintaining the love of her maternal grandparents, the knowledge of her parentage, and her Muslim culture. Taking a global and holistic view, the balance did not fall in favour of adoption: C deserved an opportunity to be raised within her natural family. It was in her best interests to become a ward of court and to be placed with M's parents. M and F were prohibited from going within 500m of M's parent's home, from approaching, harassing or having contact with C or either grandparent, and from visiting any school which C might attend in future (paras 24- 27, 29, 31, 38-57).

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Permission

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