

LB of Tower Hamlets v D and Others [2014]

[2014] EWHC 3901 (Fam)

13/11/2014

Barristers

Cleo Perry QC

Court

Family Court

Practice Areas

Public Children Law

Summary

On the basis that on the facts it was neither necessary nor appropriate to do so, Hayden J declined to direct an assessment of the Father who was living in Somaliland

Facts

These were care proceedings in respect of two siblings aged 4 and 2. Their younger sibling had died, apparently of neglect, aged 4 months, and the mother faced criminal charges. The facts suggested that the mother had herself been brought from England to Somalia to be married at the age of 13 or 14, and had had her first child at the age of 15. She had consistently claimed that her husband (the father) was physically abusive towards her and been helped to return to England by the British Embassy. The recent decline in the mother's mental health and the children's care coincided; it seemed, with the prospect that the father might join the family in England.

The issue was whether the local authority should be directed to carry out an assessment of the father and, if so, what the arrangements should be for that assessment. The local authority had thoroughly investigated the prospect of sending a social worker to the father in Somaliland, and had concluded on the basis of advice from the Foreign and Commonwealth Office that this would be too dangerous for the social worker, given the "high threat" of terrorism and targeted kidnapping. On behalf of the father, it was said that he wished to care for the children and should be assessed. Counsel argued that an identified, willing social worker with dual Nigerian and English citizenship would be at less risk and should be instructed as an independent social worker to conduct the assessment.

Held

Hayden J considered the provisions under s.13 of the Children and Families Act 2014 whereby expert evidence may only be put before the court with permission, and that such permission may be granted only where the evidence is "necessary". Guidance is set out at s.13(7). Hayden J cited *Re P (Placement Orders: Parental Consent)* [2008] 5 and set out the views of the President in *Re H-L (Expert Evidence: Test for Permission)* [2013] as to the meaning of 'necessity'. Hayden J then approached the question by

identifying these three principles [para 5]:

- “i) every opportunity should be made to explore the potential for a child being cared for by a parent;
- ii) this obligation (for it is nothing less) is a facet of both the child’s and the parents’ rights pursuant to Article 8 ECHR;
- iii) in evaluating the reality of the available options and the ambit of the assessment that needs to take place, it is the welfare of the children that remains the paramount consideration.”

Hayden J said, “It will not always be “necessary” for there to be, for example, a comprehensive assessment of a parent. There will be cases where from the outset the obstacles to a parent’s wish to care for a child, no matter how genuine or profoundly expressed, will be so substantial as to make it obvious that other options require exploration as a priority” (para 6). And, “Whether an assessment is “necessary” will therefore depend on the facts” [para 7].

On balance, the court endorsed the local authority’s view that it would be ‘reckless’ for a social worker to be sent to Somaliland [para 27], and found that it would not be appropriate for the court to authorise a social worker to do so, or indeed to sanction or encourage any other British national [para 34]. Hayden J suggested that all possible alternative avenues should be explored, and encouraged the father to apply for a visa to England, whereupon, the court was confident, the local authority would be likely to assess him appropriately. The approach of the local authority was commended throughout the judgment.

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Permission

Family Law Week 