

D-O'H (Children) [2011] EWCA Civ 1343

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10/08/2011

Court

High Court

Practice Areas

Public Children Law

Summary

Cross-appeals in care proceedings by the mother against the refusal of a s38(6) parenting assessment and the making final care orders, and by the local authority against the adjournment of placement order proceedings in respect of one child. Appeals dismissed.

Facts

The applications before the court at final hearing were: (i) the LA's application for final care orders with care plans for L, aged 3, to be adopted and N, aged 13, placed in long term foster care; (ii) the LA's application for a placement order in respect of L; (iii) M's application for a parenting assessment; and (iv) N's application for direct contact with L.

The evidence before the court included a core assessment, social work statements, a Guardian's report, a letter from M's GP, a statement from M's probation officer, a report on alcohol testing in relation to M and a report by a forensic psychologist, whose conclusions were damaging for M. The court also heard oral evidence.

HHJ Watson refused M's application, endorsed the care plans and made final care orders in respect of L and N. She adjourned the placement order proceedings in respect of L to allow for an assessment of the children's attachment needs to inform the court in relation to post placement contact.

On appeal M submitted that there had been no proper assessment of her parenting capacity and that the core assessment completed by the LA was flawed, lacking in substance and failed to comply with the guidance in Working Together to Safeguard Children 2010 and the Framework for the Assessment of Children in Need.

Held

The Court of Appeal dismissed the appeal and held that:

- In completing core assessments local authorities are bound by the guidance in Working Together unless good reason exists to depart from it;
- In determining an application under s38(6) the court had to determine whether such an assessment was necessary to provide the court with the material it required to enable it to reach a proper decision about

the care of the children – the principles to apply have been recently set out by the CA in *TL v Hammersmith and Fulham* [2011] EWCA Civ 812;

- In this case although the core assessment was more limited than was desirable or normally required by the guidance that was not fatal and the Court was entitled to consider the implications of any gaps in the material in the light of the entirety of the evidence available.

The LA also appealed on the grounds that the judge was wrong to order a report on the attachment of L and N and had given insufficient weight to the likely disruption to an adoptive placement that would arise from ongoing direct sibling contact and the delay an adjournment would cause in finding a permanent placement for L.

The Court of Appeal dismissed the appeal and held that the judge was within her discretion to approve the care plan for L to be adopted and make a final care order but adjourn the placement order proceedings to allow for the further assessment which could be relevant in determining N's application for post placement contact and provide greater clarity about the type of adoptive placement that would best suit L's needs.

Permission

Family Law Week 