

Re Q (A Child)

[2015] EWCA Civ 991

29/09/2015

Barristers

Sally Bradley

Court

Court of Appeal (Civil Division)

Practice Areas

Public Children Law

Summary

Where a child had been influenced by his mother's hostility towards his father and had suffered emotional harm as a result of court proceedings concerning contact, a judge had been realistic in concluding that any further attempt to enforce contact was almost bound to fail and would be harmful to the child. The judge had been entitled to make no further order as to child arrangements and instead to direct the parents to co-operate in the child's referral for therapy. In doing so, he had not abdicated his responsibility to do everything in his power to promote contact.

Facts

A father appealed against a judge's decision to make no further order in his application for a child arrangements order in respect of his seven-year-old son.

The parents' relationship had ended when the child was less than a year old and since then he had lived with his mother. Relations between the parents were hostile and the child was not having contact with his father, despite protracted litigation. The mother had made several allegations against the father and the child expressed a clear wish not to see him. The court had made unsuccessful attempts to facilitate contact by appointing an independent social worker and by directing the parents to attend therapeutic mediation. A child psychiatrist had recommended therapy for the child and counselling for the parents. However, the specialist clinic to which the child was referred had indicated that therapy was not appropriate whilst proceedings were ongoing. The child's guardian concluded that he was emotionally traumatised by the concept of contact. She indicated that the division between the parents was insurmountable, and she was not confident that anything would change, whichever parent the child lived with. She recommended that the proceedings should conclude so that therapy for the child could start. The judge found that the child had been influenced by the mother's hostility towards the father. He determined that prolonging the proceedings would do more harm than good to the child and that nothing would be achieved by ordering contact or ordering the local authority to prepare a report under the Children Act 1989 s.37. He concluded that the child was unlikely to recover from the emotional harm which he had suffered without therapeutic intervention. He therefore made a specific issues order that

both parents should co-operate in the referral of the child to the specialist clinic together with such treatment as might be required. He made no order in respect of child arrangements but made directions in the event that the matter returned to court.

The father submitted that the judge had been wrong to end the proceedings without making a child arrangements order and should have directed a s.37 report. He argued that the process had breached his rights under ECHR art.6 and art.8.

Held

Faced with an impossible situation, the judge had taken a course which was not merely open to him but was, in reality, probably the only course that stood the slightest chance of achieving what was needed, namely the resumption of the child's relationship with his father. The judge had rightly been unsparing in his criticism of the mother and unflinching in his analysis of the harm which she was causing to the child. However, he had realised that the strategy which he had hitherto adopted had not worked and that there was no reason to think that it would work in future. He had been realistic in his conclusion that any further attempt to enforce contact was almost bound to fail and would be harmful to the child. He had been justified in concluding that a further hearing, with or without a s.37 report, was most unlikely to tell him anything that he did not already know or bring about any change in parental attitudes. He had been sensible in thinking that therapy might achieve what all previous interventions had failed to achieve and justified in deciding that it was the best way forward. In proceeding as he had, the judge had acted well within the latitude afforded to him by the principles explained in C (Family Proceedings: Case Management), Re [2012] EWCA Civ 1489, [2013] 1 F.L.R. 1089 and had not offended the principles set out in C (A Child) (Suspension of Contact), Re [2011] EWCA Civ 521, [2011] 2 F.L.R. 912, Re C (Family Proceedings: Case Management) and Re C (A Child) (Suspension of Contact) applied. He had not abdicated his responsibility to do everything in his power to promote contact. He had engaged with an, albeit non-judicial, method which he hoped might prove effective where judicial methods had failed. The very terms of the order showed that he contemplated a future role for the court. There had been no breach of either art.6 or art.8 (see paras 26-31 of judgment).

Permission

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