[2010] EWCA Civ 375

Case No: B4/2009/2459

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM TRURO COUNTY COURT
(HIS HONOUR JUDGE VINCENT)

Royal Courts of Justice
Strand, London, WC2A 2LL

12th March 2010

B e f o r e :

LORD JUSTICE WALL
and
LORD JUSTICE AIKENS

IN THE MATTER OF F (a Child)

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Official Shorthand Writers to the Court)

Mr C Naish (instructed by Messrs Vingoe Lloyd) appeared on behalf of the Appellant father.
Miss C Searle (instructed by Coodes Solicitors) appeared on behalf of the Respondent, the Child's Guardian.

HTML VERSION OF JUDGMENT

Lord Justice Wall:

1. This is an application for permission to appeal against an order made by HHJ Vincent sitting in the Truro County Court in October 2009.

2. The case concerns a young woman, L, who is rising 15, having been born on 24 May 1995. The local authority has taken care proceedings in relation to L, who has had -- to put it neutrally -- a chequered life, and who showed at one stage every sign of going downhill. Fortunately she has gone into foster care and she has excellent foster carers; and the evidence before us today, reinforced by the attendance of the Guardian and the recent conversation the Guardian has had with her, is that she is doing well in foster care, she is going to school, she is enjoying school and really her life is back on track and that is plainly very good news. I hope the Guardian will convey the fact that this court regards it as good news to L when he next sees her.

3. What happened in the case was that there was, as is commonplace, an issues resolution hearing, and at the resolutions hearing unfortunately the Guardian was not present -- and no criticism of him for that -- but he was represented, and the judge, quite understandably in the circumstances, took a rather robust view. He thought it would be sensible in all the circumstances if he made a care order then and there, and that is what he did. He did not give a judgment but we have a transcript of the hearing which took place before him. We are, frankly, very helpfully told by Miss Searle who appears for the Guardian this morning that had the Guardian been present at the hearing, it is likely that he would have recommended a further interim care order because the question of L's contact with her family, which is obviously a very important issue, as well as any psychological treatment she should be receiving as a result of her difficulties, will also need to be discussed at a final hearing.

4. However, Miss Searle submits this morning that as things have fallen out, public funding has now been made available for everybody on the basis of fresh proceedings for contact, and in

those circumstances really one should leave the final care order in place, not least because it appears to have been accepted by L, who as a consequence of it, so the Guardian submits, has settled down and, as I say, is now living a sensible and useful life.

5. With all respect to Miss Searle, I do not think the argument that public funding has been sorted out is any real basis upon which we should dismiss this appeal. It is unfortunate that matters have fallen out as they have. But my view is that the judge should not at the IRH have made final care orders, he should have made an interim order. He has jumped the gun, he has in a sense put the cart before the horse; and whilst I understand entirely what he did, it was in my judgment procedurally inappropriate and therefore his order should be set aside.

6. The local authority accepts both that the order should be set aside and that an order should be made in terms of the grounds of appeal which are put forward on behalf of the father, and those are these: that there should be an interim care order to the local authority in respect of the child, L; that the clinical psychologist who has been instructed in the case should answer written questions put to her within 28 days; there should be statements setting out what disputes, if any, there are in relation to contact; the Guardian is to make a final report; and the application is then to be listed for a final hearing and no doubt the making of a care order. It is further provided that if any party wishes to cross-examine the psychologist at the final hearing, they are to notify the Guardian and the solicitors within 14 days and the Guardian's solicitor shall arrange for her attendance at the final hearing.

7. None of this, of course, is in any way prescriptive or designed to prevent an agreement being reached if agreement can be reached. It reinforces the role of the Guardian, who will remain the Guardian for L in the proceedings, and it enables the father to pursue his application for contact, which is plainly one of importance.

8. I think it very important, and I am sure the Guardian will do this, that L is told that this is really essentially a procedural muddle that everyone has got themselves into; that nothing is going to happen to her which would otherwise not have happened, namely she will stay with her present foster carers. She is very likely to be the subject of a final care order in due course; that is not something that has been disputed, as I understand it, on the father's behalf. And in all the circumstances, since she is to be congratulated on the steps she has taken so far to organise herself and get her life in order, nothing is going to change save that the court will have to decide, if it is not agreed, what contact she should have and what, if any, psychotherapy she may require in future.

9. In my judgment, therefore, the appellant has made out a case for saying that the order was procedurally inappropriate in the particular circumstances of this case. Speaking for myself, I would therefore grant permission, allow the appeal, set aside the judge's order and make the orders set out by Mr Naish on page 4 of his grounds in the Appellant's Notice. That is the order I propose.

Lord Justice Aikens:

10. I agree.

Order: Application granted; appeal allowed.