



Neutral Citation Number: [2017] EWCA Civ 2696

Case No: B4/2016/4645

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM WEST LONDON FAMILY COURT
RECORDER SAPSFORD QC
ZC16C00294

Room E311
Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 6th July 2017

Before:

THE SENIOR PRESIDENT OF TRIBUNALS
and
THE HONOURABLE LORD JUSTICE MOYLAN

B E T W E E N:

LONDON BOROUGH OF EALING

and

C (CHILDREN)

MR BEDDOE (Coram Chambers) (instructed by London Borough of Ealing) appeared on behalf of the Applicant

MR R LITTLEWOOD (4 Paper Buildings) (instructed by Burke Niazi) appeared on behalf of the Respondent

THE PARENTS in Person

Hearing date : 6th July 2017

JUDGMENT
(For Approval)

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LORD JUSTICE MOYLAN:

Introduction:

1. On 1 November 2016 Recorder Sapsford QC, sitting in the Family Court at West London, made orders in respect of contact between three children and their parents on cross-applications made by the parents and the Local Authority.
2. The three children live apart from their parents in foster care arranged by the Local Authority, the London Borough of Ealing, under care orders made on 18 June 2013. They have lived with their foster carers since September 2014. The children last had contact with their parents in June 2015.
3. Recorder Sapsford ordered that the parents' application for contact be dismissed and that there be no order on the Local Authority's application for permission to refuse contact.
4. The Local Authority appeals against the latter determination and is supported by the Guardian on behalf of the children. The parents are present in court. They are in person and without the benefit of legal representation. They have a nuanced position which I shall explain in due course. They attempted to issue a Respondents' notice but did not manage to do so. I have a copy of the same in draft and the court has been able to ascertain their position this morning.
5. The essential background to the case is this. After the care orders were made contact became difficult. There was an unsuccessful application by the parents to discharge the care orders. In September 2015 a psychological report was obtained which recommended that contact be reduced and that the children receive therapy. In the same year, the foster carers reported increasing emotional distress displayed by the children around contact. Planned contact was cancelled and, in June 2016, an independent assessment concluded that contact between the children and their parents was not in any of the children's best interests. Subsequently, at least two of the children have made serious allegations of physical abuse including that they were tied up by the parents and a police investigation is in progress. This court knows from the submissions made this morning that allegations continue to be made and it appears that they may be escalating in their seriousness.
6. The parents deny these allegations. They have told us that the children are not making genuine allegations to the police. There is, at least, a suggestion that the allegations are prompted by their grandmother among others. The allegations have not yet been the subject of determination in either the family or the criminal courts and, for that reason, I will not descend into detail or comment further about them.
7. It was in this context that cross-applications came to be made, first by the parents on 27 April 2016 for direct contact and then by the Local Authority on 28 July 2016 for permission to refuse contact between each of the children and the parents.
8. The children, who have been represented in the proceedings through their Guardian, firmly object to contact and have maintained their objections to their key social worker, their foster carers, the Guardian, a contact assessor, a psychological expert, and to their school.
9. Prior to the cessation of contact, there was objective evidence of the adverse effects of contact on the children including, for example, their performance at school, incontinence,

and other behavioural consequences. I have read the core bundle of material that was before the judge and it is clear that, apart from the evidence of the parents, all the evidence supported the strongly advanced professional opinion that the reintroduction of contact would “re-traumatise the children”.

10. The legal framework for the applications that were made to the judge is simple and was not in doubt at the hearing before him. Accordingly, I need not dwell on it. I propose only to highlight the fact that section 34 of the Children Act 1989 provides that where a child is in the care of a Local Authority, that Authority shall allow reasonable contact with his/her parents. Any refusal of contact, other than as a matter of urgency and for no more than seven days, has to be authorised by a court. This did not happen in this case.
11. The Local Authority advances a number of excuses for, what I can only describe as, the unacceptable conduct of this case until the time when a new social work team took over. It does not appear that the Local Authority had much, if any, regard for the statutory scheme for children in care that is set out in The Care Planning, Placement and Case Review (England) Regulations 2010. I say that because the proceedings in the court below were overshadowed by the fact that the previous key social worker had not kept the parents informed of the Local Authority’s decision-making process including their proposal to refuse contact. The Local Authority has also failed to arrange therapy for the children despite the clear recommendation of the Guardian in the care proceedings and has either failed to update its care plans for each of the children or, at least, failed to let the parents and the court know of the contents of those documents until a stage during the contested hearing when the Local Authority took steps to provide the judge with the revised documents.
12. The judge strongly condemned not only those failings but also the omissions of the former key social worker in failing to provide services to the family including the children. The Local Authority has apologised to this court for those failings. The background and context are, of course, important and I do not minimise them. Further, as this court has not investigated the matter in detail, I add only that the care planning and review process is critical to the well-being of children in care and must be observed. At the conclusion of this hearing, this court will ask the monitoring officer in the Local Authority, through the Director of Children’s Services, to make a report to this court and to the parties about the Local Authority’s failings and the steps that have been taken to redress those failings and to provide services for each of the children including therapy.
13. When considering the judgment under appeal, it is clear to me that the judge was distracted by the Local Authority’s failings and focused on them rather than the essential welfare factors in the case. The evidence was all one way. The Local Authority and the Guardian set out the clear and firm and repeated wishes and feelings of each of the children that they did not wish to resume or have contact with either of their parents. There was also clear evidence relating to the risks of reintroducing contact.
14. The context for the decision also included previous findings made in the care proceedings and in the subsequent discharge application. Findings had been made that the children had been physically and emotionally neglected. The children had been silenced by their parents and had been taught to be fearful of professionals. The description of their neglect was graphic. The court had also previously concluded that the parents lacked any insight into their actions and omissions and were still as convictive as ever. There was no acknowledgement within the previous proceedings by the parents of the children’s welfare needs. Those judgments have not been successfully appealed. They provide the foundation

for all that follows including these proceedings.

15. Against that background, the unanimous and uncontradicted professional evidence about contact is plainly sufficient to establish that the Local Authority's application should have succeeded. The parents' application, which was designed to lead to the reintroduction of direct contact, clearly had no prospect of success at the time it was made. Further, having regard to the impact of the police investigation, there can be no doubt that the judge's decision was wrong.
16. It has to be said that the judge's own conclusions were contradictory. At paragraph 16 of his judgment he said, "For the moment, whilst the police continue to carry out their enquiries, there can be no question of the re-institution of supervised contact and, accordingly, I dismiss the parents' application now before me". At paragraph five of his judgment he had said, "There can be no question of the re-institution of supervised contact but when the police come to a decision, then it would be more appropriate for the court to consider the merits of the application under section 34(4)". Then in conclusion, at paragraphs 28 and 29, he determined that there should be no order on the Local Authority's application. As a result, the Local Authority does not have the power to do that which the judge said should happen, namely to continue to refuse contact.
17. The solution to the cross-applications in this case was, with respect to the judge, obvious. The Local Authority should have been granted permission to refuse contact for a period of time. This would allow the children the time they need to engage in therapy to see if contact can be recommenced in the longer term. It would also allow the police investigation to continue unimpeded because it would clearly be inadvisable to have direct contact until the investigation has concluded, given the investigation itself and the nature of the allegations made. However, I make it clear that, if there was no police investigation, the evidence in respect of the best interests of each of the children is sufficient by itself to justify granting the Local Authority's application. I would also add that, even if the therapy is successful, this might not lead to the restoration of contact with the parents; that is a welfare determination which will have to be made in the future.
18. In this court, the parents have taken, if I may say so, a very measured and realistic position. They do not seek to pursue an appeal before this court. They understand that direct contact is a question for the future. They accept there can be no contact during the police investigation. They accept that there can be no contact until after therapy has been undertaken. They would wish to say, and they say firmly, that they deny the allegations. They are very concerned about contact between the children and the grandmother who they clearly believe is instrumental in the allegations being made and they want a court to permit them to have contact in due course.
19. Turning then to what this court should do. During the hearing we asked Mr Littlewood, on behalf of the Guardian, whether it would be in the children's interests to put a time period on any order we might make granting the Local Authority permission to refuse contact. Both Mr Littlewood and Mr Beddoe, on behalf of the Local Authority, argue that these children's individual needs cannot be confined within any specific timetable. They submit that the children have had enough timetables and litigation experience. I understand these submissions but, at present, it is not known whether therapy will lead to the reintroduction of contact. Neither the parents nor the children will know what will happen until the therapy has taken place. Critically, this is a Local Authority that has not got a good track record even in respect of arranging therapy since the hearing below. I, for my part, am persuaded that there should be a time limit to provide a framework within which this Local

Authority must act. I consider that this accords with each of the children's best interests.

20. In conclusion, for the reasons I have set out, I have no doubt that the appeal should be allowed and the order made by the judge in respect of the Local Authority's application be set aside. I consider that this court is able to determine what order should be made on the evidence available to us and having regard to the parent's position as referred to above. In my view, it is clear that we should grant the Local Authority permission to refuse contact between the parents and each of these children but for a time limited period. In my judgment, having regard to the circumstances of this case, this should be for no more than two years from today. Further, I would direct that the monitoring officer provide through the Director of Children's Services a report to the parties and this court in the terms I have set out above.

SENIOR PRESIDENT OF TRIBUNALS:

21. I agree.

End of Judgment

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