



Neutral Citation Number: [2021] EWCA Civ 785

Case No: B4/2021/0280

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE FAMILY COURT AT TAUNTON**  
**HHJ Richards**  
**TA362020**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21 May 2021

**Before :**

**LORD JUSTICE PETER JACKSON**  
**LORD JUSTICE MALES**  
and  
**LADY JUSTICE SIMLER**

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**N (Children)**  
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**The Appellant Mother** appeared in person with a McKenzie Friend  
**Anthony Hand** (instructed by **Somerset County Council**) for the **Respondent Local Authority**  
**Elizabeth Willstead** (instructed by **Daniells Family Law Ltd**) for the **Respondent Children by their Children's Guardian**

Hearing date : 21 May 2021  
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**Approved Judgment**

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be at 2:00pm on Friday, 21 May 2021.

**Lord Justice Peter Jackson :**

1. This is a mother’s appeal from the making of a placement order on 21 December 2020 in relation to M, a little girl who is now 6. The appeal, for which permission was granted by Baker LJ on 9 April 2021, is not opposed by the local authority or by M’s Children’s Guardian. It is a peculiarity that their non-opposition is not based upon the ground of appeal for which permission was given. We are grateful for the help that we have received from the parties at the short hearing this morning.
2. The background is very fully set out in a judgment given by His Honour Judge Richards (‘the Judge’) on 17 June 2020, when he made care orders in relation to M and her older brother T, now aged 13, in consequence of long-standing difficulties in the family. There is no appeal in relation to T, who was placed in a specialist residential placement, and Baker LJ refused to grant permission to appeal out of time in respect the care order in relation to M. In consequence, M was removed from her mother’s care and placed in foster care, but a decision about whether the local authority’s application for a placement order should be granted was deferred until later in the year. In November the mother applied to revoke the care order and sought the immediate return of M to her care; in any event she opposed the making of a placement order.
3. After a further hearing in November, the judge gave his decision on 21 December. He dismissed the application to revoke the care order and made a placement order as requested by the local authority and supported by the Children’s Guardian. M has remained in foster care, apparently settled, and a possible adoptive placement has been identified.
4. The mother, acting in person, applied for permission to appeal from the making of the placement order, but not from the dismissal of her application for the discharge of the care order. The only ground of appeal for which permission was given is that the Judge did not demonstrate that adoption is the only option for M in circumstances where the mother says she has separated from the father and where T, whose behaviour had been extremely challenging, is no longer at home. The local authority and the Guardian contest this ground of appeal.
5. The parties nevertheless agree that the placement order should be set aside. It has transpired that there was a breach of the Adoption Agency Regulations 2005. At the time that she made her decision in this case, the Agency Decision Maker (“ADM”) did not have a health report from the medical adviser as required by Regulation 15, or advice that no such report was required. Furthermore, the Child Permanence Report did not include a medical summary prepared by the medical adviser as required by Regulation 17. The local authority therefore intends to present M’s case again to the ADM and thereafter to issue a new application for a placement order if the plan for adoption is approved. We were told by Mr Hand that it is content to withdraw its previous application for a placement order on the basis that any fresh application was likely to be made in about six weeks’ time. Bearing in mind the unfortunate history and the pressing need for a decision to be made about M’s future, any longer period would be concerning. For her part, the mother is concerned that she was not told about this issue sooner.
6. Even where parties to an appeal are in agreement, it is of course a matter for the court as to whether an appeal should be allowed. In these unusual circumstances, where the

respondents agree to the placement order being set aside for a procedural reason, and the appellant's substantive argument was sufficiently strong to warrant the grant of permission to appeal, I propose that we should take a pragmatic course by discharging the order without hearing further argument. In taking this course, I am particularly influenced by the fact that M's Guardian supports it.

7. It is not every breach of regulations that will justify the upsetting of an otherwise regular order of this kind: see *Re B (Placement Order)* [2008] 2 FLR 1404. It appears that the breach of the Regulations may not be restricted to this case and that it may become necessary for rulings to be made by the High Court about the consequences in other cases. It would therefore not be right for us to enter into any unnecessary discussion of that issue.
8. Nor do I intend to say more about the substantive merits of the appeal. Even if the mother's ground of appeal was upheld, it would not realistically be open to this court to dismiss the application for a placement order and the best outcome that the mother could have hoped for is for the application to be remitted to the Family Court.
9. That court will need to give fresh consideration to any proposal for M to be adopted, and it would not be helpful for this court to express any view on that question. Our orders do not imply any criticism of the Judge, but as and when the matter returns to court it should come before another judge.
10. In summary, the outcome of this appeal reflects the unique circumstances that have arisen in this case. It does not have any implications for future decisions about M or for decisions in other cases.
11. We therefore allow the appeal for the reasons given in this judgment. The placement order will be set aside. The local authority is permitted to withdraw the underlying application for a placement order on the basis that it is likely to issue a fresh application in a short time, and that that application is to be heard by another judge. The local authority is directed to write to the mother within 7 days explaining the circumstances relating to the medical adviser and the disclosure of that issue to her. It will be recorded in the order that we consider that any further proceedings about M should be expedited.

**Lord Justice Males**

12. I agree.

**Lady Justice Simler**

13. I also agree.
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