



Case No: B4/2009/0755
B4/2009/0775

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE BRIGHTON COUNTY COURT
(HIS HONOUR JUDGE COATES)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday, 8th July 2009

Before:

LORD JUSTICE THORPE
LORD JUSTICE LONGMORE
and
MR JUSTICE BODEY

IN THE MATTER OF S (A Child)

(DAR Transcript of
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Ms A Ball QC and Ms C Macmillan (instructed by Messrs Bosley & Co) appeared on behalf of the 1st Applicant, the Mother.

The 2nd Applicant, the father, appeared in person and was assisted by a MacKenzie Friend.

Ms L Theis QC and Mr C Rice (instructed by East Sussex County Council Legal Services) appeared on behalf of the 1st Respondent, the local authority.

Ms Wiley (instructed by Stephen Rimmer & Co) appeared on behalf of the 2nd Respondent, the Guardian ad Litem.

Judgment

(As Approved by the Court)

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Mr Justice Bodey:

1. These are applications for permission to appeal findings in care proceedings made by Her Honour Judge Coates at the Brighton County Court on 16 December 2008, to the effect that the statutory threshold for the making of a care or other similar order had been established. There is also an application in respect of a care and placement order made by the same judge on 17 March 2009. The application for permission has been advanced by Ms Ball QC on behalf of the mother, and by the father who acts in person. The applications are opposed by both the local authority and by the children's guardian.
2. The child concerned is a girl, S, who was born on 23 February 2002. She was aged just five at the time of the events in April 2007 which took her into interim care. She remains with foster carers to date, pending the outcome of this application for permission to appeal.
3. The background can for these purposes be shortly stated, although it has become considerable along the way. In December 2006 an anonymous referral was made via the NSPCC to the local social services expressing concerns about S. Those concerns were not established and they do not need to be set out here. However, the consequence was that the parents were seen by the social services, which made the parents angry. They became convinced that a particular teaching assistant at S's school, whom they had reported for allegedly smacking S, had been the originator of the referral, and they went to the school. There they became angry, vociferous and difficult, to the extent that the head teacher came close to calling the police. The father's own evidence is that he "lost it". Subsequently the parents went round to the teaching assistant's house, taking S with them, but fortunately she was out.
4. The outcome was that the parents removed S from her school and she did not attend school thereafter until she was taken into interim care. This was for a period of some four and a half months. The judge held that the mother had subsequently misled the education authorities by telling them initially that she was educating S at home, when she subsequently agreed that she was not doing so. She told the educational authority that the father was refusing to complete school entry preference forms until the above complaint which the parents had made against the teaching assistant had been dealt with. Although S only became of compulsory school age shortly before she was taken into care, the parents' attitude meant that she had been taken away from the society of her school friends and there was no sign of the parents getting her back into education.
5. On 23 March 2007 a police officer visited the family home about the theft of a puppy, the parents being dog breeders. The police officer found the house clean and tidy with no smell, and S appearing appropriately cared for in every way. An earlier nursery report in 2006 had described the child as always happy to try out new experiences and her teacher had described her as a pleasure to teach. The parents also produced considerable evidence from neighbours and others that S was happy and well cared for by them.

6. On 19 April 2007 two RSPCA officers attended at the family home. They were concerned about possible 'tail docking' by the parents in their dog breeding establishment. The RSPCA officers described the parents as obstructive, aggressive and belligerent. As a consequence they left and a warrant was obtained.
7. On 25 April 2007 a police sergeant with three other police officers, two RSPCA officers and a vet attended at the matrimonial home to execute the warrant, which related to animal welfare matters. The judge found as a fact that the warrant was shown to the parents. Nevertheless the evidence which the judge accepted was that the parents were extremely angry, the father contorted with rage with his fists clenched. During the course of what was a dreadful showdown, with the father shouting at the police to "get the fuck out", S, who came onto the scene, unfortunately saw him being handcuffed. In front of her he said (as found by the judge) words to the effect: "you fucking lot are going to die of cancer by the time you're 45". At one point whilst in handcuffs, he was heard to say to S that if he had his way 'the police would be arrested and put in handcuffs to see how they fucking liked it'.
8. It is clear from the evidence of the woman police officer who took care of and comforted S on that day, whilst both her parents were screaming and shouting at the officers, that she, S, became understandably upset and distressed. At one point she began shouting at the police too. The judge accepted the evidence of the police as to the state of the premises: dogs' faeces everywhere with partially eaten and whole dead rabbit carcasses on the floor and the settee; blood on the floor and entrails of rabbit on the walls and the floor. One of the witnesses asked himself: "how could anyone live here?". It is right, as the parents say, that they had been looking after another dog with puppies on behalf of someone else at the particular time, so that the circumstances were exceptional.
9. The woman police constable who comforted S described herself as horrified when she entered the bedroom which was being used by the parents and the child. She described a dirty blanket and dirty duvet with no cover on; no pillows and a large hole in the ceiling of the room. It is also right to say that the parents' case is that they were on the point of moving out. They put the state of the house down to the police raid rather than how it had been beforehand, which the judge rejected. When the woman police officer was talking to S at the house, the child told her that her mother had had a fight with her teacher and went on to say: "I should have punched her in the mouth", concerning talk from one so young.
10. On 31 April 2007, S having been made the subject of an emergency protection order, contact was arranged to take place at a family centre. Unhappily, the father became extremely angry, although the mother remained calm. He told S that they, the parents, were going to take her home; and during his ranting S was reported as looking fearful and anxious. The father said that the police had 'set them up' by bringing buckets of rabbit guts into the house and spreading faeces there. S was seen to be clearly extremely distressed by the father's talk and behaviour and she asked the supervisor twice to keep her

safe. She was seen to be shaking with fear. In cross-examination at the hearing in July 2007 the father denied anger on that day.

11. On 31 July 2007 there was a hearing in the County Court of a further application by the local authority for an interim care order. It was one in a sequence of such applications for interim care to be continued. It involved HHJ Coates hearing twelve witnesses and it took, I think, eleven days to resolve. She made fact findings about the case consistent with the summary which I have given, and she found that the threshold for an interim care order was made out.

12. Thereafter further interim care orders were made until the parents, then acting in person, applied to the Court of Appeal for permission to appeal one of them. That was heard by Hughes LJ on 2 April 2008. Because they were acting in person, he revisited the fact-finding hearing of 31 July 2007, although it had not ever been appealed. He asked himself whether there was any prospect of an appeal against the judge's fact-finding exercise, so that if necessary he could have given leave to appeal out of time; but he concluded that there was no such prospect. He also said that there was more than enough reason to be worried about S for the court to keep control of the situation under interim care orders until the final hearing, and added:

“ ... sadly, ... the more the parents refuse, out of principle, to cooperate, the more inevitable it is that the present state of affairs will have to continue.”

He urged the parents to recognise that some things in the past could have been done better. He encouraged them not to concentrate on the past but to concentrate on showing that in fact they could perfectly well care for their daughter.

13. For reasons which do not fall to be recounted here, the case took a considerable period of time to bring on for a final hearing. There were various difficulties which I do not propose to go into. During the process reports were filed (a) by a consultant forensic child and adolescent psychiatrist instructed by the children's guardian, (b) by a consultant in forensic psychiatry instructed by the parents, and (c) by an independent social worker also instructed by the parents.

14. On 11 August 2008, preparatory to the final hearing which was due to commence about a month later, there was an experts' meeting between those three experts. Neither psychiatrist found mental health problems in either parent, but both agreed on the necessity (as advised by the children's guardian) for there to be psychological assessment of them in view of the possibility of their having personality or behavioural traits which would adversely affect their ability to put the emotional needs of S above their own needs and strong feelings and reactions. The independent social worker was not initially in agreement with this course, but he rightly deferred to the views of the two psychiatrists. It was thought by the children's guardian to be the

appropriate way forward, in view of the successful contact which had been ongoing between the parents and S.

15. The final hearing commenced on 15 September 2008, by which time no such psychological assessment of the parents had been undertaken, because they were not in agreement. On the first day the parents' own forensic psychiatrist repeated her opinion as to the need for such an assessment. There was then a gap after the first five days of hearing, between 19 September and 9 October 2008, whereafter the hearing continued, taking in all a very large number of days, I think around 15, until 24 November 2008. Judgment was given on 16 December 2008 that the threshold had been met for statutory intervention. This was based on the facts as found in July 2007 and on the various concerns about the parents expressed in the experts' reports (which I need not rehearse here) absent a psychological assessment to allay those concerns sufficiently.
16. It was subsequently in March 2009 that the learned judge heard the case again and made a final care and placement order. It had not been possible to make any care order in December 2008 because the placement panel had not then been convened.
17. We have read skeleton arguments from Ms Ball QC for the mother and from the father acting in person, which set out in very considerable detail the parents' criticisms of the judgment, indeed of both judgments. We have also read skeleton arguments opposing the application for permission to appeal from both the local authority through Ms Theis QC and the children's guardian through Ms Wiley.
18. As this is an application for leave to appeal, I do not propose to go through those proposed grounds in any depth. Suffice it to say that they include that there was no sufficient evidence for the judge to find that there was a likelihood of significant harm, whether physical or emotional, to S on the relevant day (which was 25 April 2007, when the local authority took safeguarding procedures); that insufficient weight was given to the favourable evidence mentioned above about the care which the parents had been giving S quite adequately up and until the events of 2007; and insufficient weight to the favourable evidence as regards the quality of contact. It is said that there were irregularities regarding the instruction of the child and adolescent psychiatrist, including that she subsequently went outside the terms of her brief in making an assessment of the parents as well as of S; and further that she was supplied with a psychotherapist's report, which the parents felt should have been kept from her. It is said that the learned judge erred in not giving the parents a proper opportunity to decide if they would be willing to undergo a psychological assessment. The argument is that such an opportunity should have been given at the conclusion of the hearing; whereas in fact the judge went straight on in her judgment to decide that the parents would not be willing or able to cooperate with a psychological assessment. She therefore made an interim care order on a care plan of permanence elsewhere. Lastly it is said that the placement order was disproportionate in the overall circumstances of

the case, not compliant with the 'ECHR' rights of the parties and not in the interests of the welfare of the child.

19. On any view this is a case where the judge had a profound acquaintance with the circumstances, having dealt with the matter over a prolonged period. She it was who had every opportunity to observe its ebbs and flows, to understand its dynamics and to assess the underlying personalities, attitudes and insights of each of the mother and the father, which played such a considerable role here in the decision as to the child's welfare.
20. The mother says today, as she did for the first time at the hearing on 17 March 2007, that she is now willing and wishes to cooperate with this and a psychological assessment which the children's guardian had with this and was advising (along with the psychiatric experts) back in August/September 2008. That was a proposal the validity of which it fell to the judge to consider, and in her judgment at the March 2009 hearing she did not consider that it would ever realistically come to fruition.
21. Most particularly though, we now have before us the skeleton argument of the father for this application, dated 6 May 2009, in which he reverts to his opinion that on 25 April 2007 S was unlawfully removed during what he describes as a police raid. He explains that the parents have never neglected or harmed or abused S, who he says was a healthy and happy child when with them before the events of April 2007. He asserts that the local authority have spent all the time since the beginning of the case in "...trying to figure out what assessment they can put the parents on next and what hurtful false allegations they can label the parents with". He says:

"I found it very disturbing when HHJ Coates agreed with the local authority and the children's guardian there should be yet another assessment after two years in the case, as this was undermining the profession's [sic] of [the forensic psychiatrist and the independent social worker]."

He speaks of the local authority 'bombarding the parents with every assessment going, no matter how long the process would take'.

22. In his submissions to us this afternoon, which were none the worse for being brief, the father again repeated that he was not minded to go through any further assessment because in his view they simply cause further delay; what the court should now be doing, he said, is to return the child to the family.
23. In my judgment the judge rightly directed herself in accordance with the law; considered in depth all the evidence, every piece of which seems to me to have been properly admissible; weighed it all up in the balance; gave ample reasons for her conclusions and made orders in her discretion which, unhappily for the parents, she clearly felt best served the welfare of S. She was herself patently frustrated by her inability and that of the professionals to get through to the parents in time, and particularly the father, what they all felt was necessary

before any rehabilitation of S home could be safely considered. Hence she spoke of making the care and placement orders only with reluctance. The further psychological assessments for which she hoped the parents would accept the need were (as I say) recommended by the children's guardian and both psychiatrists as the only way forward, given their real concerns about the parents, and were not dissented from by the independent social worker. Unhappily for the mother, a psychological assessment undertaken on her alone would not serve to advance the court's ability to determine whether or not a safe rehabilitation could be undertaken. The parents are a couple, and so there has to be an assessment of them both, with their being at least on the face of it willing to enter into it freely.

24. In my judgment the original fact-finding exercise is unassailable in this court and rightly no attack is made on it. As I have said, the parents were clearly placed on notice by Hughes LJ and subsequently by Pauffley J of the desirability of accepting the factual findings; but the clear implication from the father's skeleton argument before us dated as recently as 6 May 2009 is that he still finds that approach extremely difficult to adopt. It is somewhat surprising in my view, given the judge's factual findings, that the threshold was not conceded by the parents below, enabling everyone to focus on the welfare decision and on trying to achieve the rehabilitation of S with them.
25. In the draft grounds of appeal it is asserted that on the facts found, the threshold was not met. I cannot however for my part see how it can be said that the judge was wrong in finding at the very least a likelihood of significant emotional harm (which is sufficient to meet the threshold) on the relevant date in April 2007 given, if nothing else, her findings as to: (a) the parents' extreme and inappropriate reactions to people whom they came up against in life, which would clearly (as happened) put the child in the midst of angry and violent scenes causing her distress; (b) the parents removing S from her primary school and her little school mates for some four months prior to her going into interim care, because they had disagreements with the school; and (c) at first lying to the education authorities, as the judge found, about her being educated at home and then showing no signs of putting her back into education until the emergency protection order was made.
26. Many of the grounds of appeal are tangential to the main issue in this case, which is whether the parents have any real ability to engage sufficiently in the psychological assessments which the psychiatric experts say are necessary prior to any attempted rehabilitation. As I have said, the father's grounds of appeal, which show that he continues to perceive underhand and sinister motives underlying the proposal for such psychological assessments, demonstrate that he would either not cooperate with them, or else would do so only superficially and under protest.
27. It is thus quite impossible to say, as the applicants would have to satisfy this court, that the conclusions of the judge were plainly wrong. Some of the proposed grounds of appeal raise points which would have had some mileage in my view at first instance, but these were considered and amply addressed by the judge. In my judgment they have no mileage in this court. Other grounds

of appeal are near being *de minimis* in the grand scheme of things and have no real prospect of achieving any interference with the judge's careful exercise of her discretion. The short point is that, sadly for the parents, any such movement as they have achieved in their attitudes and insight is too little too late.

28. The judgments below are in my view not appealable and I consider that this application should be refused.

Lord Justice Thorpe:

29. I agree

Lord Justice Longmore:

30. I also agree

Order: Application refused