

ENGLAND AND WALES / JUDGMENT

M & Ors v Suffolk County Council

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Judgment Approved by the court for handing down. D-F (Children) Neutral Citation Number: [2014] EWCA Civ 942 IN THE COURT OF APPEAL (CIVIL DIVISION) ON APPEAL FROM IPSWICH COUNTY COURT HHJ Yelton IP12C00802 Case No: B4/2013/2674 & 2771 Royal Courts of Justice Strand, London, WC2A 2LL Date: 15/07/2014 Before: LORD JUSTICE TOMLINSON LORD JUSTICE RYDER and LORD JUSTICE VOS

- ----- Between: M -and- GP & AK (Grandparents)
- and - Suffolk County Council
- -----
- ----- Appellants Respondent Ms Kate Brannigan QC and Ms Grainne Mellon (instructed by Powells Law) for the Mother Ms Tina Cook QC (instructed by Suffolk County Council Legal Department) for the Local Authority Ms Christine Hayes (Instructed by the Children's Guardian) for the Children The Grandparents appeared in person Hearing date: 22 May 2014
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Judgment

Lord Justice Ryder:

1. This is the appeal of a mother and her mother and step father who I shall call the 'maternal grandparents', against care and placement orders made by His Honour Judge Yelton in the Ipswich County Court sitting at Cambridge on 30 August 2013. The children concerned are now aged 3 and 2. Permission to appeal was granted by Black LJ at an oral hearing on 27 February 2014 reported as In the Matter of F (Children) and D-F (Children) [2014] EWCA Civ 439. I gratefully adopt the description of the history which my Lady sets out at paragraphs [1] to [8] of that judgment. The appeal was limited to one ground which can be summarised as Judgment Approved by the court for handing down. D-F (Children) whether the grandparents are able to provide the children with a permanent home. The appeals were heard on 22 May 2014 and were dismissed with reasons to follow.
2. The local authority, Suffolk County Council, issued care proceedings on 27 July 2012 because of their concerns about the mental health of the children's mother and domestic violence between the parents. Father had been convicted of assaulting the mother and there was an

outstanding allegation of rape made by mother against him. In that context on 29 July 2012 mother travelled to the Republic of Ireland and placed her children in voluntary foster care. The local authority in this jurisdiction arranged for a missing persons alert to be issued in respect of the children. Mother worked with Irish social services, completing six sessions of a parenting assessment with a social worker from Cavan Social Services. Her contact with the children in Ireland was by and large positive. At that stage, she wanted to remain in Ireland with the children.

3. The children returned to this jurisdiction in November 2012 and were placed in foster care. The mother returned shortly after. Father was convicted of rape and sexual assault against the mother after a criminal trial during which mother gave evidence against him. I should record that the father has been able to participate in these proceedings by a video link from prison but he has not added anything of substance to the appeal.
4. Within the care proceedings in England and Wales interim care orders were made by a district judge on 9 August 2012 and were continued by a circuit judge until the matter was transferred to the High Court to consider jurisdiction. On 9 October 2012 Parker J made findings of fact that the proceedings had been commenced on 27 July 2013, that the Ipswich court was seized of the proceedings and that the children were habitually resident in England and Wales. A case management conference was held on 29 November 2012 before the same judge who gave case management directions relating to evidence and assessment. None of those findings or orders were appealed at the time. At that hearing Parker J identified the issue in relation to the grandparents as their "ability to cope with these children during the whole of their minority, bearing in mind their relationship with each of the parents". 5. In November 2012 the maternal grandparents were positively assessed as potential foster carers for the children. They were subsequently recommended for approval as family and friends foster carers for the children by a local authority foster panel which met on 28 January 2013. They made an application for a special guardianship order on 4 February 2013 and were joined as parties to the proceedings on 6 February 2013 when the court was told that they had been approved as foster carers. No interim application was made at any time for the children to be placed with them during the proceedings and no-one actively pursued a placement with the grandparents under a care order with a view to a special guardianship order over time.
6. The final hearing took place over 5 days in August 2013 before Judge Yelton after having been delayed from May. There had been no judicial continuity during case management with the regrettable consequence that the only issue identification that had taken place was that undertaken by Parker J. Judge Yelton had not previously been the allocated judge. The court heard evidence from the social worker for the children, the social worker for the parents (who undertook the special guardianship report on the grandparents), the author of the fostering report on the maternal grandparents, the mother, the maternal grandparents and the guardian. Judgment Approved by the court for handing down. D-F (Children)

7. The mother's grounds of appeal included three detailed complaints about the determination made by the judge which have not been pursued before this court because permission to appeal was not given. It is important to understand the context of the mother's case. She asserted that the case management decisions, that is the orders that were not appealed at the time they were made, were wrong and that she should have been permitted to instruct and place reliance on an expert psychiatrist or psychologist. She also asserted that the judge had wrongly relied upon her mental health history as being indicative of her future behaviour thereby giving too much weight to that risk and too little weight to the mother's own evidence about herself and risk. Finally, she asserted that it was impermissible for the judge to go beyond facts that had been agreed for the purpose of the satisfaction of the threshold in section 31 of the Children Act 1989 in making his own findings and value judgments at the conclusion of the hearing.
8. None of these complaints had sufficient merit to lead to permission. Indeed I would go further, the detail of the mother's history is stark and very worrying. Although it can be said that there was a sea change in her life by July 2012, that would have to have been sustained and tested and be capable of continuous supervision for a court to conclude that it would have been safe for any child to be cared for by her. That broad context is important because in the county court and arguably even in this court until permission was refused, the mother's case was regarded by the parents and the grandparents as the primary case with the grandparents taking second place to the mother's case on the basis that she was immediately capable of caring for her children. The grandparents were the reserve option.
9. The mother's fourth ground of appeal which is also the grandparents' ground of appeal is put in a different way. It is that the judge did not analyse the risk to the children if they were to be placed with the grandparents, in particular whether the risk that the mother posed might be managed or ameliorated by the capabilities of the grandparents, the mother's own attitude to that risk and the effectiveness of any therapy that the mother might obtain in the future. Further, the judge preferred the evidence of the social worker who prepared the special guardianship report on the grandparents which was negative as against the positive fostering report and it is submitted that he was not entitled to do so.
10. The appeal divides into two key issues: a) did the judge's findings and value judgments support his welfare analysis and in particular his conclusion about risk so far as the grandparents were concerned and b) did the judge undertake a welfare analysis of the options and a proportionality evaluation of his decision so as to conclude that 'nothing else would do'?

11. The judge acknowledged that he was going to deal with the key issues and did not need to decide every issue of fact or opinion that was put before him in evidence. That is an appropriate approach. These are quasi-inquisitorial proceedings and it is for the judge, applying the overriding objective and active case management, as prescribed in the Family Procedure Rules 2010, to identify the key issues that it is necessary to decide in order to determine the ultimate question(s) in the proceedings.
12. The risks that the grandparents had to protect against were identified by the judge as follows: a) b) the mother minimises events where they do not assist her; the mother does not give a full and true account and can be misleading; Judgment Approved by the court for handing down. D-F (Children) c) d) e) f) g) h) i) j) k) the mother is almost wholly self centred; on occasion the mother loses her temper over trivial matters and becomes aggressive and confrontational; on occasion the mother becomes overly assertive, controlling and abusive; the mother does not easily regulate her own emotions, acts impulsively and with passion to the extent that she is unaware of the impact of her behaviour on others including her children; the mother continues to have intemperate outbursts including in the presence of the children; the mother failed to protect the children from domestic violence inflicted by the father; the mother failed to prioritise the children over her own needs; the mother has behaved in an emotionally unstable way; and the mother has found it difficult or impossible to work with many professionals.
13. Those findings and value judgments, supported as they were with specific examples, some of which were said to have come from the grandparents and others from the guardian, that is not exclusively from the local authority, are not susceptible of challenge. They are to be found in paragraphs [11] to [62] of Judge Yelton's

judgment.

14. Given that factual position, the judge then undertook an analysis of those conclusions by reference to the assessments of the grandparents. Taking the general complaint made against the judge first, he had two assessments of the grandparents that had come to broadly different conclusions. He was criticised for choosing one as against the other. The assessments were produced with different purposes in mind. Each was accepted to be compliant with the regulatory structure and Government guidance that supports the same and this court did not need to investigate that aspect. It is not surprising nor necessarily unusual for a judge to have to make a choice between two differing professional or expert opinions. That choice may be made upon the basis that the judge investigates the assumed factual substratum or reporting upon which an assessment is based and comes to different conclusions of fact which necessarily influence the expert's advice or he may prefer one opinion as against another or a combination of the two. Furthermore, an assessment's methodology or purpose may be more relevant or focused on the key issues in the case and inevitably, if accepted, provide a better basis for the judge's conclusions.

15. In this case the judge preferred the assessment of the social work expert who conducted the special guardianship report to the social work expert who undertook a family and friends foster care assessment. It matters not in this case whether either of them was an expert for the purposes of part 25 of the Rules, they were both expressing expert social work opinions based on their skill and expertise. His reasons were set out between paragraphs [71] and [76] of his judgment. He considered each assessment in detail, he was very aware of the different purposes of the assessments and he had the benefit of hearing both authors give evidence. He Judgment Approved by the court for handing down. D-F (Children) was accordingly aware of the nuances of their evidence which go beyond the usual credibility issues relating to factual evidence and which relate to the application of the skill and expertise of the expert to the circumstances of the case. He was entitled to come to the view that he did.
16. As to the particulars of his analysis, he considered both the positives and negatives of the grandparents' case. He held that the grandparents: a) b) c) d) e) were committed to each other and to the children; were used to the children and the children were used to them: there was a great mutual fondness between them; had made a favourable impact on those with whom they had dealt and had found it easy to work with social work professionals; had a great love for the children; and would preserve the children's family ties that is, the undoubted advantages of being loved by their placed in their extended family in which they are known and grandparents.
17. The negatives were expressed by the judge in the following terms: a) b) c) d) e) f) g) h) i) they did not appear to connect (one of) the child(ren)'s distress at witnessing one of the mother's emotional outbursts; they had adopted a non-interventionist approach in terms of active protection when family holiday; the father turned up by arrangement with the mother at a they did not discourage the mother from allowing the father to attend the holiday when they knew that he had perpetrated violence on family the mother in front of the children; during the first of their assessments the grandparents had taken the view that the mother was the proper person to look after the children; the maternal grandmother would struggle to enforce boundaries in relation to her daughter; the grandmother was unable to emotionally challenge her daughter; the grandmother minimised the risk that the mother presents to the children now and in the future; the grandparents' view was that they could look after the children until the mother was in equilibrium; the grandparents would not provide the permanence that the children needed being temporary; and (which was urgently required) because they saw their care as Judgment Approved by the court for handing down. D-F (Children) j) the grandparents would find it difficult to resist the wishes of the mother who is not only aggressive but also an intelligent woman who is skilled at manipulating people to her own advantage.
18. That analysis is contained in paragraphs [66] to [81] of the judge's judgment. It is a sufficient analysis for the judge to be able to conclude that the grandparents would not be capable of protecting the children from the risk of emotional harm from their parents and also that the grandparents would not be likely to offer the long term placement needed by the children.

The analysis was rooted in his conclusions about the parents, in particular the mother and the opinions expressed in the special guardianship report which he was entitled to prefer over the opinions expressed in the long term foster care assessment for the very reason that the former was concentrating on permanence and substitute parenting rather than capability to provide care albeit in the broadest sense of that word.

19. No-one suggests that the judge undertook the neat balancing of welfare factors comparing one option with another that is described in *Re B-S (Children)* [2013] EWCA Civ 1146 at [41] to [46]. The local authority and the guardian submit that despite that error of form, the substance is plain on the face of his judgment. They rely for their submissions on this court's decision in *Re W (A Child)*; *Re H (Children)*

[2013] EWCA Civ where Sir James Munby P said: "[16] Plainly, in the case of judgments given before *Re B-S* the Court of Appeal must have regard to and make appropriate allowance for that fact. The focus must be on substance rather than form. Does the judge's approach as it appears from the judgment engage with the essence? Can it be said, on a fair and sensible reading, not a pedantic or nit-picking reading - that the judge directed his mind to and has provided answers to the key questions. [...] Nor, to take another example, will the mere fact that the judgment does [17] not engage with matters referred to in paragraph 74 of *Re B-S*. What is crucial is the effect of the judgment read as a whole."

20. The local authority and the guardian submit and I agree that the judge engaged with the core long term welfare decisions and addressed them in an holistic way in his judgment. This was not a judgment that fell into the linear error described in *Re G (A Child)* [2013] EWCA Civ 965. There were three options: the mother, the grandparents and adoption. No-one suggested that long term foster care was appropriate and that perhaps underlines the judge's preference for the assessment of the grandparents that was focussed on permanent parenting for the children. Although I would be minded to be less critical of the judgment in this case, the analysis of this court followed closely that in *Re C (A Child)* [2013] EWCA Civ 1257, at [32] and [33] to which we were referred.
21. The judge was acutely aware of the Supreme Court's decision in the matter of *B (A Child)* [2013] UKSC 33, in particular the need for a proportionality evaluation. He made explicit reference to its requirements on three occasions in his judgment. He emphasised the law's imperative (he characterised it as a preference) for family placement and the advantages of family life within a birth family as against removal from that family. He specifically cautioned himself against simply conducting a comparative best interests balance and instead referred to the language used by the Supreme Court: will nothing else other than adoption do? In short, he conducted a proportionality evaluation.

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22. On an appeal this court's primary function is to review the welfare analysis and proportionality evaluation and decide whether those value judgments were wrong Judgment Approved by the court for handing down. D-F (Children) within the meaning of that phrase as, for example, described by Lord Neuberger in *Re B* at [93]. I came to the conclusion at the end of the appeal that the judge's analysis and evaluation were not wrong and most certainly were not insupportable and accordingly the appeals had to be dismissed. Lord Justice Vos:
23. I agree. Lord Justice Tomlinson:
24. I also agree.
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Prepared on 28 October 2026 · Esheria