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Re B (Children)(Remote Hearing: Interim Care Order) [2020] EWCA Civ 584

Y1KBW Newsletter | 01.05.2020 | Millie Benson

This is a judgment from the President of the Family Division overturning the making of an interim care order, with the removal of a child to foster care. The original hearing took place on an urgent basis and by telephone. This straightforward and engaging judgment cautions practitioners against confusing the urgency of a remote hearing with urgency for a child. There are interesting comments on the current judicial workload and the time pressure for practitioners and clients involved with an urgent application in care proceedings.

Facts:

Two children, called Sam and Samantha within the judgment, had been living with their maternal grandmother since 2013. Their grandmother was made their special guardian in July 2013. However, all had not been "plain sailing" and the Court of Appeal describes almost continuous local authority involvement since that point, and concerns about the maternal grandmother's ability to protect the children from an aunt and uncle and from their mother. The children had been placed on child protection plans in September 2019.

An incident on 20 March 2020 led to the police being called and Samantha being placed in police protection and foster care. Sam was not directly involved in the incident and remain with his grandmother. The grandmother signed a section 20 agreement in relation to Samantha on 23rd March but made it clear that she sought the return of Samantha by 3rd April. All of this resulted in the local authority issuing proceedings on 2nd April, seeking an interim care order in relation to Samantha and an interim supervision order for Sam.

Proceedings:

At 10.49 on the morning of the hearing (listed for 12 noon), the Guardian filed a position statement. This is set out in detail in the President's judgment due to its importance in the following events. The position statement detailed the Guardian's concerns and advocated for

Sam’s immediate removal from the grandmother’s care as well as Samantha’s. The Court of Appeal notes, rather damningly, “…it is, to put it at its lowest, surprising that she and the children’s solicitor felt it appropriate to make such a bold recommendation from such a low knowledge base.”

At around 11.30, the local authority informed the parties that it had changed its care plan and now sought the immediate removal of Sam as well as Samantha.

The case was put back until later in the afternoon and started at 16.22. Readers should note that a very detailed (but readable!) chronology of the 2nd and 3rd April is included in the Court of Appeal judgment – it illustrates well the fast-moving nature of this case and just how much work the parties and judge were expected to do in a very short time.

At the hearing, the Judge heard submissions and refused the grandmother’s counsel’s application for an adjournment. He gave an ex tempore judgment making interim care orders in relation to both Sam and Samantha and Sam was removed from the grandmother’s home at within an hour of the decision.

Court of Appeal – key aspects of the decision:

The appellate court is firm in its view that the evidence simply could not have justified the immediate removal of Sam from his grandmother’s care. The Court is clear that there was nothing urgent about the need for Sam’s removal and that an adjournment was plainly the better course of action. The judgment notes:

“Our observation is that this was a case where the central concern related to emotional harm stretching back for years. On the information then before the court it could not in our view be plausibly argued that something had now happened to make Sam’s removal that evening necessary. … The evidence did not remotely justify his peremptory removal and there is nothing in the judgment that is capable of persuading us that it did. Our further observation is that, no doubt partly because of the exigencies of the remote process, there was a loss of perspective in relation to the need for an immediate decision about Sam. This

was a classic case for an adjournment so that a considered decision could be taken about removal, if indeed that option was going to be pursued after reflection. …"

On a practical level, the judgment highlights that this hearing took place by telephone and says:

"There is a qualitative difference between a remote hearing conducted over the telephone and one undertaken via a video platform. If the application for an interim care order for Sam had been adjourned, it may well have been possible for the adjourned hearing to have been conducted over a video link and that single factor might, of itself, have justified an adjournment in a case which, in our view, plainly was not so urgent that it needed to be determined on 3 April. Whilst it may have been the case that the provision of video facilities was limited at the particular court at the time of the hearing, it is now the case that the option of using a video link is much more widely available. Where that is the case, a video link is likely at this time to be the default option in urgent cases."

The Court further sympathises with the busy Recorder, saying: "At 17.57 the hearing concluded. By that time the Recorder had been working, almost continuously and mainly on the telephone, for 10½ hours. Our observation is that, although we have found the decision in this case to have been unquestionably wrong, the nature of the workload faced by the Recorder, experienced as he is, was surely a contributory factor"

By Millie Benson – click here to view profile