

CA on appeal from Bristol County Court (Her Honour Judge Darwall-Smith) : 12<sup>th</sup> July 2001

**JUDGMENT : LADY JUSTICE HALE**

1. This is a father's application for an extension of time and permission to appeal against the order of Her Honour Judge Darwall-Smith made in the Bristol County Court on 11th December 2000 in care proceedings relating to his daughter, K. K was born on 4th January 1991 and so is now 10. The judge made an order placing K in the care of the local authority and also that contact between K and both of her parents should be at the discretion of the local authority, and an order under section 91(14) of the Children Act 1989 prohibiting either parent from making an application to the court in relation to K without the court's leave for 12 months.
2. This was a very sad and complex case. This is evidenced by the fact that K was represented by the Official Solicitor, as he then was. There were reports from a child psychiatrist instructed by the Official Solicitor and an adult psychiatrist instructed by the father.
3. The parents were not married to one another but the father had parental responsibility by an agreement made in 1993. The father is black of African Caribbean origin, the mother white, both having been born in this country. Their relationship began in 1985. They bought a property together in 1986. The mother in 1987 was diagnosed with multiple sclerosis. K was born in 1991. Their relationship soon ran into difficulties after that. They led separate lives under the same roof for some time and finally separated in 1993. The mother still lives in the former family home. The father has a child born in 1993 of a new relationship. They have been in dispute about K since 1992, almost the whole of her life. The Official Solicitor has been involved since 1994. Mostly K has lived with her mother until the events leading to these proceedings, except for nearly a year, from October 1996 to September 1997, when they shared her care – she spent a week with one and a week with the other – and nearly a month in 1999 when the mother was in hospital and she stayed with her father. In May 1999, after the mother had come out of hospital, there was an agreement for shared care which was to be implemented in the August, but that broke down almost immediately because it was on the condition that the father lived with his partner and that turned out not to be practicable.
4. Thereafter, there were serious problems with contact. K's behaviour deteriorated badly. She was accommodated in foster care in January 2000. Care proceedings were begun in March. The father applied for a residence order. It is the sad fact that the mother's health now prevents her from caring for K any longer.
5. The threshold for making a care order was conceded both by the mother and the Official Solicitor on behalf of K. It was not conceded by the father: that is to say, it was denied on his behalf that he was in any way responsible for the situation that had developed. There was no real doubt that at the time K was suffering serious emotional and psychological problems. There was expert evidence attributing this to four factors: witnessing serious arguments between her parents, the continuing dispute between her parents about her future, the periods of absence of her father from her life, and her mother's serious illness which led to K being both anxious and at the same time somewhat irritated with her mother. The judge made findings about these and how they had contributed to the harm suffered by K, and she made observations about the effect upon K of the father's absences from her life, most of which have been the result of deliberate decisions on his part. The judge rejected a fifth factor urged by the father, the mother's longstanding persistent emotional abuse of her daughter. The view of the child psychiatrist, Dr Meller, was that, if this had been continuous since her birth, it would be a most significant cause of her present difficulties. If it was the occasional product of the mother's illness, it would not have much causative effect. The judge did not find that there had been continuous emotional abuse by the mother but she did find that the mother's illness had been a significant factor in the harm that K had suffered. Even if there had been such abuse, the father could not avoid his own share in responsibility for the other factors. Hence the judge concluded that there was overwhelming evidence that, by the start of the proceedings in March 2000, K was suffering significant harm attributable to a lack of reasonable care by both parents. She also found that K was likely to suffer significant harm if removed from her foster carers by either parent. Hence there was a need to protect her by some form of order.

6. The choice presented was between an immediate residence order in favour of the father and a care order, with a carefully considered care plan which aimed to reunite them in due course, subject to the father complying with certain conditions. The judge accepted that the father had a great deal to offer K. He was capable of providing good care for her when he was not enmeshed in his disputes with the mother and with the local authority. K wants to have a good relationship with him. There was evidence of good contact between them from July 2000 until an incident which upset K in November 2000. The problem, in the judge's view, was that the father was unable to understand K's very special emotional needs. She had improved a great deal since being in foster care but she was still a very strong willed little girl, with her boundaries not securely fixed, liable to be aggressive and to lose her temper. The father had not changed his approach in any way. He had not set out to be deliberately destructive but he had found it difficult to contain his feelings and his wish to be in control. He had found it impossible to co-operate with the professionals who were trying to help. This might be understandable with the social workers for a variety of reasons, but not understandable with those therapists who were treating K or, for that matter, with her school. If K was to be reunited with him there needed to be one carefully planned move. It would be devastating for her if this was unsuccessful. Hence K needed to remain in her placement with the foster carers for at least another year. Otherwise she was likely to regress. It was important therefore to have a care order but there should be mediation to improve the relationship between the father and the local authority and regular contact with both parents. No specific order for contact was indicated because of the need to be sensitive to K's own needs and to move at her pace. Because litigation had been a major factor in the harm caused to K, it was appropriate to prohibit further applications without the permission of the court by either parent. K needed to pursue her therapy without being subject to court proceedings or knowing that there were court proceedings about her.
7. It is against that background that this application for permission to appeal was made. It came before me first on 7th June. At that hearing I was concerned to discover that there had been no contact between K and her father since last December. I had no information about how and why that might have occurred but the father, who was at that stage acting in person, appeared to be under the impression that he was able to wait for his psychiatrist, Professor Sashidharan, to arrange mediation rather than to deal directly with the local authority over the matter of contact. It also emerged during that hearing that the father might not have had an opportunity of studying in great detail the careful judgment of the judge. I therefore adjourned the application to give the father an opportunity to read and study that judgment and to make further inquiries with a view to implementing the care plan, in particular making arrangements for contact with his daughter and for mediation between him and the local authority, with the advice of Professor Sashidharan, and placing further information before the court as to the progress of the care plan. I directed that a copy of my order be served on the local authority and on CAFCASS Legal Services in succession to the Official Solicitor for their information. I made it clear that they were at liberty to attend the adjourned hearing should they consider that it would assist the court. I directed that in order to protect the child from any knowledge of this application, its existence and the details of this order should not be disclosed to or discussed with the mother or the child without leave of this court. I took that unusual course because it did seem to me that there was ground for concern about the form of the contact order and the lack of progress with the contemplated mediation, but the last thing that this court would want to do would be, by its own process, to set at nought the clear intentions of the judge, on the expert evidence, that K should have this period of peace and quiet.
8. I have now been presented with much more information about the efforts that have been made to re-establish contact and to find an appropriate mediator. Those efforts have included the involvement of Dr. Shoebridge, the child psychiatrist, and he is willing to assist the father with understanding the situation and with understanding K's difficulties, and indeed to assist in re-establishing the contact between them. At the same time, further efforts are being made through Professor Sashidharan to find a mediator.
9. What then should I do on this occasion? First, the father is very concerned about the care order. One understands, in a sense, how from his point of view it is a straightforward matter. Once his daughter

has to be separated from her mother because of her mother's illness, she should come to live with him. He has already shown that he can look after her, certainly from the physical point of view. In his view her problems will then disappear quite quickly. The fact that the social workers cannot see this is influenced by their perception of him as a problem, influenced to some extent at least by racist stereotypes and attitudes. He also complains that the full truth of the behaviour of the mother towards his daughter was not put before the court and therefore the court was not given sufficient information to make a judgment on his allegation of persistent emotional abuse.

10. The truth is, as must be plain, that this was an exceptionally difficult case, a difficult case in which to achieve the best outcome for K. None of the experts, in particular the psychiatrist who was assisting the Official Solicitor representing K's best interests, was supporting the father's case for an immediate residence order in his favour, but both Dr. Meller and Professor Sashidharan had shown themselves sympathetic to the father's case for rehabilitation, and made constructive suggestions as to changes to the care plan to help achieve this. In those circumstances, I see no prospect of this court allowing an appeal against the care order. The judge reached conclusions which were clearly open to her to reach on the case before her. She considered it carefully and she applied the right principles of law. I am glad to know that the father, through his counsel today, has accepted that the need is not to look backwards but to look forwards and as quickly as possible, to seek to give effect to the care plan.
11. I could simply dismiss this application, were I to be of the view that an appeal against the rest of the order had no prospect of success, or I could adjourn it, in the hope that progress would be made between now and the adjourned hearing. An adjournment on the same terms as the previous adjournment would be an unusual step to take, but it is one that is urged upon me by all counsel in the case. They all accept that the priority is to get contact re-established on a regular and reliable basis between K and her father as soon as possible. It is only once further attempts have been made that it is possible to gauge whether the unusual form of contact order made by Her Honour Judge Darwall-Smith was indeed the proper order to make in the circumstances.
12. I have also been concerned, following the case of **Re W and B**, decided in this court recently, that the mediation aspect of the care plan was so crucial to bringing about some sort of reconciliation between the local authority and the father, so that they could communicate with one another, that it would have been an item suitable for starring under the procedures put forward by the court in that case.
13. In those circumstances, it seems to me that it would be appropriate to adjourn this application. I will adjourn it for three months. It will return before a constitution which consists of myself and may also consist of another judge. I will give consideration to that. I will adjourn it on the same basis as I adjourned the case last time. Obviously the local authority and CAFCASS will know about the order. They will be at liberty to attend the adjourned hearing should they consider that it would assist the court. I will maintain the direction that the child must be protected from having any knowledge of the application; therefore its existence and the order I make today must not be disclosed to or discussed with the mother or the child without leave of the court. I am conscious that the mother is party to these proceedings and obviously has an interest in them, but nevertheless K's interests for the time being must prevail. This will be the best way of bringing that about.
14. What I would hope has happened before the adjourned hearing is that the father has discussed matters with Dr. Shoebridge and has made some progress in understanding his daughter's needs. I would not expect, although I would not prevent, the mediator being in any way involved with that. The object of the mediation is to re-establish contact between the father and the local authority. These two matters are independent of one another. The father must understand that it is extremely important that he re-establishes contact with his daughter and shows a constructive interest in what others are trying to do to help her and makes his own contribution to that, and tries to get away from the confrontations which have taken place in the past. I am not blaming anybody for those but it is important to make progress in the future. The application is adjourned on those terms.

**Order: Application adjourned for three months as per judgment; public funded assessment.**

MR. G. CAMPBELL (instructed by Messrs Barcan Woodward, Bristol) appeared on behalf of the Applicant.

MR. P. WOOD (instructed by the Legal Services, Bristol County Court) appeared on behalf of the Respondent.

MR. N. MARSTON appeared on behalf of the Official Solicitor.