

Ayshea Megyrey discusses:G (Children: Fair Hearing), Re [2019] EWCA Civ 126 (07 February 2019)

Procedural appeal against interim care orders by a mother who was subjected to Judicial pressure, ruled to be 'serious procedural irregularity' by the Court of Appeal. [Click here](#) for a copy of the official appeal decision.

Appeal allowed.

Facts

The application for interim care orders was heard before HHJ Carr QC on the day police protection orders expired in respect of two children. Mother having withdrawn her consent to the children being accommodated. This was a procedural appeal by mother who stated that she was subjected to improper judicial pressure that led to the orders being granted without opposition on her part. The appeal was allowed. It was accepted that there had been serious procedural irregularity and the mother did not get a fair hearing. The matter was set down for an early contested hearing in front of another judge.

Significant Points

Appropriate Procedure:

It was raised on behalf of the Local Authority that mother should have applied to discharge the orders rather than to appeal. However, Peter Jackson LJ affirmed that the proper course is to appeal to the court of appeal citing Re R (Contact: Consent Order) [1995] 1 FLR 123 at 129 where it was said that where it was alleged that a judge had brought improper pressure to bear upon a party to reach a settlement by appearing to have made up his mind finally before hearing the evidence or by some threat or unjustifiable warning (in this case as to costs) it is appropriate for the court

of appeal to consider the matter and not the judge himself or a judge of coordinate jurisdiction.

The Appropriate Parameters of Case Management:

It was observed that the overriding objective in family proceedings is to deal with cases justly, having regard to any welfare issues involved. The court is under a duty to deal with cases expeditiously and fairly and to manage them actively in ways that include "helping the parties to settle the whole or part of a case" in accordance with FPR 2010 1.1(1), 1.1(2)(a) and 1.4(2)(g).

Therefore, Lord Justice Peter Jackson stated that Judges can, quite properly indicate a provisional view to the parties which may lead the parties to change their position. However, judges must not place unreasonable pressure on a party to change position or appear to have prejudged the matter.

The transcript revealed the following comments which Peter Jackson LJ concluded would have led the mother to believe that the judge had made up her mind and would be sure to make adverse findings if she pursued a contest:

"... if it is heard today I shall certainly make findings that your client will be stuck with."

"very risky for her"; "a very very precarious position";

"inevitably, I'm going to make findings... – that that is significant harm. I don't think there's any question about it.";

"not... without some consequences."

"I shall probably send my findings, if I make any, to the police and require it goes to CPS and – see what happens."

Lord Justice Peter Jackson concluded that mother's consent to the orders was not freely given but secured by oppressive behavior on the part of the judge in the form of inappropriate warnings and inducements

Evidential Requirements at the Interim Stage:

Lord Justice Peter Jackson commented that if the judge had wished to make a short term holding order he would not have criticised her for proceeding on submissions with any evidence required to justify a longer term order to be heard at a later date.

Significance of findings made at the Interim Stage:

Mr Justice Moor stressed the fundamental difference between sections 31 and 38 of the Children act 1989. Section 31 sets out what needs to be established before a court can make a full care order. However, section 38(2) is in very different terms "A court shall not make an interim care order or supervision order under this section unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 31(2)". He gave the following guidance:

- Therefore, at an interim hearing, rarely, if ever, will findings of fact be made that will have the effect of establishing the threshold at a final hearing;
- Accordingly, courts should be very cautious before making reference to the significance of conclusions drawn at the interim stage as such comments may appear to the parents to be a form of pressure;
- If the court is satisfied that there are reasonable grounds for believing threshold is made out in accordance with section 38(2) then it may say so, but that the court is not making final findings which will have to be proved in due course.

Reflections

This case perhaps raises questions as to how best to advise parents in respect of the perceived tactical risks or advantages in deciding whether or not to contest an interim care order. Also, whether it is appropriate for the face of the order to bear factual detail as to the basis upon which the interim care order is made.

[Ayshea Megyery](#) specialises in family law and has extensive experience in representing parents, children and local authorities in complex family law cases incorporating issues such as serious non- accidental injury, severe sexual abuse including historical allegations.

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