Neutral Citation Number: [2019] EWCA Civ 1571

Case No: B4/2019/1321

**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE FAMILY COURT AT LIVERPOOL**
**LV14C02920**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 September 2019

**Before :**

**LORD JUSTICE FLOYD**
**LORD JUSTICE PETER JACKSON**
and
**LORD JUSTICE GREEN**

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**Between :**

**S-L (Children: Adjournment)**

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**Leona Harrison** (instructed by **St Helens Council**) for the **Appellant Local Council**
**Kathryn Dale** (instructed by **Stephensons Solicitors**) for the **Respondent Mother**
**Lisa Edmunds** (instructed by **Haygarth Jones Solicitors**) for the **Respondent Father**
**Rachael Banks** (instructed by **Morecrofts LLP**) for the **Respondent Children through their Guardian**

Hearing date: 19 September 2019

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# Approved Judgment

## Lord Justice Peter Jackson:

1. By this appeal a local authority challenges a decision to adjourn its applications for care and placement orders in respect of two young children. The appeal is opposed by the parents but supported by their Guardian.

2. The parents, who are in their thirties, have three children: Sally (11), Emily (3) and Richard (7 months) – not their real names. In August 2012, care and placement orders were made in relation to Sally, though in the event the placement order was later revoked and she has remained throughout with her foster carers under a care order. In view of this history, Emily was made the subject of a child protection plan at the time of her birth under the category of emotional abuse/neglect. After some positive changes she was re-designated in May 2018 as a child in need, but concerns then escalated, particularly after an incident of domestic violence in July 2018. The local authority's concerns included domestic abuse, instability in the parents relationship, poor supervision and neglect, and evidence that Emily was developmentally delayed and behaving abnormally – being without speech, pulling her hair out, rocking and banging her head.

3. In August 2018, Emily was removed from home under a police protection order after unexplained bruising were observed and in September 2018 care proceedings were issued. The plan was for the parents to enter a residential unit for assessment: the mother and Emily went there on 9 October and the father joined them on 23 October.

4. On 24 January 2019, Richard was born. The father had left the placement the night before and the parents appeared to have separated, although they later resumed their relationship, as has happened in the past. The parenting assessment of the residential unit, also dated 24 January, was decisively negative for a substantial number of reasons, which it unnecessary to list. The assessment was an intensive one based on 16 weeks of work and there has been no suggestion that it was not fully and properly carried out.

5. The local authority had contemplated a continuation of the residential assessment following the birth of the new child, but the outcome of the assessment with Emily and the parents' separation led them to revise the plan and propose foster care for both children. The matter came before a circuit judge at a contested hearing on 28 January. He approved the care plan and determined that no further assessment was necessary. There was no appeal from that decision. The children moved to foster care and the parents have been having contact.

6. The proceedings came for final hearing before a recorder in May 2019. Over three days, evidence was given by the manager of the residential unit, a paediatrician, the allocated social worker, an adoption social worker, the parents and the Guardian. The relevant professional evidence was all one way: the parents' love for the children could not be doubted and it was thought more likely that the injuries to Emily were neglectful than deliberate. However, the parents had not been able to adequately care for Sally, were not able to adequately care for Emily, and would not be able to adequately care for Emily and Richard together. For their part, the parents sought to look after the children under a care order.

7. The recorder declined to make final orders. She considered that a further 12-week assessment was required, ideally at the residential unit and, if not, with the children at home. She made interim care orders to allow this to happen.

8. The judgment, given on 9 May, scarcely exceeds three pages of transcript. The recorder found the interim threshold crossed on the basis of Emily's exposure to domestic violence. As to the unexplained bruising, she noted that this was not alleged to have been deliberately inflicted, but she made no other finding about it. She then went on to say this:

> *"What the local authority seems to be saying in relation to Richard is that because there was a deficit in relation to Emily that that will have a knock-on effect on Richard. That if the parents could not look after Emily properly, it would mean that at the same stage for Richard that will be the case for Richard. I do not take that view. I do not."*

She went on to list the witnesses from whom she had heard, but gave no account of any of their evidence, nor in the case of the professional witnesses of her reasons for disagreement with their opinions. Instead, she simply stated that she had decided to allow a further period of assessment

> *"so that the parents have the opportunity to demonstrate that they would be able to provide good enough care to both children."*

She said she did so because she was conscious that the original plan had been for the residential assessment to be extended after Richard's birth, even though that had not been approved by the circuit judge in January. She described her decision as giving the children a final chance to remain with their parents and fixed a directions hearing after the first six weeks of the further assessment to consider ongoing timetabling.

9. The local authority's appeal, brought by permission of King LJ, argues that the decision was one that no reasonable judge could properly have made on the evidence and that the judgment cannot stand as an acceptable explanation for the decision. It seeks a rehearing before a different judge. The Guardian concurs.

10. Ms Dale for the mother and Ms Edmunds for the father have valiantly defended the recorder's decision. They argue that this was only an adjournment, not a concluded welfare decision, and as such did not call for detailed analysis and reasoning. They say that it is evident (although she did not say so) that the recorder was impressed by the parents' oral evidence. Further assessment was justified by their being a gap in the evidence – namely that the parents had not had the opportunity to show that they would be able to provide good enough care to two children with differing needs. The recorder was right to have regard to the strict requirements of the law in relation to severing ties between children and parents. On behalf of the father, it is said that she did no more than *"press the pause button".* It is further observed that if the appeal had not been brought, the results of the further assessment should by now have been available.

11. These being the circumstances, I am in no doubt whatever that the appeal should succeed and that the local authority's applications must be remitted for hearing by a different judge. It will be for that judge to decide whether the evidence justifies the

making of care or placement orders in relation to Emily and Richard and I say nothing as to that. This court is concerned only with the recorder's decision to adjourn the proceedings for further assessment.

12. In cases involving children, there can sometimes be good reasons for adjourning a final decision in order to obtain necessary information. The overriding obligation is to deal with the case justly, but there is a trade-off between the need for information and the presumptive prejudice to the child of delay, enshrined in section 1(2) Children Act 1989. Judges in the family court are well used to finding where the balance lies in the particular case before them and are acutely aware that for babies and young children the passage of weeks and months is a matter of real significance. Sharpening this general calculation, public law proceedings are subject to a statutory timetabling imperative. Section 32(1)(a) provides that the court must draw up a timetable for disposing of the application without delay and in any event within 26 weeks; subsection 32(5) allows an extension only where the court considers it necessary to enable the proceedings to be resolved justly.

13. In this case, the proceedings relating to Emily began on 3 September 2018 and those in relation to Richard on 24 January 2019. The recorder's decision to adjourn therefore squarely engaged the above provisions in relation to both children and she was obliged to explain why an extension of the timetable was necessary. In any event, she was under a general obligation to ensure that an adjournment was justified. Adjourning a decision should never be seen as 'pressing the pause button': it is a positive purposeful choice that requires a proper weighing-up of the advantages and disadvantages and a lively awareness that the passage of time has consequences.

14. I would also comment on the pragmatic submission that the information sought by the recorder might by now have been obtained but for the delay arising from the appeal. There may be cases where an interim decision is questionable, but an appeal would be disproportionate. This is not such a case. The local authority challenged the decision because the children would have had to be removed from foster care, either to a residential assessment placement which had already given its views on the family, or for an assessment with the parents at home that no professional considered to be safe. It is regrettable that there has been delay, but the local authority was right to challenge a decision that it and the Guardian considered disruptive to the children and of no forensic value to the court.

15. An appeal to this court can only succeed if the decision was wrong or where there has been a serious procedural irregularity. In this case, both conditions are met. This decision to adjourn was clearly wrong. The parents had been intensively assessed in relation to one child and there was no gap in the evidence to justify a further assessment in relation to two children for whom delay in decision-making was a pressing negative feature. The recorder did not refer to the statutory timetabling obligations or explain why further extension was necessary. There was also a serious procedural irregularity in the complete inadequacy of the judgment. As a general proposition I accept that a case management decision can be more briefly reasoned than a final decision, but it still has to be reasoned. Here there was no attempt to analyse the evidence or the issues, or to measure the significance of the extensive and undisputed family history, or to explain why the court was departing from strong professional advice and from the approach of the circuit judge in January. Instead, the decision was announced without context or coherent explanation. It is unnecessary to

multiply the reasons why it cannot stand. If my lords agree, the appeal will be allowed and the direction for further assessment will be set aside. The matter will be remitted for an expedited final hearing in the light of the sensitive ages of these children.

**Lord Justice Green:**

16. I agree.

**Lord Justice Floyd:**

17. I also agree.