



20 February 2013

PRESS SUMMARY

In the matter of L and B (Children) [2013] UKSC 8
On appeal from [2012] EWCA Civ 984

JUSTICES: Lord Neuberger (President), Lady Hale, Lord Kerr, Lord Wilson, Lord Sumption

BACKGROUND TO THE APPEAL

The issue in this appeal is whether and in what circumstances a judge who has announced her decision in civil or family proceedings is entitled to change her mind.

It arose in this case in care proceedings in a family court. The proceedings concern a child (“S”) and her half brother (“T”). Care proceedings were commenced in respect of both children after S was taken to hospital with serious injuries. A fact-finding hearing was ordered to determine whether S’s injuries were non-accidental and, if so, the identity of the perpetrator. The hearings lasted over several days, spread over several months because of the mother’s mental health. It became common ground that the injuries were non-accidental and the only possible perpetrators were the mother and father. On 15 December 2011 the judge, Judge Penna, gave a short oral judgment (“the December judgment”) finding that the father was the perpetrator and she invited submissions if the parties wanted further detail. She gave directions for the filing of expert evidence before a final hearing provisionally booked for 20 February 2012. Her order was not in fact formally sealed by the court until 28 February 2012. Before that, on 15 February 2012, the judge delivered a written ‘perfected judgment’ (“the February judgment”) which reached a different conclusion from her oral judgment, holding that she was unable to determine whether it was the mother or the father who had caused the injuries to S. As a result, she proposed to give directions for an assessment of the father as a carer for S at the next hearing.

The mother was granted permission to appeal against the February judgment. The Court of Appeal by a majority allowed her appeal, quashed the February judgment and ordered that the findings of the December judgment as to the perpetration of the injuries to S should stand. The father brought an appeal to the Supreme Court with the support of the local authority, the children’s guardian, and their maternal grandparents (with whom T had been residing).

JUDGMENT

The Supreme Court unanimously allows the appeal. It gave its decision to the parties at the conclusion of the oral hearing of the appeal on 21 January 2013 and now provides its written judgment. This is given by Lady Hale, with whom all the Justices agree. The Supreme Court restores the February judgment and the welfare hearing has already proceeded on the basis of the findings in that judgment.

REASONS FOR THE JUDGMENT

It has long been the law that a judge is entitled to reverse his decision at any time before his order is drawn up and perfected. In the absence of express power to vary or discharge his own orders, any general power for a judge to review his order once perfected was abolished by the Judicature Acts 1873 and 1875 but the power to reconsider the matter before an order was perfected survived [17-18]. Thus until the December order was sealed, the judge in this case did have the power to change her mind and the question for the appeal court was whether she should have exercised it [19].

The overriding objective in the exercise of this power must be to deal with the case justly. Contrary to the practice previously adopted, it is not reserved for exceptional circumstances and would in every case depend on its particular facts. It would be relevant whether any party has acted upon the decision to his detriment especially in a case where it was expected that they may do so before the order is formally drawn up [27].

In this case, the parties had not irretrievably changed their position as a result of the December judgment. S's placement had yet to be decided and she remained where she was for the time being. Finality was important but here a final decision had yet to be taken. No judge should be required to decide the future placement of a child upon what he or she believes to be a false basis [29]. The judge had heard very full submissions on the evidence and it was not necessary to invite further submissions before changing her findings in this particular case [30].

If, unlike the facts of this case, the order had already been sealed by the time the judge changed her mind, what would be the position? In care proceedings the fact-finding hearing is merely part of the whole process of trying the case [34]. During that process the judge must be able to keep an open mind until the final decision has been made, at least if fresh evidence or further developments indicate that an earlier decision was wrong. It would be detrimental to the interests of all concerned and particularly the children if the only way to correct such an error were by an appeal [35]. The Civil Procedure Rules and the Family Procedure Rules make it clear that the court's wide case management powers include the power to vary or revoke previous case management orders, and the issue was whether it was proper to vary an order, rather than whether that order had been sealed [37]. The power had to be exercised judicially and not capriciously and in accordance with the overriding objective [38].

However, if the later development was simply a judicial change of mind, the arguments were finely balanced. Children cases may be different from other civil proceedings because the consequences were so momentous for the child and for the whole family. The court had to get it right for the child [41]. On the other hand, the purpose of the fact-finding hearing was to create a platform of established facts which would be undermined, throwing the later hearings into disarray, if a judge could be urged to change his mind and in effect hear an appeal against himself [44]. As the point did not arise in this case, the court declined to express a view [45].

The Supreme Court reflected that the problem which arose in these proceedings would have been avoided by having a full and reasoned judgment from the judge in the first place, which would have identified the reasons for her initial conclusion that the father had been the perpetrator, and from which the father could have appealed. That would have avoided the situation here, where the findings against the father were restored without his having an opportunity for a proper appeal [46].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html