Legal Practice Conversation Series: Friday, 30 November 2012
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Re M (Education: Section 91(14) Order) [2007] EWCA Civ 1550; [2008] 2 FLR 404

Brief summary of case
• Client is mother (M) whose two children (C) are in the care of the local authority (LA) following care proceedings which concluded years ago. Placement plan for the C is long-term fostering. C still see M for contact.
• M manages to secure legal aid (means and merits tested) to apply to discharge the care orders and in the alternative more contact. Applications go to trial and fail.
• Prior to the final hearing M sought advice from reputable education law solicitors about C’s Statement of Special Educational Needs (SSEN). M is advised at least in respect of one C ("K") that she should make an appeal to the First-Tier Tribunal (Health Education and Social Care Chamber) (Special Educational Need and Disability) [formerly SENDIST] to challenge parts of K’s amended Statement of Special Educational Needs (SSEN). She follows that advice.
• M wants to have K seen by a speech and language therapist (SALT) and educational psychologist (EP) in order for K’s needs to be assessed independently. That is what she is advised to do by her education law solicitors. It is routine as part of the evidence gathering process and because the LA will use their own EP and SALT reports to support their position.
• M can’t just take K to appointments with these professionals because K is in foster care. The education law solicitors write to the LA which shares parental responsibility (PR), pursuant to the care order for K, to seek its agreement.
• There is delay in the LA responding and then at the final hearing in the discharge proceedings, it raises the issue before the judge seeking s.91(14) orders to prohibit M from making an applications to the court for K to be assessed. Note that there was no history of M making such applications and even in the proceedings, M had not made such an application.
• Order is made and so now the LA believes it has headed the matter off as M cannot make an application to the court to ask for K to be assessed and if the LA continue not to allow K to be assessed by independent experts (SALT and EP) then M’s SEN appeal is doomed to fail as she has no professional evidence to rely on.
• Educational law solicitors find out and are worried about where this leaves their case. They now believe that M requires face to face legal advice as opposed to telephone advice (which is what M was receiving hitherto under LSC’s education law telephone advice contracts). Case is referred to Fisher Meredith’s education law team. Partner there sees the issue with the family court order. I take a look to see if anything can be done.
• I see that the order was wrong in law and would be relied on by the LA to their favour. I apply to have M’s legal aid certificate transferred to Fisher Meredith to me so that I can look at it all properly and advice on merits of appeal. Previous solicitors refuse as they cannot see an appeal point. I don’t want to tell them the point as then they will take it! I ask the LSC to intervene and arrange the transfer notwithstanding their refusal to agree.