Neutral Citation Number: [2013] EWCA Civ 1158

Case No: B4/2013/1240

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM BIRMINGHAM COUNTY COURT
Her Honour Judge Hindley QC

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 September 2013

Before :

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

- -

Re C (Children)

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- -

The applicant mother in person (assisted by Julie Haines of Justice for Families Ltd)

No hearing : application considered on papers

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Approved Judgment

Sir James Munby, President of the Family Division :

1. This is an application for permission to appeal against an order made by Her Honour Judge Hindley QC in Birmingham County Court on 3 May 2013. The application is fundamentally misconceived. As a matter of law, no appeal lies against Judge Hindley's decision. The application is accordingly dismissed.

2. The relevant facts can be stated shortly. On 26 September 2012 District Judge Asokan made care and placement orders in respect of the applicant mother's two children. The mother did not ask the District Judge for permission to appeal. On 16 January 2013, well out of time, the mother issued a notice of appeal. She required permission to appeal. The matter came before Her Honour Judge Deeley on 8 February 2013, who treated the hearing as a directions hearing and adjourned the application for permission to appeal. The applicant then applied to the Court of Appeal for permission to appeal from Judge Deeley's order (B4/2013/0533). The application was dismissed on 30 April 2013 by McFarlane LJ, who certified it as being "totally without merit": see CPR 52.3(4A)(a).

3. Before Judge Deeley there had been argument about the substance of District Judge Asokan's judgment. Judge Deeley considered that it lacked clarity in three particular areas and, in accordance with FPR PD30A, paras 4.6-4.9, and well established practice, remitted the matter to District Judge Asokan for amplification of her reasons. That was promptly done. The amplified judgment and additional reasons are dated 20 February 2013.

4. The mother's application for permission to appeal then came on for hearing before Judge Hindley on 3 May 2013. The mother had the assistance of a McKenzie friend, Timothy Haines. Judge Hindley refused the mother permission to appeal from District Judge Asokan's orders. She set out her reasons for that refusal in a careful and detailed extempore judgment.

5. The mother then indicated that she was wished to appeal. The order made by Judge Hindley was, so far as relevant for present purposes, in the following terms:

> "1 The applications for permission both to extend the time to appeal and to appeal are refused.
>
> 2 In the event that the Appellant seeks permission from the Court of Appeal to appeal the decision of this court, time for filing any notice of appeal shall be limited to 8 days from today."

6. The mother filed her Appellant's notice in the Court of Appeal on 9 May 2013, seeking permission to appeal against the order Judge Hindley had made on 3 May 2013. It was supported by grounds of appeal and a skeleton argument written on behalf of the mother by Julie Haines of Justice for Families Ltd.

7. For reasons that will shortly become apparent, I need to deal in more detail than would usually be necessary with subsequent events.

8. At the same time as she filed her Appellant's notice the mother filed a completed Form 62, 'Request that the costs of transcripts be paid at public expense.' Unhappily, she filed an incomplete version, without any proof of her income. The complete Form 62 was not sent to the Court of Appeal until 30 May 2013. On 6 June 2013 a Deputy Master directed that a transcript of Judge Hindley's judgment be prepared at public expense. The same day, 6 June 2013, the Court of Appeal wrote to Birmingham County Court, notifying the County Court of the Master's decision and asking the County Court to make the tape of Judge Hindley's *judgment* available to the transcribers and to ask them to prepare a copy of the transcript to be forwarded to the Court of Appeal within 14 days. Unhappily, what the Court of Appeal received, under cover of a letter from the County Court dated 18 June 2013, was a copy of the transcript of the *proceedings* before Judge Deeley on 8 February 2013, and not, as requested, a transcript of the *judgment* of Judge Hindley on 3 May 2013. The Court of Appeal's records show that the County Court was twice chased by telephone for the transcript, on 25 June 2013 and 3 August 2013, but without response.

9. On 1 August 2013 my office received an email from the mother's Member of Parliament, Mr John Hemming MP, saying that his constituent was still awaiting the transcript. On my instructions my office took the matter up with Judge Hindley the following day. She responded, indicating that she had been unaware of any request to her court for a transcript but that she had now ordered that a transcript be prepared. The draft transcript arrived from the transcribers at the County Court on 13 August 2013 and was forwarded the next day to Judge Hindley. She corrected it and sent it to me the same day, 14 August 2013. Although my office forwarded a copy of the transcript to the Court of Appeal the next day, 15 August 2013, it was not until 13 September 2013 that the County Court itself took any steps to do so.

10. The papers were put before me on 19 August 2103. It was not until 20 September 2013 that I was able, to the extent that has proved possible, to get to the bottom of why there was so much delay in producing the transcript.

11. I return to the mother's application.

12. As will be appreciated, this is not, as the mother asserts, a second appeal. It is an attempt to appeal not against a decision on appeal but from a decision of an appellate court – here Judge Hindley – to refuse permission to appeal to that court. Accordingly, section 54(4) of the Access to Justice Act 1999 applies (see also FPR PD30A, para 4.5):

> "No appeal may be made against a decision of a court under this section to give or refuse permission".

13. It is therefore simply not open to the mother to seek to ventilate her complaints before the Court of Appeal: see *Moyse v Regal Mortgages Limited Partnership* [2004] EWCA Civ 1269, [28]-[31], and *Crossland v University of Glamorgan* [2012] EWCA Civ 1709, para [8]. I have no power to do anything except dismiss her application as one which the Court of Appeal has no jurisdiction to hear.

14. That is, accordingly, the order I make.

15. I return to the issue of the transcript.

16. Anyone reading the facts as I have set them out can only be dismayed – and that is to use diplomatic language. This case, like too many others in the Court of Appeal, has been delayed, unnecessarily and quite wrongly, by unacceptable delays in obtaining a transcript. I made strong comment about this in April this year in *Re C (A Child)* [2013] EWCA Civ 431. Black LJ made similar comments in July in *Re P (A Child)* [2013] EWCA Civ 963. Something must be done to improve practice and performance in court offices. With that in mind, I shall be bringing this judgment to the attention of all Designated Family Judges and also the HMCTS Director of Civil, Family and Tribunals.