Case No: B4/2017/2741 + 2742/FAFMF

Neutral Citation Number: [2018] EWCA Civ 720
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM HIGH COURT FAMILY DIVISION
MRS JUSTICE PARKER
MK16C80076

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/04/2018

Before:

LORD JUSTICE MCFARLANE
LORD JUSTICE DAVID RICHARDS
and
LORD JUSTICE PETER JACKSON

- -

Between:

P (A child)

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Jo Delahunty QC, Michelle Christie and Paul Froud (instructed by **Bastian Lloyd Morris Solicitor Advocates**) for the **1st Appellant father**
Darren Howe QC and Hannah Mettam (instructed by **Towcester Family Law Practice**) for the **2nd Appellant mother**
Hannah Markham QC and Kate Grieve (instructed by **Northamptonshire County Council**) for the **1st Respondent local authority**
Kate Branigan QC and Lianne Murphy(instructed by **Borneo Martell Turner Coulson**) for the **2nd Respondent child**

Hearing dates: 22 March 2018

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Judgment

LORD JUSTICE MCFARLANE :

1. This appeal arises from childcare proceedings in which all parties now accept the Family Justice system has manifestly failed to provide a sound resolution of the serious factual allegations that underpinned the application for a care order. Although the appeal proceeded by consent and, as a result, this judgment can be short, it is, nevertheless, necessary to explain something of the background before dealing with the basis of the appeal and, thereafter, offering some modest guidance in the hope that these highly unfortunate circumstances may be avoided in future cases.

Background

2. The child at the centre of the proceedings, a girl, T, was born in 2000 and was aged over 16 years at the time of the fact-finding hearing before Mrs Justice Parker which took place over the course of 12 days in the autumn of 2016.

3. By the time her circumstances came to be before the court, T had become a most troubled and vulnerable teenager. At the time of the fact-finding hearing she was accommodated in a secure mental health facility for treatment under the Mental Health Act 1983.

4. T had been born into a family where, from the very early days, there were significant problems with the capacity of both her birth mother and father to provide safe and adequate parenting. Her family circumstances have been described as "chaotic". T's home oscillated between time spent with her mother and, alternatively, her grandmother. The birth parents' relationship was apparently characterised by problems with alcohol abuse and domestic violence. Eventually, but only when T was over 6 years old, she and her young

sister X were removed from parental care and made the subject of care proceedings. In due course care orders and placement for adoption orders were made in October 2006. Thereafter both siblings came to be placed for adoption and final adoption orders were made in October 2008.

5. After an initial honeymoon period, it is plain that T's behaviour in the adoptive home progressively deteriorated. By the time of the hearing before Parker J, T had been diagnosed as suffering, principally, from an Attachment Disorder. She also suffered from depression and Post Traumatic Stress Disorder. More recently she had been diagnosed with Autism Spectrum Disorder. Irrespective of the allegations of sexual abuse, which are the focus of this appeal, by the close of the oral hearing before Parker J all parties accepted that the complex mental health difficulties of this vulnerable teenager were such as to render her "beyond parental control" with respect to her home with her adoptive parents sufficient to cross the threshold criteria in that respect under s 31(2)(b)(ii) of the Children Act 1989 ['CA 1989'].

6. The Judge's findings that the threshold criteria were met, at least, on the basis of T being "beyond parental control" is not subject to challenge. At the end of January 2017 the Judge made a final care order with respect to T and her welfare is now provided for under the umbrella of that order until she reaches the age of 18 later this year. It follows that, whatever the outcome of this appeal with respect to the allegations of sexual abuse that T came to make with respect to her adoptive father ("the father"), the care order that was made with respect to T will stand and there will be no alteration in the current arrangements for her welfare.

The sexual abuse allegations

7. In the course of the family's deteriorating ability to maintain T within their fold, she left the family home in May 2014 for a short period of respite foster care. She then returned to the family home in late May and remained there until she was removed, with the agreement of her adoptive parents, to local authority accommodation under CA 1989, s.20 on 25 August 2014. The reason for her removal was that on that day T made allegations that "my dad sexually abuses me" to a mental health practitioner from the local CAMHS team who had been her key worker for some time. In the course of her discussion with the CAMHS worker on that day T gave more detail of her allegations both orally and in short written notes.

8. As a result, T was removed from the family home. She underwent an Achieving Best Evidence ("ABE") interview on 9 September 2014. The interview was of significance in the sense that T again made allegations of sexual abuse against her father both orally and by writing notes on paper provided for her during the interview.

9. Some months later, in March 2015, T made further allegations which were, after referral to the police, repeated to a police officer. She declined, however, to undergo a second ABE interview. On the next day, in conversation with her then social worker, T purported to retract, initially fully and then partially, her sexual abuse allegations.

10. The allegations made by T all relate to the 3 month period between May and August 2014 when she was back in the family home following the short period of respite care. Whilst the detail of her accounts changed, markedly, over time,

in essence she asserted that she had experienced some form of overt sexual behaviour from her father two or three times per week during this period amounting to some 20 or 30 separate occasions. Whilst some, if not many, of these encounters had been limited to lifting of clothing and inappropriate touching, she asserted that on at least one occasion the father had attempted to penetrate her vagina with his penis.

11. From first to last the father has denied behaving in any inappropriate way towards T. For her part, the adoptive mother ("the mother") has not believed T's allegations and has supported the father's denial.

The fact-finding process

12. Unfortunately, and to my mind inexplicably, the state of affairs whereby T was accommodated under CA 1989, s.20 was maintained from August 2014 until the institution of care proceedings in April 2016, notwithstanding the clear and stark issue of fact created by T's allegations and the father's wholesale denial. Irrespective of the fact that T's mental health and presenting behaviour may have rendered it impossible for her placement in the family home to be maintained, the need to protect and have regard to the welfare of the younger sibling, X, who remained in the family home, required this significant factual issue to be determined.

13. In July 2016 the local authority filed a Schedule of the "threshold findings" that it sought within the care proceedings. These were limited to the allegations made by T on 27 August and in the ABE interview on 9 September. They were limited in time to the period between the end of May and 25 August 2014 and set out five short specific descriptions of the type of

abusive behaviour alleged. It was pleaded that the father had behaved in this way "twice a week most weeks" throughout the 12-week period. The Schedule also included criticism of the mother's response which was, it was said, to say to T "I don't believe you" and her failure to take protective measures prior to T's removal from the family home.

14. Parker J presided over a fully contested hearing at which each party was represented by a full legal team of leading counsel, junior counsel, and solicitors, each of whom was expert in conducting child protection proceedings of this nature.

15. T's circumstances at the time of the hearing meant that she did not have capacity to instruct her own lawyers. It was also clear that T could not be called to give oral evidence during the hearing. Despite these difficult circumstances, T's interests were well served by her legal team, often in their own time and without any hope of remuneration, visiting her regularly in the secure unit to ensure that she understood the process and was able to communicate her views to them.

16. In addition to what seems to have been a very large volume of paperwork, the Judge had the benefit of hearing oral evidence from some 16 witnesses. The Judge was assisted by counsel preparing and agreeing a note of all the oral evidence and chronologies of the key material and of the allegations. At the close of the oral hearing each party made detailed closing submissions, cross-referenced to the agreed documents.

The judgment

17. The oral evidence had been concluded on 18 November 2016 and closing submissions were delivered on 18 and 25 November. The case was then adjourned to 8 December 2016 for the delivery of judgment. On that occasion, however, the Judge explained that she had been occupied with other cases and had been unable to prepare a written judgment. She had, however, reached "some conclusions" and, with the parties' agreement, she stated what those were in the course of a short judgment which runs to some 6 pages in the agreed note that has been prepared by the parties. In short terms, the Judge rehearsed a number of the significant points in the case, for example, T's mental health, the recording of her allegations and the ABE interview process, any evidence of inconsistency and T's overall reliability, and an assessment of the father's credibility before announcing her conclusion in the following terms:

> "I have come to the conclusion therefore, and I am sorry to have to do so as I thought the mother and the father were the most likeable people, but during the course of 2014, there was an attempt at least, it may have been more, of sexual congress between the father and T."

18. The case was then adjourned to 30 January 2017 for the delivery of a full judgment. A note of what had been said in court on 8 December was agreed between the parties and submitted to the Judge. On 30 January the Judge again indicated that, due to pressure on her time as a result of other cases, she had not been able to prepare a full judgment. Instead the Judge gave a lengthy oral judgment, seemingly based on prepared notes.

19. On 30 January, when the Judge had concluded her judgment, counsel for the father immediately identified a number of aspects in which, it was submitted,

the judgment was deficient. The Judge directed that an agreed note of what she had said should be prepared and submitted to her within 7 days, together with requests from each party identifying any suggested corrections or requests for clarification.

20. The parties, in particular those acting for the parents, complied with the tight 7-day timetable. The Judge was provided with an agreed note of judgment which runs to some 115 paragraphs covering 42 pages. In addition, counsel submitted an annotated version of the note indicating possible corrections, together with a list of more substantial matters which, it was claimed, required clarification. In doing so those acting for each of the parties were complying precisely with the process originally described by this court in the case of *English v Emery Reimbold and Strick Ltd* [2002] EWCA Civ 605 and subsequently endorsed in the family law context by this court on many occasions.

21. I will turn to the detail of the criticisms made of the Judge's judgment shortly, but, for present purposes, I will bring this account of the process of delivering judgment to a conclusion.

22. On 22 February 2017 the transcription firm appointed by the court received the recording and began to prepare the transcript. A draft transcript was submitted to the Judge for approval on 12 March 2017. Unfortunately, despite a number of requests, initially by the parties and, latterly, from one of the Masters of the Court of Appeal a final version of the judgment approved by the Judge had not been provided to the parties or to the Court of Appeal prior to the appeal hearing in March 2018. Neither did this court have any response

from the Judge to the requests for clarification of the oral judgment that have been made by the parties. As a result, at the appeal hearing, the oral judgment given on 30 January 2017 was taken as the most definitive account of the Judge's determination of the actual allegations.

23. In the course of informing the President of the Family Division, and through him, Parker J of the outcome of the appeal, which was to set aside the findings of fact that had been made, Parker J provided an approved version of the 30th January 2017 judgment ['the approved version'] together with an email trail showing that the Judge's temporary clerk had sent the approved version to an email address at the transcribing company on 27th September 2017. The approved version, in addition to tidying up part of the order in which topics were considered and accepting a number of suggested corrections, includes an addendum running to 18 pages and 60 paragraphs in which the Judge sets out her response to the requests for clarification that had been made by the father and mother.

24. It does not seem that the approved version was sent to any of the parties or to the Court of Appeal Master by the transcribers, the Judge or her clerk. The approved version was not formally handed down by the Judge and, indeed, it is not referred to (save obliquely in an email on 3rd November from the Judge's clerk to all the parties) in any communication that we have seen. Given the string of requests over the course of over six months that had been made by the parties and by the Court of Appeal for the Judge's detailed response, the failure to distribute the approved version, or even alert those concerned to the fact that it had been sent to the transcribers, is surprising.

25. Once the existence of the approved version became known to this court, we circulated copies to the parties and invited any further submissions, having given the preliminary indication that the court was not minded to alter the orders that had been agreed between the parties and endorsed by the court at the appeal hearing. Each of the parties responded that they did not wish to make any further submissions. Save for some brief further observations at the conclusion of this judgment, what follows is an evaluation of the material before this court as it was at the time of the oral appeal hearing, that is with the Judge's final word being recorded in the note of the oral judgment given on 30th January, and without reference to the approved version which has subsequently become available.

The Judge's decision

26. Early in the judgment of 30 January the Judge records the decision that she had already announced at the December hearing in the following terms (paragraph 17):

> "I have decided that she has been sexually interfered with by her father and that she has been caused significant emotional harm by reason of her mother's disbelief in telling her so, although my criticism of the mother was highly muted in the circumstances for reasons I will come back to."

27. After a summary of the evidence the Judge stated (paragraph 58):

> "It is against that background that I need to assess the threshold."

She then set out the content of the local authority fact-finding Schedule introducing it with the following words:

> "I am asked to make findings in terms of:"

Unfortunately, the judgment does not record the Judge's decision on any of the five specific findings of sexually abusive behaviour alleged in the local authority Schedule save that, at paragraph 71, the Judge stated "I also find that the description T gives of her father attempting to penetrate her is wholly believable". Whether that statement amounts to a finding is, however, not entirely clear as it simply appears as a statement in the 8th paragraph of a 40 paragraph section in which the Judge reviews a wide range of evidence.

28. The basis of the appeal is that the Judge's judgment fails sufficiently to identify what (the local authority would submit, if any) findings of fact the Judge made.

29. Before leaving the 30 January judgment, it is necessary to point to 2 or 3 other subsidiary matters that are relied upon by the appellants as indicating that the judgment, substantial though it may be in size, is inchoate:

a) Prior to listing the witnesses who gave oral evidence the Judge states "I think I heard the following witnesses". The list of 13 witnesses is said to omit 3 other individuals who also gave oral evidence.

b) In the closing stages of the judgment the Judge makes one additional point which is introduced by the phrase "one thing I forgot to say" and a second which is introduced by "also one thing I have not so far mentioned, and I should have done".

c) At the very end of the judgment, and after the Judge has gone on to deal with procedural matters unrelated to the findings of

fact there appears a four paragraph section dealing with case law related to the court's approach to ABE interviews where it is asserted there has been a breach of the ABE guidelines. That section is preceded by the phrase "I completely forgot".

The appeal

30. Two notices of appeal issued on behalf of the father and mother respectively were issued in August 2017. Although this was many months after the making of the care order and the delivery of the oral judgment in January 2017, I accept that the delay arose because the parties were waiting for the Judge to engage in the process of clarification that she had directed should take place and, thereafter, the production of a final version of the judgment. There were also considerable difficulties in securing legal aid, caused at least in part by the absence of a judgment. At various stages the Judge's clerk had given the parties some hope that a final judgment might be produced. The notices of appeal were only issued once the parties were forced to conclude that a final version of the judgment was unlikely to be forthcoming. Following the failure of the efforts made by the Court of Appeal to obtain a judgment, I granted permission to appeal on 16 November 2017.

31. The grounds of appeal and skeleton arguments that argue the cases of the father and of the mother from their respective positions engage fully with the underlying facts in the case in addition to arguing that the process as a whole has been fatally compromised by the court's inability to produce adequately precise findings and to do so in a judgment which sufficiently engages with the significant features of the evidence. As it is on this latter basis that the

appeal has preceded by consent, my Lords and I have not engaged in the deeper level, granular analysis of the evidence that would otherwise be required.

32. In terms of the *English v Emery Rheimbold* process, those acting for each of the two parents submitted short (in the mother's case 3 pages, in the father's case 5 pages) requests for clarification on specific issues. Each of those requests is, on my reading of the papers, reasonable and, even if a specific request were unreasonable, it was open to the Judge to say so.

33. The resulting state of affairs where the only record of the Judge's determination is imprecise as to its specific findings and silent upon the approach taken to significant elements of the evidence is as regrettable as it is untenable.

34. That the state of affairs that I have just described exists, is made plain by the stance of the local authority before this court. Rather than simply "not opposing" the appeal, the local authority skeleton argument, as I will demonstrate, specifically endorses the main thrust of the appellant's case. Further, we were told by Miss Hannah Markham QC, leading counsel before this court, but who did not appear below, that the local authority's position on the appeal has been approved at every layer of management within the authority's children services department. For one organ of the state, the local authority, to conclude that the positive outcome (in terms of the findings that it sought) of a highly expensive, time and resource consuming, judicial process is insupportable is a clear indication that the judicial system has, regrettably, failed badly in the present case.

35. Against that background it is helpful to quote directly from the skeleton argument prepared by Miss Markham and Miss Grieve on behalf of the local authority:

> "5 At the heart of the appeal are findings that (father) behaved in a sexually inappropriate way towards his daughter T. The findings are set out in this way, as it is accepted by the respondent local authority that the judgment given by Mrs Justice Parker does not particularise the findings made nor does it cross refer findings to the local authority Schedule of findings. As such the findings have not been accurately recorded or set out.
>
> ….
>
> "14 The local authority does not oppose the appeal for reasons set out below.
>
> 15 However the local authority does not accept that all grounds as pleaded would be matters or arguments which the local authority would either not oppose or indeed agree, if taken in isolation. The focus in approaching this appeal has been to stand back and have regard to the fairness and integrity of the judgment and the process taken by the parties to try to clarify the judgment and in particular the findings made.
>
> 16 It is submitted that it must be right and fair that a party against whom findings are made should know the actual findings made and the reasons for them. It is submitted that reasons on reasons are not necessary, but clarity as to findings and a clear basis for them is a primary requirement of a Judge.
>
> 17 It is significant that the learned Judge has resisted requests of her to clarify her judgment and that in particular she has not taken opportunities to set out the findings she has in fact made.
>
> 18 Dovetailing into that error is the argument that flows from that omission; absent clear findings it is impossible to see, understand and argue that the Judge formulated her findings on clear, understandable and right reasoning.
>
> …
>
> 21 In this instant case it is submitted on behalf of the parents that the judge did not even set out the findings, not least allow them to see whether she fairly and with significant detail set out her reasoning for coming to the findings she then made. Further

> requests of the Judge were properly made and the learned Judge has neither responded to them nor clarified why she is not engaging in the requests of her
>
> …
>
> 23 (Having listed the short specific findings made by the Judge) It is acknowledged that these matters are the most detail (the Judge) gives to her findings. Whilst it is asserted by the local authority that the learned Judge was able, within the ambit of her wide discretion to make findings, it was incumbent upon her to set out with clarity what those findings were and how she came to make them.
>
> 24 It will be apparent from the matters set out above that she failed in this task and that she failed to cross refer back to paragraph 59 (where the Judge listed the content of the local authority Schedule of findings) and set out what she had or had not found proved."

36. The local authority identified two specific grounds relied upon on behalf of the father, one asserting that the Judge rejected the father's case on the deficits on the ABE interview, against, it is said, the weight of the evidence, but provides no analysis for coming to that conclusion. Secondly the local authority accepts that there were many examples of inconsistency within the accounts that T had given. In both respects the local authority expressly acknowledged that the Judge failed to engage with these two important aspects of the case and failed to set out her findings in respect of each.

37. The local authority, rightly, argue that a Judge has a wide discretion to accept or reject evidence in a case such as this and that the Judge does not have to refer expressly to each and every detail of the evidence in the course of their judgment. The local authority's skeleton argument, however, accepts "that a fair and balanced assessment of the cases advanced and evidence for and against said cases is necessary, proportionate and fair and has not occurred sufficiently in this complex case."

38. Miss Kate Branigan QC, leading Miss Lianne Murphy, both of whom appeared below for T, acting on the instructions of the children's guardian adopt a similar stance to that taken by the local authority. In their skeleton argument (paragraph 10) they state:

> "Albeit T maintains that the allegations made against her father are true, the children's guardian has had to conclude that the judgment as given by the court on 30 January 2017 is not sustainable on appeal and that inevitably the appeals on behalf of both appellants must succeed."

Later (paragraph 14) it is said:

> "Regrettably we accept that it is not possible from the judgment to identify what findings the court has made. At paragraph 59 of the judgment note, the court sets out the detail of the findings it is invited to make, but at no stage thereafter does the learned Judge indicate which of the findings she has found established to the requisite standard nor does she attempt to link what she is saying about the evidence to the specific findings sought….On this basis alone the judgment is arguably fatally flawed."

And at paragraph 15:

> "We further recognise in certain key respects the court has failed to engage with the totality of the evidence to the extent that any findings the court has purported to make are unsustainable in any event. In particular, we accept the arguments advanced on behalf of the appellant father… that the court failed to undertake a sufficiently detailed analysis of the context in which T's allegations came to be made, failed to engage with the professional evidence which called into question the reliability of those allegations and did not weigh appropriately in the balance the inconsistencies which were clearly laid out on the evidence in relation to T's accounts."

39. In the light of the parties' positions, the oral hearing for this appeal was short. All were agreed that the appeal must be allowed with the result that, at the end of a process which started with allegations made in August 2014, and in included a substantial trial before a High Court Judge, any findings of fact

made by the Judge and recorded in her oral determinations made in December 2016 and on 30 January 2017 must be set aside and must be disregarded in any future dealings with this family.

40. For our part, my Lords and I, rather than simply endorsing the agreed position of the parties, had, reluctantly but very clearly formed the same view having read the note of the 30 January judgment and having regard to the subsequent failure by the court to engage with the legitimate process of clarification that the Judge had, herself, set in train.

41. Before turning to the question of what lessons might be learned for the future and offering some guidance in that regard, a formal apology is owed to all those who have been adversely affected by the failure of the Family Justice system to produce an adequate and supportable determination of the important factual allegations in this case. In particular, such an apology is owed to T, her father and her mother and her younger sister X, whose own everyday life has been adversely affected as a result of professionals justifiably putting in place an intrusive regime to protect her from her father as a result of the statement of the Judge's conclusions 16 months ago.

Guidance

42. Whilst it is, fortunately, rare for parties to encounter a situation such as that which has arisen in the present case, such circumstances do, however, occur and we have been invited to offer some limited advice or guidance.

43. The window in which a notice of appeal may be issued under Civil Procedure Rules 1998, r 52.12(2) is tight and is, in ordinary circumstances, limited to 21

days. It is often impossible to obtain a transcript of a judgment that has been delivered orally within the 21 day period. Unfortunately, it is also the experience of this court that not infrequently problems occur in the five or six stages in the administrative chain through which a request for transcripts must proceed and it may often be months before an approved transcript is provided. Whilst it is plainly more satisfactory for the judges of this court to work on an approved transcript, and that will normally be a pre-requisite for any full appeal hearing, the Lord or Lady Justices of Appeal undertaking evaluation of permissions to appeal in family cases are now more willing to accept a note of judgment (if possible agreed) taken by a lawyer or lawyers present in court in order to determine an application for permission to appeal rather than await delivery of an approved transcript of the judgment. It is therefore important for advocates attending court on an occasion when judgment is given to do their best to make a full note of the judgment so that, if it is needed, that note can be provided promptly to the Court of Appeal when a notice of appeal is filed.

44. The observation set out above requires adaptation when a party seeks clarification of the Judge's judgment. In such a case, it must be reasonable for the party to await the conclusion of the process of clarification before being obliged to issue a notice of appeal, unless the clarification that is sought is limited to marginal issues which stand separately to the substantive grounds of appeal that may be relied upon.

45. Where, as here, the process of clarification fails to achieve finality within a reasonable time, it is not in the interests of justice, let alone those of the respective parties, for time to run on without a notice of appeal being issued.

What is a reasonable time for the process of post judgement clarification? The answer to that question may vary from case to case, but, for my part, I find it hard to contemplate a case where a period of more than 4 weeks from the delivery of the request for clarification could be justified. After that time, the notice of appeal, if an appeal is to be pursued, should be issued. The issue of a notice of appeal does not, of itself, prevent the process of clarification continuing if it has not otherwise been completed. Indeed, in some case the Court of Appeal at the final appeal hearing may itself send the case back to the Judge for clarification. The benefit of issuing a notice of appeal, apart from the obvious avoidance of further delay, is that the Court of Appeal may itself directly engage with the Judge in the hope of finalising any further outstanding matters.

The recently received approved version of the judge's judgment

46. As I have explained at paragraph 25, the body of this judgment is based upon the material that was before the Court of Appeal at the oral appeal hearing and therefore makes no reference to the approved version of the Judge's judgment, including the substantial appendix responding to requests for clarification, which was apparently prepared by 27th September 2017 but was neither disclosed to the parties nor to this court until after the oral hearing had taken place. However, I should add that I have read the full text of the approved judgment and I am satisfied that the additional paragraphs do not alter my overall conclusion that the judgment is fundamentally flawed for the reasons given above.

47. For my part, therefore, and despite respecting the position of the Judge who had clearly spent a substantial amount of time preparing the approved version, I consider that the parties are right not to seek to re-open the appeal by engaging in detailed further submissions. In any event, the need for finality in litigation is an important goal of any system of justice, this is particularly so where the litigation is such as the present case where serious allegations and findings, together with consequent child protection arrangements, have been hanging over a family for over 3 years. Against the yardstick of 4 weeks that I have suggested for any process of clarification, and in any event, in the context of a fair trial and appeal process for a judge to take just under 9 months to produce an approved version of an oral judgment, particularly when from Day One the court has known that an application for permission to appeal is pending, is well beyond the margin of what is fair. Although it is correct that a Court of Appeal Master was asking for the Judge to complete her judgment, even if the approved version had been provided at the end of September 2017 I would have allowed this appeal on the basis that the whole process (and taking particular account of the inadequate content of the oral 30th January judgment) was unsatisfactory and unfair. The present circumstances, in which the existence of the approved version has only become apparent after the appeal process had effectively concluded and final orders had been announced allowing the appeal, only go to compound that conclusion.

Conclusion

48. For the reasons I have given, it is inevitable that this appeal must be allowed with the consequence that the Judge's two oral statements of her determination must be set aside in their entirety and, for the future, disregarded.

49. For the avoidance of doubt, the care order with respect to T will continue to be in force, it being justified on the basis of the separate threshold criteria finding with respect to T being "beyond parental control".

50. So far as X is concerned, although she has been the subject of arrangements made under the Pre-commencement Procedure operated within the Public Law Outline, no proceedings have ever been issued with respect to her since the making of the adoption order. The local authority have made it plain to this court that the current child protection arrangements will now come to an end as a result of the setting aside of the Judge's determination.

51. In circumstances of the kind that have arisen in this case, it is important that the court's conclusions are correctly understood by other agencies. For that reason, the order that we make in consequence of this appeal succeeding includes a provision for a letter to be sent by the local authority to those agencies explaining (1) that the findings of fact made in the fact-finding judgments are to be disregarded and (2) that the parents are to be treated by all agencies and professionals who have dealings with them or with X in the same manner as parents against whom no allegations had been made. This provision is intended to ensure that in relation to any future dealings with professionals the family is neither prejudiced nor immune as a result of the events with which these proceedings were concerned.

Lord Justice David Richards:

52. I agree.

Lord Justice Peter Jackson:

53. I also agree.