

Judge uses discretion in contact proceedings case

“...the case highlights the importance the courts place on what is best for the child. They have the freedom to decide what will work best, depending on the individual circumstances.”

For more information contact:

Owen Dignan
Associate Solicitor
020 8221 8088
owen.dignan@bowlinglaw.co.uk

When considering any question relating to the upbringing of a child, the Courts will take into account all of the child's circumstances and will always attempt to ascertain what would be in the child's best interest. In a recent case concerning a 14-year-old girl, the right of the Judge to use his discretion to decide who should be the girl's guardian was confirmed.

The girl had been involved in contact proceedings for over ten years and the same Children and Family Court Advisory Support Service (CAFCASS) officer had been her appointed guardian since the beginning of the proceedings. The Judge concluded that the best outcome for the girl would be achieved by not disrupting a relationship that was working effectively and ruled that the CAFCASS officer should continue to be her guardian, rather than appointing the National Youth Advocacy Service (NYAS).

NYAS provides trained and supported independent visitors to children who are eligible and for whom it is in their best interests. NYAS is often involved in cases such as this and the judge invited it to prepare a report and to decide if it felt it should intervene and act as guardian instead of CAFCASS. NYAS declined, because unless it was formally appointed as her guardian, it had no access to public funding and could not therefore prepare the report.

The girl's father appealed the decision that CAFCASS not NYAS should be his daughter's guardian. However the judge in the Court of Appeal refused to make an order transferring guardianship to NYAS as there was no evidence to suggest that this was a more appropriate solution.

In fact, changing the girl's guardian would disrupt her routine and would mean that she had to develop a new relationship with a different guardian. This could only be viewed as having a detrimental effect as it would cause the girl unnecessary stress. Her relationship with the CAFCASS officer had been working successfully for over ten years and the judge saw no reason to fix something that was not broken. The appeal was therefore dismissed.

Owen Dignan, a Solicitor in Bowling & Co's Family Law team comments: “Although NYAS would normally be appointed as guardian, given the circumstances in this case the Judge was entitled to decide that this was not in the girl's best interests.”

This case highlights the importance the courts place on what is best for the child. They have the freedom to decide what will work best, depending on the individual circumstances.

If you have any questions regarding contact issues or concerning your family then you can contact Owen Dignan on 020 8221 8088 or by email at owen.dignan@bowlinglaw.co.uk