

Maureen N Obi-Ezekpazu

### My Practice News

Very many of the cases that I have been instructed on over the course of the last year have involved parents who are operating under a disability. By disability I mean as defined in section 1 of the Disability Discrimination Act 1995 as amended by the 2005 Act. Representing a parent and often a child who is under such disability is extremely difficult and to my mind are amongst the more difficult cases within the public law children law arena.

Often the care proceedings process means that assessment of parents follow a particular and accepted pattern. There is often little or no work undertaken to appropriately assess the parenting skills of the parents and an under appreciation of the complexity of the presentation of the parent, which requires thinking outside of the tradition boxes in terms of assessment. The result is discrimination and unfairness and a poor outcome for the family.

I am challenging in the appellate courts, a recent decision to make a final care order and placement order in respect of a mother who is unable to hear or communicate. The local authority refused to assess this mother and failed to honour its statutory duty to her under the discrimination laws and Community care laws. The court showed little appreciation of the impact this would have on its jurisdiction under the Children Act 1989, nor did it take into account the Un Convention on the rights of Disabled Persons. It is inter alia, my contention that had the local authority acted legally my client mother will be able to carry out her parenting responsibilities during the child's minority. Equally I contend that meeting its obligations under the aforementioned legislation would have prevented the court having jurisdiction to make care or placement orders under the Children Act 1989. The interface between the Children Act 1989 Discrimination Disability Act and Community Care legislation is not usually explored within care proceedings where a myopic approach is often taken.

One of my concerns about the current approach is an acceptance that the court always have jurisdiction and the lack of challenge made against the local authorities for failing to follow the Public Law Outline Pre-court protocol before bringing care or supervision proceedings.

Another area of challenge for me within these proceedings is the voice of the child. There have been many cases in which I have been involved where children voices have effectively been silenced. It is often difficult to assert this within the proceedings if you do not represent the child. My approach to my work is a collaborative one, which means to my mind that what affects one affects all, thus the lack of a child's voice within the proceedings affects the family (the whole) and thus it is legitimate for it to be raised as a legitimate concern before the Judge. I am challenging in the appellate courts the failure on the part of the judge to hear the child's voice given the child's age and relationship with his mother and the relationship that will continue long after the care order has come to an end by the effluxion of time.

Another area of concern that I have noted over the course of the last year is whether the test in Magill-v-Porter 2001 on the question of judicial bias can ever be applied successfully to cases where judges have heard all the case management and interlocutory hearings on a matter and has made adverse decisions against a parent, and who then go on to hear the final hearing. I have a concern that an entrenched view held by a judge pervades the proceedings and will prevent the parent from getting a fair hearing. I am challenging one

such decision in the appellate courts in a case where I represented a mother where I contend that bias arose during the course of the final hearing which rendered the hearing unfair.

In a number of cases I have been involved in there has been cognitive testing of the parent to determine the level at which they interact with the world I have had to challenge a particular type of psychometric testing carried out on a parent whose first language was not English, the test produced what can only be described as perverse results (41) – which immediately led to an assessment by the court appointed expert that this mother could never parent any child. A fact easily challenged on the basis of her past parenting of children and her functioning on a day to day basis. Challenging these type of assessments undertaken jointly is difficult but must be done where the results produced cannot be supported by the evidence of functioning on a historical and current daily basis.

I am currently representing a mother who has some cognitive functioning difficulties, assessments by the local authority have been unfair but who has been able that she can meet the needs of the children in a contact setting plus being able to do so whilst in a residential setting however the cognitive issues will remain. I am seeking to challenge the local authority's case on the basis that community care legislation can be used to obtain a care package for the client that will mean she will be able to meet her parenting responsibilities throughout the children's minority. The matter will be determined by the courts in the early part of next year

A challenging and interesting year. I look forward to the coming year.

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