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BRIEFING

SOCIAL SERVICES – CASE REPORTS

CHILD RELATED

Re B (Psychiatric therapy for parents)

The parents suffered from personality and behavioural disorders. In 1993 their three children were taken into care, Care Orders made, and placed for adoption. 1997 - fourth child born - local authority commenced care proceedings. The local authority sought a Care Order with a view to the placement of the child with an adoptive family. Initially the GAL supported this. Subsequently, however, the GAL changed her mind following speaking to a Consultant Psychiatrist who proposed year therapeutic а one programme to address the parents' disabilities, but which would cost the local authority around £100,000. The local authority opposed the proposal of the Consultant Psychiatrist and GAL.

HELD

The Judge of the County Court held that she had jurisdiction to impose upon the local authority the one-year therapeutic programme. The Local Authority appealed to the Court of Appeal. Court of Appeal held that there was a distinction to be drawn between matters which involved the child alone or the child/parent relationship on the one hand, and the parents' alone on the other. In this case the Judge's Order was for a programme of therapy for the parents, with a view to improving their prospects of providing good parenting, rather than a

programme of assessment. It followed that the Order could not stand, and the Appeal was allowed.

Re R -v- Tameside Metropolitan Borough Council ex parte J

The child, who had multiple severe disabilities, lived with her parents until she was nine years old. After this she was accommodated by the local authority in a residential home for disabled children because her parents were unable to cope any longer. The arrangement was a voluntary one. When the child was 12 the local authority suggested that it would be in her best interests to move to a foster The child's parents were placement. opposed to this move. The local authority decided to move the child in any event. The parents sought Judicial Review of the local authority's decision.

HELD

The Queen's Bench Division granted Judicial Review and declared that the local authority had no power to place the child with foster parents without her parents' consent - where a child was accommodated under voluntary Accommodation under a arrangement. voluntary arrangement was a matter for co-operation between the parents and local authority: where such co-operation had broken down, the authority had no power to move the child against the express wishes of the parents, notwithstanding their duties towards

children in need within its area and, equally, parents had no right to dictate where the authority must accommodate the child. If the authority took the view that there was a risk of significant harm to the child if their own view of the child's accommodation needs did not prevail, they should apply to the Court for a Care Order. If there was no such risk, the authority were ultimately entitled to offer parents the choice between caring for the child themselves, or agreeing to a solution acceptable to the authority.

R -v- Cornwall County Council ex parte LH

As a matter of policy, the local authority did not permit solicitors to attend Child Protection Case Conferences on behalf of parents for any purpose other than reading out a prepared statement. as a matter of policy, did the authority permit a parent who had attended such a conference to be provided with a copy of the Minutes, other than by Order of the Court. The Applicant sought Judicial Review of both local authority policies, arguing that both were contrary to the statutory guidance relating to Child Protection Conferences. Working Together under the Children Act 1989, provided that although representation was not appropriate, lawyers might accompany parents to a conference, and that copies of the Minutes should be sent to all who attended the conference.

HELD

Granting Judicial Review and declaring both policies to be unlawful:

(i) Although the statutory guidance warned of the dangers conferences becoming confrontational, and stated that legal representation as such was not appropriate, it clearly envisaged the parents being accompanied by a friend or lawyer. No good reason had given for the been authority's

departure from the statutory quidance. In general, solicitors ought to attend and participate, as they could make many helpful contributions. The Chair of the conference retained a discretion as to who could attend and for what purpose, and could exercise it to prevent a solicitor's attendance if it was felt, in a particular case, that such attendance would make the conference unnecessarily confrontational.

(ii) The refusal to provide parents with a copy of Conference Minutes was ludicrous as well as in blatant contravention of the statutory guidance. If a completely accurate record of the meeting had been taken nothing in the Minutes should be new to the parent or anyone who had been at the meeting. defence that the document might fall into the wrong hands was not convincing, as it presumed that parents would fail to act responsibly with the Minutes. If there were reasons in a particular case to suppose that Minutes would be misused, it would be open to the Chair, in his discretion, to withhold them for specific reasons.

Re J (Specific Issue Orders: Child's Religious Upbringing and Circumcision

The father applied for a Specific Issue Order that J, aged five, be circumcised. The father was a Muslim, although not particularly observant. The mother was a non-practising Christian bringing J up in an essentially secular household. Judge accepted that the father viewed circumcision as an important part of J's identity as a Muslim, but rejected the father's application on the basis that circumcision would not be in J's best because of the mother's interests. opposition to the procedure and the fact that only a small minority of J's peers would be circumcised.

HELD

Dismissing the Appeal. The decision to circumcise a child on grounds other than medical necessity was a very important one: the operation was irreversible and should only be carried out where the parents, together, approved it or, in the absence of parental agreement, where a Court decided that the operation was in the best interests of the child. requirement for a determination by the Court should also apply to a local authority with parental responsibility under a Care Order. Where a determination was needed, the legal priority was the welfare of the child, not the religious wishes of the parents. Circumcision falls within a small group of decisions made on behalf of a child which, in the absence of agreement of those with responsibility, ought not to be carried out or arranged by the one parent carer without an Order of the Court.

Re P (Children Act 1989, Sections 22 and 26: Local Authority Compliance)

The father was in prison following conviction for rape and buggery of the mother, and indecent assault on a child. The mother had agreed to Care Plans involving the long-term placements of four of the children outside the home. father took part in the care proceedings, and the question arose as to whether he should be permitted to take any further part in the upbringing and decisionmaking processes relating to the children. The local authority was proposing not to consult with the father, or to inform him of the arrangements for the children, other than providing him with a basic annual report in respect of the children's general well-being and telling him of emergencies.

HELD

The Court made the Care Orders sought by the local authority and approved its proposals as to consultation with the father. In addition, the Court made a Section 91 Order, granted Injunctions preventing the father from contacting the children, or from contacting or molesting the mother, and directed that all copies of the Court papers held by the father or his legal advisers be returned to the local authority.

Re R (Child of a Teenage Mother)

The mother became pregnant when she was 12 years old, and gave birth when she was 13. After the birth the mother and baby lived with a foster family, where the foster mother cared for the baby with the assistance of the mother, who had returned to full-time schooling. The local authority sought Care Orders in respect of the mother and the baby, with a Care Plan which involved the mother staying with the foster parents and the baby being placed for adoption outside the birth family.

<u>HELD</u>

Making the Care Orders and approving a Care Plan for the mother and child to be separated without delay - planning for the baby had been left too late, with the consequence that the local authority had had dramatically to change its Care Plan. with consequential distress and disruption. No attempt had been made to identify and approve a prospective adoptive family prior to the Hearing, which meant that the baby would have to move twice, first to a bridging placement and then, once a family had been identified and approved, to an adoptive family, causing disruption crucial stage of the baby's development. Cases involving very young teenage mothers were rare but very difficult, and research suggested that there was a wide variation of approach by different local authorities. The Court provided general guidance to assist local authorities dealing with similar cases. There was no general principle that babies of young teenagers should be adopted: each case would turn on its own and would be dependent, particular, on the quality of support available for mother and child. The local authority should begin planning as soon as it was informed about the pregnancy and during planning it was not appropriate to concentrate on the welfare of the mother to the exclusion of the needs of the unborn child. Social work and expert assessments should be completed well before the birth. If proceedings under the Children Act 1989 were necessary they should be issued on the day of birth, and where the mother was very young the case should be transferred without delay to the High Court and a separate Guardian ad Litem appointed for the mother and the child immediately. baby's interim placement should be determined on evidence by the Court at an early Hearing as a matter of urgency. The case should be timetabled on the basis that an early final decision was vital, necessary invoking the standby procedure for a Judge of the Family Division to hear the case. The Court reemphasised the importance of twin-track planning in cases in which adoption was a possible outcome. In cases of very young children the local authority should also consider whether or not the case was suitable for concurrent planning.

Re E (Care Proceedings: Social Work Practice)

The five children of a family were subjected to constant emotional, physical and sexual abuse. The matter first came to the attention of social workers in 1979 when the eldest child (then aged four) was placed on the Child Protection Register. Thereafter there was history of ineffective social work intervention, accompanied by the failure of the family to co-operate with The children, in turn, professionals. exhibited similar characteristics of serious sexualised behaviour. emotional disturbance, anti-social conduct, suicidal tendencies and parental rejection. pattern was repeated over a 20-year period, during which the social workers took no effective action and repeated referrals were ignored. After hearing an application brought by the local authority in respect of the three younger children, the Court put forward the following principles:

- Every social work file should have as the top document a running Chronology of significant events, kept up to date as events unfold.
- (ii) Lack of co-operation by parents is never a reason to close a file or remove a child from a Protection Register.
- (iii) Referrals by professionals such a health visitors and teachers should be investigated and given great weight.
- (iv) Those with power of decision-making should never make a judgement without full knowledge of the files and consulting those professionals who know the family.
- (v) Children who are part of a sibling group should not be considered in isolation, but in the context of the family history.
- (vi) Cases should be time-limited and an effective timetable laid down within which changes need to be achieved.

Re D (Adoption: Freeing Order)

Under Section 16 of the Adoption Act 1976 the Court is to be satisfied that a parent freely, and with full understanding of what is involved, agrees unconditionally to the making of an Adoption Order. The mother had been involved in a number of conversations about adoption of the two children aged 14 and 12. The Affidavit evidence was that in these conversations the mother had agreed to the adoption, but she had also said that she would not see, "that man who bangs on the door", by which she meant the Reporting Officer. The Reporting Officer had made a number of attempts to interview the mother, but the mother had refused to speak to him. The mother had signed a document expressing her unconditional agreement to the adoption, but this had not been witnessed by the Reporting Officer. The Court was asked to consider whether it was satisfied that the mother had freely, and with fully understanding of what was involved, agreed unconditionally to the making of the Adoption Orders.

<u>HELD</u>

Declaring that the Court was satisfied that the mother freely, and with full understanding of what was involved, agreed unconditionally to the making of an Adoption Order - it was clear that the mother had expressed her unconditional agreement to the adoption, both orally and in writing.

Re Z County Council -v- R

When her child was born, the mother refused to disclose the identity of the father who, she said, had no interest in the child, and supported adoption. The mother concealed the fact of her pregnancy from her family and made arrangements with the local authority before the birth of the baby for it to be fostered with a view to adoption. With the mother's support the child was placed with prospective adoptive family appeared to be stable and secure. local authority then applied for an Order freeing the child for adoption. However, at that point the Guardian ad Litem raised the question as to whether the mother's relatives should be told of the baby's existence and consulted as to whether any of them might wish to offer the child a That suggestion was adamantly opposed by the mother, who stated that neither she nor her family could offer the child a secure future, and that she wished the position with the prospective adoptive family to be settled without delay. matter was transferred to the High Court for the issue to be addressed, and also consideration of the Human Rights Act.

HELD

- (i) Under English law, the local authority adoption agency empowered to consult and inform the child's blood relatives of his existence. Further, the Guardian ad Litem had a duty to investigate any relevant matters relating to an Order freeing the child for adoption. However, none of the provisions of statute, regulations or rules imposed any duty upon either the local authority, the Guardian ad Litem or the Court to inform or consult members of the family in a case like the present, since there was no reason to doubt the mother's views that the relatives could not care for It was concluded that it the baby. would not be in the child's best interests to reveal this information, as it would be likely to severely disrupt the family and jeopardise the helpful co-operation between the mother and the adoption agency.
- Under the European Convention for (ii) the Protection of Human Rights and Fundamental Freedoms 1950, a family life exists between a child and a father or other close relatives within Article 8(1). It followed that if a Freeing Order was made and the child was adopted there would be an interference with the exercise of the child's right to respect for family life with the extended family, and to their right to a family life with the child within Article 8. However, within Article 8 such interference was in accordance with the law, which permitted Freeing and Adoption Orders, and did not positively require that the child's relatives be informed or consulted before such an Order was made. In the present case, such interference was deemed necessary for the protection of the child. Furthermore, the mother had her own rights under Article 8 to respect for her private life, which would be breached by the imparting

of information given by her in confidence. Thus, on balancing the competing rights under Article 8, the balance on the facts came down in favour of preserving that confidence.

Re K (Secure Accommodation Order: Right to Liberty)

The child, aged 15, had been permanently excluded from nursery when aged two, as a result of his destructive behaviour, and had been referred to an Educational Psychologist at the age of four because of generally aggressive behaviour. He had then been placed in a special school, but it had become increasingly difficult for his parents to manage his behaviour, which included serious sexualised behaviour and the destruction of property, including fire setting, and the local authority became involved. Eventually the child was placed in a residential home. Following an assault on a female member of staff, an assessment of the child, then aged 11, diagnosed him as having Hyper-Kinetic Conduct Disorder, and described him as presenting a serious risk to himself and Although another residential placement was successful for a time, after the child's 13th birthday there was a further deterioration in his behaviour and, following indecent assaults, incidents of fire-setting and assaults on staff, he was eventually placed in a secure unit under a Secure Accommodation Order within the Children Act 1989. The child appealed the most recent of a series of such Orders on the basis that Secure Accommodation Orders were incompatible with the right to liberty under the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, and he also sought damages in respect of the alleged breach of his right to liberty.

HELD

Refusing a declaration of incompatibility and making a Secure Accommodation Order until February of this year, the Court of Appeal held that a Secure Accommodation Order made under the Children Act 1989 was a deprivation of liberty, but was not incompatible with the Convention where it was justified within Article 5, as the detention of a minor by lawful Order for the purpose educational supervision. Educational supervision was not to be equated rigidly with notions of classroom teaching but, particularly in the care context, should embrace many aspects of the exercise by the local authority of parental rights for the benefit and protection of the child concerned. If a young person were to be detained under a Secure Accommodation Order, without any educational provision being made for that young person, there would be a breach of the Convention right to liberty, but on the basis that the duty of the Court was to find a compatible interpretation of legislation, Section 25 was not incompatible with the Convention, notwithstanding the fact that it did not itself mention educational provision.

R -v- Kent County Council ex parte S

S and P were in local authority care as children. Homes were found for them in Kent by their local London authority. When they reached adulthood, S and P asked the Court to determine whether the continuing duties owed to them under the Children Act were owed to them by Kent, the authority in which they lived, or by the London authorities in whose care they had been as children. S also needed to know who was responsible for her under the Chronically Sick and Disabled Persons Act 1970.

HELD

A declaration was made that Kent owed S and P duties under the Children Act 1989 and owed S duties under the Chronically Sick and Disabled Persons Act 1970 as the London authorities had no continuing duties, owing to the fact that neither S or P lived within their areas.

ADULTS

Re Z (Medical Treatment: Hysterectomy)

19, suffered from Down's Z, aged Syndrome. When she was 12 years old she started menstruation and her periods heavy, painful and irregular. Although medication had been given, this did not alleviate Z's great discomfort and distress. In addition, Z was attracted to men, and presently had a boyfriend, who also suffered from Down's Syndrome and her mother recognised that Z might, and would. probably have а sexual relationship in the future. Z's mother applied for Z to have a hysterectomy. The Official Solicitor submitted that although there was a risk of pregnancy, major surgical procedures were not in Z's best interests, and that other medical treatment could be given. Four experts were called to give evidence, all of which conflicted in some areas.

HELD

The Court held that the responsibility for the assessment fell on the Court alone. and that while the experts had to be listened to with respect, their respective opinions had to be weighed and judged by the Court. Since Z's periods brought her nothing but misery, pain and discomfort and served no useful purpose either reproductively or emotionally, it was in her best interests that her periods should Were Z to become cease altogether. pregnant she would be incapable of raising a child, and the trauma of pregnancy, childbirth and the inevitable removal of the child would be a catastrophe for her. Furthermore, if she had to undergo an abortion the psychological and emotional fallout would be disastrous. Therefore, the risk of pregnancy had to be removed The sub-total hysterectomy completely. would not only dramatically improve Z's quality of life by eliminating her menstrual periods, but also give her total protection from pregnancy. Accordingly, it was in the best interests of Z that she undergo a

laparoscopic sub-total hysterectomy, and the mother's declaration was granted.

Re A (Medical Treatment: Male Sterilisation)

A, aged 28, had Down's syndrome and had been assessed as being on the borderline between significant and severe impairment of intelligence. He lived with his 63 year old mother, who provided him high-degree of care а supervision. The mother's health was not good, and her major concern was that, when A moved into local authority care, he might have a sexual relationship resulting in the birth of a child, and he would be unable to understand the consequences, and she disapproved very strongly of a man walking away from responsibility. Accordingly, the mother, acting as A's next friend, applied to the High Court for a declaration that a vasectomy operation was in A's best interests, and could lawfully be performed on him, despite his inability to consent to The Official Solicitor opposed the application. The Judge at first instance found that whilst A was sexually aware and active, he had no understanding of the link between sexual intercourse and pregnancy. He held that, while in the care of his mother A was unlikely to enter into a casual sexual relationship with a woman. but were a pregnancy to occur the effect on A would be minimal and concluded that a vasectomy operation was not essential to A's future well-being. It was appealed to the Court of Appeal.

HELD

Sterilisation of a mentally incapacitated patient on non-therapeutic grounds could only be carried out if it was in the best interests of the patient. The concept of best interests related to the mental incapacitated person, and were not limited to best medical interests, but encompassed medical, emotional and all other welfare issues. An application on behalf of a man for sterilisation was not the equivalent of an application in respect

of a woman, as there were obvious biological differences. In the case of a man who was mentally incapacitated, neither the fact of the birth of a child nor disapproval of his conduct was likely to impinge on him to a significant degree, other than in exceptional circumstances. In the present appeal it was necessary to focus on the best interests of A himself and it was clear that, as long as the mother cared for him, he would continue to be subjected to the present regime of close supervision. If sterilisation did take place it would not save A from the possibility of exploitation, nor help him cope with the emotional implications of any close relationships that he might form. It was clear from the evidence that the level of supervision at the day centre did not depend upon his fertility, and the supervisor stopped inappropriate behaviour because it was conducted in a public place, which would continue whether or not he had the operation. The Appeal was dismissed.

Re D (Mental Patient: Habeas Corpus)

The patient was detained pursuant to the Mental Health Act 1983, Section 3. Under Section 11 of the Act the social worker who made the application for hospital admission was required to consult with the person "appearing to be the nearest relative of the patient". The social worker had consulted the patient's younger child, believing that she had cared for the patient. The younger child had washed the patient's linen when he was doubly incontinent, checked that he had sufficient food, and had also assisted with his financial affairs, including paying his water rates when he refused to do so. patient applied for a Writ of Habeas Corpus, arguing that the younger child was not his nearest relative, as she had not "cared for him" and that the Committal Order must therefore be rescinded.

<u>HELD</u>

The question here was not whether the social worker had consulted with the

legally correct "nearest relative", but whether he had consulted with the person "appearing to be" that relative. To impose a duty of enquiry on the social worker in relation to deciding who is the nearest relative would be intolerable in the circumstances in which most decisions had to be made. The Court should not enquire into the reasonableness of the decision that the younger child was the nearest relative, only the honesty of that assertion. The social worker's honesty was not impugned in this case.

GENERAL INTEREST

Gogay -v- Hertfordshire County Council

Local authority - child in care with learning and communication difficulties who had been sexually abused - child sexually suggestive conduct and comments about residential care worker difficult to evaluate - care worker being told that an allegation of sexual abuse had been made and suspended while investigation undertaken - care worker suffering consequent psychiatric illness - whether local authority right to suspend care worker.

HELD

Court of Appeal - A local authority looking after vulnerable people was under a duty to take reasonable care to safeguard them from harm, both under Section 22 of the 1989 Act and generally. The duty had to include making reasonable enquiries when there was information to suggest that there might be risk from within the agency. The Department of Health guidance and regulations under the Children Act 1989 and various other materials, provided guidelines for the conduct of situations such as that which arose with respect to E in the present case. There was a distinction to be drawn between the process of investigating whether a child was at risk, and the process of dealing with a member of staff who may have been implicated in that risk, and it did not necessarily follow that where an investigation was underway the member of staff had to be suspended. In the present case, although the local authority did, and should have had the power to make such an investigation, the issue was whether the claimant should have been suspended simply because those enquiries were being made. There was a mutual obligation implied in every contract of employment not to act in a manner likely to destroy or seriously the relationship damage between employer and employee without reasonable cause. In the present case the information causing concern was difficult to evaluate, and should never have been described as an "allegation of sexual abuse". Further, it was difficult to accept that there had been no alternative to the suspension of the claimant, which was a "knee jerk" reaction. damages for psychiatric injury, there was a clear distinction between mental distress and a recognised psychiatric illness, and the Judge had been right to award damages for both financial loss and personal injury to the claimant.

Re L (Care Proceedings: Cohabiting Solicitors)

Care proceedings were brought by the local authority in relation to four children who had been cared for by Mr and Mrs B. Three of the children were Mr and Mrs B's own children, and one was a child whom they had brought up as their own but who was in fact the child of L, Mrs B's sister. L was on bad terms with Mr and Mrs B: she perceived them as having damaged her relationship with her child, and considered that the local authority had favoured them in respect of the child. An issue arose concerning the cohabitation of two of the solicitors acting in the proceedings. The solicitor with conduct of the local authority case within their legal department, a woman, was cohabiting with the solicitor with conduct of the case for Mr and Mrs B. a man. The male solicitor had informed his clients. Mr and Mrs B. of the cohabitation, although the Law Society had apparently assured him that he was under no professional duty to do so, and Mr and Mrs B had waived any objection. The solicitor acting for the children was aware of the cohabitation, and had raised concerns about the situation with the local authority, which were not pursued. However, L's solicitor was not aware of the cohabitation. When L's solicitor was informed of the cohabitation by the solicitor acting for the children, considered that she should tell her client. L was upset by the information, perceiving confirmation of her suspicions of local authority bias against her. L's solicitor objected to the continued involvement of cohabiting lawyers, but solicitor was prepared to withdraw from the case. L applied for an Order that the two solicitors should not both personally retain conduct of the proceedings.

HELD

High Court decision - Unless the woman solicitor with conduct of the case on behalf of the local authority relinquished it, the Court would declare that the local authority's Head of Legal Administration was no longer representing it in the proceedings. In care proceedings the role of the local authority was of crucial significance and of special sensitivity; the power of the local authority in care proceedings placed a premium on the importance that the authority be seen to act impartially. If an objection about the cohabitation of lawyers involved in care proceedings was made in good faith, the Court might intervene in order to preserve the fairness of the trial and, specifically, the expectation that the local authority would maintain professional distance from the other parties. No general formulation would be adopted, but in this case the cohabitation of the lawyers gave rise to a reasonable lay apprehension that the local authority might present its case in a way favourable to one set of parents at the possible expense of another parent. Although the adults involved were not direct rivals for the care of the child, the unhappy relationship between them, and continued significance relationships of all three of them with the child, made it important that there was no apprehension reasonable approach of the local authority was in any way coloured by favour towards some of The professional integrity of the lawyers involved was not in question: it was their cohabitation that was the sole cause of the apprehension. A form of Order which purported to regulate what took place behind the doors of the department or firm was not attractive. Where an Order restraining a solicitor from acting was made in separate proceedings, the Order would take the form of a straightforward Injunction; where, as here, the Order was being made in the same proceedings, the neater course would be to remove the solicitors from the record by declaring that he was no longer acting. The usual practice should be that where one cohabitant was asked to act in circumstances where he or she knew that the other was already acting, it should be for the former to yield to any objection. In this exceptional case, however, it was right that the local authority solicitor should withdraw.

PER CURIUM

Intimate cohabitation was a relationship different in kind from professional association or social friendship. Where cohabiting lawyers were instructed in the same case, acting for different parties, the Court would expect the lawyers to inform their clients of the cohabitation, as the discovery of the cohabitation by an unsuccessful party after the conclusion of proceedings could give rise perception that the proceedings had been a charade.

> Janette Bird 15 May 2001

For further advice please contact the Adults & Children Division

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