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Tower Hamlets London Borough Council v M & Others (2015)

[2015] EWHC 869 (Fam)

27/03/2015

Barristers
Chris Barnes

Court
Family Division

Practice Areas
Public Children Law

Summary
The court gave guidance in relation to the correct procedure to be followed in applications to remove children's passports.

Facts
The court gave guidance in relation to the correct procedure to be followed in applications to remove children's passports.

The court had made a number of children wards of court following separate applications by two local authorities who were concerned that the children were at risk of leaving the UK to travel to Islamic State countries, particularly Syria. There were concerns that the children's families were unlikely to adequately protect them from leaving the country. Under its wardship jurisdiction, the court made ex parte orders relating to the retrieval of the passport of each child concerned. Counsel for the second local authority had told the court that the police supported the applications. However, the judge later received a telephone call from the High Court Tipstaff, informing him that the police considered that they had not had a proper chance to evaluate the risk identified and that enforcement of the orders might not be required because it might be possible to secure the surrender of the passports through co-operation with the families. The judge therefore suspended the order and listed another hearing when it emerged that the police had only been notified about the application an hour-and-a-half before the hearing. The case was adjourned for a few days and during the adjournment, social workers, police and lawyers were able to work together and ensure that a number of passports were lodged with solicitors.

Held
(1) The removal of an individual's passport, even on a temporary basis, was a very significant incursion into their freedom and personal autonomy. It was never an order which could be made lightly. A number of core principles applied: (a) before coming to court, the lawyers should draft, at least in outline, the scope and ambit of the orders they sought, in order to expedite the subsequent service of the orders and

in order to compel the lawyers to think in a focused manner about the specific orders they sought; (b) from the outset, thought should be given to how quickly the case could be restored on notice in order to comply with the requirement of fairness contained in ECHR art.6; (c) even though the cases would, of necessity, be brought before the court in circumstances of urgency, they nonetheless required the instruction of senior and experienced lawyers because the issues concerned had profound consequences, not limited to the individuals concerned, and would frequently require a delicate balance of competing and potentially conflicting rights and interests; (d) the interest of the individual child was paramount and could not be eclipsed by wider considerations of counter-terrorism policy, but the decision which the court was being asked to take could only be arrived at against an informed understanding of that wider canvas; (e) it would never be satisfactory to offer merely verbal assurance that the police, security forces or those involved in counter-terrorism were aware of and supported the application. Cogent and coherent evidence was required, which could be subjected to appropriate scrutiny. The format of the evidence might vary from case to case. It might require a police presence in court; there might be the need for police or counter-terrorism officers to be represented; written and sworn statements might suffice; or, on occasion, evidence might be received by secure telephone or video link; (f) justified interference with the rights of a minor under ECHR art.8 would always require public scrutiny. There was a presumption of transparency through the attendance of accredited press officials in court; (g) before coming to court, careful attention should be given to the framework of reporting restrictions required to protect the child from publicity, remembering that some families might already have excited or sought out a degree of press coverage. There was also a risk that the children might be identified by piecing together information already in the public domain; (h) an evaluation of the reporting restrictions had to have at the forefront the consideration that publicity was not confined to conventional media outlets, but extended to the wide range of social media; (i) the importance of co-ordinated strategy, predicated on open and respectful co-operation between all the safeguarding agencies involved, could not be overstated. An ongoing dialogue in which each party respected the contribution of the other was most likely to achieve good and informed decision-making; (j) measures should be taken to comply with the guidelines laid down in S (A Child) (Family Division: Without Notice Orders), Re [2001] 1 W.L.R. 211 in relation to granting ex parte relief in the Family Division, Re S applied (see paras 13, 18-20, 58 of judgment). (2) The second local authority had consciously misrepresented the extent of the police awareness of the application. Where only the state appeared in court, the court required a very high degree of candour on the part of all those involved. The fullest possible information had to be placed before the court in an entirely unpartisan way, namely the evidence which supported the application and that which ran counter to it. That duty extended not merely to counsel and solicitors, but to all involved, such as police and social services. Moreover, the lawyers involved had to take great care to emphasise and reinforce that obligation to their lay and professional clients. It was also important to carefully consider whether the facts presented a real degree of urgency which necessitated an application being made on an ex parte basis (paras 13, 15-17, 36, 42).