

Re G (Interim Care Order: Residential Assessment)

[2006] 1 FLR 601

24/11/2005

Barristers

Charles Hale KC

Court

House of Lords

Practice Areas

Public Children Law

Facts

The local authority initiated care proceedings in relation to the child a few days after her birth. The child's mother had two previous children. Her second child had died of non-accidental injuries at around 6 months old. Her first child was now in his father's care because the mother was seen as presenting too great a risk to him. The local authority initially planned to place the mother's third child for adoption, but later agreed to a 6-8 week residential placement for the parents and child at a hospital specialising in the assessment and treatment of severely disturbed adults, young people and families. The local authority asked the hospital to obtain an account from the mother of what had happened to the child who had died, an explanation for any inconsistencies between this and previous accounts, and an assessment of the mother's acknowledgement of and insight into the events which had led to his death. At the end of the initial period, the hospital recommended a further 6-week assessment. The local authority opposed this because little had been done to address the questions to which it sought answers. The court directed that a further 6-8 week period of assessment should be carried out. The hospital strongly recommended further treatment for the family in a residential setting, but neither the local NHS Trust, nor the local authority was willing to fund this. The judge held that there was no power to direct the local authority to fund a further period of inpatient treatment for the mother and child. The Court of Appeal overturned his decision, holding that the key question was whether what was sought could broadly be classified as an assessment to enable the court to obtain information. The local authority appealed to the House of Lords on the question of whether the court had power to direct the therapeutic treatment of a parent under s. 38(6) of the Children Act 1989.

Held

Held – allowing the appeal –

(1) The court's power to direct assessment of the child under s. 38(6) must be interpreted in light of the background to the Children Act 1989, and in particular in light of the clear division of responsibility between the local authority and the court. It was the role of the court to decide, without undue delay,

and having carefully scrutinised the local authority's care plan, whether or not to make a care order. It was the responsibility of the local authority to decide how the child should be cared for once an order had been made. The court should resist the temptation to postpone making its final decision until any uncertainties had been resolved, if such a course conflicted with the division of responsibilities between court and local authority, and with the general principle that delay was not in the child's best interests (see paras [48], [57], [61]).

(2) The purpose of s. 38(6) was to ensure that the court was in control of the evidence to be obtained about the child and put before the court. The purposes of the subsection were to enable the court to obtain the information it needed and to control the information-gathering activities of others. The court had the power under s. 38(6) to direct an examination or assessment of the child, including, where appropriate, her relationship with her parents, the risks that her parents may present to her, and the ways in which those risks may be avoided or managed. The principal focus of the assessment must be the child. Any services which were provided must be ancillary to the aim of obtaining the necessary information to make a decision. The court had no power under s. 38(6) to ensure the provision of services beyond this either for the child or her family (see paras [7], [63]-[65], [69]).

Per Lord Scott of Foscote obiter: If a programme of therapy for a parent, with a view to improving his or her parenting skills, fell outside the scope of s. 38(6), the court would have no power to direct the local authority or any other potential funder to undertake the funding of the programme (see para [23]).

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