4 Paper Buildings
Temple, London
EC4Y 7EX
T: 020 7427 5200
E: clerks@4pb.com
W: 4pb.com

Re G (A Minor) (Interim Care Order: Residential Assessment)

[2005] Daily Cases

24/11/2005

Barristers
Private: Jonathan Cohen QC

Court
House of Lords

Facts
The court had no power to make an order for an "assessment" under s 38(6) of the Children Act 1989 where the main purpose of the order was to provide a continuing course of psychotherapy for a mother in order to give her the opportunity to change sufficiently so as to become a safe and acceptable carer for her child who was the subject of an interim care order.

The House of Lords so held, allowing an appeal by Kent County Council from a decision of the Court of Appeal (Dame Elizabeth Butler-Sloss P, Thorpe and Latham LJJ) [2004] 1 FLR 876 on 27 January 2004 allowing an appeal by E, a minor, and her parents against an order of Johnson J on 24 October 2003 refusing to extend their stay as in-patients at the Cassel Hospital, Richmond Surrey.

The local authority initiated care proceedings in respect of a newborn child, E, because R, another child of the mother's by a different father, had died aged six months, of multiple non-accidental injuries. The court had been unable to establish which of R's parents had caused his death, but held that the mother had not told the authorities all that she knew about it. The judge directed pursuant to s. 38(6) for E and her parents to have a period of residential assessment at the hospital. That period was subsequently extended but when the hospital recommended a further period of several months' residential assessment and therapy the local authority refused the funding.

Held
LORD SCOTT OF FOSCOTE said that to come within s. 38(6), the proposed assessment must be an "assessment of the child". The main focus must be on the child. In the present case the main focus of the proposed residential assessment was on E's mother and not on E. What was to be assessed was E's mother's capacity for beneficial response to the psychotherapeutic treatment she was to receive. Such an assessment, no matter how valuable the information might be for the purposes of the eventual final care order decision, could not be brought within s. 38(6). In regard to the Human Rights Act 1998 , there was no dispute that both E and her parents had the right under art 8 of the Human Rights Convention to "respect" for their "family life". It was submitted that that right placed the state and the local authority as an emanation of the state, under a positive obligation to provide for E's mother to have the benefit of

the proposed therapeutic and assessment programme in order to provide E and her parents with the optimum chance of being able to live together as a family. It was submitted that if s. 38(6) was given a scope which did not extend to a direction that that programme be offered it would deprive E's parents, and other parents in a similar position, of the chance to demonstrate that fundamental changes could be made within the necessary timescale so that it would be safe for them to parent their child. His Lordship said that the proposition that the refusal of a court to make that direction, or the unwillingness of the local authority, the NHS trust or the legal aid authorities to fund its implementation, would have constituted a breach of E's or her parents' art 8 rights could not be accepted. There was no art 8 right to be made a better parent at public expense.

LORD CLYDE and BARONESS HALE OF RICHMOND delivered concurring speeches.

LORD WALKER OF GESTINGTHORPE and LORD MANCE agreed.