

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

[2006] 1 AC 576

17/10/2005

Court

House of Lords

Facts

The mother had two children, J and R, born in 1996 and 1998 respectively, by two different fathers. When R was less than six months old he died of multiple, non-accidental injuries. The judge held that either of R's parents could have caused his injuries and that the mother had not revealed all that she knew about the injuries, but the judge was unable to decide which of R's parents was responsible for his death. In the meantime the local authority had brought care proceedings in respect of J. The court decided that the mother presented too great a risk for J to be placed with her, and J was placed with his father. In 2003 the mother had a third child, E, by a man who was not the father of J or R. A few days after E's birth the local authority initiated care proceedings in respect of her. The court made an order pursuant to section 38(6) of the Children Act 1989¹, for a hospital which specialised in the assessment and treatment of severely disturbed adults and families to carry out a six- to eight-week period of in-patient assessment of E and her parents, and in particular to assess the mother's acknowledgement of and insight into the events which had led up to R's death. The local authority opposed an extension of the residential assessment but the judge ordered that it should continue for a further period at the same hospital. During that period the mother began to address the issues surrounding her emotional neglect of R and his death, and the hospital recommended that the family's residential assessment be extended further so that they could be offered ongoing assessment and rehabilitation with intensive psychotherapy for the mother. The local authority refused to fund a further period at the hospital. The judge held that he had no power under section 36(8) to direct the local authority to do so because what was proposed was therapy rather than assessment. The Court of Appeal allowed the mother's appeal and reversed the judge's decision on the ground that the essential question should always be whether what was sought could broadly be classified as an assessment to enable the court to obtain the information necessary for its own decision.

Held

On the local authority's appeal-

Held, allowing the appeal, that the question in deciding whether the court had power to make a direction under section 38(6) was not whether what was proposed could be described as an assessment, but whether it could be described as an "assessment of the child"; that since the assessment of the child was intended to provide the court with the information necessary to make a final decision regarding the child's future with the minimum of delay, any assessment had to

1 Children Act 1989, s. 38(6); see post, para4 .

take place within a relatively short period and should not be prolonged by repeated interim orders; that the court's jurisdiction was confined to obtaining information about the current state of affairs and did not extend to a continuing survey of the effects of treatment over a long period; that the purpose of section 38(6) was to enable the court to control, and therefore be able to limit, the number and type of examinations or assessments that a child who had become the subject of care proceedings would be required to undergo; that the assessment of the child could include, where appropriate, an assessment of the child's relationship with her parents, the risk that her parents might present to her and the ways in which those risks could be avoided or managed, so long as the focus was always on the child; that the main purpose of the proposed programme was to provide therapy for E's mother in order to give her the opportunity to change and thereby become a safe and acceptable carer for E; that those proposals focused on the treatment and improvement of the mother and her parenting skills and could not be regarded as an assessment of the child for the purposes of section 38(6), notwithstanding that the results would be valuable in enabling the court to decide whether a care order should be made in respect of E; that the right to respect for family life under article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms did not include the right to be made a better parent at public expense in order to give the family the optimum chance of being able to live together; and that, accordingly, the judge was correct in concluding that it was beyond his power to order any further residential assessment for E and her parents (post, paras 4 ,7 -9 , 14 ,17 -19 ,24 -29 ,31 -32 , 34 ,62 , 64 -69 ,72 -74).

In re C (A Minor) (Interim Care Order: Residential Assessment) [1997] AC 489, HL(E), In re B (Psychiatric Therapy for Parents) [1999] 1 FLR 701, CA, In re D (Jurisdiction: Programme of Assessment or Therapy) [1999] 2 FLR 632, CA and In re B (Interim Care Order: Directions) [2002] 1 FLR 545, CA considered.

Decision of the Court of Appeal [2004] EWCA Civ 24; [2004] 1 FLR 876 reversed.

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