

# Re G (Interim Care Order: Residential Assessment)

**[2004] 1 FLR 876**

24/01/2004

## **Barristers**

Private: Jonathan Cohen QC

## **Court**

Court of Appeal

## **Facts**

A local authority issued care proceedings in relation to a child following the death of a younger sibling from severe multiple injuries. The court concluded that it was impossible to exculpate either the mother or father from responsibility for the death and made a care order in respect of that child. The mother subsequently became involved in a new relationship and became pregnant. The local authority initiated care proceedings a few days after the birth and the court ordered a 6-8 week residential assessment at the Cassel Hospital (a NHS therapeutic community hospital) under s. 38(6) of the Children Act 1989. The judge then ordered a further 6 weeks at the Cassel as the issues had not been sufficiently addressed. Following this period, the Cassel recommended that the family's stay be extended. The local authority agreed that it would be appropriate for the family to remain at the Cassel, but were unable to commit to funding. The local authority's care plan was for the new baby to reside with the grandmother and father. The mother would visit twice daily and undertake weekly psychotherapy with a view to rehabilitation. The matter was listed for directions and the local authority filed limited evidence on finances. The judge found that he had no jurisdiction to extend the s. 38(6) assessment and even if he had the discretion, he would not have exercised it. The parents appealed.

## **Held**

Held - allowing the appeal -

(1) The proper approach to s. 38(6) was set out in the case of *Re C (A Minor) (Interim Care Order: Residential Assessment)*. The essential question should always be, can what is sought be broadly classified as an assessment to enable the court to obtain the information necessary for its own decision? The assessment of the child means assessment of the child within the family and the resource consideration must be the same whether the court is making an order for medical examination of the child or an order for assessment of the child (see para [48]).

(2) The decision of Holman J in *Re M (Residential Assessment Directions)* should not be treated as a guideline case (see para [64]).

(3) An application for a direction under s. 38(6) may potentially engage both Art 6 and Art 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (see para [51]). The impact of the Human Rights Act 1998 on the determination of s. 38(6) applications must be recognised (see para [64 ](ii)).

(4) A case advanced by a local authority to establish that the cost of the assessment sought is excessive or disproportionate must be substantiated by evidence and the witnesses relied on must be available for cross-examination, unless otherwise agreed or directed. The case may not be accepted if presented only by reference to the budgets for some district within the local authority's territory.

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