

Re A (Care Proceedings: Asylum Seekers)

[2003] 2 FLR 921

16/05/2003

Barristers

Robin Barda

Court

Family Division

Facts

The mother and father and the two children entered the UK from a non-European country in February 2002. Their applications for asylum were refused. The father's appeals were dismissed by an adjudicator, and the Immigration Appeal Tribunal refused the father leave to appeal. An invitation to the Secretary of State either to reconsider the matter or permit the father to remain in the UK on an exceptional basis was rejected. Removal directions were given, and the father was detained by the Home Office. A local authority worker who saw the father in custody at the police station became concerned when he not only suggested that the mother was suicidal, but also implied that he might kill himself, the mother and the children. That evening the mother took an overdose and was admitted to hospital where she remained for one night. The father was moved to the removal centre and placed on suicide watch. The local authority was granted an ex parte interim care order in relation to both children together with an emergency protection order. The authority issued care proceedings that month based on fears for the safety of the children if they were reunited with the parents. However, the children and the mother were reunited shortly thereafter, moving to live in a family home supervised by the local authority. The interim care order was extended pending a hearing of the outstanding issue whether the father posed a risk to the children or whether his actions were, as the Secretary of State believed, a deliberate attempt to frustrate the removal process. Although the father was now stating that he had no intention of killing himself or his family, the position of both parents was that the care proceedings should remain in place until such time as the local authority was satisfied that the children were not likely to suffer significant harm in the care of their parents, either in this country or in their country of origin. The local authority took the view that the assessments carried out since the father made his original threat had allayed any concerns there might have been about whether either parent might harm the children. Neither the local authority nor the children's guardian considered that there was any real need for the proceedings to continue.

Held

Held – discharging the interim care orders and dismissing the proceedings –

(1) Apart from proceedings under the Adoption Act 1976, whatever jurisdiction he might be exercising a judge of the Family Division could not make an order which had the effect of depriving the Secretary of

State of his power to remove a child or any other party to proceedings (see para [48]).

(2) The functions of the court under the Children Act 1989 and of the Secretary of State under the Immigration Act 1971 and related legislation were, by and large, separate and distinct. The court and the Secretary of State were performing different functions and, necessarily, applying different tests. The court, when exercising its powers under the Children Act 1989 was not entitled to have regard to immigration policy and must be guided by the interests of the child. The Secretary of State did not apply the principle that the child's interests were paramount, but performed a balancing exercise in which the scales started even (see para [53]).

(3) Where Children Act proceedings related to a child who was liable to removal or deportation the jurisdiction should be exercised very sparingly (see para [53]).

(4) If, apart from immigration questions, there was no genuine dispute concerning the child, the use of the court's jurisdiction to attempt to influence the decision of the Home Secretary was an abuse of process (see para [53]).

(5) The only task of the court in care proceedings was to assess whether there was some 'solid advantage' to the children in continuing the proceedings.

(6) In the present case there was no evidence to show that the children were at real or substantial risk of harm from either parent, who, in the view of the local authority were good and caring parents, devoted to their children. The question of risk to the children arising out of conditions in their country of origin was not a question for the court in care proceedings; it could not be used to seek to prevent a family which came from a foreign country from returning there if that was what they wanted, and could not be used in the instant case. There was no sound evidential basis for the assertion that the parents would be unable to parent effectively if the family were returned to their home country. There was, therefore, no basis for continuation of the proceedings, which were no longer serving any useful or even legitimate purpose and were conferring no benefit on the children. In truth, the parents were seeking to use the court as a means of influencing or attempting to influence the Secretary of State, which was an abuse of process (see paras [54], [58], [60], [61], [64], [67]).

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