

A v A Health Authority and another In re J (A Child)

[2002] 3 WLR 24

24/01/2002

Barristers

Robin Barda

Court

Family Division

Facts

In the first case proceedings were commenced in the Family Division on behalf of A, an incompetent adult, seeking an order compelling the defendant health and local authorities to allow him in his best interests to return to his long term care home. In the second case proceedings were commenced in the Family Division on behalf of S, a 16-year-old girl held in secure detention, and her newborn baby, J, seeking an order that J be made a ward of court and an injunction against the Secretary of State for the Home Department and a declaration that S and J should not be separated on S's return to secure accommodation. An application was also made to the Administrative Court on S's behalf seeking permission to apply for judicial review of the Secretary of State's decision not to allow her and J to be placed in a mother and baby unit.

Held

Held , that cases which, although concerning the welfare of either children or incompetent adults, required the review of a decision of a public authority were properly litigated by way of an application for judicial review in the Administrative Court, preferably before a nominated judge of the Administrative Court who was also a judge of the Family Division; that cases about the best interests of a child or an incompetent adult, even if some issue of public law was involved, should be litigated in and before judges of the Family Division; that the crucial distinction went to the identity of the decision-maker whose decision was under scrutiny, the appropriate test being the substantive nature of the issue before the judge; that while S's dispute with the Secretary of State plainly had to be resolved in accordance with the substantive public law principles, those aspects of the proceedings concerning S's and J's welfare prima facie were to be decided in accordance with normal Family Division principles; and that, while A's place of residence was to be determined on the best interests test, the challenge to the local authority's decision to move him from the care home raised substantive public law issues (post, paras 72 ,79 , 80 , 89 ,95 -97 , 99 ,108 -109 ,113 -114).

Permission

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