

Re O (A Minor) (Blood Tests: Constraint) Re J. (A Minor)

[200] 2 WLR 1284

24/01/2000

Barristers

Cliona Papazian

Court

Family Division

Facts

Since the only exception in section 21(1) of the Family Law Reform Act 1969 to the requirement of consent to the taking of a blood sample is where a person with care and control gives consent under section 21(3) for paternity purposes in relation to a child under 16, there is no power to compel a mother to give consent to samples being taken of a child's blood to establish paternity (post, p. 1290F-G).

Where, therefore, in two cases a preliminary issue was ordered to determine what order, if any, could be made to enforce a direction under section 20(1) of the Act of 1969 that a sample of blood be taken from the child to determine paternity after the mother refused her consent to a sample being taken: -

Held

Held , that any power to direct the taking of blood under the inherent jurisdiction had been abrogated by the statutory scheme under Part III of the Act of 1969; and that, therefore, each case would be remitted to the judge for further directions on the merits (post, pp. 1295A-B , 1298G).

Dicta of Balcombe L.J. in In re F. (A Minor) (Blood Tests: Parental Rights) [1993] Fam. 314, 321, C.A. and of Ward L.J. in In re H. (A Minor) (Blood Tests: Parental Rights) [1997] Fam. 89, 100, C.A. applied.

In re R. (A Minor) (Blood Tests: Constraint) [1998] Fam. 66 not followed.

Per curiam . It would be an abuse of process to make an interim care order to vest parental responsibility for the child in the local authority at the same time as ordering a report under section 37 of the Children Act 1989 as a means of enabling a direction for blood tests under section 20(1) to be implemented (post, p. 1298C-D).

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