

Re G (A Child) (1999)

[2000] 2 FLR 259

22/12/1998

Barristers

Barbara Mills QC

Court

Court of Appeal

Facts

On an application for a secure accommodation order under s.25 Children Act 1989, where a child had not reached the age of 16, the judge's discretion as to the duration of that order was not restricted to the date upon which the child would become 16.

Appeal on behalf of a child ('G') from the secure accommodation order made by Styler J on 9 December 1999, a few days short of G's 16th birthday. G was born on 27 December 1983 and had had an extremely troubled childhood. Wardship proceedings had been brought since 17 August 1993. In October 1997, the judge had provided that: (i) G should remain a ward during her minority or until further order; and (ii) she should remain accommodated by the local authority pursuant to s.22 Children Act 1989 by a separate prohibited steps order and that neither of her parents should remove G from such accommodation without prior consultation. G was accommodated at a community home but her behaviour led the local authority to seek the court's approval to move G into secure accommodation. Thus, on 9 December 1999, the judge granted a 28 day secure accommodation order with the date of commencement as 3 December. The Official Solicitor ('OS') had concerns as to the legality of the order on the basis that it ran beyond the date of G's 16th birthday and therefore, filed notice of appeal on 19 December 1999. The parental grandmother supported the appeal. The submission advanced by the OS turned on the proper construction of the relevant sections of the statute, and principally ss. 20 and 25 of the Act and reg.5 Children (Secure Accommodation) Regulations 1991 SI 1991/1505. The principal submission of the OS was that the judge's order that G be kept in secure accommodation beyond 27 December was invalid since, between 27 and 31 December, G would have been a person accommodated under S.20(5) of the Act and any restrictive accommodation of a person in that category was prohibited by reg. 5(2) of the Regulations. The issue before the court was whether a judge in exercising his discretion to determine the duration of a secure accommodation order was bound to have regard to the combination of s.20(5) of the Act and reg. 5(2) of the Regulations as effectively restricting that discretion to the date upon which the child attained the age of 16.

Held

HELD: (1) The judge had before him an application for a secure accommodation order under s.25 of the Act. He had to be satisfied that the criteria contained in s.25(1) of the Act were satisfied and reached the clear conclusion that they were. (2) The judge had to specify the period for which G could be detained

and could not specify any period in excess of the maximum provided by S.25(2) of the Act. By providing for a 28 day period in the order, the judge was within the maximum of three months provided by the subsequent regulation. There was no other inhibition on his discretion. (3) On the date that the order was sought, G was clearly not a child accommodated under s.20(5) of the Act because she had not attained the age of 16. The question of what would happen when she did reach 16 was theoretical future material and was not a question which the judge was bound to take account of in exercising his discretion. The judge's order was made in the exercise of his discretion and was not open to challenge in the court.

Appeal dismissed.

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