

Barking and Dagenham London Borough Council v O and another

[1993] 2 FLR 651

12/03/1993

Court

Family Division

Facts

The mother had two boys, K, who was 6, and J, who was 2. The boys had different fathers. The local authority applied for care orders in respect of the boys in the family proceedings court, which proceedings were immediately transferred to the Family Division. The local authority had serious concerns as to the physical safety and emotional well-being of the children. The boys had frequently been admitted to hospital and the local authority had believed that they were suffering from Munchausen's syndrome by proxy. There had been a third child, C, who died at the age of 5 months in what the local authority believed to be suspicious circumstances. There was a previous directions hearing, when interim care orders were made and a directions given that medical reports on behalf of the local authority, the mother and the guardian had to be served by a certain date. On that date an application was granted for disclosure of hospital records from six hospitals in respect of the two children and C. Five days later, the mother applied for two further hospitals to be added to the list and for the previous direction to be amended for the mother to file and serve her medical reports if the mother intended to rely on them. That amendment was opposed by the guardian and the father of one of the children.

Held

Held – granting the amendment –

(1) It was not necessary for the children's welfare for limited interim reports, made without reference to the hospital records and which took the form of comments on the doctors' reports, to be disclosed in any event.

(2) The mother, in the absence of waiver, was not bound to disclose medical reports obtained by her solicitor, unless she wished to do so. In wardship proceedings there may be a power to order disclosure of material governed by legal professional privilege, but Children Act proceedings were not wardship proceedings. Although the welfare paramountcy principle was common to wardship and to the Children Act, the justification for taking the highly unusual step of overriding legal professional privilege was the particular nature of the wardship jurisdiction which had not been inherited by the Children Act jurisdiction.

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