

LBH (LOCAL AUTHORITY) v (1) KJ (MOTHER) (2) IH (A CHILD BY HIS GUARDIAN CJ) (2007)

AC0116013

28/11/2007

Barristers

Rex Howling KC

Court

High Court

Summary

The threshold criteria for a care order under the Children Act 1989 s.31(2) was established where the child was at risk from domestic violence and her mother was unable to meet all of the demands that her disabilities required.

Facts

The local authority applied for a care order in respect of a nine-year-old girl (D) who had multiple disabilities. D and her mother (M) were Somalian. D was the child of M's third husband. She lived with M and four of her siblings. She was visually impaired with severe learning disabilities. She could not move or sit up unaided, had no intelligible speech and had to be fed by tube directly into her stomach. M's home had no ground-floor bathroom and the bedrooms were all upstairs. The property was too small for moving and lifting equipment to be installed. D was moved into local authority care after M contracted tuberculosis. After M's recovery, M was attacked by her fourth husband (H). M's children had attempted to intervene, and one of them was also assaulted by H. The local authority agreed that D could return home, but at the end of the first week D was admitted to hospital suffering from hypothermia, and had since remained in local authority care. The local authority submitted that M was not capable of properly caring for D, and was negligent over the hygiene of D's gastroscopy wound, which had become infected. M argued that the local authority gave her inadequate support and had failed to provide proper accommodation for her.

Held

The duty of the court was to consider whether the local authority had established the threshold criteria in the instant case, the only means by which the welfare jurisdiction of the court could be engaged under the Children Act 1989 s.31(2). It was difficult to avoid the conclusion that D had suffered serious harm or was likely to suffer significant harm in the future. However, the difficult issue was whether it could be demonstrated that the significant harm was attributable to the care not being that which it would be reasonable to expect a parent to give. In particular, it was difficult to determine what was reasonable in the context of major and lifelong disability. M was not as skilled as others were in stimulating D. She did not co-operate as she could and should have done with such services as were available, sometimes

rejecting help on an apparently irrational basis. She did not acknowledge the difficulties that she had in sometimes understanding what was required and she did not attach the importance to meticulous hygiene that D's condition required. In addition, she did not appreciate the harm to which D was exposed through her failure to deal properly with issues of domestic violence. Those failings however had to be seen in the context of familial demands, M's accommodation problems and the cultural issues which complicated matters for her. The court was hesitant to find that those failings had caused significant harm to D in the past, but it was clear that they were highly likely to cause significant harm in the future if they remained unaddressed, *H (Minors) (Sexual Abuse: Standard of Proof), Re* (1996) AC 563 HL applied. In those circumstances the local authority had established the threshold criteria under s.31(2) so as to open the door to the welfare jurisdiction of the court. However, it was essential to adopt a whole-life view of planning. D would not only need care but someone to take decisions for her indefinitely. The court would view with alarm and scepticism any care plan that did not make any provision for the fullest involvement of the family on the basis that at her majority it was principally to them that she would need to look. In addition, M had the capacity to change and learn and had the beginnings of an understanding that change was necessary.

Application granted

Permission

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