

RP v (1) NOTTINGHAM CITY COUNCIL (2) OFFICIAL SOLICITOR (2008)

[2008] 2 FLR 1516; [2008] EWCA Civ 462

08/05/2008

Barristers

Robin Barda

Court

Court of Appeal

Summary

The court gave guidance on the steps to be taken before and during care proceedings where there was an issue as to a parent's capacity.

Facts

The appellant (P) appealed against care and placement orders that had been made in respect of her two-year-old daughter. A jointly instructed clinical psychologist had commented that P had a significant learning disability, that she had a limited understanding of the proceedings and of her solicitor's role within them and that it would be appropriate for the second respondent Official Solicitor to become involved. The Official Solicitor did become involved, did not oppose the making of a care order and accepted on P's behalf that she was not capable of giving consent to the making of a placement order, whereupon her consent was dispensed with and the order was made. On appeal, the first respondent local authority sought guidance on the steps to be taken in care proceedings where there was an issue as to a parent's capacity.

Held

HELD: (1) The making of care and placement orders was inevitable. P had asserted, among other things, that her rights under the European Convention on Human Rights 1950 art.6 had been breached. No such breach had been made out. (2) One of P's McKenzie friends, a Member of Parliament, had made ill-informed and tendentious criticisms of the Family Justice System. While the system was not perfect, this case showed that it had operated properly. (3) The recently issued Public Law Outline Guide to Case Management in Public Law Proceedings indicated strongly not only that the question of adult capacity to give instructions needed to be addressed at the earliest opportunity but that the local authority would be expected, in the pre-proceedings phase of the case, to be on the alert for the possibility that a parent in particular might be a protected person and might not have the capacity to give instructions in the proceedings. At that point, in many cases, the local authority would be working with the child's parents in an attempt to keep the family together. The practical answer in those circumstances was likely to be that the parent in question should be referred to the local authority's adult learning disability team (or its equivalent) for help and advice. If that team thought that further investigations were required, it could

undertake them. It should, moreover, have the necessary contacts and resources to commission a report so that as soon as the pre-proceedings letter was written, and proceedings were issued, the parent's legal advisers could be in a position, with public funding, to address the question of a litigation friend. It was important that judgments on capacity were not made by the social workers from the child protection team. Once proceedings were issued, the question of the parent's representation became and remained a matter for the parent's legal advisers. The question of ensuring that during proceedings a parent was properly informed and understood the role of the litigation friend, in particular the role of the Official Solicitor, had to be a matter for that parent's legal team, and for the Official Solicitor himself. (4) Annexed to the judgment was an important statement of the Official Solicitor commenting on his position both generally and in relation to this case.

Appeal dismissed

Permission

Lawtel 