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Re C (A Child) (2009)

[2010] 1 FLR 774 : [2009] Fam Law 1127 : [2009] EWCA Civ 955

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Barristers
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Court
Civil Division

Practice Areas
Public Children Law

Summary
In deciding whether to discharge a care order, it was relevant, but not determinative, for a court to consider the fact that the 15-year-old subject of the order, who had repeatedly absconded from care, was obstructive and uncooperative to an extent where the care order was ineffective and the local authority was unable to perform its statutory duties.

Facts
The appellant mother (M) appealed against a decision to discharge a care order relating to her 15-year-old son (J). There had been a long history of social services involvement with the family. Whilst accommodated by the local authority, J's two older brothers had repeatedly absconded and returned to M who had supported their behaviour and displayed unremitting hostility towards social services. In both cases, the children eventually reached an age where the local authority decided that care orders could no longer achieve anything useful. J was now following the same pattern of behaviour. He had persistently absconded from wherever the local authority had placed him. The local authority's repeated efforts to return him to his various placements were unsuccessful, even with the help of the police and with a recovery order. Eventually, a therapeutic foster placement was secured but J and M refused to cooperate. M applied to discharge the care order and the local authority reluctantly decided not to oppose the application on the basis that the resistance of J and M meant that the care order was ineffective. Shortly before the hearing, however, M requested an adjournment until J was 16. Her purpose was to enable him to qualify for the leaving care provisions and potentially for financial assistance after discharge of the care order. The judge refused to grant an adjournment and discharged the care order. M submitted that (1) the judge had erred in taking account of the lack of effect of the care order and should have considered the potential benefits to J of the leaving care provisions; (2) the judge had erred in having regard to the position of the local authority under the care order.

Held
HELD: (1) The applicant for an order to discharge a care order had to make out a case but it did not

follow that the test simply involved listing potential benefits. Welfare was a more complicated and rounded consideration than that. The judge was entitled to take into account the continuing effect or lack of effect of the care order. He had found on ample evidence that the care order was one to which the local authority simply could not give proper effect. Although J was in some need, the care order set up conflict and the judge was entitled to take account of what was involved in preserving it, S (Minors) (Care Order: Appeal), Re (1995) 2 FLR 639 CA (Civ Div) applied. The local authority's conclusion that to attempt the forcible return of J would do more harm than good placed it in clear breach of its duty under the Children Act 1989 s.22(3) to safeguard and promote J's welfare, the requirements of s.23(4) and (5) of the Act and the Placement of Children with Parents etc Regulations 1991 reg.4 and 7. The local authority was not satisfied that a placement with M was the most suitable way of performing its duty and the prospect of any sensible agreement with M was exiguous. So long as the care order remained, it therefore could not comply with its duties in the circumstances which existed. That was a relevant consideration for the judge, although not determinative. It needed to be balanced against the potential advantages under the leaving care provisions of preserving even an empty husk of a care order. It was plain that the judge was conscious of those advantages since they were the sole reason advanced by M for not discharging the care order. There might sometimes be cases in which a care order ought to be preserved because of the leaving care provisions. However, J did not fall within the leaving care provisions. He had been living with M for substantially longer than six months and the Children (Leaving Care) (England) Regulations 2001 reg.4 (5) therefore did not apply. The fact that J had not been placed with M by the local authority did not affect his position. It was clear that the scheme of the Regulations was to take out of the leaving care provisions children who, rather than having to turn to the local authority for substitute parents, were in fact living with their own parents, R (on the application of M) v Hammersmith and Fulham LBC (2008) UKHL 14, (2008) 1 WLR 535 followed. (2) A court faced with an application of this kind would, in some circumstances, need to be alert to the possible incentive for the local authority to resist the inclusion of additional young people in the leaving care provisions, which were without doubt capable of being onerous. In the present case, however, the local authority had done its best. It remained ready to make a therapeutic foster placement available for J and the initiative for the discharge of the care order had come from M. The local authority's position was reluctantly to acquiesce in unfortunate reality.

Permission