

D v Buckinghamshire County Council [2008] EWCA Civ 1372

[2008] EWCA Civ 1372; [2009] 1 FLR 881

10/12/2008

Barristers

Justin Ageros

Court

Civil Division

Summary

In the circumstances a judge in family proceedings had been right to make findings of fact relating to the local authority's reasonable belief that the appellant posed a risk to children and to authorise disclosure of those findings to the Secretary of State for the Department for Children, Schools and Families.

Facts

The appellant (D) appealed against a judge's decision to make certain findings of fact in care proceedings and to authorise disclosure of those findings. A young Indian man (J), then aged 16, had been sent by his parents to live with D in the United Kingdom. D had previously been employed as a teacher at a school in India where J was a student. The local authority made enquiries about D and took the view that a pattern of behaviour emerged from the history which could be described as "grooming". J was removed from D's home under an emergency protection order. The local authority initiated care proceedings and sought injunctive relief to prevent contact between D and J. In those proceedings a series of orders for disclosure was made against various bodies and agencies. That disclosure was part of the evidence to be deployed by the authority. J then returned to India and the local authority applied to withdraw the care proceedings. The judge made no order on the care order application and the injunction proceedings were discontinued. He nevertheless heard evidence and made a number of findings of fact and authorised disclosure of those findings to a number of bodies, including the Secretary of State for the Department for Children, Schools and Families. The order implementing his judgment had never been finally drawn up and approved by the judge. D submitted that (1) the judge should not have proceeded with a finding of fact hearing; (2) the judge should not have authorised disclosure of his findings because there was no pressing need to do so.

Held

HELD: (1) The court did have jurisdiction to inquire as it did. Parties had no right in family proceedings to discontinue at will and always required the leave of the court to withdraw. Accordingly proceedings remained active until the court otherwise determined. It was therefore open to a court to find facts even where there was no live issue. Sometimes it was necessary to do just that either because a further application might in due course be made in respect of the child or because a party to those proceedings

might in due course become involved in the life of another child. In the instant case the judge was right to act as he did. He was entitled to conclude that D was a man who might well both continue to associate with children and also might well pose a risk to them and accordingly it was both desirable and permissible to draw the information together and consider its implications. (2) Matters held on the basis of honest belief on reasonable grounds by those who had child protection responsibilities came within the potential ambit of disclosure orders; there had to be real and cogent evidence of a pressing need for the requested disclosure, C (Sexual Abuse: Disclosure to Landlords), Re (2002) EWHC 234 (Fam), (2002) 2 FLR 375 applied. The judge's findings painted a worrying picture of potential risk to other children or young people. There were entirely reasonable grounds on the facts of the instant case to believe that D would seek such involvement in the future. The judge was entitled and right to order disclosure to the secretary of state who kept an exclusionary list, usually known as list 99, under the Education Act 2002 s.142 of those prohibited essentially from holding teaching posts in schools and an exclusionary list under the Protection of Children Act 1999 of those considered unsuitable to work with children. Disclosure to the secretary of state did not lead to automatic inclusion on either list. It was only material to be considered by the secretary of state. If, in the exercise of his statutory discretion, he decided that it merited registration, the person affected had statutory rights of review. However there was no warrant for going beyond that and ordering disclosure to any other party. (3) The matter was remitted to the judge to determine the precise form of the disclosure schedule and to authorise disclosure to the secretary of state but not otherwise.

Permission

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