

Re K sub nom A Local Authority v N & Ors (2005)

[2005] EWHC 2956 (Fam); (2007) 1 FLR 399

16/12/2005

Barristers

Ruth Kirby KC

Court

Family Division

Summary

It was not appropriate to make a supervision order or any protective order in respect of a 16-year-old Iraqi Kurd who had been unlawfully married by her family to an older man who had beaten and raped her, given that the child had returned to her family and was adequately protected by her parents.

Facts

The applicant local authority sought a 12-month supervision order and orders pursuant to the court's inherent jurisdiction to ensure the safety of a child (K) for the entirety of her minority. K was 16 years old, and lived with her parents and six siblings. The family were Iraqi Kurds. When K was only 15 she was unlawfully married by her family to a 27-year-old man (X) in a Muslim ceremony. The marriage was void as a matter of English law. K complained that she had been raped and beaten by X and physically assaulted by her father until she consented to sexual intercourse with X. K was then "divorced" from X. The local authority intervened and placed K with foster parents. K went between her family home and foster parents, family friends and special units. She returned home in March 2005 and no further incidents had taken place. K was receiving psychotherapy once a week. The local authority argued that (1) a supervision order was not only proportionate but necessary to ensure K's well-being over the next year. There had been a number of crisis points in K's life recently, and although she was happier and more settled at home, a supervision order would assist to reduce the risk of crisis by monitoring K's emotional well-being and offering timely intervention; (2) the court should make orders preventing K, until her 18th birthday, from either marrying or leaving the jurisdiction without the permission of the court.

Held

HELD: (1) It was not appropriate to make a supervision order. K had indicated a clear opposition to the making of an order. The reality was that K was almost 17 and was, along with her parents, unwilling to co-operate with public authorities if required by order to do so. K had been living at home for some time without any kind of order being in place. Relations between K and her parents seemed much improved. A supervision order was unlikely to achieve anything and might even be counter-productive. (2) If K required to be protected, then the appropriate way to achieve that would be by making her a ward of court. However, recourse to wardship as a mechanism for controlling teenage marriage had undergone a

dramatic decline. There had been a decline in marriage, and an increase in cohabitation outside marriage. Also, the mean age of marriage had substantially increased. The inherent and wardship jurisdictions were more likely to be invoked by a local authority, or even the child, seeking the court's assistance in overriding parental pressures to enter into a marriage which the parents desired but which the local authority or child wished to prevent. The situation where the appropriate exercise of the court's powers was most urgently and imperatively required was the forced marriage. Forced marriage was intolerable, and the court must bend all its powers to preventing it happening, *SK (An Adult) (Forced Marriage: Appropriate Relief)*, Re (2004) EWHC 3202 (Fam), (2006) 1 WLR 81 applied. However, arranged marriages were to be respected as a conventional concept in many societies and were for that reason to be supported. It was necessary to adopt a flexible approach to the question of what was in a particular child's best interests, *J (A Child) (Custody Rights: Jurisdiction)*, Re (2005) UKHL 40, (2006) 1 AC 80 applied. In modern conditions it seemed that the only justification for invoking the wardship jurisdiction in the type of situation in the instant case was in order to protect a child. The court should not normally invade the sphere of parental obligation and parental responsibility unless there was a real reason to fear that the child would not be adequately protected by the parents or that the child required to be protected from the parents. K's parents did not pose a very significant degree of risk to her. There were no findings of physical abuse by her father; the local authority had not established that it was a forced marriage; and K had been living seemingly happily at home for several months without any court order being in place. K's interests were best met by making no order. There was no adequate case for invoking the court's protective jurisdiction.

Permission

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