

Re X (A Child) sub nom Re X (Emergency Protection Orders) (2006)

[2006] EWHC 510 (Fam); (2006) 2 FLR 701 : Times, April 21, 2006

16/03/2006

Barristers

Ruth Kirby KC

Court

Family Division

Summary

The court set out good practice guidance relating to Emergency Protection Orders. In addition, the court supplemented the guidance in *X Council v B* (2004) EWHC 2015 (Fam), (2005) 1 FLR 341 with two requirements, namely that without notice EPO hearings should be tape recorded and, secondly, that a full account of the proceedings should be provided to parents regardless of whether that information had been requested or not.

Facts

The court reviewed the law and practice relating to Emergency Protection Orders when considering an application made by a local authority for a care order in respect of a 9-year-old girl (X). An EPO had been granted in respect of X, whose name had previously been entered onto the local Child Protection Register in the category of emotional harm, after the justices had heard evidence of fabricated or induced illness and possible sexual abuse. The local authority's decision to apply without notice for the EPO was made following receipt of information that X's mother had taken X to hospital requesting that X should be examined by a doctor for stomach pain despite the fact that a nurse had considered that there was no problem. The evidence in support of the EPO application had been provided by a team manager who only had a broad knowledge of the case. Following the granting of the EPO, X was placed in foster care and remained there for the following 14 months under a series of interim care orders. The local authority subsequently abandoned its reliance upon any allegation of sexual abuse or fabricated illness when pursuing its application for a care order and the case proceeded solely on the basis of allegations of emotional abuse.

Held

HELD: (1) The local authority's decision to apply for an EPO without notice had been deeply and fundamentally flawed. There had not been any grounds for applying for, let alone making, an EPO in view of the absence of positive evidence to satisfy the significant harm threshold in the Children Act 1989 s.44. X had not been in imminent danger of harm that in any way justified her removal from parental care, X

Council v B (2004) EWHC 2015 (Fam) , (2005) 1 FLR 341 applied. The evidence given by the team leader to the magistrates had been misleading in many respects and social workers had not taken any steps to investigate the fabricated illness aspect of X's case. (2) The court set out good practice guidance to be considered when making EPOs which included the observation that cases of emotional abuse, non-specific allegations of sexual abuse and/or fabricated or induced illness would rarely warrant EPOs where there was no evidence of immediate risk of direct physical harm. In addition, the mere need for an assessment would never in itself establish the existence of a genuine emergency. The guidance also included the direction that EPO applicants should be represented by a lawyer whose duty it was to ensure that the court understood the relevant legal criteria required both for EPOs and without notice applications. Furthermore, evidence should come from the best available source which in most cases would be from social workers with direct knowledge of the case. (3) The 14-point guidance set out in X Council, which was to be provided and expressly drawn to the attention of magistrates at every EPO application, should be supplemented in two respects. Firstly, without notice EPO hearings should be tape recorded or recorded in writing by a full note being taken by a dedicated note taker. Secondly, parents should always be given a full account of the material submitted to the court, the evidence given at the without notice hearing, the submissions made to support the application and the justices' reasons, regardless of whether the information had been requested.

Permission

Lawtel 