

Re B (Children) (2008)

[2008] UKHL 35; (2008) 3 WLR 1 : (2008) 4 All ER 1 : (2008) 2 FLR 141 : (2009) 1 AC 11 : Times, June 12, 2008

11/06/2008

Barristers

Jo Delahunty KC
Alison Grief KC

Court

House of Lords

Summary

The standard of proof in finding the facts necessary to establish that a child “is likely to suffer significant harm” under the Children Act 1989 s.31(2), or the welfare considerations in s.1, was the balance of probabilities. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts.

Facts

The appellant children’s guardian (G) appealed against a decision ((2008) EWCA Civ 282) dismissing his appeal against findings of fact in relation to allegations that the respondent father (F) had sexually abused his step-daughter (R). F and his wife (M) had two young children. R was M’s sixteen-year-old daughter from a previous marriage. After F and M had separated, care proceedings had been commenced in respect of the children. R then made allegations that F had sexually abused her. At a fact-finding hearing the judge had been unable to conclude that there was no real possibility that F had sexually abused R and therefore concluded that there was a real possibility that he had abused her. The issue to be determined was whether it was sufficient for the purposes of establishing under the Children Act 1989 s.31(2) that a child “is likely to suffer significant harm” that there was a “real possibility” that abuse had taken place, or whether the required standard of proof was the balance of probabilities. The guardian, who represented the two youngest children, and was supported by the local authority and M, argued that although it had to be proved on the balance of probabilities that a child “is suffering” significant harm, the same allegations of harm, which had not been proved for that purpose, could be the basis of a finding of the likelihood of future harm.

Held

HELD: (1) The standard of proof in finding the facts necessary to establish that a child “is likely to suffer significant harm” under s.31(2), or the welfare considerations in s.1, was the balance of probabilities, H (Minors) (Sexual Abuse: Standard of Proof), Re (1996) AC 563 HL followed, U (A Child) (Serious Injury: Standard of Proof), Re (2004) EWCA Civ 567, (2005) Fam 134 approved, and Lancashire CC v B (A Child) (Care Orders: Significant Harm) (2000) 2 AC 147 HL, O and N (Children) (Non-Accidental Injury: Burden of

Proof), Re (2003) UKHL 18, (2004) 1 AC 523 and M and R (Minors) (Child Abuse: Expert Evidence), Re (1996) 4 All ER 239 CA (Civ Div) considered. Lord Nicholls' words in In Re H were not to be taken as suggesting a higher standard depending on the seriousness of the allegation. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. There was no logical or necessary connection between seriousness and probability. The inherent probabilities were simply something to be taken into account, where relevant, in deciding where the truth lay. To allow the courts to make decisions about the allocation of parental responsibility for children on the basis of unproven allegations and unsubstantiated suspicions would be to deny them their essential role in protecting both children and their families from the intervention of the state, however well intentioned that intervention might be. It would confuse the role of the local authority in assessing and managing risk, in planning for the child, and deciding what action to take, with the role of the court in deciding where the truth lay and what the legal consequences should be. (2) The purpose of splitting a hearing of an application for a care order was not to split the two questions that the court had to answer, namely whether the threshold criteria in s.31(2) had been crossed, and if so what would be best for the child. The purpose was to separate those factual issues that were capable of swift resolution so that the welfare professionals had a firm foundation of fact on which to base their assessments. Those findings of fact were part of the whole process of trying the case. The trial was part heard and should not be resumed before a different judge.

Permission

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