

# Re (1) X (2) Y (3) Z (Care Proceedings: Costs) (2010)

**[2011] 1 FLR 1045 : [2010] Fam Law 800**

22/06/2010

## **Court**

Family Division

## **Practice Areas**

Public Children Law

## **Summary**

A local authority would be granted leave to withdraw care proceedings where there was no solid advantage to the children from continuing the proceedings.

## **Facts**

The applicant local authority sought leave to withdraw care proceedings.

The local authority had been concerned about three children (C) for more than a decade before it issued care proceedings. Its original threshold document alleged C were neglected by the parents (P), but its final threshold document alleged P had subjected C to unnecessary hospital admissions, medical examinations and tests by lying about or exaggerating C's symptoms. The local authority twice applied to remove C from P. The court refused the first application. The second application required a fact-finding hearing with a time estimate of four weeks, but after a few days the local authority, having reassessed its case, sought leave under the Family Proceedings Rules 1991 r.4.5 to withdraw the proceedings. The three issues for the court were whether (i) leave should be granted for the proceedings to be withdrawn; (ii) the local authority's proposals for the provision of ongoing support and services for the family were adequate; (iii) the local authority should pay, in whole or in part, P's costs.

Jo acted for the mother accused of FII (Fabricating Induced Illnesses) in each of her 3 children who the LA had persistently and unsuccessfully sought to remove from the parents care. No findings were obtained and the LA ultimately withdrew all s 31 applications. Costs of £100,000 were awarded against the LA for conduct which was adjudged to fall 'outside the band of what is reasonable'

## **Held**

(1) The paramount consideration for any court dealing with a r.4.5 application was the question whether the withdrawal of the care proceedings would promote or conflict with the welfare of the child concerned, DB and CB (Minors), Re [1993] 2 F.L.R. 559 applied. C had lived with P for the whole of their lives and there were many positives to be found in the parenting provided. The evidence was that C were happy, settled and, within the bounds of what was possible in the confines of their overcrowded home, well cared for. Against that backdrop, there was no solid advantage to them from continuing the proceedings (see paras 120, 176 of judgment). (2) The local authority considered P and C's home to be overcrowded

but it had no ability to pay for any extension to the house. It was deeply unattractive that a local authority which had been so concerned and so critical for so long about the housing conditions of C, whom it accepted to be children in need under the Children Act 1989 s.17, was so unimaginative in its approach to helping P to overcome the problem. However, the court did not have the power, within the instant proceedings, to judicially review that decision or otherwise to compel the local authority to make available the support and services which it considered appropriate. Such an application had to be made to the Administrative Court. The proceedings had been going on for so long and had been so upsetting for P and C that it would not be appropriate to extend them simply in the hope of being able to extract some further concessions from the local authority. Therefore, the local authority was given leave to withdraw the proceedings (paras 183-184, 190-191). (3) The test to apply when considering whether to make a costs order against a local authority in public law proceedings under the 1989 Act was whether its conduct was reprehensible or beyond the band of what was reasonable, M (A Minor) (Costs), Re [1995] 1 F.L.R. 533 applied. The local authority had abandoned all of the matters relied upon in its original threshold document. It had failed to convene a strategy discussion or otherwise take steps to obtain and evaluate information relating to C's extensive involvement with the health services in order to determine whether there was evidence of fabricated illness and, if so, whether steps needed to be taken to safeguard C. It had fallen below accepted standards of best practice in the decision-making process which led to its earlier application to the court for interim care orders. It had relied completely and uncritically upon a consultant paediatrician's report in deciding to amend its threshold document to raise allegations of fabricated illness. Thus, the local authority's conduct of the case fell outside the band of what was reasonable. It was ordered to pay £100,000 towards the estimated £398,000 of P's costs, which were to be paid by the Legal Services Commission (paras 192, 197).

## Permission

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