

Re S (A Child) (2008)

[2008] EWCA Civ 1140

08/07/2008

Court

Civil Division

Summary

An application to discharge a care order would stand dismissed once the local authority served and filed a pathway plan and statements of transitional and financial arrangements in respect of the child subject of the care order.

Facts

The appellant guardian of a child (X) appealed against a decision refusing to discharge a care order obtained by the respondent local authority in respect of X. X had been an eligible child under the Children Act 1989 Sch.2 para.19B(4) but the local authority had failed to observe its duty, which had arisen six months after her 16th birthday, to carry out a needs assessment and prepare a pathway plan for her. In an effort to force the local authority to comply with its duty, X's parents applied to discharge the care order. Over the course of some months, the family proceedings court made three separate orders for the local authority to file a position statement but each time the local authority failed to comply. The matter was referred to the county court where the judge accepted the local authority's undertaking to file its pathway plan, statement of transitional arrangements and statement of arrangements for X's financial affairs and dismissed the application to discharge the care order, effectively by consent. The local authority did not comply with its undertaking. The issue was what action should be taken in respect of the order of the judge.

Held

(1) Through circumstances beyond his control the judge's basis for making his order had been frustrated by the local authority, which had utterly neglected its duty. (2) In the same terms as the undertakings given to the county court, the local authority was ordered to serve the pathway plan, statement of transitional arrangements and statement of arrangements for X's financial affairs. (3) The order was endorsed with a penal notice and, without prejudging the matter, a preliminary view was expressed that, if the director of the local authority's social services department were to disregard the order, an application to commit him would stand a good prospect of success. (4) Upon the three documents being served and filed in the county court, the application to discharge the care order was to stand dismissed. (Per Wall L.J.) With the benefit of hindsight, it would have been preferable if the county court judge had said that the application to discharge the care order should stand dismissed on the production of the documents as that would have enabled the parties to issue contempt proceedings to ensure the documentation was forthcoming.

Permission

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