

A London Borough Council v K & Ors (2010)

[2009] EWHC 850 (Fam)

12/04/2010

Court

Family Division

The court was required to make findings of fact in care proceedings initiated by the local authority in respect of two children (A and B). A and B were girls aged nine and seven. The proceedings had started out as an application by their mother (M) for their contact with their father (F) to be defined. During the proceedings M asserted that A and B had disclosed that they had been sexually abused in horrific circumstances by F and a paedophile ring. Those allegations led to a major police and social services investigation but no charges were brought, the professionals suspecting that M might have coached or influenced the children. When M maintained the allegations in the continuing contact dispute, the local authority began care proceedings. M invited the court to find that F had been violent towards her and that he had sexually abused A and B. F denied the claims, alleging that M had coached the children to make false allegations. The local authority and the guardian ad litem adopted a neutral position on the question of sexual abuse, the guardian maintaining a degree of scepticism about M's allegations.

(1) All the allegations made against F were untrue. Through a process of distorted thinking M had come to believe, wrongly, that A and B had been abused. She had then set about proving it, enlisting the unwitting help of a string of professionals. She had embarked on a process of repeatedly questioning the children, introducing, through leading questions and false premises, a wholly fictitious account. Having started, she was unable to stop. She repeatedly discussed F with the children in a disparaging way, leading them to think ill of him, and it was she who introduced the idea of sexual abuse to them, over-questioning and influencing them to make false accusations. So distorted was her thinking that the account she introduced to the children was equally distorted and grotesque. It was the bizarre and extreme features of the children's account that marked it out as being untrue and also demonstrated that M had not deliberately concocted a false account but genuinely, though erroneously, believed that they had been abused. In consequence, A and B had suffered very significant emotional harm; had been introduced to a wholly inappropriate knowledge of sexual matters; had been subjected to questioning and intrusive physical examination; and had been separated from F for almost two years (see paras 112, 144-145, 148-149, 151-155). (2) The hearing had identified a number of important lessons that could be learned about care proceedings and child protection. First, family courts needed to work harder to improve case management. In a case as complex as the instant one, the trial judge ought to be allocated at an early stage. Secondly, care was needed in the instruction of experts. Where the terms and basis of an assessment evolved over time, the lead solicitor had to ensure that there was full agreement between the parties about the instruction of an expert, and full understanding of what was expected of him. Thirdly, better procedures had to be put in place to ensure that police material was fully disclosed. As a start, disclosure ought to be dealt with by a named officer, who was to meet with the lead solicitor to

ensure that disclosure had taken place as ordered. Fourthly, children were not to be registered with GPs who had not received the requisite child protection training and were not familiar with the relevant professional guidance and local procedures. Fifthly, examination of pre-pubertal children suspected of having been sexually abused, ought, if possible, to be done by doctors with relevant experience and should, wherever possible, be recorded on DVD. The written record of the examination should include a note of the anatomical configuration of the hymen, and clinicians were expressly to record what they saw in the supine and knee-chest positions. Sixthly, veracity or validity assessments had a limited role to play in family proceedings. Only the judge saw and heard all the evidence, and no expert was in a position to say where the truth lay. Finally, the forensic process played an invaluable role in determining the truth (paras 156-163).

The court gave guidance as to case management and procedure, and good clinical practice, in cases involving allegations of child sexual abuse.

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