

Re B (A Child) (2013)

[2013] EWCA 964

30/07/2013

Barristers

Private: Jonathan Cohen QC

Court

Court of Appeal (Civil Division)

Practice Areas

Public Children Law

Summary

A residence order terminated a local authority's duty to provide accommodation so that a child was no longer "looked after" making the refusal of a fostering allowance legitimate.

Facts

The appellant local authority appealed against a decision that a child (K) was a "looked after child" following the making of an interim residence order in favour of her grandparents (G).

The parental care of K's older half-sibling was deficient and a care order was made. Following K's birth, the local authority were also concerned about her and issued care proceedings, which the parents opposed. With the support of K's guardian, an interim residence order was granted to G from five months of age. The local authority were prepared to make payments to help G with childcare costs, but they did not accept that they had duties to K as "a looked after child". G sought a fostering allowance and a residence order allowance, which were refused.

The local authority submitted that K had been "in need" for the purposes of the Children Act 1989 s.20(1) only until she moved to live with G, as, although it had had a duty to provide K with accommodation under s.20(1), it had been prevented from fulfilling it by s.20(7) because the parents had objected to K being accommodated. G argued that the placement of K with them was the provision of accommodation by the local authority and K was therefore still a "looked after child" pursuant to s.22(1).

Held

It was an important factor that the parents had objected at all times to the local authority providing accommodation for K. Either a duty arose under s.20(1)(c) because K was in need as her carers were prevented from providing her with suitable accommodation but the local authority were prevented by K's parents' objections from fulfilling that duty because of s.20(7). Or, the joint effect of s.20(1) and s.20(7) was to prevent a duty arising at all. Either way, the local authority could not have provided K with accommodation under s.20(1) at any time (see paras 33-35 of judgment). Even if the local authority had

provided accommodation, it had been fleeting and brought to an immediate end by the residence order, C v D [2009] EWHC 1942 (Fam), [2010] 1 F.L.R. 583 considered (para.37). As soon as a residence order was made, it conferred parental responsibility under s.12(2) and the child was therefore provided with accommodation by the person with parental responsibility, a situation wholly inconsistent with a continuing duty under s.20. In a similar way, where a child was in the authority's care, the making of a residence order immediately discharged the care order pursuant to s.91(1) and the child was no longer looked after. That lent powerful support to the decision (paras 40-41).

Permission

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