

A Local Authority v HB (Alleged Risk of Radicalisation and Abduction) (2017)

[2017] EWHC 1437 (Fam)

26/05/2017

Barristers

Private: Oliver Jones
Chris Barnes

Court

Family Division

Practice Areas

Public Children Law

Fact-finding hearing in proceedings concerning applications for orders under the inherent jurisdiction of the High Court and Part IV of the Children Act 1989, which involved alleged risks of radicalisation.

This case concerned two children, ML (aged 6) and BL (aged 3). The mother was represented at the hearing. The father was unrepresented and did not appear. The father had left the UK in December 2013, and it was understood that he may have died in Syria.

The court was dealing with applications for orders under the inherent jurisdiction of the High Court and Part IV of the Children Act 1989. Proceedings were initially issued by the local authority in August 2016, on the grounds that the mother planned to travel to Syria with the children and that the children were therefore at risk of radicalisation. The reasoning behind parallel applications is set out in *HB v A Local Authority & Anor (Wardship: Costs Funding Order)* [2017] EWHC 524 (Fam).

Background

In summary, the local authority sought findings that the mother had taken the children to Gaziantep, a border town in Turkey; had sought to take the children into Syria; had sought to provide funds to 'the so called Islamic State'; and was 'part of a family network of "ISIS extremists" and sympathisers'. The local authority accepted that the mother's care of the children was otherwise very good and sought an order to prevent the mother from removing the children from the jurisdiction of England and Wales for the remainder of their minority.

During the hearing, Mr Justice MacDonald heard from professionals involved in the case, including an officer from the SO15 Counter-Terrorism Command Safeguarding Team (PC Q) and the previously allocated social worker (CN). Evidence was heard regarding a comment made by ML to his teacher regarding his father's death, which included mention of a photograph that ML had seen of his father. The allocated social worker subsequently formed the belief that the photograph to which ML referred depicted the death of his father in Syria, which was not proven to be the case. It was concluded that the

social worker dealing with the referral, CN, failed to adhere to good practice when investigating ML's comments and thereby attached unjustified forensic weight to ML's statements. This in turn led PC Q into error. The allegation that ML was shown extremist material was subsequently withdrawn by the local authority.

The mother had initially argued that there were innocent explanations behind the findings sought by the local authority. She latterly accepted that she had not been wholly frank with professionals, stating that she had travelled to Turkey in a bid to persuade the father to return to England and meet his responsibilities to the children. She accepted visiting Gaziantep in 2014. There was a dispute between the mother and the local authority as to the nature of her travel plans to Turkey in 2014, as well as the intended purpose of the significant amounts of money carried by the mother. The mother emphatically denied seeking to take the children into Syria, seeking to provide funds to Islamic State or sympathising with their views. She argued that the local authority's case amounted to 'guilt by association' with her brother, who had established links to extremism and terrorism.

Law

Mr Justice MacDonald emphasised that the fundamental legal principles to be applied when determining applications of this nature do not change in cases involving alleged risks of radicalisation, extremist beliefs or risk of removal to Syria.

- i) In cases of alleged extremist beliefs or ideology, alleged risk of radicalisation and alleged risk of removal to a war zone, the burden of proving the facts pleaded rests with the local authority on the balance of probabilities. There is no requirement on a parent to prove the contrary. Where a respondent parent seeks to prove an alternative explanation for a given course of conduct, failure to prove that alternative explanation does not of itself establish the local authority's case (*The Popi M*, *Rhesa Shipping Co SA v Edmunds*, *Rhesa Shipping Co SA v Fenton Insurance Co Ltd* [1985] 1 WLR 948 at 955-6).
- ii) The burden of proof is the simple balance of probabilities. The inherent probability or improbability of an event is a matter to be taken into account when deciding whether that event occurred (*Re B* [2008] UKHL 35 at [15]). There is no room for a finding by the court that something might have happened (*Re B* at [2]). The legal concept of proof on the balance of probabilities must be applied with "common sense" (*The Popi M*, *Rhesa Shipping Co SA v Edmunds*, *Rhesa Shipping Co SA v Fenton Insurance Co Ltd*).
- iii) Findings of fact must be based on evidence, not on speculation. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors (*A County Council v A Mother, A Father and X, Y and Z* [2005] EWHC 31 (Fam)).
- iv) The court looks at 'the broad canvas' of the evidence before it, taking into account a wide range of matters including the credibility of the witnesses and inferences that can properly be drawn from the evidence, and considering the evidence in its totality. The court must consider each piece of evidence in the context of all of the other evidence (*Re T* [2004] 2 FLR 838 at [33]).
- v) The evidence of the parents/carers is of utmost importance: it is essential that the court forms a clear assessment of their credibility and reliability. The court is likely to place considerable reliability and weight on the evidence and impression it forms of them (see *Gestmin SGPS SA v Credit Suisse (UK) Ltd Anor* [2013] EWHC 3560 (Comm) at [15] to [21] and *Lancashire County Council v M and F* [2014] EWHC 3 (Fam)).

vi) The court must bear in mind that a witness may tell lies in the course of an investigation and the hearing, but be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything (R v Lucas [1982] QB 720).

vii) With respect to the welfare decision before the court under Part IV of the Children Act 1989, the court must be satisfied that the threshold criteria set out in s 31(2) of the Children Act 1989 are made out and have regard to s 1 of the 1989 Act, including the stipulation that the child's welfare is the court's paramount consideration. In proceedings under the inherent jurisdiction of the High Court, the court must be satisfied that the order sought is in the child's best interests. The child's welfare is the court's paramount consideration.

In the context of cases of this type, where suspicion may find 'an easier foothold', it is important to remember that suspicion is not enough (Re X & Y (No 3) [2015] EWHC 3651). The court must not guess or infer what the evidence might have been (Re C, D and E (Radicalisation: Fact Finding) [2016] EWHC 3087 (Fam)).

The definition of 'radicalisation' and 'extremism' was set out as contained within the Revised 'Prevent' Duty' Guidance for England and Wales: Guidance for Specified Authorities in England and Wales on the Duty in the Counter-Terrorism and Security Act 2015, namely:

'Radicalisation' refers to the process by which a person comes to support terrorism and extremist ideologies associated with terrorist groups.'

Extremism is defined within that guidance as follows:

'...vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas.'

The analysis of Haddon-Cave J in Begg v BBC [2016] EWHC 2688 (QB) at [117] to [131] of 'extremist Islamic positions' was considered. The court reminded itself of the approach in Re A [2015] EWFC 11 that the conclusion argued for by the local authority must follow from the facts found, and that each case is decided on its own facts (Re X (Children); Re Y (Children) [2015] EWHC 2265 (Fam)).

Discussion

It was determined that the local authority had not proved its case. Whilst some matters gave rise to a degree of suspicion, there was no direct evidence that the mother held to an extremist ideology, supported her husband's actions or shared her brother's extremist views. Attempting to prove the latter risked 'descending into "guilt by association"'.

It was noted that the mother had lied regarding her trip to Gaziantep to meet with the children's father, but also that she held strong views in relation to the importance of the children having a relationship with their father. Whilst it was 'extremely unwise' for the mother to have taken the children to Gaziantep, this did not in itself constitute a risk of significant harm.

Submissions were accepted on behalf of the mother that the local authority's case relied on an 'exceptionally narrow interpretation' of her actions. The importance of the court retaining a sense of context when examining the evidence was emphasised. The local authority's applications were accordingly dismissed.

Conclusion

Mr Justice MacDonald concluded that whilst Islamist extremism and radicalisation exist as a 'brutal and pernicious fact in our society', the court must hold fast to the 'cardinal precepts of fairness, impartiality and due process that unpin the rule of law in our liberal democracy'.

Permission

 Family Law Week