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AB (A Child)

[2018] EWFC 3

16/01/2018

Barristers
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Court
Family Division

Practice Areas
Public Children Law

Judgment of the President containing observations in relation to the important jurisdictional and procedural issues to be considered before embarking upon care proceedings against "otherwise unimpeachable" parents in disputes about the appropriate medical treatment and support of a child.

The proceedings primarily concerned a 4-year-old child, AB, who has a complex life-limiting neuro-metabolic, neuro-developmental and neuro-degenerative disorder. AB's older sister has a less serious form of the condition.

AB's parents were described as being "devoted to both children and determined to do what is best for them". However, AB had been the subject of litigation for some time as a result of his condition.

In May 2016, Parker J, on the application of the relevant NHS Trust, had made a raft of declarations in the exercise of the inherent jurisdiction of the High Court. These had the effect that the Trust would be acting lawfully and in AB's best interests by withholding certain identified medical treatments in the event that his condition deteriorated.

On 21 June 2016 the Court of Appeal refused the parents' application for permission to appeal against Parker J's decision.

On 24 June 2016, the local authority made a without notice application to Parker J for an order preventing AB's parents from removing him from hospital. The order was granted the same day but was discharged three days later by consent. As a result, AB was discharged home to the care of his parents on 2 September 2016.

On 3 February 2017, the local authority issued care proceedings in relation to AB in the Central Family Court. The core allegations relied upon in the threshold document were that:

B's parents "have been reported [to] be uncooperative, rude and aggressive and intimidating of medical

and nursing staff."
"Due to the lack of co-operation from the parents, and repeated allegations about the carers, it has been impossible to implement a care package of support for [AB]. [He] will suffer significant harm over time if the care package cannot be provided to him."
"The parents' behaviour has led to [AB] not receiving the assessed level of care provision to meet his needs even when care staff were exchanged for nursing staff at the parents' request. The appropriate level of care cannot be given whilst [he] is in the home environment."
Following a six-day hearing in March 2017, HHJ Toulson QC granted a care order in relation to AB. HHJ Toulson QC rejected the parents' contention that he should no longer be exercising the care jurisdiction in relation to AB, that the case had become an "end-of-life treatment" case and that it should be dealt with under the inherent jurisdiction. He appeared to have taken the effect of s100(2)(d) of the Children Act 1989 as being that "no judge could use the inherent jurisdiction of the High Court to confer power on the local authority in present circumstances." Unusually, he granted the parents permission to appeal on the basis that the evidence he had heard "established that whilst the care to which the local authority took objection cause the child pain, it also prolonged his life. The evidence on this point was striking: the child would probably have died before now but for the care."

On 9 May 2017, the Court of Appeal allowed the parents' appeal; the care order was set aside and the case remitted for a rehearing on all issues.

However, by the time of the IRH listed before the President in September 2017, the local authority, relying on the "careful, thoughtful and appropriately analytical" evidence produced by "a senior practitioner with many years' experience", sought permission to withdraw the s31 application.

The President granted an order allowing the application for a care order to be withdrawn on the basis that the parties agreed that AB and his sister were to remain at home with their parents. A care package was to be jointly funded by the local authority and the CCG.

At paragraph 24 of the judgment, the President sets out four (obiter) observations in relation to the jurisdictional and other questions raised by the Court of Appeal. He notes:

The complex issues raised in this case as to whether the appropriate process is by way of application for a care order or application under the inherent jurisdiction are "little explored in the authorities". Local authorities "need to think long and hard before embarking upon care proceedings against otherwise unimpeachable parents who may justifiably resent recourse to what they are likely to see as an unnecessarily adversarial and punitive remedy."
"A local authority does not need any specific locus standi to be able to invoke the inherent jurisdiction…. Section 100 does not prevent a local authority invoking the inherent jurisdiction in relation to medical treatment issues."
"Whatever its strict rights may be, a local authority will usually be ill-advised to rely upon its parental responsibility under section 33(3)(a) of the 1989 Act as entitling it to authorise medical treatment opposed by parents who also have parental responsibility….For a local authority to embark upon care proceedings in such a case merely to clothe it with parental responsibility is likely to be problematic and may well turn out to be ineffective."
If a local authority "is thinking of embarking upon care proceedings with a view, as here, to removing the child from the parents, it needs to think very carefully not merely about the practicalities of finding an appropriate placement, whether institutional or in a specialised foster placement, but also about the practicalities of ensuring that the parents have proper contact with their child during what may be its last few months or weeks of life."

To read the judgment, please click here.

Permission