

A Local Authority v X, Y and Z (Permission to Withdraw) (2017)

[2017] EWHC 3741 (Fam)

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Barristers

Sam King QC
Chris Barnes

Court

Family Division

Practice Areas

Public Children Law

Judgment of McDonald J in which he considers the local authority's application for permission to withdraw care proceedings and provides useful guidance on cases involving alleged radicalisation.

In this case McDonald J determined an application by the local authority for permission to withdraw care proceedings in respect of three children: X, born in 2002, Y born in 2004 and X, born in 2012.

The local authority's application for care orders arose out of an alleged risk to the children stemming from what are said to be the parents' alleged extremist beliefs and the father's related criminal convictions for terrorism offences including soliciting murder. The local authority was also concerned with findings made in civil proceedings arising out of the father being the subject of a Terrorist Prevention and Investigation Measure (hereafter 'TPIM'). The circumstances in which the father came to be the subject of a TPIM are set out in detail in the open judgment of Nicol J published as Secretary of State for the Home Department v LG, IM and JM [2017] EWHC 1529 (Admin).

Both parents denied being members of the banned terrorist organisation Al-Muhajiroun (ALM) but neither denied past links with people associated with ALM and Omar Bakri Mohammed. The parents likewise did not deny the father's offending behaviour, attending demonstrations and the mother did not deny attending 'Sisters Circles' or that the children had accompanied her.

The local authority's initial approach to the case was criticised by McDonald J who reminds us of good practice at [29] - [30]:

'29. Those dangers are well demonstrated in this case by an initial local authority statement that sets out an alleged generic pattern of behaviour exhibited by a set of families who are said to share common characteristics with this family, and then works hard to make this family fit that pattern, even though, on the local authority's own evidence, in several respects it does not comfortably do so. This results in an analysis that fails to reflect all aspects of the family's presentation and one which lacks nuance.

30. It is vital that each family who is the subject of local authority intervention be assessed by reference to its own situation. Seeking to rely on a subjective model of expected behaviour rather than a careful assessment of what is, in fact, taking place within the subject family is fraught with difficulty, not least the risk that the assessment will commence with a fixed expectation of what is likely to be found. Such an approach is to be avoided in favour of assessment undertaken by reference to the tenets of good practice plainly established by the statutory guidance in Working Together to Safeguard Children (HM Government March 2015). (Emphasis added)

In the course of the proceedings, fuller investigation by the local authority, guardian and expert risk assessor Mr Jahangir Mohammed produced a unanimous professional view that whatever the parents' views or actions may be, there was no evidence of the children having been radicalised or exposed to extremist material. The children were relatively disinterested in religion and politics and were well cared for by the mother.

In light of this, all parties supported the application to withdraw proceedings as being in the children's best interests. The only difference that arose between the parties was whether this was a case which falls into that category of cases where it is plain that the threshold cannot be met, and therefore the application for permission to withdraw must succeed without more, or into that category of cases where the threshold criteria could be met, and therefore the application for permission to withdraw the proceedings falls to be measured against the children's best interests as the court's paramount consideration. The parents considered that the case fell into the former category. The local authority, tacitly supported by the guardian submitted that the threshold criteria are met on the basis of a risk of significant harm to the children.

McDonald J provides a useful review of the law relating to withdrawal of care proceedings at [47] - [53]. In applying the law to the facts the learned judge concluded that this was a case in which the local authority would be unable to satisfy the threshold criteria pursuant to s 31(2) of the Children Act 1989 and, accordingly, the local authority's application for permission to withdraw the proceedings must be granted [55]. The learned judge noted that whilst the evidence in respect of the parents might be capable of grounding serious findings, he reminds us at [58] that:

'...before the threshold criteria can be met s 31(2) of the Children Act 1989 requires the court to be satisfied that the children have suffered or are likely to suffer significant harm attributable to the care given, or likely to be given to them by the parents. It is in this respect that I am satisfied that the local authority finds itself in grave, indeed insurmountable forensic difficulty.'

His Lordship concludes with a final word of caution in relation to cases of alleged radicalisation at [68]:

'It is easy to assume that a straight line can, without more, be drawn between a parent who is said to hold extremist views, or a parent who is said to be involved in terror related activity and the suffering of significant harm or the risk of significant harm to that parent's child or children. However, the evidence in this case demonstrates that the position is more complex than that and one that falls to be considered carefully on a case by case basis in light of the evidence in a given set of proceedings.'