

Re J (Minors) (Care: Care Plan)

[1994] 1 FLR 253

22/10/1993

Court

Family Division

Facts

The mother had seven children. The local authority sought care orders regarding four of the children. Three of the children, aged 13, 11, and 6, were living with the mother and one child, aged 9, was living with a foster-mother. The judge found that the threshold criteria were satisfied. The judge was also satisfied that care orders should be made and the three children should be removed from the mother's care. The local authority had initially wanted the children to stay with the mother, but at the hearing, changed its mind and sought full care orders. The local authority produced a care plan on the second day of the hearing which proposed three different foster placements for the children. The local authority stated that it had no plans to place the children for adoption and that it wished to assess the possibility of rehabilitation with either the mother or the father. The local authority also wished to consider the extended families and permanent long-term placements. The guardian was concerned that the care plan remained untested and in material aspects inchoate. The social worker gave evidence that the children had been matched with the foster carers on paper only, that he had not met the foster-parents and he had not spoken to the children about their prospective move. The local authority sought full care orders to enable the uncertainty for the children to end and to start the firm planning process for their future. The guardian urged the court to make interim care orders until a clearer picture of the care plan was available, when the substantive applications could be restored.

Held

Held - allowing the local authority's application -

(1) The arguments went to the heart of the division of responsibility between the courts and local authorities in the making and implementation of care orders. The power of the High Court to monitor and review care orders made in wardship and matrimonial proceedings had been specifically excluded by the Children Act 1989.

(2) The combination of the court's consideration of the threshold criteria and whether a care order should be made, required the court to scrutinise the local authority's care plan. If the court was not satisfied that the care plan was in the best interests of the child, or all the facts of the plan were not known to the court, it could refuse to make a care order. The care plan should accord, if possible, with chap 2, para 2.62 of vol 3 of *The Children Act 1989 Guidance and Regulations: Family Placements*. Where evidence was available in relation to material parts of the care plan, such evidence and details of the placement should be made available and form part of the care plan.

(3) The care plan should be made before the final hearing and in consultation with the parents and other parties, or at least take their views and wishes into account. There was a need for a proper balance to be struck between the need to satisfy the court about the appropriateness of the care plan and the avoidance of over-zealous investigation into matters which were within the administrative discretion of the local authority.

(4) The making of an interim care order in cases which were listed as and intended to be final hearings, and in which the court had heard all the available evidence, should be approached with great caution. The court had to be aware of the danger of using an interim care order as a means of exercising judicial supervision and of diminishing the general principle of delay. Section 38 of the 1989 Act was primarily designed to cater for the situation prior to a final hearing where the case needed to be adjourned because it was not ready for trial.

(5) There were cases in which the action which was required to be taken in the interests of children necessarily involved steps into the unknown. Provided the court was satisfied that the local authority was alert to the difficulties which might arise in the execution of a care plan, the function of the court was not to seek to oversee the plan but to entrust its execution to the local authority.

(6) The division of responsibility in the instant case resulted in the court satisfying itself that the threshold criteria had been met and that the local authority's care plan was appropriate, even if necessarily inchoate. If the care plan represented the only practical course of action for the children, then it would be artificial for the court to make an interim order since to do so would represent an attempt to exercise a supervisory jurisdiction over matters entrusted to the local authority.

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