

Essex County Council v R

[1993] 2 FLR 826

23/07/1993

Barristers

Private: Elizabeth Coleman

Court

Family Division

Facts

In proceedings which concerned the future care of the parents' surviving child, the mother obtained leave to instruct a consultant psychiatrist who was experienced in dealing with drug addicts. The psychiatrist interviewed the mother, and the father was present for the first 10 minutes. One of the parents stated that they had taken drugs, which were known to induce violent behaviour, on the afternoon preceding the death of their child. That statement had been written in a report which was given to the mother's solicitors in January 1993. Subsequently, the psychiatrist reported on work which had been carried out by a child psychiatrist. In May 1993 the psychiatrist rewrote her first report and prepared a second report. This report did not state that one of the parents had used drugs on the afternoon preceding the death of the child. This information only came to light in the psychiatrist's oral evidence on the twelfth day of the final hearing. Counsel for the mother had seen the first report but had not remembered it and had not noticed the omission from the second report.

Held

Held -

(1) The professional responsibility in these circumstances was not clear on the authorities as they stood. *Re A (Minors: Disclosure of Material)* established that the court in wardship had the power to order a party to disclose a report to which legal professional privilege attached if it contained material relevant to the determination of the case and even if that material was adverse to the party's cause. *Barking and Dagenham London Borough Council v O and Another* had not extended that principle to Children Act cases.

(2) The judge in wardship held a responsibility to investigate any material relevant to the determination of the welfare issue, whether put before him by the parties or not. The investigative powers and responsibilities of the Family Division judge had not been curtailed by the Children Act 1989. *Re A (Minors: Disclosure of Material)* was equally applicable to Children Act cases decided by a Family Division judge.

(3) Legal professional privilege was the creature of case-law, and where limitations by exception had

seemed necessary, those limitations had equally been developed by case-law. Where the court was considering the welfare of the child, the power that it held, allied to its responsibility, enabled it to override legal professional privilege. Parties to proceedings owed a duty to the court to make full and frank disclosure of any material in their possession relevant to the determination of the future of the child.

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