

## B (A Child) [2009]

**[2010] 1 FLR 1211 : [2010] 1 FCR 114 : [2010] Fam Law 130 :  
(2009) 153(45) SJLB 28 : [2009] EWCA Civ 1254**

25/11/2009

### **Barristers**

Henry Setright KC  
David Bedingfield

### **Court**

Civil Division

### **Practice Areas**

Public Children Law

### **Summary**

A judge had erred in failing to make an interim care order under the Children Act 1989 to keep a young child in local authority care, where both the child and her older brother had met the threshold for interim orders under s.38 but the judge had understated the improper treatment that the brother had received from the parents and thus minimised the risk of harm to the younger child if returned.

### **Facts**

The appellants, a child (B) by her guardian (G) and the local authority, appealed against the refusal of an interim care order under the Children Act 1989 s.38 in relation to B. B lived with her parents and her half-brother (T). T was removed from the home and accommodated in local authority care under s.20 following concerns about the care he was receiving at home. There was no suggestion of any need to remove B. However, the parents were then both arrested on suspicion of committing offences of child cruelty and/or wilful neglect of a child in relation to T. As a result, B was also removed into foster care. At an interim hearing, an application for further interim orders to keep both children in care was unopposed in relation to T but opposed in relation to B. The application in relation to B was supported by G. Evidence was given that T's treatment by his parents was brutal and that he was being kept locked in darkness in a dirty and blood-stained bedroom, and that B could also be at risk from harm. Refusing to make an order and departing from G's recommendation, the judge found that the threshold criteria for making interim care orders pursuant to s.38 was satisfied in the case of both children, but that the continued removal of B from the care of her parents was not proportionate to the risk of harm to which she would be exposed if she was returned to them. He stated that T was being expected to live in conditions that were not appropriate to him and which did not represent good parenting, but that no evidence was yet available to see if there would be harm to B if she was returned. He also accepted an assurance from the father that he would cooperate with close monitoring of B if she was returned.

## Held

The question for the judge was to decide whether there were reasonable grounds for believing that the circumstances in respect of B were as mentioned in s.31(2). However, he failed to properly conduct the necessary balancing exercise and to explain why he took the course he did, *G v G (Minors: Custody Appeal)* (1985) 1 WLR 647 HL followed. The evidence revealed a profoundly worrying state of affairs, and the judge was plainly wrong in finding that there was not yet any evidence to see if B would be harmed if returned. By describing the treatment of T as living in conditions that were not appropriate for him and which did not represent good parenting, the judge seriously understated the treatment of T and thus minimised the risk of harm to B, and he seemed to have shut his eyes to the seriousness of the evidence disclosed. In addition, he failed to give cogent reasons for departing from G's recommendation. The purpose of an interim care order was for the welfare of the child, *L-A (Children) (Care: Chronic Neglect)*, *Re* (2009) EWCA Civ 822, (2009) Fam Law 1025 applied. It was clear that B's welfare did demand her immediate removal from her parents' care, and there was abundant material that warranted that course of action. B and T were subsequently in the same foster placement where each was being appropriately and properly treated. If both children were not fully returned to the care of their parents they could go their separate ways. However, B's best interests for the immediate time were better served by being together in the same safe placement as T, rather than being placed with her mother whilst T remained in foster care. It followed that the judge was wrong not to have made an interim care order in relation to B.

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