

A Local Authority V C & & Others (2003)

[2003] EWHC 2206 (Fam)

03/07/2003

Barristers

Alison Grief KC

Court

Family Division

Summary

The best interests of children involved in care proceedings was achieved by the High Court invoking its wardship jurisdiction in order to fill a lacuna created by the Fostering Services Regulations 2002 SI 2002/57. The result was that the children could be placed with their grand parents despite them having not been approved as foster parents.

Facts

Judgment concerning a lacuna in the Fostering Services Regulations 2002 SI 2002/57 in connection with care proceedings and also the propriety of recourse to the court's wardship jurisdiction to remedy the problems caused by the regulation. C was the mother of children ('V, W, X and Z') who were the subject of care proceedings. It fell to the court to determine with whom they should live, the applicant local authority having proved that the "threshold criteria" in s.31(2) Children Act 1989 were met in relation to each child. As regards Z, the applicant's care plan was approved whereby the child was to be placed in a permanent substitute family secured by adoption. So far as V, W and X, were concerned, the issue was whether they remained with their maternal grandparents, Mr and Mrs S, or whether a new start was made for them in a permanent substitute home secured by adoption. Although the applicant rejected Mrs and Mrs S as foster parents, it favoured the making of a care order with the children remaining where they were and a sharing of parental responsibility (with the applicant) taking place into their adolescence. The applicant submitted however that such an option was unavailable because the inevitable consequence of s.23 of the Act and the Regulations in the circumstances was that it would immediately be obliged to remove the children. The situation gave rise to the court considering first, the issue of the Regulations limiting the range of people with whom a child could be placed, and secondly, the propriety of recourse to the wardship jurisdiction of the court to remedy the problem raised by the first issue.

Held

HELD: (1) It was in the best interests of the children that they remained within their natural family in the care of Mr and Mrs S, and that the arrangement was subjected to long-term scrutiny. (2) It was the position however that since Mr and Mrs S had been rejected as foster parents (a decision which it was assumed was open to the applicant to make), no such situation was possible under a care order. The

effect of s.23(2)(a) and (3) of the Act was to place a relative in the same position as any other foster parent unless by s.23(4) that relative was either a parent, or held parental responsibility, or held a residence order before the child was accommodated. Since Mr and Mrs S did not come within s.23(4) they had to be treated as foster parents, but reg.34(1) of the Regulations prevented any placement from taking place because they were not approved foster parents. (3) On the basis that the effect of the Regulation was to create a significant lacuna and to thwart the court's duty under s.1 of the Act, it was appropriate to invoke the court's wardship jurisdiction so as to properly protect the welfare of the children. Accordingly, with the consent of the parties, wardship together with a supervision order and a raft of orders under s.8 would provide the best available solution in all the circumstances.

Permission

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