

Re S & Ors : Re W & Ors Sub Nom Re W & B (Children): W (Child) (Care Plan) (2002)

[2002] UKHL 10 (2002) 2 AC 291 : (2002) 2 WLR 720 : (2002) 2 All ER 192 : (2002) 1 FLR 815 : (2002) HRLR 26 : (2002) UKHRR 652 : (2002) BLGR 251 : Times, March 15, 2002 : Independent, March 20, 2002

14/03/2002

Court

House of Lords

Summary

The Court of Appeal had exceeded its role in deciding that the essential milestones of a local authority care plan were to be elevated to starred status. An interim care order was not intended as a means by which the court could continue to exercise a supervisory role over the local authority's care of a child. The Children Act 1989 was compatible with the European Convention on Human Rights.

Facts

Two appeals concerning the impact of the Human Rights Act 1998 on Parts III and IV of the Children Act 1989. The Court of Appeal had made innovations in the construction and application of the Children Act. The principal issue before the House of Lords concerned the soundness of this judicial initiative. The Court of Appeal had heard appeals in both cases together and propounded a new procedure by which at the trial the essential milestones of a care plan were to be identified and elevated to "starred status". If a starred milestone was not achieved within a reasonable time the local authority was obliged to reactivate the process that contributed to the creation of the care plan. In the first appeal, the Secretary of State for Health and the local authority appealed from the reasoning of the Court of Appeal. In the second appeal, the mother contended that if the Children Act did not permit the introduction of the starring system, that Act was incompatible with Arts.6 and 8 European Convention on Human Rights.

(1) It was a cardinal principle of the Children Act that when a care order was made the responsibility for the child's care lay with the designated local authority. The court retained no supervisory role. This was the intention of Parliament. (2) There were occasions when local authorities' discharge of their parental responsibilities had not been satisfactory. It was understandable that the Court of Appeal had sought some means to alleviate these problems. However, the House of Lords was unable to agree that the introduction of a "starring system" was justified as a legitimate exercise in interpretation of the Children Act in accordance with s.3 of the 1998 Act. The 1998 Act reserved the amendment of primary legislation to Parliament. A meaning that departed substantially from a fundamental feature of an Act of Parliament was likely to cross the boundary between interpretation and amendment. The starring system departed

substantially from the cardinal principle of the Children Act, was inconsistent with the scheme of that Act and constituted an amendment to the Children Act. (3) Sections 7 and 8 of the 1998 Act conferred extended powers on the courts. In this case, the Court of Appeal relied on ss.7 and 8. However, the starring system went further than to provide a judiciary remedy to victims of actual or proposed unlawful conduct by local authorities entrusted with the care of children. Section 7 envisaged proceedings against a public authority that had acted or proposed to act unlawfully. Whether the authority had acted unlawfully was a matter to be decided in the proceedings. The starring system imposed obligations when there had been no such finding. (4) The possibility that something might go wrong with the local authority's discharge of its responsibilities under the Children Act, and that this would be a violation of Art.8, did not mean that the legislation itself was incompatible with Art.8. If an authority carried out its statutory duties under the Children Act there should be no question of infringement of the Art.8 rights of the child or his parents. Failure by the state to provide an effective remedy for a violation of Art.8 was not itself a violation of Art.8. Such failure was an infringement of Art.13, which was not a Convention right defined in s.1(1) of the 1998 Act. (5) The Children Act was in harmony with Art.6(1). Under the Children Act the parents could apply to the court to discharge the care order. Disputes concerning decisions of the local authority while a care order was in force attracted the requirements of Art.6, which were satisfied by judicial review. (6) The purpose of an interim care order was to enable the court to safeguard the welfare of a child until such time as it was possible to decide whether or not to make a care order. An interim care order was not intended as a means by which the court could continue to exercise a supervisory role. Once a final care order was made the resolution of uncertainties was a matter for the local authority. Uncertainty was to be resolved as far as possible before the court proceeded to make a care order, thus a period of "planned and purposeful" delay could be justified. The court had to be free to defer making a care order until the way ahead was no longer obscured by an uncertainty that was neither "inevitable nor chronic". (7) The Government was strongly urged to attend to the problems identified by the Court of Appeal as a matter of urgency. One of the questions that required urgent consideration was whether some degree of court supervision of local authorities' discharge of their parental responsibilities would improve the quality of child care provided by local authorities.

Permission

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