

Southend on Sea Borough Council v (1) RS-H (2) SJH (3) HS-H (By Her Children's Guardian) sub nom Re H (A Child) (Care Plan) (2008)

[2008] 2 FLR 21; [2008] Fam Law 523; [2008] EWHC 327 (Fam)

22/02/2008

Barristers

Brian Jubb
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Court

High Court (Family Division)

Practice Areas

Public Children Law

Summary

The court published an addendum judgment levelling judicial criticism against three local authority personnel in relation to their professional conduct concerning an interim care plan. Professionals involved in family proceedings were not entitled to have faith that their evidence may remain privileged; there was a greater prospect of publication of a family decision than before.

Facts

At a resumed hearing in care proceedings, the court declared that it wished to record in an addendum judgment its findings concerning the inappropriate and uninformed stance of three local authority personnel in relation to an interim care plan put before the court, and to determine whether and in what form the addendum judgment could be published.

The local authority had commended and presented to the court a care plan proposing unsupervised contact between the child (H) and her mother. The judge had been surprised by the proposal, given that she had made strident findings against the mother in a previous fact-finding hearing and had heard unchallenged expert psychiatric evidence that the mother's acceptance of the findings was only in the early stages and that great caution should be exercised. During the evidence adduced at the welfare hearing, serious mismanagement on the part of the local authority had come to light and the judge had therefore disregarded the evidence of three social workers involved, re-assigned the case to an independent social worker and recorded her intention to give a separate judgment so that the parties, particularly the mother, could be aware of why the local authority's recommendations had not been followed. The mismanagement concerned delay in producing adequate interim care plans, lack of consultation with parents and H's guardian in formulating them, substantial alteration of a care plan by a team manager so that it was presented as though it represented the social worker's views when the

team manager knew that it did not, and the giving of inconsistent evidence.

H's guardian sought publication of the instant judgment for the protection of children, families and professionals in their future dealings with the local authority. The individual social workers involved in the case maintained that publication would have a deleterious effect on their careers, would have a negative impact on the willingness of social workers to give frank opinion evidence and would discourage suitable applicants from joining a diminishing pool of appropriately qualified child protection social work teams.

Held

(1) The evidence in the instant case had indicated a social work team without coordination, focus or direction, which had been highly frustrating to H. Although, ultimately, H's welfare had been safeguarded and the prospective harm to her, which would have been caused had the local authority's care plan been implemented, averted, H's mother had been cruelly misled in her expectations. Between them, the allocated social worker, her team manager and the service manager had demonstrated various shortcomings including decision-making based on conjecture and personal prejudice against the father rather than on any finding of fact or professional opinion, failure to conduct any independent review of the situation, and failure to provide close managerial oversight. The court's criticisms were related to the facts of the instant case, but it was naive to believe that there were no wider implications for other cases dealt with by the same team. The court had no jurisdiction to conduct a public inquiry, but an independent management investigation had been commissioned and revised guidance had been issued to all staff as to the proper procedures to be adopted in the creation of and subsequent approval of care plans. Those steps were designed to redress management procedures, but did not wholly address the question of social work misjudgement. The effectiveness of the new regime called for critical objective review. There was an obvious public interest in informing clients and other affected parties of the team's shortcomings, which the recent system was designed to redress, so that there could be some exploration of whether the stated aims had been met. That could be done effectively by publishing a short summary to prospective interested parties and the South East Family Division Judges to enable continuing scrutiny of procedure while preserving the anonymity of the three individuals involved. (2) Professionals involved in family proceedings had to realise that there was a greater prospect of publication of a family decision than before, and that publication might include names of witnesses and the judicial criticism levelled against them. Professional witnesses were not entitled to have faith that their evidence may remain privileged. The fact that "deficiencies" may not be the most damaging or that prompt action was taken in recognition of the problems would not necessarily deter the court from authorising publication.

Permission

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