

Hertfordshire County Council v H [2013]

[2013] EWHC 4049 (Fam)

05/07/2013

Barristers

Alex Verdán KC
Sam King KC
Alison Grief KC

Court

High Court (Family Division)

Practice Areas

Public Children Law

Summary

Application by local authority to withdraw care proceedings in circumstances where threshold not met.

Facts

The local authority had issued care proceedings in relation to a young boy, D, who was, at the time of the hearing before Parker J, aged 6 months. D's mother had a significant history of mental health difficulties involving depression and suicide attempts. She took an overdose of tablets when D was 2 days old. D had also undergone two life threatening events as a small baby and on investigation he was found to have subdural collections. The concern was that F's medical presentation was the result of some form of traumatic incident (possibly a shaking injury), coupled with, or independent from, a possible smothering injury or other abusive behaviour.

Parker J had directed that there be expert evidence provided by Dr Jayamohan (a neurosurgeon), Dr Ganeson (neurologist and part of the treating team), Dr Anslow (a well-known paediatric neuroradiologist) and Dr Morrell (consultant paediatrician with wide experience in child abuse and trauma cases with a particular interest in false illness syndrome). The evidence of the experts was such that (as was agreed by all parties) although trauma could not be excluded, it could not be established on the balance of probabilities to have occurred.

The local authority had included within its threshold document (which concentrated on the head injury / NAI allegations) two paragraphs about the mother's suicide attempt and mental health in general. However, it submitted that, absent the other findings it had previously sought, those grounds were not sufficient to satisfy the threshold, particularly bearing in mind the level of support it was offering to the mother. Parker J agreed with that analysis.

The Guardian was "hesitant" [paragraph 14] about the withdrawal of proceedings but left the matter to

the Court. The Guardian was concerned that he did not have a clear understanding of the mother's psychological functioning and he would like to have that before the case concluded. Parker J commented that in her experience explanations for psychological difficulties could not be found and she did not consider it appropriate to adjourn the matter for this to be undertaken.

Held

Parker J cited the case of *London Borough of Southwark v B* [1993], in which Waite LJ said:

"The paramount consideration is the question of whether the withdrawal of the care proceedings would promote or conflict with the welfare of the child concerned. It is not to be assumed when determining that question that every child who is made the subject of care proceedings derives an automatic advantage from having them continue. There is no advantage to any child in being maintained as the subject of proceedings that have become redundant in purpose or ineffective in result. It is a matter of looking at each case to see whether there is some solid advantage to the child to be derived from continuing the proceedings."

Parker J also recalled the comments of Bracewell J regarding Guardians' duties in circumstances where they disagreed with the withdrawal of proceedings in *Re N (Leave to Withdraw Care Proceedings)* [2000] 1 FLR 134. She also distinguished the instant case from *S (a Child) v Nottingham City Council and Others* [2013] EWCA Civ (in which the local authority had not been permitted to withdraw proceedings) on the basis that in this case there was no prospect of the local authority being able to satisfy the court that the threshold was met, whereas in *Re S* the child had been found to have suffered non-accidental injury.

Parker J levelled no criticism against the Guardian for putting his concerns before her, but did not consider that they provided the solid ground necessary to decline to accede to the local authority's application to withdraw.

Application granted.

Permission

Family Law Week 