

Re PB (Children) sub nom A Local Authority v (1) HP (2) MB (2009)

**[2010] 1 WLR 419 : [2009] 2 FLR 66 : [2009] 2 FCR 105 :
[2009] EWCA Civ 143: [2009] Fam Law 387 : (2009) 106(11)
LSG 19 : (2009) 153(9) SJLB 28 : Times, March 19, 2009**

27/02/2009

Barristers

Dermot Main Thompson

Court

Court of Appeal Civil Division

Practice Areas

Public Children Law

Summary

A public law contact order made under the Children Act 1989 s.34 was capable of being enforced by committal, and a circuit judge sitting in the county court had the power to attach a penal notice to such an order.

Facts

The appellant local authority appealed against a decision of a judge to attach a penal notice to an order for contact made under the Children Act 1989 s.34.

The child in question (B) was in the interim care of the local authority. He was living with foster carers and the care plan was that he should remain in their care in the long term. The order was for contact between B, the man whom he treated as his father (F), and his half-brother (Y). Its purpose was to preserve their relationship and it required the local authority to "make [B] available for supervised contact with [F] on one Sunday every month for a period of three hours at a time...". The judge had of her own motion attached a penal notice to the order to ensure that contact took place because B's foster father had indicated that he would not facilitate the contact and that he would terminate B's placement if contact was ordered. Since the making of the order B had enjoyed regular contact with F, and his placement with his foster parents had been maintained. The issues were (i) whether a public law contact order made under s.34 of the Act was enforceable by committal; and (ii) whether a circuit judge sitting in the county court had the power to attach a penal notice to such an order.

Held

(1) A contact order made under s.34 of the Act was enforceable by committal. The Family Proceedings Rules 1991 r.4.21A, which legislated for the imposition of penal notices, applied only to private law

proceedings and was not exhaustive. Pursuant to r.1.3 of the 1991 Rules, the CCR and the RSC continued to apply to family proceedings, subject to the 1991 Rules, and it was therefore the CCR Ord.29 r.1 that covered orders made under s.34. The contact ordered by the judge was in B's best interests and was in danger of being frustrated by the foster father. It required the local authority to make B available for contact and was sufficiently clear to fulfil the terms of CCR Ord.29.1. The local authority not only had parental responsibility for B but also had the power, under s.33(3)(b) of the Act, to determine the extent to which others might meet their parental responsibility for him. With that power came the responsibility to obey contact orders made under s.34. Moreover, there was no dispute that the county court in ordinary civil proceedings not only had the power to make orders and injunctions against local authorities, but also had the power to enforce them by committal, S (A Child) (Eligible Child), Re [2008] EWCA Civ 1140, [2009] 1 F.L.R. 378 considered. It would be an extraordinary state of affairs if a circuit judge was unable to enforce an order made under s.34. (2) If the court had power to enforce a s.34 order by committal, it also had the power to attach a penal notice and a circuit judge sitting in the county court had jurisdiction to attach a penal notice. It was not necessary for a circuit judge to sit as a High Court judge pursuant to the Supreme Court Act 1981 s.9 before he could attach a penal notice to a s.34 contact order. (3) Since the imposition of the penal notice, contact had worked well. In that respect, the notice had served its purpose and neither F nor B's guardian ad litem sought its continuation. It was therefore struck out. The appeal was therefore dismissed in so far as it related to jurisdiction, but allowed in relation to the continuation of the penal notice.

Appeal allowed in part

Permission

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