R (SA) v Kent County Council

Citation:
[2011] EWCA Civ 1303

Date:
10.11.2011

Court:
Court of Appeal

Comment:

Appeal by local authority against a decision that a child living with a grandparent in an arrangement initiated by the authority, was a looked after child and, as such, the grandparent was entitled to financial provision from the authority. Appeal dismissed.

This case concerned the financial provision required to be made by the appellant local authority to the grandmother of a child, A. A had gone to live with her grandmother due to the local authority's concerns about the parenting she was receiving from her mother. The local authority contended that this came about as a result of a private arrangement between the grandmother and A's mother, was therefore a private fostering arrangement, or it was a placement under s.23(6), Children Act, and A was not a looked after child. Therefore, the local authority needed to make only discretionary payments to the grandmother under s.17, Children Act and there was no duty to pay a fostering allowance to the grandmother.

Black J at first instance had found that all discussions about A going to live with her grandmother were initiated by the local authority. She accepted the grandmother's assertion that the arrangement for A to live with her arose from discussions with the social worker and not from discussions with A's mother. The local authority's ongoing involvement in the placement was consistent with it being a placement in which the local authority had taken the lead. Crucially, the local authority had never indicated to the grandmother that it would expect her to make financial provision for A without help from themselves.

Black J had therefore held that the presence of the grandmother did not mean that the local authority could side-step its duty to accommodate A under s.20(1), Children Act 1989, a duty owed to A because her parents were unable to care for her. Following closely the reasoning of the Court of Appeal in Southwark LBC v D [2007] EWCA Civ. 182, the duty was discharged by a placement under what was then s.23(2), Children Act (rather than s.23(6)) and A was therefore a 'looked after' child and the full fostering allowance should have been paid to her grandmother.

The Court of Appeal concurred with the view of Black J. She had been entitled to find that the local authority placed A with her grandmother pursuant to s.23(2) and A therefore
remained a looked after child. The appeal was consequently dismissed.

However, the Court of Appeal then went on to consider the structure and wording of the old section 23, and the earlier authorities dealing with the interpretation of that section, particularly In re H (A Child) (Care order: Appropriate Local Authority) [2003] EWCA Civ 1629. In this case, the Court of Appeal had decided that s.23(6), Children Act places local authorities under a duty to enable a looked after child to live with a person to whom he is related or otherwise closely connected. Once this is achieved, the looked after child ceases to be provided with accommodation by the local authority and therefore ceases to be a looked after child.

The unanimous view of the Court of Appeal was that this was probably an incorrect interpretation. They preferred an interpretation, also suggested by Black J at first instance, that s.23(1) sets out the duty to provide accommodation to looked after children, s.23(2) sets out the ways in which the provision of accommodation might be achieved, and s.23(6) simply imposes a duty to try to place the child with a relative or friend. Therefore, there are not two alternative routes by which a child can be placed with a relative and there is no distinction to be drawn between children placed under s.23(2) and children placed under s.23(6).

However, having considered the submissions made on behalf of the Secretary of State in particular as to whether this Court was entitled to depart from the decision in Re H, the Court of Appeal found that it was not so entitled.

Barrister:

Nick O’Brien