RE P (CARE PROCEEDINGS: FATHER'S APPLICATION TO BE JOINED AS PARTY)

Family Division

Connell J

24 November 2000

Care – Natural father – Application to be joined as party – Delay – Right to family life – Right of access to courts

Human rights – Right to respect for family life – Right of access to courts – Application to be joined as party to care proceedings – Father's 18-month delay in making application – Whether delay justified denial of father's access to court

The natural father was present at the child's birth, and had some early involvement in the care of the child. When the child was about 4 months old, he was removed from the mother's care under a police protection order. The local authority applied for an emergency protection order, serving notice of the proceedings on the father. The father attended the hearing at which the emergency protection order was granted, and the next hearing at which an interim care order was made. On both occasions, the father was advised that he should seek separate representation, but did not do so. The guardian ad litem wrote to the father, offering to see him, but received no reply. When the child was about 13 months old, the local authority produced a care plan proposing that the child be placed for adoption. In the months between the threshold criteria meeting, at which it was agreed that the criteria were met, and the final disposal hearing, the father spent some time in prison. His case was that he first heard of the adoption plan on his release. Shortly afterwards he attended a directions hearing at which, with some difficulty, the court fixed a hearing date convenient to all parties to the proceedings, with a 2-day time estimate. The father was again unrepresented at this hearing, and he was again advised to seek legal advice. The guardian wrote to the father, asking him to contact her if he wished to participate in the proceedings, and in the life of the child, but again received no response. In the following month, however, the father contacted solicitors, who indicated to the local authority that the father wished to be joined as a party to the care proceedings. His application to be joined was issued at the final directions hearing, some 18 months after the care proceedings had begun. The application was refused on the basis that the father's involvement would further delay the proceedings, and that such delay would be damaging to the child's welfare. The father appealed, relying on *Re B (Care Proceedings: Notification of Father Without Parental Responsibility)*. He argued that his involvement would not necessarily involve delay, and that the refusal to join him as a party was a breach of his human rights.

Held – dismissing the appeal – there was no breach of the father's human rights in refusing to allow him to be joined as a party to the proceedings. The father had been served with notice of the proceedings at the outset, had been advised early on to seek legal advice, and had chosen not to participate in the proceedings having been given ample opportunity to be involved. While, as a general rule and unless there was some justifiable reason for not joining him, a natural father should be permitted to participate as a party in care proceedings relating to his child, these proceedings had already been prolonged for far too long, and it was therefore particularly essential that the hearing date set should be adhered to. The father's involvement might not have required a postponement of the hearing date, but it would almost certainly have prolonged the hearing beyond the 2 days listed, so that a resumption date would have had to be found. Realistically, it was not possible to limit the father's involvement in

such a way as to ensure that the 2 days fixed were sufficient, particularly in view of the substantial issues of fact between the mother and the father. The denial of the father's right of access to the court was justified by the legitimate aim of resolving the care issue without further delay, and was proportionate to that aim. The father retained his right to be consulted, and to apply for contact and/or a parental responsibility order. *Re B (Care Proceedings: Notification of Father Without Parental Responsibility)* distinguished.

Statutory provisions considered

Children Act 1989, ss 22(4), 31, 34, 94

Family Proceedings Courts (Children Act 1989) Rules 1991 (SI 1991/1395), r 7(2), (3), (5)

European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, Arts 6, 8

Case referred to in judgment

B (Care Proceedings: Notification of Father without Parental Responsibility), Re [1999] 2 FLR 408, FD

Penelope Cooper for the appellant
Patricia Roberts for the first respondent
Melanie Johnson for the second respondent
Debbie Sawhney for the third respondent
Yvonne Brown as solicitor advocate for the fourth respondent

CONNELL J: This is an appeal by the natural father, under s 94 of the Children Act 1989, from the decision of District Judge Kenneth Brown, sitting in the Inner London and City Family Proceedings Court on 13 November 2000. On that date, the district judge refused the appellant's application to be joined as a party to the care proceedings, which had been instituted by the London Borough of Hackney in May 1999 in respect of the appellant's son, P, who was born on 23 January 1999. Accordingly, P is now some one year and 10 months old.

The proceedings are due to be heard next Tuesday, that is to say in 4 days time, over 2 days in the same family proceedings court but by District Judge Davidson who, as will emerge, has had previous conduct of an important part of this case.

In summary, the appellant submits that the district judge was plainly wrong to prevent his participation in these vital proceedings which relate to his natural child and in which the local authority propose that the child should be placed for adoption. The appellant further submits that the refusal of the court to allow him to be joined as a party amounts to a breach of his rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and he points, in particular, to Art 6 and Art 8. Further, he relies upon the judgment of Holman J in the case of *Re B (Care Proceedings: Notification Of Father Without Parental Responsibility)* [1999] 2 FLR 408. In summary, the appellant submits that there is a presumption that a natural parent should be involved in such important proceedings relating to a child and, accordingly, he says his application should have been granted, hence this appeal.

In my view, it is important for the court to look with some care at the history of this case. Unfortunately, for reasons which have been explained,

A no chronology has been made available to me but, in the circumstances, I have done my best to piece together what I believe to be an accurate summary of the most relevant dates in the history up to now.

As indicated, P was born in January 1999. The appellant was present at his birth and had some early involvement in the care of this child. In the course of submissions, it emerged that the relationship between the mother and the father became a violent relationship and there is a significant issue as B between them as to the extent of the appellant's involvement in the care of the young baby, but for present purposes it is right, in my view, for me to approach the case on the basis that he had some early involvement with the child.

On 20 May 1999, when P was about 4 months old, P was removed from the care of his mother under a police protection order. On 28 May 1999, the C London Borough of Hackney issued their application under s 31 of the Children Act 1989 and obtained an emergency protection order from the court under s 44 of the Children Act 1989. It is important to realise that notice of the proceedings was at the time served on the appellant and he indeed was present at the court hearing on 28 May 1999.

The next hearing took place on 4 June 1999. Once again, the father was present at the hearing. The court made an interim care order. As to those two D hearings, it is apparent that both on 28 May and 4 June 1999 the appellant was advised that he should seek separate representation. That advice was given to him either by the representatives of the mother, or alternatively by the court clerk, but the fact of the advice is accepted. Equally, it is the case that the appellant did not seek representation at that stage, despite the advice which he received.

E After the interim care order had been made, on 9 June 1999, the guardian ad litem wrote to the father, offering to see him. Of course, it is part of the duties of the guardian to understand the role which any important person in the life of the child is playing and wishes to play. The guardian never received any reply to that letter.

Thereafter, the case proceeded through various hearings, whilst evidence was gathered and assessments, in particular relating to the mother, were F carried out.

By February 2000, the local authority produced a care plan for P, which proposed that the child should be placed for adoption. It is not clear precisely when the father became aware of that proposal. His evidence in his statement dated 13 November 2000 is that during this period he was in touch on and off with the mother, and further, he says he attended some contacts between the mother and the child, albeit unofficially. It is clear that the G mother knew of the proposal for adoption and it is likely, one would have thought, that she would have told the appellant. It is not possible for this court today to resolve the issue, because the appellant's submission is that he was not aware of the proposal for adoption until September of this year. It is clear that during the period of the currency of the proceedings that the appellant lived an erratic life. He himself, in his statement, discloses that he H was taking various drugs on a pretty frequent basis at that time and, as I say, I am not in a position to reach any conclusion as to when he first knew of the proposal for adoption, although the mother plainly knew from February 2000 onwards.

This is one of those cases in which the court decided to proceed by way of

split hearing, namely, first to hold a hearing designed to see whether the threshold criteria were satisfied and thereafter to proceed to a disposal hearing when, of course, the welfare of the child would be the court's paramount concern. A

As to the threshold criteria hearing, that was concluded in front of District Judge Davidson on 1 March 2000 when, after the case had been proceeding for some time, I understand that agreement was reached between the parties as to the basis upon which all who then were parties to the proceedings accepted that the threshold criteria were satisfied. B

Once that step had been established, it was important, of course, that the case should proceed with reasonable expedition to the second stage, namely, the disposal hearing, and it was also important that the same judge who conducted the threshold hearing should hear the second part of the case, namely, the disposal hearing. That was an objective which, of course, the court had in mind during the subsequent directions hearings. C

On 29 May 2000, the father was sentenced to a term of imprisonment, as he tells the court in his statement, as a result of the offence of driving whilst disqualified. He was released from prison on 5 September 2000. It is then, according to the father, that he heard for the first time that the care plan was for adoption, ie in early September 2000.

On 28 September 2000, there was a further directions hearing at the family proceedings court. Once again, the appellant attended. He was unrepresented. There were two important matters which took place at that hearing on 28 September 2000. First, the final hearing, the disposal hearing, was fixed for 28 November 2000 before District Judge Davidson, with a time estimate of 2 days. Counsel on behalf of the local authority indicated that it was difficult to find a date which was convenient for all the four parties to the proceedings and also convenient to the court and judge's diary. I mention that because, in my view, that increases the evident importance of adhering to the date which was fixed if possible. D E

Secondly, on 28 September 2000, the father was spoken to by the court clerk once again. He was advised again to seek legal advice. The following day, 29 September 2000, the guardian ad litem again wrote to the father, saying would he please contact her if he wished to participate in the proceedings and in the life of the child. Counsel for the guardian informs the court that the guardian had no response from the appellant to that letter. F

Thereafter, although the precise date is not clear because counsel for the appellant has been unable to obtain instructions on the point, it is apparent that the appellant went to seek advice from solicitors. They must have made an appointment to see him, because on 16 October 2000 he contacted the solicitors by telephone, the purpose of the call being to rearrange an appointment which had been made and the appointment was made for the solicitors to see him now on 25 October 2000. He saw the solicitors on that date. Thereafter, on 31 October 2000, the solicitors spoke to the Legal Department of the London Borough of Hackney and indicated that the father wished to be a party to the care proceedings. G

So the matter proceeded to the hearing on 13 November 2000. That hearing had been scheduled as the final directions hearing before the effective and final hearing on 28 November 2000. It was on that date that the application, which was before the district judge and which is the subject of this appeal, was issued. It was on that date that the appellant signed his H

A statement in the case. I observe, therefore, that the application was made by the appellant 18 months after the proceedings had been commenced. In those circumstances, it is plain that the application was made very late in the day, but despite that, counsel for the appellant submits that the district judge was plainly wrong not to allow this father to join the proceedings as a party. The district judge set out his reasons for his decision very clearly, if I may say so, and I propose to read three paragraphs of those reasons, since they are B crucial to this appeal. Three paragraphs from the end of the reasons the district judge says as follows:

> 'The court, in considering the father's right to family life and to be involved with his own son and his rights to be able to put his side of the case, has to balance those rights with the need for a speedy conclusion to C proceedings involving this young child. The proceedings have already gone on for eighteen months, considerable delay has already been caused by attempted assessments that appear to have become abortive, P needs a speedy decision; he is approaching the age where he is likely to suffer irrepairable harm if he is not provided with the stability and security that he needs.'

D The district judge continues:

> 'I am quite satisfied that father, over the past eighteen months, has had ample opportunity to apply to become a party and in no way have his rights under Article 6 been prejudiced, he has merely failed to exercise them. I am quite satisfied also that were he made a party and allowed to E pursue these applications, they would serve only to delay the proceedings even further and undermine the welfare of P.'

Finally, he says:

> 'In considering the application of Article 8, the right to respect for family life, the court has to balance the parents' rights to be involved with their F child with the welfare of the child, and I am quite satisfied that the welfare of this child will allow no further delay and it would not be in the interest of the child's welfare for the father to be given the leave he seeks to be joined as a party. His application is therefore refused.'

In attacking that decision, counsel on behalf of the appellant relies in particular upon the decision of Holman J in the case of *Re B (Care* G *Proceedings: Notification of Father without Parental Responsibility)* [1999] 2 FLR 408. That case also concerned an application by a natural father without parental responsibility to be joined as a party to care proceedings. There is a most important difference, in my view, between the facts in that case and the facts in this case because in that case, the father had not been served with notice of the proceedings at the appropriate stage, whereas in H this case, this father was served with notice right at the outset of the proceedings.

I read, first, from the headnote at 408, where the holdings of the court are set out and, in particular, I read from para 2, and the sentence in the middle of the paragraph, because this sentence contains the core of the submission

which is made by Miss Cooper on behalf of the appellant. The headnote reads:

> 'Broadly, a father ought ordinarily to be given the opportunity to be heard before major decisions were taken in relation to his child, and if he wished to participate as a party to care proceedings he should be permitted to do so unless there was some justifiable reason for not joining him as a party. In this case, disruption to the child caused by delay was not sufficient reason for refusing to join the father, as there was no evidence that joining him as a party would delay proceedings, and any risk of delay could have been dealt with by the justices requiring, as a condition of joining the father, that the hearing go ahead as arranged.'

I pass to 413 in the judgment of Holman J and read from that page two passages. At letter B:

> 'But the position of a father is, in my judgment, a uniquely different one. It is, of course, true that so far as the rules are concerned, a father who does not have parental responsibility is only initially entitled to receive notice of care proceedings, as I have already described, and undoubtedly has to invite the court to exercise a discretion under r 7 of the rules to join him as a party. But the very fact that he is entitled to notice puts him in a different category from aunts, grandmothers or any other people in a less close relationship.'

At letter E, the judge goes on:

> 'In my judgment, the broad approach should clearly be that if a father wishes to participate as a party in care proceedings, he should be permitted to do so unless there is some justifiable reason for not joining him as a party. As a matter of basic justice, a father, if he wishes to do so, should be able to inform a court as to his attitude and views on an application for a care order, and permitted to give the court such assistance, if any, as he can to help the court in the decisions which the court has to make.'

The appellant, through counsel, relies very strongly on those two passages in that judgment. That leads, in my view, to the proper consideration by this court of the issue: is there here, in the circumstances of this case, some justifiable reason for not joining the appellant as a party or, alternatively, does justice demand that the appellant be allowed to participate in the proceedings in the manner desired?

The submission continues on behalf of the appellant that as at 13 November 2000, some 15 days before the date fixed for the final hearing, it was not clear that the final hearing would be delayed if the appellant's application had been allowed. Counsel submits that at that stage the appellant was not seeking any adjournment and goes on to say that the court could, if appropriate, have stipulated that the hearing on 28 and 29 November 2000 should go ahead as planned, with the father joined as a party in accordance with his application, and here reliance is placed upon another passage in the judgment of Holman J in the case of *Re B (Care Proceedings:*

Notification of Father without Parental Responsibility) [1999] 2 FLR 408 at the top of 412, where the judge said, dealing with the facts of that case:

> 'But even if he was, it would clearly have been open to the justices to allow Mr J's application to be joined as a party, but nevertheless to stipulate that the hearing must go ahead as planned on 2 December 1998. It does not seem to me to have been at all a reason, or relevant consideration, for rejecting the whole application, that it might have led to a delay in the main hearing.'

So the suggestion on behalf of this father is that even now, this father might be able to participate sensibly and constructively in these proceedings. It is suggested that the papers might be served upon those representing him today, that he could be seen in conference by counsel on Monday and then participate in the case on Tuesday when it begins.

In my view, however, this case is substantially different from the case of *Re B (Care Proceedings: Notification of Father without Parental Responsibility)* (above). As I have already observed, this father had been served with the relevant notice, in accordance with the Rules and at the outset of the proceedings. Accordingly, he knew of the existence of the proceedings, he was advised early on to seek legal advice and he chose at that time not to participate in those proceedings. There is a marked difference between the delay which already existed on 13 November 2000 in this case and the delay which existed in the case of *Re B* (above). Examination of that case shows that the final hearing had been fixed for December 1998, against a background of proceedings which had been started in May of 1998; therefore, the length of time between inception and disposal would have been 7 months. The father applied in November of 1998 to be joined as a party. Accordingly, it is clear that the delay which has already occurred in resolving this case relating to this young child is over twice as long as the delay which had taken place, or was taking place, in the case of *Re B* (above).

I accept the general proposition relied on by counsel for the appellant and propounded by Holman J, namely, that as a general rule and unless there is some justifiable reason for not joining him, a natural father should be permitted to participate as a party in care proceedings relating to his son.

Here, however, by 13 November 2000, in my view, these proceedings had already been prolonged for far too long. The passage of time which had taken place made it even more essential than usual that the hearing date for the disposal hearing should be adhered to. There was a date with a 2-day time estimate, which had not been easy to arrange. If, as he wished, this father had been joined on 13 November 2000, even if he did not apply for any adjournment, and there can be no certainty as to that, the hearing would inevitably, in my view, have been significantly lengthened by his presence and his participation. Counsel have told me that there are already eight witnesses for this case, disregarding any participation on the part of the father. Accordingly, the father would have made, had he been joined, a ninth potential witness. Given his representation, as it would have been, the cross-examination of the other witnesses would inevitably have been longer. The likelihood is, in my view, that the hearing in those circumstances would not have been concluded in 2 days, and who knows when the hearing could

properly have been resumed?

The guardian, who is neutral as to whether or not this appeal should succeed, submits through counsel that the district judge could have allowed the father to have been joined, as he wished, but could have limited his participation in the hearing so that the hearing was not further prolonged. I have thought about that submission with some care, but upon reflection, I am not clear as to how that limitation can, in practice, be achieved in a case such as the present. It might very well be, I suppose, that the court at the final hearing would limit the father in his participatory role to questions of contact. Supposing that that were the type of limitation which was sought to be imposed upon him, even so, the father would probably wish to give evidence on that aspect of the matter, he would certainly want to cross-examine the social worker and the team manager about the issue of contact. Further, I observe, in the light of what I have been told on the one hand by counsel for the father and on the other hand by counsel for the mother, that there are in this case substantial issues of fact as between the mother and the father. For instance, what was the participation of the father in the early young life of the child? Inevitably, those issues would, if pursued, significantly prolong this hearing and it would, in my view, be very difficult for a court with a natural father before it to say: 'You may not pursue that issue at all'. In any event, a resolution of such issues would be unlikely to benefit the child, but it would be very difficult to shut out the father from some form of challenge to the mother's evidence once he had been admitted as a party.

It is further relevant to the conclusion to which I have come in this case to consider the Children Act 1989, particularly s 22(4). Section 22 deals with the general duty of the local authority in relation to children looked after by them, and at subpara (4) reads:

> 'Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of—
>
> …
>
> (b) his parents;'

Accordingly, the local authority have that duty and they recognise that duty now that they realise that this father wishes to play a meaningful role in the future of his son, because in the amended care plan which is produced and dated 23 November 2000, they say this:

> 'Within the context of the above, the local authority assure the court that should a care order be granted, upon the conclusion of the final hearing on 28 and 29 November 2000, the statutory duties will be complied with in terms of assessing the family members proposed by the father. This will be done by way of twin track planning.'

The duties of the local authority do not stop with compliance with s 22. There is, of course, also s 34 of the Children Act 1989, which deals with parental contact with children in care. The local authority, under that section, have a duty to allow reasonable contact for a parent with a child in care, and

A once again the amendment in the care plan is here relevant, and I observe that under s 34(3) the father can himself apply for contact with a child in care.

Further, one of the wishes of this father is to apply for parental responsibility, and that opportunity is still available to him, should he wish to pursue it.

B In all the circumstances, therefore, at the end of the day and having carefully considered the criticisms which have been made of the decision of the district judge, I reach the conclusion that I agree with the district judge that were the father made a party and allowed to pursue his applications, they would serve only to delay the proceedings even further and undermine the welfare of the child in that way.

C It is relevant to further note that other parties to these proceedings, namely the mother and the grandmother, both submitted through counsel that they wish for this now far too long prolonged matter to be dealt with finally on 28 and 29 November 2000 and, in reaching his conclusion that this application should be refused, I am certainly not in a position to say that the district judge was plainly wrong in dismissing this application. That, at the end of the day, is the test which I have to apply.

D Accordingly, on that basis, I would dismiss this appeal but before I do so, it is important that I consider the additional points which counsel make relating to the alleged contravention of the father's rights under Arts 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. As to the suggestion that the proceedings and the manner in which they have been conducted and the refusal of the father's application amount to a breach of the father's rights to a fair trial under

E Art 6, in my view, this father has not been denied the right to participate in these proceedings, at least until very late in the day. The Family Proceedings Courts (Children Act 1989) Rules 1991 provide for the participation of people in the position of this father, in particular, r 7, subrr (2), (3) and (5) are in point. It is, in my view on the facts as described, the fault of the appellant that he did not apply far earlier, as he could have done and as he was advised to do. Now that he has been denied that right by the decision of

F the district judge, the denial is, in my view, in pursuit of a legitimate aim, namely, the resolution without further delay of this application, and the denial is proportionate to that legitimate aim.

As to Art 8, of course, the right to respect for private and family life is a right not only of the father but also, in particular of the mother and of the child. I assume, for this purpose, that there was a family life between this father and this child, and on the basis of that assumption, his rights in that

G regard have to be balanced together with the rights of the mother and, crucially, the rights of the child. In my view, it is plain, when one looks at the history of the case, that the child's needs are to get a resolution to this issue which has been a matter of doubt for far too long. I repeat, the father still has his rights, as set out in s 34 and s 22(4) of the Children Act 1989 and he will, in accordance with the amended care plan, be consulted as

H appropriate.

In the circumstances, therefore, I reach the conclusion that his rights under Art 8 are not infringed. In all those circumstances, therefore, this appeal will be dismissed.

Appeal dismissed.

Solicitors: *Clifford Watts Compton* for the applicant
Local authority solicitor
Clinton Davis Pallis for the second respondent
Stunt Palmer & Robinson for the third respondent
Yvonne Brown & Co for the fourth respondent

PHILIPPA JOHNSON
Barrister