M v LAMBETH BOROUGH COUNCIL

Family Division

Balcombe J

22 March 1984

Wardship – Child committed to care of local authority in wardship proceedings – Use of secure accommodation – Whether local authority required to seek authority of juvenile court in addition to direction of High Court

In November 1983 a child, then aged 14, was made a ward of court. On 7 December 1983 a judge committed the child to the care of a local authority and directed that the child be placed in a special unit. The special unit was accommodation in a community home provided for the purpose of restricting the liberty of children residing there, and was secure accommodation to which s. 21A of the Child Care Act 1980 and the Secure Accommodation (No.2) Regulations 1983 applied.

Prior to 24 May 1983 the statutory provisions relating to the restrictions of the liberty of children in care were ss. 10 and 18 of the 1980 Act. Those provisions did not prevent a local authority from restricting the liberty of a child in care.

On 24 May 1983 a new section, s. 21A, was introduced into the 1980 Act by the Criminal Justice Act 1982 providing restrictions on the use of accommodation for restricting the liberty of children in care. The Secure Accommodation Regulations were made under s. 21A(2). The new section and the Regulations were found to be unduly limited. They applied only to children in care under s. 2 of the 1980 Act or committed to care under a care order or warrant under s. 1 or s. 23 of the Children and Young Persons Act 1969. They did not apply to a wide range of children in care under other provisions, including wards of court committed to care under s. 7(2) of the Family Law Reform Act 1969.

A new s. 21A of the 1980 Act was substituted by the Health and Social Services and Social Security Adjudications Act 1983 and the Secure Accommodation (No.2) Regulations 1983 ['the No.2 Regulations'] were made. By the substituted s. 21A and the No.2 Regulations the new provisions relating to the restriction of the liberty of children in care were extended to cover, *inter alia*, wards of court committed to care.

Both the original and the substituted s. 21A of the 1980 Act and their related Regulations prohibited a local authority from keeping a child in their care in secure accommodation unless, on application by the local authority, a juvenile court authorized the child to be kept in such accommodation.

The local authority sought a determination of the question whether the substituted s. 21A and the No. 2 Regulations required the local authority to apply to a juvenile court for an order authorizing the child's placement in secure accommodation notwithstanding the order of the High Court of 7 December 1983 and the fact that the child was a ward of court.

Held – In the case of a ward of court in respect of whom the High Court had directed that he be placed in secure accommodation, s. 21A of the 1980 Act (as substituted by the 1983 Act) and the No. 2 Regulations required the local authority to apply to a juvenile court for an order authorizing the child to be kept in secure accommodation. Where the High Court had, before 1 January 1984, made a direction that a ward be kept in secure accommodation, that child might not be kept in such accommodation without the authority of a juvenile court under s. 21A of the 1980 Act. Where, after 1 January 1984, a local authority with a ward in their care wished to place the child in secure accommodation, they must first apply to the court in wardship for an order to that effect and then obtain the authority of a juv-

enile court to keep the child in such accommodation. In neither case would the authority of the juvenile court preclude a direction that the child be placed elsewhere.

Per curiam: The situation produced by the statutory provisions was wholly unsatisfactory. It could not be necessary for two courts to be involved, leading to unnecessary delay and expense. It would appear to be sufficient if the Act and Regulations provided that a ward in the care of a local authority should not be kept in secure accommodation without the leave of the High Court.

Statutory provisions considered

Child Care Act 1980, s. 21A as substituted by the Health and Social Services and Social Security Adjudications Act 1983

Secure Accommodation (No. 2) Regulations 1983

Cases referred to in judgment

CB (A Minor) (Wardship: Local Authority), Re [1981] 1 WLR 379; [1981] 1 All ER 16

F v S (Adoption: Ward) [1973] Fam. 203; [1973] 2 WLR 179; [1973] 1 All ER 722

J v C [1970] AC 668; [1969] 2 WLR 540; [1969] 1 All ER 788

Lewisham Borough Council v M (1981) 2 FLR 384; [1981] 1 WLR; 1248; [1981] 3 All ER 307

Kevin Grice for the mother;
Barbara Slomnicka for the local authority.

BALCOMBE J:

The child was born on 15 August 1969 and is now 14½ years of age. He became a ward of court upon the issue of the originating summons in this matter on 30 November 1983. On 7 December 1983 Booth J committed the child to the interim care of the London Borough of Lambeth pursuant to s. 7(2) of the Family Law Reform Act 1969 and directed that he be placed at a special unit. There can be no doubt that, on the evidence before the judge, this placement was entirely in the child's best interests and, indeed, no one then or since has sought to challenge this order on its merits.

The special unit is accommodation in a community home provided for the purpose of restricting the liberty of the children there resident and as such is secure accommodation within the definition contained in the Secure Accommodation Regulations. By this application the Lambeth Borough Council asks for the determination by the court of the following question, namely whether upon the true construction of s. 21A of the Child Care Act 1980 and of the Secure Accommodation (No. 2) Regulations 1983, the council is required to apply to the juvenile court for an order that the child's placement at the special unit do continue, notwithstanding the order of 7 December 1983 and the fact that the child is a ward of court? This raises a pure point of law and I was told that there are a number of other cases waiting upon the determination of this question.

Until 24 May 1983 there were no specific statutory provisions relating to the restriction of the liberty of children in care. Section 18(1) of the Child Care Act 1980 (replacing s. 12(1) of the Children Act 1948) provides that in reaching any decision relating to a child in their care – under s. 2 of the Act or by virtue of a care order or warrant under s. 23(1) of the Children and Young Persons Act 1969: see s. 17 of the 1980 Act – a local authority shall give first consideration to the need to safeguard and promote the

Welfare of the child throughout his childhood. However, s. 18(3) of the 1980 Act (replacing s. 12(1A) of the 1948 Act) empowers a local authority to exercise their powers in relation to a particular child in their care in a manner which may not be consistent with their duty under s. 18(1), if that appears necessary for the purpose of protecting members of the public. Another exception to the general duty under s. 18(1) is contained in s. 19, which empowers the Secretary of State to give directions to a local authority with respect to the exercise of their powers in relation to a particular child in their care, again where he considers it necessary for the purpose of protecting members of the public. Finally, s. 21(1) (*b*) of the 1980 Act empowered a local authority to maintain a child in their care in a community home. None of these provisions prevented a local authority from restricting the liberty of a child in their care; indeed, s. 10(2) authorized a local authority to restrict the liberty of a child in their care by virtue of a care order or a warrant under s. 23(1) of the 1969 Act to such extent as the authority considered appropriate, subject only to the Community Homes Regulations 1972 and reg. 11 thereof in particular.

However, on 24 May 1983 there came into force s. 25 of the Criminal Justice Act 1982 Which introduced a new s. 21A of the Child Care Act 1980, providing restrictions on the use of accommodation for restricting the liberty of a child in care. Since that new section fell within Part III of the 1980 Act, it only applied to children in care under s. 2 of the 1980 Act or by virtue of a care order or warrant under s. 23(1) of the 1969 Act – see s. 17 of the 1980 Act. The Secure Accommodation Regulations 1983, made under the powers contained in the new s. 21A(2), which also came into operation on 24 May 1983, did not – indeed, could not – extend the ambit of the section to children in care otherwise than as provided in s. 17.

It soon became apparent that the new s. 21A and the Regulations made under it were unduly limited in their operation. In particular, they did not apply to children in care under place of safety orders, and this was particularly inappropriate since such orders are obtained ex parte and there is no right of appeal. It was by no means clear whether they applied to a ward in care under s. 7(2) of the Family Law Reform Act 1969, which provides that if an order is made committing the ward to the care of a local authority:

> '. . .thereupon Part III of the Children Act 1980 . . . shall . . . apply as if the child had been received by the local authority into their care under s. 2 of that Act.'

There are similar powers under many other statutes enabling a court to commit a child to the care of a local authority.

Accordingly, a yet newer s. 21A of the 1980 Act was introduced by s. 9 of, and para. 50 of Sch. 2 to, the Health and Social Services and Social Security Adjudications Act 1983. The new s. 21A came into force on 1 January 1984. Subsection (7) of the new s. 21A authorizes the Secretary of State to provide by regulations that the section shall apply to any description of children specified in the regulations. The Secure Accommodation (No. 2) Regulations 1983 ('the No. 2 Regulations') have been made in exercise of that power. They, too, came into operation on 1 January 1984. The Secure Accommodation Regulations 1983 were revoked and, by reg. 5

of the No. 2 Regulations it was provided that s. 21A of the 1980 Act should apply also to children of a description specified in the Schedule to the regulations. The Schedule is, so far as relevant, in the following terms:

> 'Section 21A of the 1980 Act . . . shall apply also to a child who falls to be accommodated by a local authority by virtue of any of the following enactments . . . (*j*) s. 7 (2) of the Family Law Reform Act 1969 (committal of wards of court to care of local authority).'

(It also refers to those provisions of the Children and Young Persons Act 1969 which authorize the making of place of safety orders.)

It was not submitted to me – indeed, having regard to the introductory words of s. 17 of the 1980 Act 'Except where the contrary intention appears', and the express power contained in s. 21A (7) (*a*), such a submission would not appear to be tenable – that these regulations were *ultra vires.* Accordingly, whatever the position may have been between 24 May 1983 and 1 January 1984, it seems to me clear that s. 21A and the No. 2 Regulations apply to children (such as this child) in the care of a local authority pursuant to a care order made in wardship. It is to the inter-relation of these provisions and the powers of the court in wardship that I now turn, but must first deal with one specific point made by Miss Slomnicka on behalf of the Lambeth Borough Council, namely that in any event there is an omission in the scheme of the new provisions, since the Schedule to the Regulations does not refer to a child in the care and control of a local authority, not pursuant to an order made under s. 7(2) of the Family Law Reform Act 1969, but under an order made in exercise of the inherent jurisdiction.

I must accept the decision of the Court of Appeal in *Re CB (A Minor) (Wardship: Local Authority)* [1981] 1 WLR 379, that it is theoretically possible for a court exercising jurisdiction in wardship to give care and control of the ward to a local authority. However local authorities are creatures of statute and have only such powers as are conferred upon them by statute. Unless the child has already been received into care under some other statutory provisions, I know of no statutory power enabling a local authority to have the care of a ward save that conferred by s. 7(2) of the Family Law Reform Act 1969. In exercising its jurisdiction in wardship to place a child in the care of some person, the court must regard the welfare of the child as the first and paramount consideration – see s. 1 of the Guardianship of Minors Act 1971; *J v C* [1970] AC 668. I find it difficult to see how it could promote a child's welfare to place it in the control of a body which has no power to care for it. Equally, I would be very surprised if a local authority were to accept the care of a child, when they had no power to place it with foster parents, or maintain it in a children's home: see *Lewisham Borough Council v M* (1981) 2 FLR 384. In the event I conceive that the omission mentioned by Miss Slomnicka is of no practical significance.

So I turn to the provisions of the current s. 21A. Subsection (1) lists the criteria which are to be applied in deciding whether a child in the care of a local authority may be placed, and if placed, kept, in secure accommodation. Subsection (2) empowers the Secretary of State to make regulations specifying the maximum period for which a child may be kept in

secure accommodations (*a*) without, and (*b*) with, the authority of a *juvenile court* (my emphasis). Subsections (3), (4), (5) and (6) are all concerned with the hearing before, and appeals from, the juvenile court. Subsection (6) is of some significance in the present context, since it precludes a juvenile court from exercising its powers under the section unless the child concerned is legally represented or has at least had the opportunity for legal representation. A ward of court would not normally be legally represented in the wardship proceedings, unless it had been joined as a defendant by order of the court and a guardian ad litem (usually the Official Solicitor) appointed. Subsection (8) is in the following terms:

> 'The giving of an authorization under this section shall not prejudice any power of any court in England and Wales . . . to give directions relating to the child to whom the authorization relates.'

It is important to realize what s. 21A does, and what it does not do. It does *not* empower the juvenile court to direct that a child *shall* be kept in secure accommodation. It *does* provide that a child shall not be placed or kept in secure accommodation unless *authorized* by the juvenile court, on application made by a local authority – see reg. 8 of the No. 2 Regulations.

The No. 2 Regulations, besides specifying the description of children to whom s. 21A shall or shall not apply, or shall have effect subject to modifications, also specifies the maximum periods during which a child may be kept in secure accommodation with and without the authority of a juvenile court.

It is, of course, trite law that when a child is a ward of court, no major step in his life may be taken without the approval of the court exercising jurisdiction in wardship – see, e.g., *Re CB (A Minor)* (above) at p. 388A-C. That the wardship court retains the power to give the necessary directions, even though it may have made a care order in favour of a local authority under s. 7 (2) of the Family Law Reform Act 1969, is apparent from the provisions of s. 43(5) of the Matrimonial Causes Act 1973, which are incorporated by reference in s. 7(3) of the Family Law Reform Act. Nevertheless, the power to give a *direction*, under s. 43(5), that a ward of court be placed in secure accommodation, cannot obviate the necessity for obtaining the necessary *authority* from the juvenile court under s. 21A, any more than an order in wardship authorizing adoption proceedings in respect of the ward can obviate the necessity for an adoption *order* by the appropriate court exercising jurisdiction in adoption – cf. *F v S (Adoption: Ward)* [1973] Fam. 203. Similarly, an order by the juvenile court *authorizing* a ward to be placed in secure accommodation, would not prejudice the power of the High Court to *direct* that the ward be placed elsewhere (e.g. with foster parents): see s. 21A(8).

I can summarize the position as I understand it as follows. Where, as in the present case, the court exercising jurisdiction in wardship has, before 1 January 1984, directed that a ward in the care of a local authority be placed in secure accommodation, that child may not be kept there without the authority of a juvenile court under s. 21A. That authority should be sought as soon as possible, since the maximum period for which the ward may be kept in secure accommodation without the authority of the juvenile

court is 72 hours (subject to certain minor exceptions) – see regs. 10 and 11 of the No. 2 Regulations.

Where, after 1 January 1984, a local authority with a ward in their care wishes to place, and then keep, the child in secure accommodation, they must first apply to the court in wardship for an order to that effect, but cannot in fact place or keep the child in secure accommodation without the authority of the juvenile court. In neither case does the authority of the juvenile court to keep the ward in secure accommodation preclude a direction by the High Court that the ward be placed elsewhere.

The situation thus produced seems to me to be wholly unsatisfactory. I appreciate that the purpose of the new s. 21A and the No. 2 Regulations was to ensure that no child in the care of a local authority should have its liberty restricted by being placed in secure accommodation until after a judicial determination of the issue. Nevertheless, it cannot be necessary for two courts to be involved, and this dual involvement must lead to unnecessary delay and expense. Since in the case of a ward the High Court will already be involved, it would appear to be sufficient if the Act and Regulations were to provided that a ward in the care of a local authority should not be placed, or if placed kept, in secure accommodation, without the leave of the High Court, with such provision for the child to be represented on that application as may be thought appropriate. (It is worthy of note that, as Mr Grice for the child's mother in the present case submitted, when the Lambeth Borough Council makes application to the juvenile court for the child's continued detention, she will not then be entitled to be legally represented.)

In the circumstances, I answer the question asked by the Lambeth Borough Council in the affirmative, namely that they are required to apply to the juvenile court for an order that the child's placement at the special unit do continue.

Solicitors: *M.E. Hanrahan* for the mother;
R. G. Mellor for the local authority.

B.C.