

RE C (WARDSHIP: INDEPENDENT SOCIAL WORKER)

Family Division

Butler-Sloss J

13, 14 June 1984

Wardship – Independent social worker – Application by parents to use independent social worker – Application twice refused by court – Continued use of independent social worker despite lack of authorization by the court – Independent social worker shown documents involved in case – Breach of confidentiality in wardship proceedings – Third application by parents for leave to permit independent social worker to give evidence – Whether court should give leave – Factors to be taken into account

In June 1983, in care proceedings in a juvenile court, an independent social worker had, at the request of the solicitor acting on behalf of the children, prepared a report. That report was never used since it was agreed by all parties that the matter would be better dealt with in wardship proceedings. The care proceedings were discontinued and on 15 June 1983 the local authority initiated wardship proceedings in the High Court. In August 1983 the matter came before the registrar for directions and an application was made by the parents for leave to have the same independent social worker make a further assessment of the situation. The application was refused but because there was insufficient time for a court welfare officer to submit a report for the hearing in November, the registrar indicated that the report of the independent social worker could probably be exhibited with the parents' affidavit. The solicitor for the parents was under the misapprehension that he was entitled to consult the independent social worker and to show her all the documents. In November 1983 the proceedings were adjourned and the parents made a second unsuccessful application that the independent social worker should be permitted to be involved in the case. On 13 June 1984 at the hearing, a third application was made by the parents that the social worker should be permitted to give evidence of her expert opinion. It was clear from the two affidavits filed by the independent social worker that she had seen all the documents in the case. Counsel for the local authority conceded that these two affidavits should be admitted by the court.

Held – refusing the application –

(1) Since the independent social worker had been twice debarred by the court from having specific involvement in the case, other than with the parents, she would have very limited knowledge of the current position. She could, therefore, only give evidence generally from her experience as a social worker on the issues of rehabilitation and access which would be of very limited usefulness. Accordingly, there would be a ruling against the independent social worker giving evidence on that basis except that her two affidavits would be admitted.

(2) The issue of the desirability of using an independent social worker had twice been before the court which had refused permission but the social worker had nevertheless been permitted to see all the documents in the case. This was a serious breach of the normal confidentiality in wardship proceedings. However, there had been a genuine misunderstanding in this case as the solicitor for the parents had reason to believe that the independent social worker could continue to advise the parents and had unintentionally committed the breach of confidentiality by showing her the documents in the case.

(3) It was desirable that independent social workers should be authorized by the court if they were to be involved in wardship proceedings. They should be hesitant to become involved or look at the papers in the case if they had not been so author-

ized, otherwise they might be in a breach of the general principles of confidentiality.

(4) The court should be altered as to the possible misuse of legal aid funds where there had been a continued use of an independent social worker at public expense through the use of legal aid after the refusal of the court that the independent social worker should take part in the case. In such circumstances the court would consider whether the costs so incurred, or part of them, should be disallowed.

Referred to in judgment

Practice Direction (Independent Welfare Reports) (1983) 4 FLR 450; [1983] 1 WLR 416; [1983] 1 All ER 1097

Barbara Slomnicka for the local authority;

M. O'Dwyer for the parents.

BUTLER-SLOSS J:

I was asked yesterday to permit the giving of evidence by an independent social worker and I ruled that that evidence could not be given. I am, however, prepared to read, as indeed I have already read, the two affidavits of this independent social worker and the exhibits appended to those affidavits. That is done with the express consent of counsel on behalf of the local authority. That seems to me, for the purposes of this case, to be a very fair way out of the dilemma which has arisen, particularly since, as perhaps the high point of the independent social worker's evidence is contained within the affidavits, she would not be able to reinforce it under the most obvious sort of cross-examination that I can imagine, since she has inevitably, by virtue of the facts which I am about to set out, been unable to have full information about the case over the last 12 months.

The history of this matter quite shortly is that there was an adjourned juvenile court hearing in care proceedings in June 1983. The solicitor on behalf of the children, who is not now concerned in this case, asked a social worker to provide a report which is, if I may use a colloquialism, standard practice. That report was dated 1 June, and in that report, very properly, the social worker saw parents, foster parents, children, the social worker for the local authority, the health visitor, had telephonic communication with other important people and read all the relevant reports.

Agreement was reached, however, in the juvenile court that this was a matter that would be better dealt with by wardship and in the High Court; and, by agreement, an originating summons was issued by the local authority on 15 June 1983, the care proceedings were abandoned and the report of the social worker instructed by the solicitors on behalf of the children was not used.

In due course there came an appointment before the registrar, who gave directions as to the form in which the originating summons would come before the High Court, before the judge. At that hearing for directions, counsel for the parents, who has not been present before me, made an application – and I should perhaps say it is of some relevance, because I have not got entirely clear in my mind what the solicitor, who had the conduct of these proceedings, was in fact informed by counsel as to what had happened before the registrar. I am quite satisfied what did happen because I have the clear recollection of counsel on behalf of the local authority. It is not what happened in this case which is of as much importance, as what the solicitor for the parents believed had happened.

There was an application for leave to have an independent social worker to make a further assessment of the situation and for that independent social worker to be the very one who had provided the report on 1 June. It was at that stage asked that that independent social worker should again see the children and, indeed, all the parties.

That application was refused by the registrar. Some discussion ensued about whether there should be a court welfare officer and it was agreed that there was insufficient time for a court welfare officer to make an appropriate report, this being, at that stage, August as I remember, and it being hoped that the case would be heard in November. At that stage there was the belief that there was some degree of urgency about this matter, involving, as it did, two little boys, one of whom is 2 and the other 6.

I am satisfied that the registrar indicated that the report of the independent social worker provided for the benefit of the juvenile court could properly be exhibited to the affidavit of the parents and provided for the benefit of the judge in November. Nothing was said about any future involvement of the independent social worker but, in fact, she continued to be involved, the solicitor having the conduct of the defendant's case believing, I am quite satisfied – having heard his evidence – that he was entitled to consult her and to show her all the documents involved in the case. She did not, however, see the children because that is what he understood to be the specific matter which she was not entitled to do.

In fact, by virtue of the order of the registrar, affidavits were directed by the plaintiffs, the defendants and the plaintiffs, and there was no provision for an affidavit by the independent social worker.

In November 1983 this matter came for hearing before a deputy High Court judge. It became clear – since the parent who is of the utmost importance in this case, that is to say the father, was by then in police custody and was facing serious offences, and may already by then have been convicted of robbery – that the case could not proceed without him and it would be better to adjourn it until he came out of prison, which was in fact in May 1984.

At that stage counsel for the parents again asked that the independent social worker should be permitted to make further inquiries and a further assessment, including seeing the children, despite the refusal of the registrar, and at that stage there was an affidavit by the independent social worker, exhibiting her own report and various other documents, and making quite clear that she had seen the affidavits in the case.

It appears that the deputy High Court judge did not express any view about the breach of confidentiality in the independent social worker seeing the affidavits, but she refused the application for the further assessment, the further inquiries and the seeing of the children by the independent social worker. No objection, however, was raised to the suggestion on the part of the parents that the independent social worker would be in the background advising the parents, and nobody put their minds to whether she could advise the parents without seeing the documents in the case.

As it happens, this independent social worker has only seen the parents on one occasion since 1 June 1983 when she made her report; that is to say, in May 1984 after the father came out of prison.

Yesterday the matter came back to me for the actual hearing of the originating summons and an application was made, for the third time, that

the independent social worker should give evidence as to her expert opinion as to the character assessment of the parties, the difficulties that the mother had in accepting advice from authority, and the fact that, so far as this independent social worker is concerned, the wish of the parents was that even if there was to be no rehabilitation at a later stage, they would wish to have contact and she would be able to advise the court of the desirability of access on a contact basis even if there was no prospect of rehabilitation. A second affidavit was filed by the independent social worker, where there had again been no leave, and it is clear from the second affidavit that she has seen most of the affidavits, although she has not had the opportunity to discuss this matter with the social workers or with anybody else, apart from the parents, and the parents' legal advisers, and she has not, of course, seen the children or the foster mother since, at the latest, May 1983.

It seems to me that three matters arise on this. Firstly, the usefulness of the evidence of this independent social worker; secondly, the breach of confidentiality in wardship proceedings in the independent social worker, without leave, being shown by the solicitors for one side the documentation in the case; and, thirdly, the continued use of an independent social worker after refusal by the registrar and by the judge, not just for the purpose of advising the parents but with a view to giving expert evidence in court, and the implications from the point of view of the use of public money through legal aid, since, in due course no doubt, whatever may be the outcome of this case, I am bound to be asked to make an order for legal aid taxation and such an order for legal aid taxation must involve the consideration by the court as to the appropriate use of legal aid money for the continued involvement of this independent social worker by way of giving evidence and by way of swearing an affidavit.

Dealing, first of all, with the usefulness of the evidence, this particular independent social worker, debarred as she has been from any specific involvement in the case other than with the parents, is inevitably now out of touch, inevitably has limited knowledge of the current position and can only express general views as to her experience as a social worker on the desirability or otherwise of rehabilitation in general terms and the question of the desirability of access between the children and their parents. Secondly, she can tell me about the one occasion that she has seen the parents in May 1984, after father came out of prison and, in particular, she can give me, it appears, her view or assessment of the character of the mother, about whom it is alleged that she has a drink problem and about whom it is undoubtedly, on the surface of this case, apparent that she may have some personality problem. I have my doubts that an independent social worker is the best person to give me such a character assessment, particularly bearing in mind that there has been a very limited degree of involvement of a consultant psychiatrist, a very short letter. I would have thought, if that was to be an aspect of the independent social worker's evidence, it would have better come from a consultant psychiatrist.

For those reasons I take the view that there is very limited usefulness to this evidence of the independent social worker, and I therefore ruled against her giving evidence on that basis, but I am prepared to take into account what she has said in her two affidavits, since that is specifically agreed to, as I have already said, by counsel on behalf of the local author-

ity, who showed, if I may say so, great discretion and good sense in the way that she has accepted this far that this evidence should go in.

Were it only of that matter I would not have put myself to the trouble or inconvenience to the time of the court by giving a ruling with reasons, but I am told that this problem of the independent social worker has arisen on a number of occasions and I felt perhaps it would be desirable that I should express my view as to the desirability of using such an independent social worker in circumstances such as these, and I am, of course, only referring to the sort of case which has arisen here.

It does not fall fair and square within the President's direction of 24 March 1983 (1983) 4 FLR 450 wherein the President set out that the Family Division may entertain the evidence of an independent reporter in certain suitable circumstances and the limitations on such use. It was not part of that practice direction to consider the general confidentiality of wardship proceedings. The point of the President's direction was specifically to deal with no obligation of anyone to discuss the case or be interviewed by an independent reporter, that the child should not be interviewed without leave of the court and that the independent reporter should not see a report by the court welfare officer nor discuss it with the court welfare officer nor, indeed, was it desirable to use one in general terms where the court welfare officer has already been involved to make a report; and also dealing with needing the authority of the area committee of legal aid if one is to use the services of an independent reporter. In this particular case the solicitor has taken the precaution of obtaining that authority, so that he is covered to that extent.

What I have to consider is the rather different matter of the use of confidential affidavits and reports within the wardship proceedings being shown to and discussed with an independent social worker or reporter who has specifically been requested by one party to take part in the case but has twice been told that she has no standing in the case, and twice been told that she could make no further assessment and no further inquiries. I am concerned that where the matter has been properly put to the court as to the desirability of using such an independent social worker, and where the court has specifically considered the matter and has said 'No', in those circumstances the social worker has none the less been permitted to see all the confidential documents.

I take the view that in this particular case there was in fact a quite serious breach of the normal confidentiality in wardship proceedings, and I am absolutely satisfied that that was not intentional on the part of the solicitor, that he did not have his mind alerted to it by counsel, nor indeed, perhaps, by the judge who looked at the matter in November 1983.

In those circumstances I acquit the solicitor of blame in this matter, but it does seem to me that it is enormously important that the general principles of confidentiality should be observed; that whenever it is desired to have an independent social worker to report, that is a matter that should be brought to the attention of the court and, as was properly done here, the leave of the court to be requested, and if the court says 'No', that places the independent social worker and the solicitors instructing the independent social worker in a very difficult position if they thereafter look at or show the documents in the case to somebody who at that stage has no standing.

I deprecate the showing of any documents to any person who is not a

party to the case, or who has not been given permission to be involved in the case. I take the view that it would be very unwise to use an independent social worker unless the solicitor using such a social worker is satisfied that he has taken all the steps to be sure that he can show that social worker the documents in the case.

I also think that this particular social worker was placed in a very difficult position by not being allowed to make inquiries but continuing to advise the parents, with limited ability to have information and, therefore, limited ability to advise. I would have thought that the social worker would have felt herself in a somewhat invidious position.

I do not want to express a general proposition in this case – it would not be appropriate for me to do so – but I would think it right that I should hazard the comment that independent social workers would be better to be authorized by the court, if they are to be used, and should be hesitant to get involved in a case if they are not so authorized, and certainly themselves should question whether they ought to look at the documents in the case if they are not authorized by the court to take part, otherwise they, as well as the solicitors, may find themselves involved in an embarrassing breach of the general confidentiality of wardship proceedings.

Lastly, the continued use of an independent social worker at public expense through the use of legal aid, after the refusal of a judge or registrar for that independent social worker to take part in any constructive way, should alert the court to the possible considerations of the misuse of legal aid funds. In this particular case, where the solicitor genuinely believed that what he was doing was right and where, presumably, the area committee has authorized the use of an independent social worker, it would be unduly onerous upon the defendant parents' legal advisers, particularly again since counsel has been involved throughout and did not advise on this matter, if I were to disallow part of the use of the independent social worker, but I have invited the law reporters to comment on this matter where they feel it would be most appropriate, and I can believe that there will be occasions that if an independent social worker is asked by legal advisers to continue to be involved in a case where they have specifically had their use refused by the court, such use of an independent social worker should not be a burden upon the legal aid fund, and the costs in those circumstances might well on some occasions be disallowed, or part of them at least.

I am not saying, and it is not for me to say, that independent social workers should never be used in the High Court, but they should be used by the proper use of an application to the registrar or judge and consideration by the registrar or judge as to the suitability in the particular case concerned, and, of course, nothing I have said in any way disagrees, and could not disagree, with what the President said in his Practice Direction of 24 March 1983.

Therefore, for those reasons, I rule that this independent social worker is not to give evidence in this particular case.

Solicitors: *R.J.M. Mellor* for the local authority;
P. William Ackroyd for the parents.

B.C.