R v THE INNER LONDON JUVENILE COURT EX PARTE G

Queen's Bench Division

Bush J

20 November 1987

Care proceedings – Institution of proceedings following allegations of sexual abuse by father – Father charged with sexual offences – Father applying for adjournment of care proceedings until after criminal trial – Magistrates refusing father's application – Whether magistrates were wrong to refuse to adjourn the care proceedings pending the outcome of the criminal trial.

Care proceedings were commenced in the juvenile court in respect of a girl who was believed to have been sexually abused by her father. Criminal proceedings were pending against the father. The father applied for the hearing of the care proceedings to be postponed until after the criminal trial on the grounds that (1) his defence at that trial would be prejudiced if the care proceedings were allowed to proceed first and (2) that the would also be prejudiced in the care proceedings if he were to exercise his right to remain silent in order to protect his defence at the criminal trial. His application for an adjournment was opposed by the child's guardian ad litem and the local authority on the grounds that the child was already suffering from stress which could only increase with what was anticipated to be a further 4-month delay and that the situation would, in any event, be reviewed after the father's trial. The magistrates refused the application on the basis that the child should not be subjected to any further stressful delay, having had regard, inter alia, to the following factors: (1) their duty to safeguard the child's welfare and (2) that any care order made would not prejudice the father's defence at his trial since both the issues and the standards of proof required in each set of proceedings would be different although the father might be prejudiced if he revealed his defence. The father applied for judicial review of the magistrates' decision to refuse to adjourn the care proceedings until after the criminal trial.

Held – dismissing the application – the magistrates at all stages in care proceedings had to have regard to the child's welfare as one of the considerations. They must perform a balancing exercise of a judicial nature taking into account all the circumstances of the case, including any risk to the child and any risk of prejudice to an accused. It was particularly important in cases concerning children that there should be as little delay as possible in reaching decisions on their future. The magistrates did not err in law; they had not taken into account irrelevant matters nor left out of account relevant matters; nor was their decision so beyond the discretionary limits as to make it unsupportable.

Cases referred to in judgment

A v Liverpool City Council (1981) 2 FLR 222; [1982] AC 363; [1981] 2 WLR 948; [1981] 2 All ER 385

B (A Minor) (Wardship: Child in Care), Re [1975] Fam. 36; [1975] 2 WLR 302; [1974] 3 All ER 915; 139 JP 87

D (A Minor) (Justices' Decision: Review), Re [1977] Fam. 158; [1977] 2 WLR 1006; [1977] 3 All ER 481; 141 JP 669

H (A Minor) (Wardship: Jurisdiction), Re [1978] Fam. 65; [1978] 2 WLR 608; [1978] 2 All ER 903

Jefferson Ltd v Bhetcha [1979] 1 WLR 898; [1978] 2 All ER 1108

Wonder Heat Pty Ltd v Bishop [1960] VR 489 (Australia)

Miss Patricia Scotland for the father;
Miss Barbara Slomnicka for the local authority;
John Mitchell for the child acting by her guardian ad litem.

BUSH J:
This is an application for judicial review under RSC Ord. 53 by the father of a young child, a 14-year-old girl, in respect of whom care proceedings under the Children and Young Persons Act 1969 are in train in the juvenile court. The decision which it is sought to reviews that of the Inner London Juvenile Court to list for hearing, on 28 September 1987, care proceedings brought under s. 1 of the Children and Young Persons Act 1969 by the London Borough of Camden. The relief sought is judicial review of the order and an order of prohibition prohibiting the Inner London Juvenile Court from proceedings with the hearing and determination of the said care proceedings until a date after the conclusion of the trial of the father on charges of sexual abuse of his daughter, and also, if leave to apply is granted, an ex parte injunction to restrain them from proceeding with the hearing until the hearing of the application for judicial review.

The proceedings relate of a 14-year-old girl. Earlier this year sexual abuse by her father over many years was alleged by her, so that a place of safety order was made on 19 June 1987. Section 1 of the Children and Young Persons Act 1969 provides:

> '(1) Any local authority . . . who reasonably believes that there are grounds for making an order under this section in respect of a child or young person may, subject to section 2(3) and (8) of this Act, bring him before a juvenile court.
> (2) If the court before which a child or young person is brought under this section is of opinion that any of the following conditions is satisfied with respect to him . . .
>
> (*a*) his proper development is being avoidably prevented or neglected or his health is being avoidably impaired or neglected or he is being ill-treated; or
> (*c*). he is exposed to moral danger . . .
>
> and also that he is in need of care or control which he is unlikely to receive unless the court makes an order under this section in respect of him, then, subject to the following provisions of this section and sections 2 and 3 of this Act, the court may if it thinks fit make such an order.'

I have to decide whether the decision made by the justices not to adjourn the matter but to hear it before the criminal trial was one which was properly arrived at. I have to decide whether the justices disregarded relevant factors, paid undue regard to irrelevant factors, or that the decision was wrong in law or so far outside a band of reasonable decisions that it was clearly wrong. Interim care orders have been made and they have not been disputed. The last one of those was made on 15 September 1987.

The solicitors for the father applied to magistrates for an adjournment of the care proceedings until the trial of the father had taken place and been completed, and presumably until any appeal to the Court of Appeal had been dealt with. That application was supported by counsel on behalf

of the mother. The case was originally adjourned to see what length of time would be involved. The earliest date for the criminal proceedings to be tried was January or February of 1988 (in fact, it has been fixed for 1 February 1988). The father says that his case would be prejudiced if the care proceedings were to proceed before the criminal case. It is said that the criminal case and the case of the local authority are more or less the same. The court would have to hear evidence of the allegations in respect of the sexual abuse. The evidence, it is said, would be the same in both cases and the witnesses would be substantially the same.

Of course, there are two distinctions: first, that proof would be different in the civil proceedings being on the balance of probabilities (though taking into account that the allegations were very serious ones indeed); and it would not, as in the criminal proceedings, be on the basis of being satisfied beyond reasonable doubt. However, as one's experience in these matters tells one, and as the juvenile court no doubt knew, far wider considerations are involved in the care proceedings; far wider than the simple question as to whether the allegations made by the child are true or not. If they are not true and they have been made and persisted in then there is also cause for concern about the welfare of that child.

We are helped by an affidavit from the local authority solicitor, Miss Goldthorpe, as to what took place before the justices when the question of adjournment was being considered. We are also assisted by the affidavit of the very experienced chairman of the justices. Miss Goldthorpe, in her affidavit, said:

> 'At the hearing of 15 September Mr T [the solicitor for the father] submitted on behalf of the father that the juvenile court could not properly determine the issues in relation to the care proceedings without giving the father an opportunity to be heard but that he would be entirely prejudiced in the criminal proceedings if he gave evidence in the care proceedings. The chairman pointed out that if he proposed to give evidence he would be cautioned. If he did not do so the bench would fully understand the reasons why be chose not to do so. It was for the father to make up his own mind as to what he wanted to do. The chairman went on to say that the primary concern of the court was the child's welfare and her best interests, they had a primary duty to examine the issue of the justice to [the child] and were extremely concerned about the probable delays in relation to the fixing of a hearing date in the criminal proceedings, particularly in view of the likely effect of resultant tension and stress making recall of events more difficult as time went on. The chairman said none of the justice had any doubt the matter should not be delayed. Furthermore, as both parents had seen fit to consent to the application for an interim care order the day before making their application for an adjournment of the full hearing the justices were merely preserving the date already fixed: the correct time to make the adjournment application would now be at the full hearing itself and any appeal procedure considered then.'

Criticism is made of that statement by the chairman, as set out by Miss Goldthorpe, on the basis that when he was saying the child's welfare was

the primary concern of the court he was really putting it in language which gave undue weight to the welfare of the child. As one anxious not to indulge in semantics I do not consider that as giving undue weight to the welfare of the child in the decision.

When one looks at the affidavit of the chairman, having set out the facts, he went on:

> '5. We were told at a previous hearing on 21 July 1987, 28 September having been fixed for the full hearing of the case, the father had not been represented in court when that date had been fixed and his representative indicated to us that he desired to have the criminal proceedings dealt with before the care proceedings. We believed that if the criminal proceedings were not long delayed that would be desirable and instructed our clerk to write to the court asking that the criminal hearing should be expedited in accordance with the Home Officer Circular 88/1972 dated 25 April 1972 (see *Clarke Hall and Morrison on Children*, section E [257] [see also HOC 84/1982 cited at section E [524] op. cit.]).
> 6. On 15 September the court was told that despite our clerk's letter the case could not possibly come on at the Central Criminal Court before January 1988 and that the solicitor for the children understood it would not be heard until February 1988.
> 7. We were urged on behalf of the mother to postpone the care hearing. If the father were convicted and lost his liberty, it was suggested that the care and control test might not be satisfied in subsequent care proceedings. If the care proceedings were heard first it would be difficult for the mother to show that she could look after the child.
> 8. The father's representative made the same application. His client had been prejudiced at his trial if he gave evidence beforehand in our proceedings. He would be pleading not guilty at the criminal court and should not be obliged to disclose his evidence before his trial. It would be unfair to him in the care proceedings if he remained silent in order to protect his rights at his criminal trial.
> 9. On behalf of the child it was submitted that a further 4 months' delay in the care proceedings was undesirable. She was already suffering from stress which could only increase with added delay. The case should be heard on the date already fixed.
> 10. The local authority supported the submission on behalf of the child and said that if the application were heard and resulted in a care order the situation would, in any event, be reviewed at the end of the criminal proceedings.
> 11. We appreciated the reasons for the application by the parents but believed we should have regard particularly to our duties to safeguard the welfare of the child. Three months had already elapsed since she first made the allegations and we did not think it right to keep the care proceedings hanging over her head for what would be a minimum of a further 4 months. We felt it was essential for some stability to be given to her earlier than that, and that her stress over at least the care proceedings should be reduced. She should not be left in limbo for another 4 months feelings that if in fact her father was not convicted she

might be returned to a household containing a father who had either sexually abused her or alternatively been falsely accused by her of such serious sexual abuse.

12. We felt that the facts of the care order being made (if one was to be) would not prejudice the father's defence in the subsequent criminal proceedings since both the issues and the standard of proof would be different. We appreciated that there might be prejudice to the father if he in effect revealed his defence. On the other hand, there might also be some advantage to him if there was a hearing of what would in effect be the prosecution case.

13. There would obviously be some advantage in adjourning the care proceedings as if there were a conviction at the criminal trial that the care proceedings would be shortened. On the other hand, an acquittal at the criminal trial would not necessarily have any influence on the outcome of care proceedings in view of the differing standard of proof.

14. We gave careful consideration to all these factors and to the submissions which have been made to us and were left in no doubt that the hearing of the care proceedings should not be further delayed. We accordingly made an interim order until 28 September and directed so far as we were concerned the case should be heard on that date. However, we made it clear that the bench actually sitting on that date would be entitled to hear further argument on the application to adjourn the hearing and make its own decision whether to adjourn or to proceed.'

Miss Scotland's first and main contention was that the welfare of the child should not have been considered by the court at the stage of the adjournment. She posited three steps in the care proceedings: (a) has one of the grounds been proved; (b) is the child in need of care and control; (c) if 'yes' to both the above, what order should the court make? So far this contention was unexceptional.

Miss Scotland, however, goes on to say that it is only at (c) that the welfare of the child is to be considered. For this she placed reliance upon the observations of Dunn J in *Re D (A Minor) (Justices' Decision: Review)* [1977] 3 All ER 481, 485H, where he said:

> 'It is perfectly plain, in my view, that in care proceedings under the 1969 Act, the welfare of the child is not the first and paramount consideration although, once the justices are satisfied as to one of the necessary conditions for a care order, and once they are satisfied that the child is in need of care and control, the justices will have regard to the welfare of the child in deciding what action to take.'

However, those observations were expressly disapproved by Lord Roskill in *A v Liverpool City Council* (1981) 2 FLR 222, 231, C, where, in his opinion, Lord Roskill said:

> '*Re D* affords another illustration of the utility of wardship jurisdiction which in that case was invoked by the local authority and accepted by Dunn J. But, with respect, I cannot agree with the learned judge's suggested distinction between the welfare of the child always being

> paramount in wardship proceedings, but not in cases under the 1969 Act. It is true that the language of the relevant parts of the 1969 and the 1925 Acts is somewhat different. But I agree with the comment of Ormrod LJ upon this statement in *Re H (A Minor) (Wardship: Jurisdiction)* [1978] Fam. 65, 77 because, as the learned Lord Justice there said, juvenile courts always do act in the best interests of the child so far as their powers permit.'

To go to the words of Ormrod LJ himself:

> 'The effect of the 1975 Act, therefore, must be to diminish the strength of the objections to the wardship jurisdiction in child abuse cases involving care orders. Lane J in *Re B (A Minor) (Wardship: Child in Care)* [1974] 3 All ER 915 has drawn attention to its positive advantages from the point of view of local authorities. Dunn J, in *Re D (A Minor) (Justices' Decision: Review)* assumed jurisdiction on an application by a local authority. The judge in the present case relied to some extent on the decision in *Re D* (above), in which it was said that the juvenile court was not required to observe the terms of s. 1 of the Guardianship of Minors Act 1971 (as the 1925 Act had then become) under which the welfare of the child is the paramount consideration. This is not strictly speaking accurate because of course juvenile courts do act in the best interests of the child in so far as their powers permit. Where those are inadequate the case for intervention by the High Court is proportionately strengthened.'

Further, the argument really flies in the face of the express words of s. 44 of the Children and Young Persons Act 1933 which is in these terms:

> 'Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person, and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.'

In my view, at all stages of the decision-making process, including the decision whether or not to adjourn, the justices must have in mind as one of the matters to be considered the welfare of the child. They must perform a balancing exercise of a judicial nature whereby they take into account any risk or prejudice there may be to the accused, and any risk, so far as the child is concerned, and take into account all the circumstances of a case. Juvenile courts are judicial tribunals and are well versed in these exercises.

Miss Scotland complains – and I would here pay tribute to her attractive and able argument, although I do not agree with it – that the father might not be able to give evidence in the care proceedings without disclosing his defence. The magistrates took that into account, and it cannot and is not the law that no civil proceedings can take place while criminal proceedings are pending. It is particularly important in children's cases that there should be as little delay as possible in coming to a conclusion as to the child's future. I am told, and one would have expected it, that the child is

already showing signs of disturbance which might be attributable to a delayed decision. The very experienced guardian ad litem for the child urged the magistrates to hear the case.

In *Jefferson Ltd v Bhetcha* [1979] 2 All ER 1108, the Court of Appeal rejected much the same arguments as put forward by Miss Scotland in this case. It is right that I should read from p. 1112H-J where Megaw LJ said:

> 'As I understand it, the judge [that is the judge at first instance] based his decision on the view that there is an established principle of law that, if criminal proceedings are pending against a defendant in respect of the same subject matter, he, the defendant, is entitled to be excused from taking in the civil action any procedural step, which step would, in the ordinary way, be necessary or desirable for him to take in furtherance of his defence in the civil action, if that step would, or might, have the result of disclosing, in whole or in part, what his defence is, or is likely to be, in the criminal proceedings. Counsel for the defendant in this court submitted that that is the general rule which ought to be followed. He did not, as I understand it, submit that it was an invariable or inflexible rule which would deprive the court of any discretion if the matters which I have mentioned were established. With the view, if it were put forward, that this is an established principle of law, I would respectfully but firmly disagree. There is no such principle of law. There is no authority which begins to support it, other than, to a limited extent, *Wonder Heat Pty Ltd v Bishop* [1960] VR 489 . . . if indeed it does purport to lay down such a principle. I do not think it does.'

In an unreported case (the details of which have been obtained from the Bar Library) dated Monday, 4 February 1980, before Shaw LJ and Kilner-Brown J, sitting as a Divisional Court, Shaw LJ said:

> 'Against this background it is urged that it would be contrary to natural justice to insist on the hearing of the application to renew the club's licence. The evidence of the five is not available since they will elect to be silent. What they might be able to say in exoneration or exculpation of the club itself will not be heard. As a consequence the club may be denied a renewal of its licence because the full facts are not revealed to the Licensing Committee.
> By the so-called "right of silence" is no doubt meant the right of a person to refuse to answer any question the answer to which might incriminate him. If the five accused have nothing dishonourable to conceal they should be under no embarrassment before the Licensing Committee. If there are matters which it would be inexpedient for them to reveal, the probability is that they have reference to matters discreditable to the conduct of the club. In such case the sooner its activities as a club are brought to an end by a refusal to renew its licence the better. To speak of "infringing the right of silence" of those charged (the phrase is theirs or their advisers' and not mine) is not merely inapt but I think impertinent. If they choose to put self-interest before the interests of the organization which they control and purported to serve, that is a matter for them. It is to them that the club must complain of a failure of

> justice for there is no principle of law which precludes them from giving evidence on its behalf if they wish to do so. Neither the club nor they are entitled to demand the best of both worlds.'

An additional matter which Miss Scotland says has arisen is the risk of publicity. Apparently, in the juvenile court there was a report who reported for the local paper and reported the legal problem raised by the proceedings. The only report I have seen does not in any way say anything which would be capable of identifying the parties or capable of prejudicing the trial of the father in the criminal proceedings. In any event, the justices have ample powers to protect the anonymity of the parties and to circumscribe what evidence might be reported.

Section 39(1) of the Children and Young Persons Act 1933, as amended by the Children and Young Persons Act 1963, is in these terms:

> 'In relation to any proceedings in any court . . . the court may direct that –
>
> (*a*) no newspaper report of the proceedings shall reveal the name, address or school or include any particulars calculated to lead to the identification of any child or young person concerned in the proceedings, either as being the person by or against or in respect of whom the proceedings are take, or as being a witness therein;
> (*b*) no picture shall be published in any newspaper as being or including a picture of any child or young person so concerned in the proceedings as aforesaid;
>
> except in so far (if at all) as may be permitted by the children of the court.' (Reference may also be made to s. 49 of the 1933 Act.)

The matter does not end there because s. 4 of the contempt of Court Act 1981 provides:

> '(1) Subject to this section a person is not guilty of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public published contemporaneously and in good faith.
> (2) In any such proceedings the court may, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication or any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose.'

Having reviewed this matter and the law I take the view that there was nothing wrong with the decision of the justices or with the judicial process itself. They did not go wrong in law. They did not take into account irrelevant matters nor did they leave out of account relevant matters, nor was their decision so way beyond the band of possible decisions as to be unsupportable. It was not my decision and is not now, but I, for may part, were I dealing with this case, would have come to exactly the same conclusion.

This case is an important case from the point of view of the public and

the local authority social workers because if, as a matter of course, care proceedings are going to have to be adjourned until after the criminal proceedings have been completed, then local authorities would be forced to use the wardship procedures with the very heavy expense involved. It is encouraging and comforting to find, in this case, that the justices have approached their duty with dedication, skill and thoroughness, and the application for judicial review is accordingly rejected. The anonymity of the parties must be preserved in any report of these proceedings.

Solicitors: The names of instructing solicitors are omitted in the interests of preserving anonymity for the parties.

V.H.