

Re K (Order Delay) [2007] EWHC 2090 (Fam)

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Family Division

Baron J

7 June 2007

Care proceedings — Disclosure — Late issue of order by the court — Police failure to comply with order — Local authority's duty to join police and seek urgent directions

In care proceedings concerning a child who had been taken to hospital and found to be suffering from subdural haematomas a judge ordered an urgent fact-finding hearing. He also ordered the police to disclose all information resulting from police enquiries by a specific date. The date specified for production of the information was a little less than 8 weeks before the date fixed for the fact-finding hearing, which would have given ample time to enable all parties to analyse the information. The local authority had complied with the police protocol, and the order had been made by the judge in good time, but the court failed to issue the order until 2 weeks after the deadline in the order for production of the information. In any event, the police did not comply with the clear terms of the order, in that the police authority failed to produce the file, notwithstanding a number of phone calls from the local authority to the relevant police officers. After being threatened with an application for a wasted costs order, the police eventually produced two large lever arch files of documents 2 days before the hearing date. The mother's representatives received the documentation only on the morning of the hearing. As a result, the fact-finding hearing was not ready to be heard; the mother's lawyers estimated that it would take about half a day to assimilate the contents of the files.

Held – adjourning the hearing for a short time –

(1) The late issuing of the order had been unacceptable; it was of no assistance to the smooth running of justice that orders were issued in such a way that time limits were, in effect, passed. The administrative authorities should ensure that court orders were issued in good time (see para [1]).

(2) If, in similar cases, orders were not produced by the court, or if there were delays in compliance with those orders, the local authority should seek clear directions from the court at an early stage. Although the local authority had made efforts to make the information available, more should have been done, such as issuing an application joining the police as necessary, and seeking directions at a much earlier stage. For cases such as this, which had been put into the list as a matter of urgency, and which involved a young child, the delay that might ensue as a result of the lack of police information was very worrying (see paras [3], [4]).

Dylan Evans for the applicant

David Henderson Christie for the defendant

Edward Lock (Solicitor Advocate) for the guardian

Cur adv vult

BARON J:

[1] This case relates to a child called N, who was born in 2006. The allegation made by the local authority in relation to the child is that her mother, K, (to whom I shall refer to as 'the mother') in some way caused the child non-accidental injury by shaking her. It is undoubtedly the case that N

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was taken to hospital and it was discovered that she was suffering from subdural haematomas. The cause is in dispute. Clearly, the assertion on behalf of the local authority is extremely serious so far as the mother is concerned. This case came before Sumner J and on 26 March 2007 he made an order in clear terms. One of the provisions was that the case was to be heard (as fact-finding) in front of a judge of this Division for 2 days on 7 and 8 June 2007. Another term was to the effect that the police should disclose all of the information which arose as part of their inquiries by no later than 16 April 2007. This would have given ample time to enable all the parties to assimilate the details contained in the police records. The local authority had taken the precaution of complying with the police protocol. The order was made by the judge in good time. However, I am informed that it took until 30 April 2007 for the court to issue the order. Obviously, although the police were informed of its contents, they did not have the relevant order issued by the court. If what I have been told by counsel for the local authority is correct, I am afraid it is unacceptable. The administrative authorities in court should ensure that court orders are issued in good time. It is of no assistance to the smooth running of justice that orders are issued in such a way that time limits are, in effect, passed. For an order to require the police to undertake an action by 16 April 2007 to be produced by this court on 30 April (if that be correct) is unacceptable. Therefore, I suggest that the local authority make further inquiries as to why it was that the order apparently took such a long time to be issued by this court. When the case returns before the judge on another occasion, if it is adjourned, then I think the inquiries and the results of those inquiries should be made available to the judge conducting the hearing.

[2] As it is, the police did not comply with the clear terms of the order. They did not produce the file and I am told that the local authority made a number of telephone calls to the relevant police officers involved in the case. They went as far as threatening the Metropolitan Police with an order for wasted costs. As a result two large lever arch files of documents were produced by the police, apparently as late as 5 June 2007. The mother's representatives, therefore, only received the documentation, as did this court, on the morning of this hearing, namely 7 June. That is totally unacceptable. It means, in reality, that this case is not ready for hearing. The mother's representatives have instructed me that it will take about half a day to assimilate that information. When their client is facing such serious accusations, it would appear to me that she requires, and should have, the necessary time to have full consideration of that documentation.

[3] The local authority's position is that they did their best to ensure that the information was available, but to my mind that is not enough. Of course, there was a delay in relation to the court order and I have already dealt with that difficulty. But the local authority should have issued an application joining the Metropolitan Police as necessary and sought directions from this court at a much earlier time. For cases such as this (which have been put into the list as a matter of urgency) dealing with a child who is as young as N, the delay which may ensue as a result of the lack of police information is extremely worrying.

[4] Accordingly, I make it clear for future reference that local authorities in this position should be seeking clear directions from the court at an early stage if (i) orders are not produced by the court; and (ii) if there are delays in

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compliance with those orders. For future reference, I consider as a matter of practice this sort of point should be disseminated further.

Solicitors: Local authority Legal Services Department for the applicant

McKenzies for the defendant

Lock & Marlborough for the guardian

PHILIPPA JOHNSON

Law Reporter