A v BERKSHIRE COUNTY COUNCIL

Family Division

Sir Stephen Brown P

12 May 1988

Court of Appeal

Purchas LJ and Sir Gervase Sheldon

18 October 1988

Care proceedings – Full care hearing due to be heard – Guardian ad litem initiating wardship proceedings in High Court – Whether guardian ad litem having locus standi to issue such proceedings – Whether wardship proceedings should be terminated.

The application concerned a child, aged about 11 years. He was placed on the 'at risk' register when he was about 3 years old because of bad treatment received at home. In November 1987 the local authority sought a place of safety order following a school report of bruising on a weekend visit to his mother and cohabitee. The local authority commenced care proceedings and a guardian ad litem was appointed to represent his interests. A date was fixed for the full care hearing in April 1988. The consultant psychiatrist and the assessment institution consulted by the local authority for the purposes of the hearing recommended that the boy be sent to a local boarding school subject to the overriding care of the local authority. Having disagreed with the proposal, the guardian ad litem obtained legal aid and issued wardship proceedings in the High Court against the local authority claiming, *inter alia*, (i) that the minor be made a ward of court; (ii) that he be examined by a further child psychiatrist; (iii) that he be removed from his present school to a long-term foster home; and (iv) that leave be given for proceedings to be commenced for his adoption. The local authority applied for the wardship proceedings to be terminated.

The President of the Family Division granted the local authority's application and terminated the wardship proceedings on the following grounds. Although the guardian ad litem had a statutory status in the juvenile court care proceedings as provided by s. 32B of the Children and Young Persons Act 1969 and r. 14A(1) of the Magistrates' Court (Children and Young Persons) Rules 1970 (now r. 16 of the Magistrates' Courts (Children and Young Persons) Rules 1988 (SI 1988 No 913)), she had no *locus standi* to initiate the wardship proceedings in the High Court. Where the minor was made a party to wardship proceedings in the High Court, it was for the High Court to appoint a guardian to represent the minor's interest, usually the Official Solicitor or a divorce court welfare officer. The President took the view that the wardship should be terminated since the issue of the originating summons was entirely misconceived, and that the statutory responsibility placed on the local authority must be allowed to continue without challenge. By his guardian ad litem the child appealed to the Court of Appeal.

Held – dismissing the appeal –

(1) Parliament had entrusted to the local authority certain statutory duties in the care and control of deprived children. The court should not exercise its inherent wardship jurisdiction so as to interfere with the local authority's day to day administration of those duties. The court could find no ground upon which to criticize the

President's judgment and took the view that as the local authority was properly exercising its statutory role over care and control of the child in the care proceedings which had yet to be heard, the guardian ad litem who had been appointed by the juvenile court to assist in the care proceedings was not entitled to challenge the statutory responsibility placed on the local authority. The wardship proceedings were not part of the equipment available to a guardian ad litem who wished in one way or another to influence either the management of the child or the determination of the issues arising before the juvenile court. Her function as provided by s. 32B of the Children and Young Persons Act 1969 and r. 14A(1) of the Magistrates' Courts (Children and Young Persons) Rules 1970 was confined to the proceedings before the juvenile court.

(2) Her status in the wardship jurisdiction was the same as any other interested person seeking the protection of the court exercising its inherent jurisdiction as *parens patriae*.

Quaere: Whether a welfare officer acting as guardian ad litem in care proceedings before the juvenile court could ever dissociate herself from those statutory duties and appear in a different capacity before the High Court (below p. 281).

FAMILY DIVISION
12 May 1988

Statutory provisions considered
Children and Young Persons Act 1969, s. 32B
Magistrates' Courts (Children and Young Persons) Rules 1970, r. 14A (now the Magistrates' Courts (Children and Young Persons) Rules 1988, r. 16 (SI 1988 No 913))

Case 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

Diane Barnett for the guardian ad litem;
Mhairi McNab for the local authority.

SIR STEPHEN BROWN P:
This application concerns a little boy called A, who is 10 years and 11 months old. The history of his young life has given rise to concern on the part of the Berkshire County Council ('the council'). He was placed on the 'at risk' register when he was nearly 3 years old, as a result of the treatment which he appeared to be receiving at home. Certain steps were taken with the agreement of his mother by the county council in order to help with his development. He went to certain schools, which I need not itemize, but eventually, on 20 November 1987, a place of safety order was sought by the county council following a report from the school which he was then attending of certain bruising which had been noticed after he had paid a weekend visit to his mother and her cohabitee.

The county council commenced care proceedings in the juvenile court on 27 November 1987, and an interim care order was made. This was subsequently followed by successive 28 day interim care orders under the 1969 Act.

The court, in the exercise of its powers under s. 32B of the 1969 Act, appointed a guardian ad litem for the purpose of representing the child in the care proceedings before the juvenile court. Miss Barnett, who appears today for the guardian, has drawn my attention to the relevant section of the 1969 Act and to the Magistrates' Courts (Children and Young Persons)

Rules 1970, and in particular to r. 14A which is headed 'Appointment and Duties of Guardian ad Litem'.

The court in due course fixed the full care hearing for 25 April 1988. In preparation for this hearing the local authority had obtained the report of a consultant psychiatrist in January 1988 and had also sent the minor to an assessment institution. It appears that the recommendation of the consultant psychiatrist whom they had consulted, and also the assessment institution, was in favour of sending him to a local boarding-school, subject to the overriding care of the local authority.

The guardian ad litem apparently disagreed with the proposal to send him to a boarding-school, and I am told that she requested an adjournment in order that she might seek a further psychiatric report. She had in mind a particular consultant who is well known. However, before the full care hearing – 3 days before it was due – she obtained legal aid and issued an originating summons in wardship. She did this on 22 April 1988. The minor appears as plaintiff by his guardian ad litem and the county council as defendants. The summons claims the following relief:

> 'That the above-named minor . . . be made a ward of court during his minority or until further order; secondly, the care and control of the said minor be committed to the defendant authority until further order; thirdly, that the said minor be examined by a child psychiatrist . . .; fourthly, that the said minor be removed from [the boarding-school], which he was attending, to a long-term foster home; and lastly, that leave be given for proceedings to be commenced for the adoption of the minor.'

The council has now taken out a summons asking this court to order that the wardship should be terminated.

The present position is this: care proceedings were initiated, perfectly properly, under their statutory powers by the county council; interim care orders were made and a full care hearing fixed. The guardian has, of course, a statutory status in the juvenile court proceedings; that is provided for by s. 32B of the 1969 Act. The duties are set out in r. 14A of the 1970 Rules. But she has no status in the High Court. What she has done is to obtain legal aid presumably in the name of the minor, and has made use of her position as his guardian in the juvenile court to issue the originating summons and to name herself as the guardian in the wardship proceedings.

However, the issue of her wardship proceedings in this situation conflicts head-on with the decision of the House of Lords in *A v Liverpool City Council* (1981) 2 FLR 222. In particular, it conflicts with the speech of Lord Roskill, in which he said:

> 'The undoubted wardship jurisdiction must not be exercised so as to interfere with the day-to-day administration by local authorities of the statutory control under the far-ranging code which entrusts the care and control of deprived children to local authorities.'

In this instance, I am quite satisfied that the local authority was, until the issue of the wardship summons, properly exercising its statutory role

which required that it should assume the care and control of children such as A, and that it has plainly been doing. The full care proceedings had not even commenced to be heard, let alone determined.

It has been argued on behalf of the guardian before me that, because she has a statutory duty under the 1969 Act in the juvenile court to represent the interests of the minor, it ought to be extended to enable her, if she thought it right in the interests of the child, to commence wardship proceedings in the High Court. Rule 14A(1) of the Magistrates' Courts (Children and Young Persons) Rules 1970 provides:

> 'In any proceedings to which an order under s. 32A(1) of the Act of 1969 relates, not being an order under section 32A(2), the court shall appoint a guardian ad litem of the relevant infant for the purposes of the proceedings if it appears to the court that it is in his interests to do so.'

'The proceedings' means the proceedings in the juvenile court, that is to say the 'care' proceedings. Neither the 1969 Act nor the rules provide any basis for the guardian to initiate wardship proceedings in the High Court.

Indeed, if the infant is made a party to wardship proceedings in the High Court, it is for the High Court to appoint a guardian. Normally, the High Court invites the Official Solicitor to undertake that duty, or, failing him, a member of the divorce court welfare department or sometimes, in exceptional cases, a near relative. I am quite satisfied that this guardian ad litem has no *locus standi* in the purported wardship proceedings before this court. I do not in any way question her good faith in believing that she ought to strive for further investigation of the minor's condition and needs, as she sets out in her affidavit. But that, in my view, must be done in the context of the care proceedings in the juvenile court. It must also be borne in mind that there is a right of appeal from the juvenile court to the Crown Court so far as the guardian is concerned.

I have no hesitation in saying that this wardship should be terminated. In my view, the issue of this originating summons was entirely misconceived. I am surprised that she was able to gain a legal aid certificate for this purpose, and I hope it will not be repeated in other situations of a similar character. It has in fact come to my notice that this course of action has been attempted in certain other instances. I believe it to be misconceived. In this case the full care hearing has not even commenced. The juvenile court would have the duty of investigating the position having regard to all the evidence placed before it. It might then have made a care order. What the guardian in this instance seems to be challenging is the statutory responsibility which is placed upon the local authority. It is in effect a challenge to the statutory framework. Of course I know that there have been criticisms of the effect of *A v Liverpool City Council*, but this is not even a case of the parents seeking an alternative jurisdiction. I am satisfied that these proceedings should not be permitted to continue in this form. It is a misuse of the wardship procedure.

I accordingly grant the application of the county council, and discharge the summons. The wardship is terminated.

Order accordingly.

COURT OF APPEAL
18 October 1988

Statutory provisions considered
Children and Young Persons Act 1969, s. 32B
Magistrates' Courts (Children and Young Persons) Rules 1970, r. 14A (now the Magistrates' Courts (Children and Young Persons) Rules 1988, r. 16 (SI 1988 No 913))

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
Re D (A Minor) (Wardship: Sterilization) [1976] Fam. 185; [1976] 2 WLR 279; [1976] 1 All ER 327
Re W (A Minor) (Care Proceedings: Wardship) sub nom. *W v Hertfordshire County Council* [1985] FLR 879; [1985] 2 All ER 301

Peter Coni QC and Gillian Brasse for the guardian ad litem;
Helen Grindrod QC and Mhairi McNab for the local authority.

PURCHAS LJ:
This is an appeal by a minor, A, who appeared and brought his wardship summons by Mrs H, who had been appointed his guardian ad litem in proceedings in the juvenile court under s. 32B of the Children and Young Persons Act 1969. The appeal is from an order of Sir Stephen Brown P made on 12 May 1988. The wardship proceedings had been originated by summons on 22 April 1988. A summons in those proceedings taken out by the Royal County of Berkshire (the council) sought an order to de-ward A and to dismiss the originating summons of 22 April 1988.

A is a young boy born on 13 June 1977. From an early age he had been on the 'at risk' register. He had been the subject of attention of the social services but it was not until 27 November 1987, following upon a place of safety order, the necessity for which was occasioned by physical damage A sustained at his home, that the proceedings with which this appeal is concerned were started. On 27 November the council started care proceedings under the 1969 Act.

In view of the way in which the appeal has been conducted it is not necessary to deal with anything other than the barest outline of the history.

At the time of sustaining the injury, A was at a residential school at which he attended for 5 days a week and from which he went home at the weekends. On 31 December 1987, his mother was convicted at the Crown Court of assault upon A. She was conditionally discharged for a period of 12 months.

On the council's first application to the juvenile court on 4 December 1987, Mrs H was appointed guardian ad litem and has since then been deeply concerned with A in the discharge of duties which are imposed upon her, particularly by r. 14A of the Magistrates' Courts (Children and Young Persons) Rules. In particular, r. 14A(6) provides that:

> 'the guardian ad litem appointed . . . with a view to safeguarding the interests of the relevant infant before the court shall –
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> (*a*) so far as it is reasonably practicable, investigate all circumstances

> relevant to the proceedings and for that purpose shall interview such persons, inspect such records and obtain such professional assistance as the guardian ad litem thinks appropriate'.

Mrs H obtained professional assistance in the form of solicitors and she wished to obtain further professional assistance, in circumstances to which I shall come in a moment, in the form of a psychiatric assessment and report from Dr D.

It is clear from the correspondence which she exhibited in her affidavit of 22 April 1988 that the council at one stage were giving an indication that they were not going to assist her in the obtaining of professional assistance which she thought was appropriate in order to report, as she should in due course, on the full hearing before the juvenile court.

It is common ground that A was a disturbed child and that his management and treatment called for careful consideration and execution. There were two schools of thought; one, originating from a unit that was run, as I understand it, by the council, for psychiatric assessment where the resident psychiatrist was preparing a report and did prepare a report. His view was that whilst contact should be maintained between A and his family, it was in A's best interest that he should go to a residential home where he would be resident full time, and from which he could go to his family on visits and so forth. Mrs H held very strong views to the contrary. Without describing in detail the particular family circumstances, she formed the view that not within his own family but within some other family unit it was essential that A should experience the warmth and unity of a family unit. It was not to her mind at that moment that there was a possibility of rehabilitation in A's own family. In saying that, I am not to be taken as criticizing in any way Mrs H's skilful and sincere work in this case. She is a lady with the highest qualifications. She has an Honours Degree in Sociology, a Post Graduate Diploma in Social Studies and had thereafter 15 years' experience as a social worker in local authorities and a wide experience in this specialist area. She was anxious to support her view with an independent professional view, which she rightly as it turned out thought would be available from another accepted expert in this field.

The date for the hearing of the care proceedings had been fixed for 25 April 1988. Earlier, as early as January, she had asked for more time to prepare her reports. She wanted copies of the reports that were to be prepared for the council and she was asking in the correspondence in April for an opportunity to have a further assessment. The solicitors wrote pointing out in these terms:

> 'Mrs H, the guardian, feels a care order is only appropriate if the local authority intend to place A with a family. She feels his problems stem from lack of parenting and thus it is most important that he be placed with a family who could supply the firm parenting and emotional support that he needs, or there is a great danger that he will end up institutionalized.'

The last sentence of the letter reads:

> 'We would wish to apply for an adjournment on 25 April to obtain our own assessment. Your comments would be appreciated.'

That received an answer of 14 April indicating that the council were not prepared to agree to an adjournment, and I quote from the letter:

> 'As you will be aware, the guardian's role is limited to the date of the hearing and I do not think that it is an appropriate usage of the court procedures to seek an adjournment to obtain an assessment as to whether the local authority's long-terms plans are correct or not.'

After that letter, however, and before 22 April we are told that there had been a telephone conversation between Mrs H and representatives of the council in which Mrs H was told that her application for an adjournment to obtain a report would not be opposed, but at the same time it was indicated that the council were not prepared to reconsider their long-term plans for A. It is not clear what the long-term plans were. We are told that access to the family was always in mind to whatever degree was appropriate. Certainly since the arrival of the report from Dr D there has been, we are told by Mrs Grindrod, counsel for the local authority, not insubstantial staying access to the family and a holiday with a member of the family. The issue therefore was as short as this: whether the emphasis should be, as Mrs H would have it and to which she was to a substantial degree we are told confirmed subsequently by the report from Dr D, with the home in the family immediately, or whether it should be at the residential school with increasing access taking place as matters progressed.

Of course, as Mr Coni, counsel for the guardian, has pointed out, the management of the degree of access once the care order is made passes from the juvenile court, subject only to a return to challenge the care order itself made by an appropriate person such as a parent. The management on a day to day basis will remain with the council.

With a perfectly genuine motive, Mrs H thinking that the only way to secure what she was convinced was the proper course, namely a care order to the council but supervised by a court indicating where A should live, took the only step which she saw would achieve this and issued the summons in wardship in the name of A as I have already described. The President on the application to de-ward did that and dismissed the originating summons. It is now said by Mr Coni in support of this appeal that parts of the judgment should be challenged. Mr Coni has properly accepted, however, that looking at the future from a pragmatic point of view the reality is that the High Court, or any other court, would not now disturb the position which has been achieved, namely that A should stay at the school where he has been enjoying access to his family.

The recommendation of Dr D was that A should be removed, not to his own family, but to a long-term foster home and then adopted. But that is not the course which appears to have been taken by the council. For my part, if I may be permitted the comment, if they succeed in their efforts to foster and increase contact with the parents, so building a bridge to enable A to return, then that can only be applauded. The attack has been, however, that the President was not entitled to say that the application, the originating summons in wardship, was misconceived. Mr Coni, and others we are told, are anxious that what fell from the President should be taken to mean that in no case could a guardian ad litem resort to wardship proceedings in respect of a child for whom he or she was responsible.

Before returning to that wider issue, however, I think I should look at the facts of this case. At the time when the matter was before the President it was quite clear, as he said in his judgment, that the statutory care procedure placed by Parliament in the hands of the council was in train, and that before there was reason to do so the originating summons was designed to achieve control by the court of the day to day discharge of their duties by the council within the statutory framework. That, in my judgment, was the plainest transgression of the rules established now in the well-known case of *A v Liverpool City Council* (1981) 2 FLR 222 and was doomed to failure. So whatever else may or may not have happened, or might or might not have happened, the President was absolutely justified in the view that he took that there should be an end to the wardship proceedings in view of the existing care proceedings under the 1969 Act. I need only cite a very short passage from the judgment and I read from p. 275 ante:

> 'The present position is this: care proceedings were initiated, perfectly properly, under their statutory powers by the council; interim care orders were made and a full care hearing fixed. The guardian has, of course, a statutory status in the juvenile court proceedings. That is provided for by s. 32B of the 1969 Act. The duties are set out in r. 14A of the Rules. But she has no status in the High Court. What she has done is to obtain legal aid presumably in the name of the minor, and has made use of her position as his guardian in the juvenile court to issue the originating summons and to name herself as the guardian in the wardship proceedings.
> However, the issue of the wardship proceedings in this situation conflicts head-on with the decision of the House of Lords in *A v Liverpool City Council* (1981) 2 FLR 222. In particular it conflicts with the speech of Lord Roskill, in which he said:
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> > "The undoubted wardship jurisdiction must not be exercised so as to interfere with the day-to-day administration by local authorities of the statutory control under the far-ranging statutory code which entrusts the care and control of deprived children to local authorities."
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> In this instance, I am quite satisfied that the local authority was, until the issue of the wardship summons, properly exercising its statutory role which required that it should assume the care and control of children such as A, and that it has plainly been doing. The full care proceedings had not even commenced to be heard, let alone determined.'

In my judgment, there is nothing that can be said to criticize that passage from this judgment which was the *ratio decidendi* of the judgment. It is the position, moreover, that the application in wardship was made at a time when the court, namely the juvenile court, to which care orders, or their existence or otherwise, are to be referred, had not yet considered the matter fully. Moreover, it is to be remembered that Mrs H had been appointed by that court in order to assist that court in the proceedings before that court. In that context, everything that fell from the President must be correct. Our attention has, however, been drawn to one comment at the end of the judgment which, taken out of context, might have

indicated a position beyond that which I believe to be the views of the President and the effect of his judgment, and this is to be found at p. 276:

> 'Of course I know that there have been criticisms of the effect of *A v Liverpool City Council*, but this is not even a case of the parents seeking an alternative jurisdiction. I am satisfied that these proceedings should not be permitted to continue in this form. It is a misuse of the wardship procedure.'

If it were to be thought that merely because Mrs H had at one stage been appointed as a guardian ad litem, her status in the wardship jurisdiction was thereby diminished below that of any other interested person seeking the protection of the court exercising its inherent jurisdiction as *parens patriae*, then I do not believe that that is what the President meant. The case whether or not someone in the position of Mrs H can properly call upon the exercise of that inherent jurisdiction, quite apart from the occurrence of the care proceedings, is a matter which I have not considered, nor has it been properly argued. I find it extremely difficult to envisage the hypothetical case where a welfare officer acting as a guardian ad litem could ever, as it were, dissociate herself from her duties in relation to the proceedings before the juvenile court and come in a different capacity before the High Court, and until that occasion arises I prefer not to express any comment upon it. What is clear, in my judgment, is that wardship proceedings are not part of the equipment available to a guardian ad litem who wishes in one way or another to influence either the management of the child of whom he or she is the guardian in relation to the proceedings, or the determination in accordance with their statutory duty of the issues arising before the juvenile court by that court. Her function as described in r. 14A of the Rules is quite clear and is to be confined to the proceedings before the juvenile court.

Having said that, I can find no ground upon which this appeal can be sustained, and I would dismiss this appeal.

SIR GERVASE SHELDON:

I agree and for the reasons given by my Lord. However, because of Mr Coni's anxiety on behalf of his client as to some observations made by the President, I would add these words of my own.

Speaking for myself, I have always believed the law to be that anyone who has a genuine interest in the welfare of a child is entitled to institute wardship proceedings by the issue of an appropriate originating summons – subject, of course, to a liability in costs if the application is refused. Such a person in a case of *Re D (A Minor) (Wardship: Sterilization)* [1976] Fam. 185 was held to include an educational psychologist at the school attended by the ward. Nor do I see any reason why that person should not also include someone who has become involved and acquainted with the case and its details by having acted as guardian ad litem in juvenile court proceedings. In such an event, however, he or she would do so, in my view, as a private individual and not in any other capacity: he or she could not properly be described in the wardship proceedings as guardian ad litem unless and until appointed as such by the court in those proceedings. As I read it, moreover, that was the essence of the passage in the judgment of

the President to which my Lord referred – in effect pointing out that although this guardian has a statutory status in the juvenile court proceedings, she has no such status in the High Court, and that her misconception was so to describe herself in the heading of the originating summons or in thinking that her earlier status gave her some advantage over other applicants.

I also agree with my Lord that such an applicant is in no worse position, by virtue of her having been a guardian in the juvenile court proceedings, than any other interested individual who wishes to institute wardship proceedings: on the other hand, in my view, as a matter of law, she is in no better position because of her earlier status as guardian.

The gist of this case is that the plaintiff, as she said in her affidavit, does not support the proposals of the local authority for the care of the child if a care order were to be made in their favour. Her affidavit goes on to say:

> 'The justices in care proceedings do not have the power to attach conditions to a care order or to make directions as to how the local authority should discharge its responsibility regarding a child in its care. I consider therefore that to safeguard and promote the interests of the . . . minor, the question of what should happen to him once a care order is made should be decided upon by the High Court in wardship proceedings.'

That is an understandable view but in my opinion it is directly contrary to the principles established by the cases of *A v Liverpool City Council* (above) and *Re W (A Minor) (Care Proceedings: Wardship) sub nom. W v Hertfordshire County Council* [1985] FLR 879. It is a clear attempt to persuade the court to exercise its wardship jurisdiction so as to interfere with the day to day administration by the local authority of the statutory duties which are entrusted to it by Parliament.

In those circumstances, I agree that this appeal should be dismissed.

Appeal dismissed. No order for costs. Legal aid taxation in respect of the appellant's costs.

Solicitors: *Griffiths & Co.*, Reading, for the guardian;
D.C.H. Williams, Reading, for the local authority.

V.H.