RE W (DISCHARGE OF PARTY TO PROCEEDINGS)

Family Division

Hogg J

24 April 1996

Care – Care proceedings – Application by mother to discharge care orders in respect of her two children – Interlocutory application by mother for father to cease to be a party to proceedings – Father having no parental responsibility – Father in prison serving a minimum sentence of 18 years for the murder of his stepdaughter – Father a party to proceedings pursuant to Family Proceedings Rules 1991, r 4.7 – Whether court having jurisdiction to discharge him as a party against his wishes – Whether court having discretion to discharge him – Circumstances in which discretion should be exercised

The applicant was the mother of two children who were born in 1990 and 1992. The respondent was the natural father of these two boys. There had been a half-sister who was born in 1989, the respondent being her stepfather. On 8 October 1991 this child was found dead in her bedroom having been grossly sexually abused. The stepfather was in due course charged with, and convicted of, her murder and sentenced to life imprisonment with a recommendation that he serve a minimum of 18 years. Care orders were made in respect of the two boys and they went to live in a residential unit with their mother for a period of time before being rehabilitated into the community. The father had not seen the elder boy since going into custody and had never seen the younger boy as he was born after the father's imprisonment. The father had no parental responsibility with regard to either child; the application made by him in the care proceedings was adjourned sine die. He had had nothing to do with the mother and the two children since being taken into custody in October 1991 and it was unlikely that he would make any contribution to their lives in the future. In 1996 the mother made an application to discharge the care orders. She wished to prevent the father from being involved and therefore made an interlocutory application for an order that he cease to be a party to the proceedings.

Held – allowing the application –

(1) In this application, the welfare of the children was important, but it was not the paramount consideration.

Re X (Care: Notice of Proceedings) followed.

(2) The father had no constructive role to play in the proceedings. The guardian ad litem would state his views. The case was a very extreme one, and in view of that and what had occurred in the past and weighing up the rights of the natural father with the welfare of the child and the impact that further distress would have had on the mother, the balance clearly indicated that the father should not be a party to the proceedings. The court had a discretionary power to discharge a party and in this extreme case it was right that he should be so discharged.

Statutory provisions considered

Family Proceedings Rules 1991 (SI 1991/1247), r 4.7(2), (3)(b) and (5)

Case referred to in judgment

X (Care: Notice of Proceedings), Re [1996] 1 FLR 186, FD

Cases cited but not referred to in judgment
F (Contact: Restraint Order), Re [1995] 1 FLR 956, CA
G and M (Child Orders: Restricting Applications), Re [1995] 2 FLR 416, FD
M (Care: Contact: Grandmother's Application for Leave), Re [1995] 2 FLR 86, CA
T (A Minor) (Parental Responsibility: Contact), Re [1993] 2 FLR 450, CA
Y (Child Orders: Restricting Applications), Re [1994] 2 FLR 699, FD

Deborah Archer for the mother
Mhairi McNab for the father
Jane De Zonie for the local authority
Vera Mayer for the guardian ad litem

HOGG J:
This is an application brought by the mother of two boys, J, who was born on 17 June 1990, and T, who was born on 6 April 1992, in relation to the father of those two children continuing as a party in these proceedings. She is seeking the discharge of the care orders which were made in respect of the children; in respect of J on 24 February 1992, in respect of T on 30 November 1992.

She brings this interlocutory application to discharge the father from those proceedings on the basis that he has no constructive role to play in the proceedings for discharging the care order, and that it would be to the detriment of the mother and the two boys if the father were in fact to continue as a party.

The history of this event is a very sad and chastening one. The mother had a little girl, V, who was born on 18 May 1989. The father of the two boys was not the father of V. The mother and the father of the two boys, whom I will call the father, met and formed a relationship, as a result of which J and T were born. On 8 October 1991 V was killed. The father at that stage was living with the mother in the flat with V and with J. On 9 October 1991 he and the mother were arrested, and in September 1992 there was a trial. The mother stood charged with neglect of V. She was acquitted by the jury. The father stood charged with a number of offences: murder of V and various sexual offences relating to V. At this trial he was convicted by the jury and sentenced to life imprisonment, the trial judge recommending that he should serve a minimum sentence of 18 years. There is some suggestion that an appeal is pending in respect of that conviction and sentence. Counsel before me can offer little assistance as she and her instructing solicitors are not fully appraised of the situation. It does seem to me a trifle odd that an appeal launched in 1992 has not been heard by today's date, now April 1996.

The father was remanded in custody on 9 October 1991, he has been in custody ever since. He has never seen his son T; he has not seen J since immediately before the death of V, and he has had very little information of the mother since September 1992 when they both stood trial.

After the death of V the local authority was deeply concerned as to the well-being of J. The mother was then pregnant with T, and the local authority instituted care proceedings. The mother and the children were sent to a mother and baby unit. They emerged from those assessments into the community in February 1994 and she is now seeking the discharge of the care orders in respect of both boys. The mother was deeply distressed by what had occurred to V and the consequential events in her life of being charged, standing trial and the care proceedings. She suffered from a severe illness, post-traumatic distress. I have read psychiatric reports about her,

those made in 1992 and more recent ones from Professor Youell. She is clearly a vulnerable person who has had a very difficult last few years. She has emerged from the acute state that she was in, she is able to look after her children, albeit she does not always want the support of the care order, and there are favourable reports concerning her care of the two children. However, she is vulnerable, and with that vulnerability one has to be aware that any undue stress and pressure could create difficulties for her which would impact upon her ability to care for the children. It has been argued that this application comes within s 1(1) of the Children Act and that the paramount consideration before me would be the welfare of the children. That has been argued against, and a case *Re X (Care: Notice of Proceedings)* [1996] 1 FLR 186 has been brought to my attention, where Stuart-White J dealt with the question of whether a father should be served with notice of proceedings. He took the view that in that case, although the welfare of the child concerned was an important consideration, it was not the paramount consideration, and I am also of that view. So the welfare of these two children, while important, is not the paramount consideration.

The situation is that in 1992 the father was joined as a party to both sets of care proceedings. He played little or no part in those proceedings. There is a statement made by him in November 1992 which appears to have been filed in the proceedings relating to T. In that statement he made it clear that he was not going to attend the hearing and that seems to have been the case, although he was represented before the court. The hearings culminated in consent orders – one assumes, because the father was not present, that it was consent of the parties present in court. The words 'The court orders by consent . . .' appear in the order made on 30 November 1992.

As a result of being a party to the earlier proceedings, under r 4.7 of the Family Proceedings Rules the father automatically becomes a party to the mother's application today to discharge the order, and one finds that at r 4.7(1) and at Appendix 3. It is conceded by all parties that I do have jurisdiction to discharge the father from being a party to these proceedings. I have been referred to r 4.7(2), (3)(b) and (5). I am satisfied I do have this jurisdiction. I have been informed by counsel that there is no reported case on this particular point. It is right that all counsel have accepted that I have a discretion in this particular matter, and the counsel for the father in particular has urged that I should not exercise the discretion against him. It is argued that to do so would be premature, that he has a natural right to have information as to the well-being of his children and has a right to express his views to this court with regard to the mother's application. Against that the mother makes her application, the local authority supports it, as does the guardian.

It is a very serious matter to prevent a natural parent from being a party to care proceedings or proceedings relating to a care order. If I were to exercise my discretion against the father I should not do it lightly, but I should do it only having regard to all the circumstances of the case and regarding it as reasonable and proper, bearing in mind that it is an extreme thing to do.

It is accepted by all that this is a very serious case. From the mother's point of view she has suffered dreadfully. From the boys' point of view they have suffered dreadfully because they have lost their father, but by actions of his own, and because of their mother's ill health.

The father's own position is that he is not making an application to the

court. He has no current information to give to the court in that he has not seen J since October 1991 and has never seen T. He has not seen the boys with their mother and he has had no contact with the mother since September 1992 when they stood trial. His information would be stale information and stale evidence. The mother, as I have indicated, has suffered an extreme reaction to the events of October 1991. She has moved forward and made good progress. The children have suffered as a result of the events of October 1991; I have read a little about how J himself has suffered and some of the difficulties that there have been with regard to him. The father may have views, but they are based on old information. The guardian's counsel indicated to me that the guardian in any event, whether or not I discharged the father, would go to discuss the application the mother is making with the father, and thus in any event the father would have an opportunity to air his views which would be passed on to the court through the guardian's report.

I have to consider whether it would be reasonable, weighing up the rights that the father believes he has as a natural father to express his views and to be present and to know what is happening with regard to the welfare of the children, and for that in itself one has to look at the mother and the impact any further distress might have on her parenting abilities and how she would feel about the father knowing some of her intimate secrets, how she has done in the last 4 or 5 years and what has happened in her life. Above all, it would be difficult to keep away from the father, if he were a party, any information as to the whereabouts of the family. Of course, reports and documents can be 'tippexed' and altered in certain ways so that direct information can be excluded, but if he were present in court he would hear things, things that could lead him to discover the whereabouts of his children if he so wished. Has he a constructive role to play? He is not making an application, he can only give stale and old information. He through the guardian can express his views as to what should happen with regard to the mother's application.

I have come to the conclusion that in the circumstances of this very extreme case and what has happened in the past, the balance clearly indicates that he should not be a party, for the reasons I have already outlined. I have come to this view having borne very much in mind that he is the natural father and that in less extreme cases a father would normally be a party. But in this particular case I exercise my discretion against that of the father. I therefore discharge him as a party and I think, Miss McNab, I therefore can release you from further part in this case.

Order that the father do cease to be party to the proceedings.

Solicitors: The names of instructing solicitors are omitted in the interest of preserving anonymity.

LESLEY-ANNE CULL
Barrister