RE C (CARE: CONSULTATION WITH PARENTS NOT IN CHILD'S BEST INTERESTS) [2005] EWHC 3390 (Fam)

Family Division

Coleridge J

20 December 2005

Care proceedings – Local authority – Duty to inform and consult parent – Application

The father had raped and indecently assaulted the child, now nearly 13 years old, and was currently serving 11 years' imprisonment for these offences. The child, who was the subject of a interim care order, did not wish the father to be informed or consulted at all in relation to her future, and successfully applied for a discharge of his parental responsibility. However, the local authority was obliged to consult and inform parents about their plans for a child in care even after parental responsibility had been discharged. The child was currently with an excellent foster mother and was progressing well; she had leave to remain in the jurisdiction for a further 3 years and the care order was to be made final once an acceptable care plan was in place. The mother lived in Jamaica and had not seen the child for 3 years, having been unable to obtain a visa; there was no real prospect of the child returning to Jamaica, not least because of security issues concerning the father's family, who also lived in Jamaica. The local authority, the guardian and the mother invited the court to dismiss the father as a party to proceedings and to make declarations absolving the authority from its duty to inform or consult the father in relation to the child. The father wished to remain a party to the proceedings, to be kept informed of the child's development and to hold the local authority to account in relation to its future conduct of the case. He argued that he had never abused his position in the proceedings and had not contacted the child or misused information in any way; he was prepared to consent to any reasonable undertaking which preserved his status within the proceedings. The child had consistently and emphatically expressed her wish that the father not play any part in her life or in the proceedings.

Held – dismissing the father from further part in the proceedings; granting leave to make the application for, and granting a declaration that the local authority was absolved from any obligation to consult the father; also making directions –

(1) Leave was required for an application for a declaration, and the court could only give such leave if satisfied that there was reasonable cause to believe that the child might suffer significant harm if the application did not proceed (see para [18]).

(2) As set out in *Re P (Children Act 1989, ss 22 and 26: Local Authority Compliance)*, the court had the power to grant a declaration designed to protect the local authority from a s 84 of the Children Act 1989 order declaring that the authority was in default of its statutory obligations under ss 22 and 26 of that Act (see paras [19]–[23]).

(3) The application was to be decided primarily on the basis of the child's best interests; only a very exceptional case would attract the kind of relief sought, as a parent was normally entitled to be fully involved in the decision-making process relating to his or her child, or at least informed about it. Insofar as the father's human rights were engaged, by the same token the child's human rights were engaged. The considerations governing the dismissal of the father from further involvement in the proceedings, and those governing the declarations were the same: it would be impractical for the father to remain a party if he were not going to be given any information (see paras [30]–[32]).

(4) In this situation the child's rights overwhelmed all others. Her decisions and views were entirely understandable and rational and objectively sensible, and should be accorded similar respect to those of an adult. She had a mother and a guardian who were able to protect her interests and had been doing so (see para [33]).

(5) The local authority was not making any very significant decision about the child, such as adoption or a move abroad, but was merely working out the details of the child's care (see para [34]).

(6) The father had forfeited consideration of his rights in relation to making decisions about the child's future. He could not usefully participate in discussions about what was in the child's best interests given his previous disregard for those interests and in circumstances in which the child desperately wanted him not to be involved. He should merely be provided with limited information on an annual basis, setting out the child's general well-being and progress. Otherwise he should be given information only if there was a life-threatening medical emergency or an intention by the local authority to alter significantly the care plan, for example by seeking adoption (see paras [35], [36]).

Per curiam: the immigration authorities were urged to allow the mother to visit the UK for the 7-day visit planned, which was being paid for by the local authority (see para [42]).

Statutory provisions considered

Children Act 1989, ss 1, 22, 26, 84

European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, Art 6

Cases referred to in judgment

H, Re; Re G (Adoption: Consultation of Unmarried Fathers) [2001] 1 FLR 646, FD

P (Children act 1989, ss 22 and 26: Local Authority Compliance), Re [2000] 2 FLR 910, FD

Z Local Authority v G (unreported) 30 November 2000, FD

Alistair Perkins for the local authority
Samantha Whittam for the mother
Neelim Sultan for the father
Simon Green for the guardian ad litem

COLERIDGE J:

[1] This is an unusual application. It relates to S who will be 13 in 3 weeks' time.

[2] On 25 April 2005 I made an interim care order following a contested hearing, which lasted 3 days. The only reason the care order was expressed to be interim was that I was unsatisfied, at that juncture, that the care plan upon which the local authority advanced their case was sufficiently settled and choate to justify the making of a final order. There was no dispute as between the guardian and the local authority, or, indeed, between any of the parties, but that the child, S, should remain in the care regime. There was a dispute, and there remains a dispute, as to the details of the care plan.

[3] Today is therefore the resumed hearing as a result of that order being an interim one. It is right to say that even now, this many months on since the last hearing, I am not being pressed either by the local authority or the guardian to make a final care order because matters are still not properly finalised. It is worrying that that is so. I have read the reports, and it is plain that matters have not been advanced with proper efficiency and urgency.

The situation on the ground is, as I say, that S remains in care under the interim care orders which have been granted from time to time since April 2005.

[4] However, at the hearing in April, I was being pressed by both the local authority and the guardian in relation to other matters. In particular, I was invited then and there to discharge the father's parental responsibility order, and I was also invited, then, to make declarations and orders to exclude the father from further involvement in the case, and in S's life. I dealt with the application to discharge the father's parental responsibility on that occasion, and that order was made.

[5] I adjourned consideration of the other matters until the final hearing. The paragraph which covers that is para 1 of the subsidiary order of 25 April.

[6] Today I am being pressed yet again by the local authority and the guardian to deal with those matters, even though the final order is not being sought today. The local authority and the guardian, and the mother, invite the court now to dismiss the father from being a party to these proceedings any longer, and to make declarations allowing the local authority not to have to inform or consult the father any further in relation either to these proceedings, or, indeed, anything to do with the future arrangements of S. As I say, those applications are advanced principally by the local authority and the guardian, but supported in full by the mother.

[7] The father opposes the applications. I will deal with his objections in detail below, but in essence he says that he is prepared to give undertakings which would provide comfort to the child (that he would not seek to contact her or involve himself in her life) but he wishes to remain a party to the proceedings, and to be kept informed of her development.

[8] There was a preliminary debate yesterday as to at what stage in this hearing I should deal with this application. I decided – for reasons which I gave at the time – that I would deal with this part of the local authority's applications first, and then, if I granted them, go on to consider what further steps are needed or orders made to ensure that this matter proceeds as soon as possible to a final order.

[9] So far as the background to this matter is concerned, I have already given judgment on 25 April 2005 relating to the circumstances leading to the orders which I then made. I do not propose to repeat it, or provide any detail in relation to the background. In addition to that judgment there is also a very lengthy chronology prepared by Mr Perkins, on behalf of the local authority, which he has kept updated, and which is available to me and to the parties, and there is no contest about the chronology. It is upon the basis of that chronology that these applications proceed.

[10] It is only necessary to say, by way of reminding myself and the court of the essential facts that these care proceedings were instituted as a result of disclosures made by S that she had been raped by her father and indecently assaulted over the course of about 6 months from the end of 2003 to May 2004. As a result of those disclosures the father was eventually tried at the Old Bailey and convicted of counts of rape, attempted rape and indecent assault. Arising out of those convictions, he is now serving a sentence of imprisonment of some 11 years. On the usual principles, therefore, he would not expect to be released in under about one half of that term, but I have not been given any precise information as to what his release date is, or what the

circumstances under which he would seek parole are, or anything of that kind. However, it is right to observe that he is unlikely to be free, within the community, for a number of years. He has appealed against the convictions, thus far without success.

[12] Following upon the hearing on 25 April 2005 these further hearings were timetabled to ensure that a final hearing took place. The following events and matters have occurred since the last hearing. First, and as I say, regrettably, not as much progress has been made, in relation to the need to make final plans for this child, as the court would have hoped. But, the fact is that S has remained with her excellent foster mother since that time, and although there have been concerns from time to time that she is not as settled there as she might be, the reality is that she has remained there more or less throughout with the exception of one period of respite, I think, in the intervening period. S is said, therefore, to be settled where she is. And she is doing extremely well at school. She has many friends, and is popular. So, in most respects, she is not suffering in any way.

[13] The second matter which has occurred is that her immigration status has now been secured. She has, as a result of proceedings through the immigration tribunals, obtained leave to remain here for a further 3-year period, and I am informed that she is now actively pursuing the possibility of obtaining citizenship in this country. Whether that is possible before she is 18, I am not sure. But, that plainly indicates her wish to remain settled in this country. Certainly her mother and the local authority, and the guardian see no way forward at this stage other than that she would remain in this country.

[14] The third matter, that has not changed since the last hearing, is that she has remained completely consistent about her desire to ensure that her father no longer plays any part in her life, or in these proceedings. It would seem to me that those pleas have become more voluble as time has gone on. I am informed by the guardian that she finds it quite inexplicable that given what she says her father did to her, he should be participating in her life in any respect at all. She does not want him knowing about her at all. The reference in the first guardian's report is to be found at para 1.22(8) where it is reported by the guardian, that at the child review on 9 March 2005:

> 'S clearly stated that she does not want to have any form of contact with her father; nor does she want him to be consulted about major decisions, or be given information about her progress.'

That has remained her consistent wish, expressed both to the guardian and to social workers, and as recently as 15 December 2005 (in other words, only a very few days ago) the matter was raised again by the guardian with her, and the result is recorded at para 18 of the latest report from the guardian where I read:

> 'With regard to the position of her father being consulted and given information about her in accordance with the local authority obligations, I have raised this with S again. She remains of the view that she does not want him to be given this information.'

So, that has remained consistent throughout.

[15] So, the first question I need to ask is whether the court has the necessary powers, and, if so, whether it is appropriate in this case to exercise them, in the end, primarily to fulfil the child's wishes.

[16] The first application seeks an order that the father should now be dismissed from being a party to these proceedings. The second limb of the application is for declarations, in the following terms:

> 'Upon it being declared and affirmed that:
>
> (1) S's welfare necessitates that the London Borough is absolved from any and all obligation to consult, refer to, and/or inform her father, in relation to any aspect of her progress, development and/or well-being whilst she is under their care;
> (2) Further or in the alternative, the declaration set out in (1) above
>
> shall absolve the London Borough of all obligations to comply with any of the duties imposed on them by, or under, the Children Act 1989 in relation to any obligation to consult, refer to, and/or inform the father. The court being satisfied that in the exceptional circumstances of this case, such failure would amount to a reasonable excuse pursuant to Section 84 of the Children Act 1989.'

[17] So far as the first application is concerned, by which the local authority seek the father's dismissal, there is no procedural complication or difficulty about that. Plainly, the court has power, under the rules, to join or remove any body in any proceedings so that the right people are before the court and can be heard. That is unquestionably right. There is no doubt that the court always has power to manage the proceedings before it and decide who are the appropriate parties to any particular dispute.

[18] The application in relation to the provision of information is somewhat more complicated and there is little guidance in the authorities about it. In the first place, since it is an application for a declaration and, accordingly, an application pursuant to the inherent jurisdiction of the court, before I can make the order or hear the application I have to give leave for the application to go ahead. I can only give that leave if I am satisfied that there is reasonable cause to believe that the child might suffer significant harm if the application does not proceed.

[19] In one decided case in particular, to which much reference has been made in relation to this matter, Charles J indicated that in similar circumstances, the court could grant a declaration to protect a local authority from criticism if it did not comply with ss 22 and 26 of the Children Act 1989. The case to which I refer is *Re P (Children Act 1989, ss 22 and 26: Local Authority Compliance)* [2000] 2 FLR 910. That was a case with some similarity to the present one. Helpfully, the judge set out in that judgment at 917–918 the relevant sections, which are s 22 and 26, and the enforcement section (if I can call it that) at s 84. Section 22 of the Children Act 1989 provides:

> 'It shall be the duty of a local authority looking after any child … (4) before making any decision with respect to a child whom they are looking after or proposing to look after, the local authority shall, so far as reasonably practicable, ascertain the wishes and feelings of (a) the child and (b) his parents regarding the matter to be decided.'

I paraphrase subs (4), but those are the relevant parts. Accordingly, therefore, there is a statutory duty upon the local authority to ascertain the wishes and feelings of the father regarding any matter to be decided about the child.

[20] In s 26, following similar principles, the regulations relating to Looked After Care Reviews (LAC reviews, as they are sometimes referred to) are set out. By subs (d) of the regulations the Secretary of State is required to make regulations to ensure that children's positions in local authority care regularly reviewed, require, by subs (d):

> 'The authority, before conducting any review, to seek the views of (1) the child and (2) his parents.'

In other words, very similar obligations are placed upon the local authority to consult with, and seek the views of, a parent. It follows obviously, therefore, that they would need to keep him fully informed – otherwise his views would be of no value.

[21] By s 84 of the Children Act 1989:

> 'If the Secretary of State is satisfied that any local authority has failed without reasonable excuse to comply with any of the duties imposed on them by, or under, [the Children Act 1989] he may make an order declaring that authority to be in default with respect to that duty.'

That is what I have described as the enforcement section. Subparagraphs (2), (3) and (4) set out the consequent provisions if such a failure by the local authority is established.

[22] It is pursuant to those three sections that the local authority seek these declarations. In the course of the judgment by Charles J, at the end he helpfully summarises the effect of his survey of the law. He says this at 923:

> 'In my judgment the result of the above is that (a) as I have said, the provisions of the sections and regulations with which I am concerned are not mandatory in the sense that are directory, and therefore the consequence of any non-compliance with them would be that such a non-compliance should be treated as an irregularity.'

He poses the suggestion at 925 of his judgment that one possibility, as he put it, was that:

> '… the local authority could seek declaratory guidance from the court. My preliminary view as to that is that it is a course that would be open to the local authority, and if it did make such an application issues of public and private law would be dealt with by this court on that application.'

[23] So in the end I agree with the judge that the court does have necessary power to grant the declaration which the local authority seek in these particular circumstances. The question is: should it do so?

[24] The arguments by the local authority, guardian and mother are quite simple. They say that the child's very strongly expressed views, which have remained consistent throughout, should govern the decision; this case should not proceed along the usual lines (which, of course, would involve the full process being engaged by the father). They say on the child's behalf that it is really part of the healing process and that she is entitled to be given the best possible chance of success and that her father should be removed psychologically from her life.

[25] I have a report from a very distinguished child psychologist, Dr Trowell, dealing with this child's present psychological condition. The upshot of that is that she is undoubtedly doing remarkably well, and that she has been remarkably resilient, given the traumas to which she has been subjected. But Dr Trowell does highlight concerns – in particular, concerns that this child is burying the trauma and is not confronting the difficulties that she needs to confront. She is very concerned that this child should be settled soon, and given the appropriate kind of support to enable her to move on.

[26] The gravamen of the local authority and guardian's case is that this is S's view; she is an intelligent, articulate 13-year old now (very nearly), and those views should carry the day, and she should be allowed to express those views in a way which is determinative.

[27] The father's response is that he has never abused his position since the hearings took place. He has not attempted to contact the child, directly or indirectly, and he does not intend to do so. He does not intend to use information he has given in any wrongful way; nor has he done so; nor has it been suggested that he has done so. It is pointed out that he is, in any event, currently in prison, and therefore his ability to make mischief is that much more limited. He wants, he says, to be able, as he puts it, to hold the local authority to account, particularly given their less than entirely efficient conduct so far of the proceedings and the steps necessary to bring these matters to a conclusion. He says he has already provided some assistance to the local authority, particularly in relation to immigration matters. So, what it comes to is that S's wishes should not be regarded as overwhelming.

[28] As a belt and braces approach, I am informed that he would be prepared to give undertakings not to contact the child; not to misuse information; and not to encourage others to contact her or her extended family. Indeed, says Miss Sultan, who appears for him again (as she did in April 2005), he would really consent to any reasonable undertaking which preserved his status within the proceedings.

[29] On his behalf, Miss Sultan has referred me to a number of cases. They are adoption cases. They make, if I may say so, the self-evident point that in relation to very significant decisions affecting a child's life it is potentially a breach of the parents' rights under Art 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 for him or her not to be fully engaged in the proceedings, or, at the very least, consulted and informed about them. There can be no doubt about that. But, it is also apparent from one particular case, which Miss Sultan helpfully and rightly referred me to, which is reported shortly as *Re H & Re G (Adoption:*

Consultation of Unmarried Fathers) [2001] 1 FLR 646 (but whose longer title is *IR and JR v RK and H and a Local Authority*) and a second case, heard at the same time, *Z Local Authority v G* (unreported) 30 November 2000, that these rights are not without exception. In *Re H & Re G*, Dame Elizabeth Butler-Sloss P sets out what she describes as 'countervailing factors' which might, for instance, as she puts it, lead to a situation where a relative, a father, a mother was not informed of proceedings. She says this, at para [48]:

> 'Amongst countervailing factors might be, for instance, rape or other serious domestic violence that places the mother at serious physical risk. There may well be other situations in which a father should not be informed of the proceedings, and my examples are, of course, not exhaustive … In the case of the husband's father, there are no factors relating to him to inhibit the giving of notice of these proceedings.'

So, it is, as always in these cases, a question of the particular facts of the particular case.

[30] The conclusions that I have come to are really these: the considerations which govern the dismissal of this father from further involvement in the proceedings, and the granting of the declarations seem to me to be the same. Indeed, there is little point in him remaining a party if he is not going to be given any information; indeed, it would be impractical for him to remain a party if he was not going to be given information.

[31] The second pivotal point, of course, is that this application is decided, first and foremost, on the basis of s 1 of the Children Act 1989 – that is to say, what is in S's best interests. Of course, hers are not the only interests, but they are the ones which are of paramount concern to the court.

[32] The third factor, self-evidently, is that it is a very exceptional case only which would attract this kind of relief. Self-evidently – and it hardly needs the human rights legislation to remind one – a parent is entitled to be fully involved, normally, in the decision-making process relating to his, or her, child, and if not to be involved, then at least informed about it. However, insofar as that engages the father's rights to family life, then by the same token it engages S's right to privacy and a family life.

[33] In my judgment, in this situation, her rights come very much further up the queue than the father's. I have to balance the rights as between the two of them. I am afraid to say that S's must overwhelm all others. It seems to me that if S was an adult now, who had been subjected to the behaviour which led to this father's imprisonment, and that as an adult she was to say, in circumstances where she needed, for instance, treatment that she did not want the perpetrator of those actions to be consulted, even if it *was* a parent, no one, for one moment, would suggest that such a person should be consulted. It so happens that this individual is not an adult, but should different considerations apply to this child when I am told she is intelligent and articulate; when her decisions and views seem to me to be entirely understandable and rational and objectively sensible? Thirdly, she has a mother who is fully involved in her life, albeit that she is not in this country, and a guardian, so long as these proceedings are underway, who is more than able to protect her interests, and indeed has been doing so.

[34] The next matter which I have to place in the balance is that there is no question, as there is in the adoption cases, of any very significant decision being made by the local authority. This is not a case where it is being suggested the child should be adopted, or moved out of the country, for instance. It is merely a question of the details of this child's life being worked out by the local authority under the umbrella of a care order.

[35] At the end of the day, standing back, I have come to the conclusion in similar circumstances and for similar reasons, as I did in relation to the application to discharge the father's parental responsibility, that this father has, as matters stand, forfeited consideration of his rights in relation to making decisions about this child's future. I cannot think that he can usefully participate in discussions about what is in S's best interests in circumstances where he has in the past wholly disregarded them, and in circumstances where the child desperately wants him not to be involved.

[36] In the circumstances, it seems to me that the only further involvement he should have in this child's life is that he should be provided with limited information on an annual basis. If there is to be any initiative so far as contact with him is concerned, that initiative must come from S if and when she feels the time is appropriate.

[37] Having considered the matter with great care, and bearing in mind all the arguments advanced by Miss Sultan on the father's behalf, I shall dismiss him from further part in these proceedings, and I shall grant leave to the local authority to make the application for the declaration which they seek, being satisfied that without it the child might well suffer significant emotional and psychological harm. I shall grant the declaration in the terms now sought provided that a short annual report of one page of A4 should be provided to the father setting out S's general well-being and progress. Otherwise, he should only be given information if there is a life-threatening medical emergency, or an intention by the local authority to significantly alter the care plan – for instance, to one seeking adoption or anything of that kind.

[38] Those are the orders that I shall make.

Later

[39] The remaining matters with which this court is concerned, having dealt with those relating to the father's ongoing involvement, concern the detail of S's life here and her remaining in the care of the London Borough. It is regrettable, as I have indicated already, that this case has not by now been finalised, but I am satisfied that the proposed orders will bring this matter to a conclusion within the next few months.

[40] One of the features of the plan is that S should be able to see her mother again. She has not seen her for 3 years now. That is extremely regrettable, and miles away from being in the best interests of this child who misses her mother, and is in contact with her. There have been, during the course of the application, a number of proposals about how the rendezvous should be organised. There was a suggestion for some time that the child should travel to Jamaica, but there are concerns about that, given the allegations which this child made about her father. The concerns are properly made out. I have seen the report from Paulette Elliott dealing with the concerns about potential difficulties which might emerge if S returned, particularly in relation to the father's family. There are security issues which I

do not think are fanciful, given the fact that this father has been sent to prison for 11 years in circumstances where neither he, nor his family, accept his guilt.

[41] There is, therefore, no other option but that this mother should travel to this country to see her daughter. That is now provided for. She is going to come for the inside of the half term next term if the visa requirements can be fulfilled by that time. I really do plead with the authorities in Jamaica who issue the visas to grant this mother a visa to enable her to travel to this country to see her child for this 7-day period in February 2006 (11–19 February being the proposed dates).

[42] The mother has strong connections in Jamaica. There is no real concern, I believe, that she will not there return at the end of the trip. The London Borough is going to keep an eye on matters. They will pay for the mother's costs – both of travel and accommodation, and subsistence – while she is here, but only for that limited period after which she will have no means to support herself unless she brings some with her. In so far as one can be confident about anything, I am confident that this mother will return to her family and her other child when this visit is over. So, I urge the immigration authorities to accept this order. If there are any other orders that I can make which will assist them, or provide them with any comfort, in advance of that visit I would be more than happy to make them. I do not think I can make any orders that she leave the country. That is a matter for the immigration tribunals. But, as I say, if there are any other conditions or constrictions which would assist, I can be approached, and I will consider them.

[43] That apart, I will make the directions which are now sought. I earnestly hope that we shall conclude this matter in the spring.

Order accordingly.

Solicitors: *Local authority solicitor*
Robert Blackford for the respondent mother
Wainwright & Cummins for the second respondent father
Atkins Hope for the guardian

PHILIPPA JOHNSON
Law Reporter