Re S (A Child) [2008] EWCA Civ 1140 (08 July 2008)

Case No: B4/2008/1514

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM WOLVERHAMPTON COUNTY COURT

(HIS HONOUR JUDGE MITCHELL)

Royal Courts of Justice

Strand, London, WC2A 2LL

8th July 2008

B e f o r e :

LORD JUSTICE WARD

and

LORD JUSTICE WALL

_____

IN THE MATTER OF S (A Child)

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(DAR Transcript of

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Official Shorthand Writers to the Court)

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Mr S Nuvolini (instructed by Messrs Challinors) appeared on behalf of the Appellant Guardian.

Miss M Phillips (instructed by Messrs CMHT) appeared on behalf of the Respondent Authority.

Miss V Cox (instructed by Messrs CMHT) appeared on behalf of the Respondent Mother & Father.

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HTML VERSION OF JUDGMENT

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Lord Justice Ward:

This is a highly unusual application. It comes before us today as an application I directed to be heard on notice with appeal to follow. It is an application by the guardian of the child concerned for permission to appeal the order of HHJ Mitchell, sitting in the Wolverhampton County Court on 23 May. That order is this:

"Upon the Team Manager on behalf of the 1st respondent Local Authority undertaking that:

1. The 1st Respondent [that is to say, the Local Authority] will serve upon the applicant parents the Pathway Plan in respect of the 2nd Respondent [that is to say, the child concerned] by 4 pm on 4 July 2008.

2. The 1st Respondent [would] also serve a statement setting out the transitional arrangement for [the child] including any panel dates for funding of all services and the contracts which have been or will be agreed together with timescales for the [I think that should read] no later than by 4pm on 4 July.

3. The [local authority would] serve a statement identifying how they intend to make arrangement for [the child's financial affairs] to be managed from 2nd August and the arrangements for contact to her parents, the applicants and funding of the same by 4pm on 4th July."

Upon those undertakings it was ordered that the application brought by the parents for the discharge of the care order be dismissed. The case is unusual because it relates to this unhappy child who was born on 2 August 1990 with severe disabilities which have rendered her care so difficult. She will therefore be eighteen in a matter of days, and on her eighteenth birthday, as is obvious, the care order will automatically come to an end.

The parents began these proceedings by applying to the local family proceedings court back in September of last year to discharge the care order or, alternatively, to have directions regulating both their contact and contact to an older sister. But principally the motivation appears to have been to force the hand of the local authority to perform their statutory duty imposed upon them in paragraph 19B(4) of the second schedule to the Children Act 1989, which provides that in the case of an eligible child (and this girl is an eligible child):

"…the local authority shall carry out an assessment of his needs with a view to determining what advice, assistance and support it would be appropriate for them to provide [under this Act] while they are still looking after him, and after they cease to look after him/her, and shall then prepare a pathway plan for him."

That duty arose six months after the eligible child attained the age of sixteen and so the duty fell to be performed by February 2007. The lamentable, totally lamentable, state of affairs in this case is that the local authority have utterly neglected their duty in a way which is worthy of the highest condemnation and that is what I give it.

On 20 December 2007 the local family proceedings court ordered the local authority to file a position statement, including the transitional plan and proposals for contact by 8 February. The local authority ignored that order and did not comply with it.

On 5 March this year the court ordered the local authority to file a statement by the Young Adults and Disability Team by 14 March. For the second time this local authority cocked a snook at the order of the court. For the third time the court ordered on 25 March that that statement be served by 4 April.

For the third time the local authority simply ignored it. In the result the matter was sent to the county court and, as I have already recited, HHJ Mitchell accepted the undertaking from the team manager of the local authority to file their pathway plan etc by 4pm on 4 July and heigh ho, what a surprise, for the fourth time the local authority metaphorically raised two fingers in the air to the court and ignored everything the court has ordered. This is a disgraceful state of affairs. If time had permitted it, I would have directed the director of the Walsall Metropolitan Borough Council Social Services Department personally to attend this court and proffer his explanation and his apology. Instead, I will direct that he writes to this court and to the Wolverhampton Court, giving both his explanation for his disgraceful failure of duty and to proffer his sincere apologies. He is fortunate not to be facing a summons for contempt.

But we are told today that a new team is in place, and we are told today that the pathway plan has been prepared by one arm of the local authority and is being placed before another arm of the local authority tomorrow for their approval -- their approval relating to the important question and probably the crucial question of funding. We are told that that should be passed tomorrow.

Now the question therefore is what is this court to do about the order, effectively made by consent by HHJ Mitchell? As things stand, it may be possible to commit the local authority's team manager for his contempt; but the proceedings will otherwise have been discharged, the guardian will have no role to play and nothing effectively could happen. I do not find that satisfactory. It is no fault of the judge's that his endeavours have not been realised, and it seems to me that we should remedy the position in this way. We should grant permission to appeal and allow the appeal on the basis that, through circumstances beyond his control, the judge's understanding and basis for making his order has been frustrated again by the local authority. Having allowed the appeal, I would substitute orders in the terms of paragraphs 1, 2 and 3, requiring and ordering the local authority to serve the pathway plan, the statement of transitional arrangements and the statement of arrangements for the child's financial affairs, and they are to serve those three documents by 4pm on Thursday 10 July; and I take it from an absence of shaking of heads that that is a feasible timescale, 4pm on Thursday 10 July.

To make matters abundantly plain, and to demonstrate to the local authority that this is an order which we expect to be obeyed, this order will be endorsed with a penal notice and the director is to be given the assurance by those who represent him today that his contemptuous disregard of this order could lead to an application to commit him and, without prejudging that matter, my preliminary view is that it stands a good prospect of success and he should be advised accordingly.

The order will then continue that, provided that those three documents are served as directed, then upon their service and filing in the Wolverhampton County Court the application by the parents to discharge the care order shall stand dismissed.

Lord Justice Wall:

I agree. I add a few words. In the particular circumstances of this highly unusual appeal the judge was not to know the local authority was cynically going to disregard the undertaking which it had given to him, and I have no doubt at all that he dismissed the proceedings in good faith. It would have been perhaps preferable, with the wisdom of hindsight, had he said that the proceedings should stand dismissed upon the production of the document because then the parents or the guardian could have gone back to the judge and issued proceedings for contempt to ensure the documentation was forthcoming. We have, however, achieved that objective by this application today.

May I just add one further word in emphasis to what my Lord has already said. I notice that the skeleton argument or the position statement put forward on the local authority's behalf today reads as follows. Paragraph 1:

(Not in bundle – checked to audio)

"1. The local authority takes no position relating to the merits of the appeal against the order of HHJ Mitchell.

2. Irrespective of the decision of the court, the Local Authority will continue to discharge its statutory obligations in respect of [the child] throughout her minority and into adulthood."

I have to say that second paragraph reads somewhat hollowly in the light of what has actually occurred. There are of course, as is always the case, no press in court, even though this court sits in public. This court in public regularly criticises local authorities for its behaviour when it falls below the high standards which we expect of it. This is a particularly lamentable example, and I have no doubt that our judgments will be transcribed and I would propose certainly that, in addition to the message which will be given, the transcript should be read by the Director of Children's Services or the Director of Social Services, whoever is now in place.

It invariably happens in these cases that we never have before us the people who are actually responsible for what has gone on. Some wretched social worker who has just been handed the papers over a few days before is usually put forward as a sacrificial lamb, as a victim to this court's anger and legitimate wrath, and that is what has happened in this case. The social worker in court got the papers, I think, yesterday and probably knows as much about the case as we do. As a result, that is wholly unsatisfactory and managers in social services departments must simply understand this court expects court orders to be obeyed. The final arbiter in these matters is the court, and the court's orders must be honoured; and this is a particularly poor example of the utter failure to do so, and in that respect I endorse everything my Lord has said in relation to it. We, I think, can salvage little from the case, but what we can salvage is what my Lord has proposed in his order, with which I entirely agree.

Order: Application granted; appeal allowed