

PRIVATE FOSTERING OR LOOKED-AFTER CHILD?

London Borough of Southwark v D [2007] EWCA Civ 182

A child, S, living with her father, alleged that her father was violent to her. Her father agreed not to have contact with her while the allegations were investigated and ED, the father's ex-girlfriend, was suggested as a mutually acceptable carer for S.

A Social Worker from Southwark asked to ED to take S and took S to her house. ED met the SW the next day and said that someone would be in touch to offer her assistance. The SW rang S's mother in Jamaica (who had sole PR) and obtained her agreement to the placement. Over the next 3 months ED asked for financial support on 4 occasions and was given a total of £230. Southwark then said that they would not provide any further support and ED should approach Lambeth, where she lived. Lambeth refused to provide funding on the basis that S was in a Southwark placement. Southwark argued that S had not been in need of accommodation because ED had agreed to look after her and therefore Southwark had no duty to accommodate her.

Held: That there could be some cases where a local authority could play a part in arranging a private fostering arrangement, but where a LA played a major role it was more likely to be concluded that they were using their powers under s20 and s23. The LA must make clear that the arrangement is expected to be a private fostering arrangement and that any financial support would come from the parents.

At first instance the judge found that Southwark could not have made arrangements for S to live with ED under s23(6) because S had not been accommodated by the LA for 24 hours and so did not qualify as a 'looked after' child.

Held: That as soon as the duty arose under s20(1) the child would become looked after if it appeared that accommodation would be required for more than 24 hours. The same pre-condition applies to all parts of s23, so Southwark could have exercised their duties under s23(2) or s23(6) immediately.

Southwark argued that if they did have a duty under s20, they had fulfilled that duty by making an arrangement for S to live with ED pursuant to s23(6)

Held: That a reasonable person, hearing the discussions that took place between ED and the SW, would have concluded that Southwark were asking ED to provide S with accommodation on their behalf and at their expense. If they were asking ED to take S under s23(6) they should have made it much clearer to her and she would have been able to make an informed decision. ED had not been able to provide informed consent to A s23(6) arrangement, and S therefore remained a looked after child.

Comment

Local Authorities should be very careful in involving themselves in private arrangements. All parties must understand fully the nature of the arrangements and the LAs involvement should not be open to interpretation as looking after the child.

Child in Need requiring accommodation: Whether involvement of Local Authority meant she was a looked after child

Sarah Jane Collins (by her Litigation Friend Mrs Dorothy Leyden) v Knowsley Metropolitan Borough Council

High Court Queen's Bench Division (Mr Michael Supperstone QC)

29 October 2008 [2008] EWHC 2551 (Admin)

In 2001 Sarah's mother died in a house fire and Sarah was left in the care of her step-father Mr Collins, who had parental responsibility for her. By October 2003, when Sarah was 14, her relationship with her step-father was difficult. Sarah had not accepted bereavement counselling after her mother's death and Mr Collins was unable to meet her emotional needs. He was drinking to excess and Sarah was staying away from home and missing school.

On 7 November 2003 Sarah visited Social Services and asked to be placed in foster care. She had been staying with her boyfriend's family and it was agreed that she would stay there over the weekend. Her Social Worker put in a request for a foster placement, but on 26 November Sarah said that she no longer wanted to be taken into care and wanted to stay where she was. The Social Worker met Mrs Leyden, the boyfriend's mother, and she agreed that she was happy for Sarah to live with her. A Planning Meeting was scheduled, but never held.

Mr Collins died on 16 December 2003 and Sarah remained living with Mrs Leyden. Mrs Leyden claimed that the Social Worker had asked her to care for Sarah long-term. Some s17 money was provided twice in 2004, but Mrs Leyden received no other support in caring for Sarah.

Mrs Leyden claimed that Sarah was a child in need who had nobody with parental responsibility able to look after her and was therefore in need of local authority accommodation.

Knowsley Borough Council claimed that Sarah already had somewhere to live when the local authority became involved and that she did not appear to require accommodation under section 20 of the Children Act 1989. Knowsley sought to distinguish the situation from that in *D v London Borough of Southwark* [2007] 1 FLR 2181 where the local authority had taken a central role in making arrangements for the child to live with a carer.

HELD

Until 26 November 2003 Sarah was living with her boyfriend's family as a temporary arrangement. On that day the local authority did play a 'central (or major) role' in making arrangements for Sarah's continuing placement with Mrs Leyden. The Social Worker discussed the placement with Mrs Leyden and expected to hold planning meetings to plan for Sarah's future. Through the social worker the local authority intended to play a significant role in making arrangements for Sarah's future because her step-father was unable to provide her with suitable care. The Court found that Knowsley had a duty to provide Sarah with accommodation under s20 and that a placement under s23(2) had been made. The Court made a declaration that Sarah had been a child looked after by Knowsley from 26 November 2003 and ordered that Mrs Leyden should be paid an appropriate fostering allowance from that date until Sarah's eighteenth birthday.

COMMENT

This case, like *D v London Borough of Southwark*, alerts local authorities to the need to be very clear about the legal framework under which a child is being placed. If a social worker is involved in arranging the placement of a child in need, the carer is entitled to assume that the local

authority is taking some responsibility for that placement. The local authority should explain clearly to the carer what alternative framework for the placement is being proposed and the carer should agree to care for the child under that framework. In this case, if Sarah had not been a looked after child, the placement should have been assessed and monitored as a private fostering arrangement, but there is no suggestion that this was considered. If a child is placed outside her immediate family, with local authority involvement and without the carer's informed acceptance of the child as privately fostered, it appears that the Courts are very likely to interpret the arrangement as a placement in local authority accommodation and the child as a looked-after child.

Private fostering: Child making his own arrangements: Whether child in need of accommodation

R, on the application of A v Coventry City Council

High Court QBD (Mr Antony Edwards-Stuart QC)

22 January 2009 [2009] EWHC 34

In February 2007 Terry, age 15, turned up at the house of Ms Elizabeth Casey, saying his father had thrown him out. Terry's mother and one older brother had died about three years earlier and his other brother, Matthew, had been living with Ms Casey, who the mother of a friend. Terry had been living with his father and step-mother for something over a year, in a three-bedroomed house with three step-siblings under the age of nine. The arrangements were unsatisfactory and after an argument Terry's step-mother told him to leave.

Ms Casey agreed that Terry could stay with her. At the end of March Ms Casey went to Coventry City Council and explained that she was struggling financially to care for Terry; in arrears with rent and council tax

and that she needed some financial assistance. She said that she did not want Terry to be accommodated, which was the only alternative. A week later she visited Terry's father to collect Terry's clothes and the child benefit book to enable her to claim CB and child tax credit for Terry. There was no other contact with Terry's father.

The Local Authority visited Ms Casey on 21 June to start an initial assessment which was not completed until September 2007. The conclusion was that the placement might be a private fostering placement, that Terry's father could not offer financial support and that social care should offer support to prevent Terry coming into care. In September Ms Casey lost her job and Coventry began paying her an Allowance of £50 per week under s17. This stopped on Terry's 16th birthday in November 2007.

Ms Casey instructed a Law Centre, who wrote to Coventry saying that Terry was a child in need under ss 17 & 20 and complaining about the lack of appropriate assessment and support. Coventry replied in October 2007, asserting that the arrangement was a private fostering placement and that responsibility for financial support belonged to Terry's father.

The local authority accepted that Terry was a child in need, but argued that he was not in need of accommodation because he was living with Ms Casey. Terry claimed that he lacked suitable accommodation, because his accommodation with Ms Casey was temporary and precarious and she could not continue to provide for him without funding.

HELD

Ms Casey had been given the impression, during the initial assessment, that she would receive financial support to help her look after Terry and to prevent him having to come into care. The Judge held that in its dealings with Ms Casey between March & September 2007 the local

authority was exercising their duties to provide accommodation for a child in need under ss20 & 23.

The local authority conducted a stage 2 complaint investigation and concluded that Terry was a privately fostered child, by agreement between Ms Casey and the child, and that funding should be provided by Terry's father. There was no basis for this conclusion; a child cannot enter into a private fostering agreement about his own care.

If the Council had asked itself the right question —ie, whether Terry required s20 accommodation, it would have had to conclude that his current living arrangements were precarious and therefore not suitable, so he was a child in need who required accommodation. The Council could not have relied on their false assumption that Terry was being cared for under a private fostering arrangement to avoid providing him with accommodation and support.

Terry was a looked after child from the date of the visit at which the initial assessment started and Ms Casey was entitled to payment of the fostering allowances from June 2007 until Terry's 18th birthday.

COMMENT

This case joins a series of cases in which the courts have decided that a child is looked after, although the local authorities have assumed that the child is in a private fostering arrangement. The judge in this case considered the cases of London Borough of Southwark v D [2007] EWCA Civ 182 and Sarah Jane Collins v Knowsley Metropolitan Borough Council [2008] EWHC 2551 (Admin) and found against a private fostering arrangement on the same basis; that the carer had received the reasonable impression that the local authority were taking some responsibility for the child's care. This case reinforces the need for local

authorities to ensure that private foster carers fully understand and accept the role that they are taking on.

The fact that the court refused to accept that a child could make his own binding agreement to a private fostering arrangement does not mean that local authorities can avoid their responsibilities to monitor a placement simply because the child's parent has not been involved in agreeing the arrangements. The definition of a privately fostered child is set out in s66 of the Children Act 1989 and does not include any element of parental consent. In this case, if the local authority thought that Terry was a privately fostered child, they should have carried out the assessment and monitoring required by the Children (Private Arrangements for Fostering) Regulations 2005.

Alexandra Conroy Harris, Legal Consultant
CoramBAAF

