

re BRUTON

1984 No 91 S.S.  
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THE HIGH COURT

IN THE MATTER OF BUNREACT NA HEIREANN ARTICLE 34;  
IN THE MATTER OF THE COUNTY OFFICERS AND COURTS (IRELAND)  
ACT 1877;  
IN THE MATTER OF THE COURTS OF JUSTICE ACT 1924;  
IN THE MATTER OF THE COURTS ACTS 1924 TO 1981;  
IN THE MATTER OF PROCEEDINGS IN THE CORK CIRCUIT COURT  
ENTITLED PETITION TO THE CORK CIRCUIT COURT JUDGE FOR  
THE CORK CIRCUIT  
AND IN THE MATTER OF KENNETH BRUTON, AN INFANT

BETWEEN:

THE STATE (AT THE PROSECUTION OF CATHERINE  
BRUTON)

PROSECUTRIX

AND

HIS HONOUR SEAN MacDERMOT FAWSITT JUDGE OF THE  
CORK CIRCUIT COURT

RESPONDENT

AND

PETER BRUTON

NOTICE PARTY

JUDGMENT delivered the 31st July, 1984 by Keane J.

This case raises a net point as to the jurisdiction of the Circuit Court in wardship matters.

The Prosecutrix and the Notice Party are the parents of the infant named in the title of the proceedings. The Notice Party presented a petition to the Circuit Court seeking to have the infant made a Ward of Court. The learned Circuit Court Judge, the Respondent in these proceedings, made an Interim Order on the 27th January, 1984 making the infant a Ward of Court and

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granting interim custody to the Notice Party. On the 16th February, 1984, he made a further Order declaring the infant to be a Ward of Court and granting the continuing custody of the infant to the Notice Party. The Notice Party claims that the Prosecutrix has deserted the infant and that it is in the interests of the infant that he should remain in his (the Notice Party's) custody. The Prosecutrix contested on each occasion the jurisdiction of the learned Circuit Court Judge to take the infant into wardship. On the 20th February 1984 she applied for and obtained a Conditional Order of Certiorari from McMahon J. on the grounds that the Order was made without jurisdiction. The Notice Party having shown cause, a Motion to make absolute the Conditional Order came on for hearing before me on July 16th.

The jurisdiction of the learned Circuit Court Judge to make the Orders impugned is challenged on the ground that, under S 33 of the County Officers and Courts (Ireland) Act 1877, the jurisdiction of the County Court in cases concerning infants was limited to proceedings relating to the maintenance or advancement or for the protection of the property of such infants, and that the jurisdiction of the Circuit Court is no greater. It was urged that, since there was no evidence before the learned Circuit Court Judge that the infant in the present case was entitled to any property, the Order taking him into wardship was made without jurisdiction.

This submission is clearly not well founded. The jurisdiction of the Circuit Court in wardship matters does not derive in any way from S 33 of the 1877 Act. The jurisdiction is expressly conferred on the Circuit Court by S 22 (1) (a)

of the Courts (Supplemental Provisions) Act, 1961. It provides that

"Subject to paragraphs (b) and (c) of this sub-section, the Circuit Court shall, concurrently with the High Court, have all the jurisdiction of the High Court to hear and determine any proceedings of the kind mentioned in column (2) of the Third Schedule to this Act at any reference number."

Column (2) at reference number 24 in the Third Schedule reads

"Proceedings for the wardship of infants and the care of infants' estates."

Column (3) of the Third Schedule at reference 24, as amended by S. 2 (1) (a) of the Courts Act 1981, makes it clear that the only circumstance where the jurisdiction of the Circuit Court in wardship cases is excluded is where the rateable valuation of land, the property of the infant, exceeds £60.

The wardship jurisdiction of the High Court and the Circuit Court in the case of infants does not depend for its existence on the possession of property by the infant sought to be made a ward. It is true that, in former days, the Court could be embarrassed in the exercise of its jurisdiction by an insufficiency of property. Thus, where disputes arose as to the education of an infant, the Court had difficulty in making a child a Ward of Court, if the only property available to provide for his or her education was that of the father whose decision as to the child's education was under attack. (See In re Meades, Minors (1870))

IR 5 Eq. 98 at p. 114). The learned President of the High Court has, however, stated that he is satisfied that he has jurisdiction to take a minor into wardship when no property matter is involved, if to do so is in the interests of the minor's welfare. (See Shatter on Family Law in the Republic of Ireland (Second Edition) at p. 243).

It is, accordingly, clear that the Circuit Court has jurisdiction to make an infant a Ward of Court in any case where it appears to be in the interests of the infant's welfare so to do, and that the exercise of this jurisdiction is not dependent on the possession of property by the infant. It also appears that this jurisdiction is excluded only where the property of the infant, insofar as it consists of land, exceeds the rateable valuation of £60. It follows that the two Orders of the learned Circuit Court Judge in the present case were made within jurisdiction. Accordingly, the Cause Shown will be allowed and the Conditional Order discharged.

Counsel for Prosecutrix:

J. Ward B.L.

Counsel for Notice Party:

Sean O'Donovan B.L.

  
Ronan Keane