



18 July 2018

PRESS SUMMARY

Williams and another (Appellants) v London Borough of Hackney (Respondent)
[2018] UKSC 37
On appeal from [2017] EWCA Civ 26

JUSTICES: Lady Hale (President), Lord Kerr, Lord Wilson, Lord Carnwath, Lady Black

BACKGROUND TO THE APPEAL

This appeal concerns the limits of a local authority's powers and duties to provide accommodation for children in need under section 20 of the Children Act 1989 ('CA').

The appellants are the parents of eight children, at the relevant time aged 14, 12, 11, 9, 7, 5, 2 and 8 months. On 5 July 2007 their 12-year-old son was caught shoplifting. He told the police that he had no money for lunch and that his father had hit him with a belt. The police visited the family's home and found it in an unhygienic and dangerous state unfit for habitation by children. The police exercised their powers under s 46 CA to remove the children to suitable accommodation for a maximum of 72 hours. The children were provided with foster placements by the respondent local authority ('the Council'). The appellants were arrested and interviewed by the police, then released on police bail on condition that they could not have unsupervised contact with any of their children.

The appellants were asked to sign a 'Safeguarding Agreement' by the Council on 6 July 2007 by which they agreed that all the children would remain in their foster placements for the present time. They were not informed of their right, under s 20(7) CA to object to the children's continued accommodation after the expiry of 72 hours, nor of their right, under s 20(8), to remove them at any time. On 13 July, solicitors instructed on their behalf gave formal notice of the appellants' intention to withdraw consent. On 16 July the Council decided that the children should be returned home as soon as possible. However, it took until 6 September for the Council to arrange with the police for the bail conditions to be varied, whereupon the children returned home on 11 September 2007.

Criminal proceedings against the appellants were later discontinued. In July 2013 the appellants issued proceedings claiming damages, amongst other things, for breach of their rights under article 8 of the European Convention on Human Rights. The High Court dismissed all the claims except for the article 8 claim, which was upheld on the basis that, because the parents had not given their informed consent, there had been no lawful basis for the accommodation of the children after 72 hours, so that the interference with family life was not in accordance with the law. The judge awarded each of the appellants damages of £10,000. The Court of Appeal allowed the Council's appeal, holding that consent was not required and that there had been a lawful basis for the children's accommodation under s 20 CA, and the interference with their article 8 rights had been proportionate.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. It holds that the appellants did not object or unequivocally request the immediate return of the children, so there had been a lawful basis for the children's continued accommodation under s 20 CA. Lady Hale gives the only substantive judgment.

REASONS FOR THE JUDGMENT

Local authorities in England look after a substantial number of children (over 70,000 in March 2017), either as part of a range of services provided for children in need, or under powers to intervene compulsorily to protect children from harm. Compulsory intervention by a local authority requires the sanction of a court process. No court order is required for the authority to provide accommodation for children in need under s 20 CA. However, it is subject to the right under s 20(7) for a person with parental responsibility for the child, who is willing and able to provide accommodation for him or arrange for accommodation for him, to object, and to the provision in s 20(8) that ‘any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the local authority under this section’ [1-2]. In short, it is a voluntary service.

If a parent delegates the exercise of his or her parental responsibility for a child to the local authority under s 20 CA, such delegation must be real and voluntary. The best way to ensure this is to inform the parent fully of their rights under s 20, although delegation can be real and voluntary without being ‘informed’ [39]. No such delegation is required where the local authority steps into the breach to exercise its powers under s 20 where there is no-one with parental responsibility for the child, the child is lost or abandoned, or the parent is not offering to look after the child. In those circumstances active delegation is not required [40]. If a parent with unrestricted parental responsibility objects at any time pursuant to s 20(7), the local authority may not accommodate the child under s 20, regardless of the suitability of the parent or of the accommodation which the parent wishes to arrange [42-43, 47]. It is not a breach of s 20 to keep a child in accommodation for a long period but a local authority must also think of the longer term and consider initiating care proceedings in order to fulfil its other duties under the CA, and to avoid breaches of the child’s or the parents’ rights under article 8 [49-52].

In the present case, where the s 20 arrangements replaced the compulsory police protection under s 46 without the children returning home in the meantime, the focus was not on the appellants’ delegation of parental responsibility to the Council, but on their rights under subsections 20(7) and 20(8) [53]. Entering into a safeguarding agreement was a matter of good practice, although it was important that it did not give the impression that the parents had no right to object or to remove the children [55]. The lawfulness of the s 20 accommodation depended on whether the appellants’ actions amounted to an unequivocal request for the children to be returned. The bail conditions were not an insuperable impediment to the request and were not a reason to refuse [57]. However, the letters from the appellants’ solicitors could not be read as an objection or as a request for immediate return: the solicitors were sensibly trying to achieve the return of the children as quickly as possible on a collaborative basis rather than push the Council into issuing care proceedings [59]. Although the Council could have provided earlier support for an application to lift the bail conditions, it was not possible to say what effect this would have had, given the independent concerns of the police [60].

Accordingly, there was a lawful basis for the children’s continued accommodation under s 20 and the ground relied on by the judge for finding a breach of the appellants’ article 8 rights was not made out [61]. The question of whether the Council’s actions were a proportionate interference with the right to respect for family life throughout the time the children were accommodated was not fully explored in the lower courts and was not raised as an issue before the Supreme Court [62]. The appeal is therefore dismissed, albeit for reasons which differ from those of the Court of Appeal [63].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>