

D1

THE DISTRICT COURT
OF NEW SOUTH WALES
CIVIL JURISDICTION

CONFIDENTIAL

5 JUDGE J B PHELAN

WEDNESDAY 28 AUGUST 2002

10 263/02 - IN THE MATTER OF THE APPEAL OF
v DEPARTMENT OF COMMUNITY SERVICES

CLOSED COURT

15 Appellant appeared unrepresented
Mr O for the Respondent
Miss P appeared amicus

20 HIS HONOUR: Ms P, I understand you have an
interest?

25 P: That is true your Honour, I had a grant of
legal aid as the child's representative in the
Children's Court. I note that is in the court
complex today, I saw her outside on my way in. She
informed that she was unrepresented and that she wished to
represent herself. Unfortunately I don't have a grant of
aid in this matter but I would be prepared to provide the
30 Court on an amicus basis with some information if that
should assist.

HIS HONOUR: I didn't realise until I was told yesterday
35 that the children had been separately represented at the
hearing.

O: Your Honour, my instructing solicitor got in
touch with Miss P --

40 P: I saw my friend's instructing solicitor in the
court complex approximately, well on the first occasion
that it was in court, was a chance meeting and I was
informed at that time Miss had appealed and it was
45 in court. But since that time I have informed the Court
as to - and I think there's a letter on the Court file -
as to my position.

HIS HONOUR: Is legal aid likely to be granted for the
50 appeal?

F: I don't know.

HIS HONOUR: Are you Miss ?

55 APPELLANT: Yes, I am your Honour.

HIS HONOUR: Miss, when I set this matter down for
hearing I was unaware that the children had been

separately represented in the lower court.

APPELLANT: Right.

5 HIS HONOUR: And it was only yesterday that I discovered that that was the case and that Miss P had appeared for them.

10 APPELLANT: Right, yeah.

HIS HONOUR: But she's not been - the children have not been given legal aid because I don't think it's ever been considered.

15 APPELLANT: Right.

HIS HONOUR: You're appearing for yourself I understand.

20 APPELLANT: I am now, yes your Honour.

HIS HONOUR: Yes and you wish to proceed with your appeal.

APPELLANT: I most certainly do.

25 P : Your Honour, it's not children, it's only the baby,

HIS HONOUR: It's just one child is it?

30 P : Yes.

HIS HONOUR: I see.

35 APPELLANT: At this point it is, yeah.

P : Yes and the difficulty of course is the child is under two, so--

40 HIS HONOUR: Who's the child with now?

45 APPELLANT: We don't actually know your Honour. I was getting regular weekly access and updates on the child but then that was just I believe a situation so it would look good for the courts, for the department's behalf, but the minute they got their orders they stopped me from seeing the child and then said, "No, no now it's once a month" and now they've done everything to avoid me even getting that once a month access and I thought this is just unfair in the best interests of the child and I felt that the 50 department was teaching my child inappropriate things and certainly disrespect. And when I pointed that out the department then stopped me from having access because they said that I certainly didn't have a say in what they chose to teach my child or as far as my points that I pointed 55 out, as far as--

HIS HONOUR: When do you say this happened?

APPELLANT: When did this happen, it's been going on since the court made this order in at the Children's Court, it's actually been going on since the day they took the child, they were trying to convince my child to call another woman mummy all the time and I said, "Please, don't teach my child to be disrespectful in any way" and they said pretty much they can do what they like and I didn't agree with that.

10 HIS HONOUR: Mr O , how many days did this case take?

O : Three days of hearing your Honour before the Children's Magistrate, the three days of evidence and then on the fourth day and that was over a period of approximately two months I think--

HIS HONOUR: So when did the Court make its decision?

O : The Children's Court made its decision on 17 May. There was a hearing date I think on 28 March, there was a hearing date on 3 April and then a further hearing on 19 April, when evidence was adduced.

25 HIS HONOUR: Was there evidence adduced on the first two days?

O : Yes, yes, so the--

HIS HONOUR: Is the transcript available?

30

O : Yes, yes your Honour there is. I certainly have a transcript and it would be--

HIS HONOUR: Have you.

35

O : --my application that these proceedings should run on the transcript, that the appeal should run on the transcript. The reason I say that is that a lot of the evidence was expert evidence of a doctor, a Psychiatrist, Dr ; a Senior Psychologist, Dr from the ; and another Psychologist, Mr . Now of course to get them to come to court again and give the same evidence would in my submission be--

45

HIS HONOUR: Yes, well it's an appeal governed by the Justices Act I assume.

O : No it's not, it's an appeal governed by the Children and Young Persons Care and Protection Act and under section 91 the provisions, subsection (2) says that the appeal should be by way of a rehearing, which means that obviously evidence can be called. But it would be my submission that the evidence that I'd be seeking to call in these proceedings would be the material that was tendered to the Children's Court , together with the transcript of the proceedings before that Court.

55

HIS HONOUR: But that doesn't prevent further evidence being called?

5 O : No not at all, not at all.

HIS HONOUR: What do you say to that ?

10 APPELLANT: I would, certainly I agree with this gentleman, that the evidence that was brought before in the proceedings prior to these proceedings, that is certainly relevant because I have brought the proceedings before your Court because I really don't believe that the magistrate took in any information from those people who were qualified, because each one of those persons that 15 went before the Court, gave, submitted evidence and also took the stand and stated that that child should be returned and should not have been taken in the first place. And there was no evidence - that child was so well looked after, that child was breastfed and I to this day 20 do not believe that five armed police officers and two DOCS workers burst in through a door with no apparent reason to threaten me and to grab a child and run the way they did is, it's so profoundly damaging to the child's psychological wellbeing, that it is just--

25 HIS HONOUR: I'm not going into the merits of it at the moment.

30 APPELLANT: Okay.

HIS HONOUR: Do you want to call further evidence?

APPELLANT: I wish to--

35 HIS HONOUR: Or do you wish to give further evidence yourself?

APPELLANT: I wish to give further evidence myself.

40 HIS HONOUR: Yes, do you have any other witnesses you wish to call?

45 APPELLANT: I can call other witnesses and people who had witnessed the child whilst the child was in my home and in my care and how exceptional that the child was. I would also like it noted that I'm also a qualified welfare worker with certificates, as well as to the point where my qualifications I've even received awards from the Premier of New South Wales. All of my qualifications were totally 50 disregarded and I also would like to question the factors that the DOCS worker involved in this case had no formal qualifications whatsoever and what real right did that person have to judge my character or my qualifications.

55 HIS HONOUR: , are your witnesses here today if the case were to run today?

APPELLANT: I, well I have one person here who can verify

the way I live, the standard of living that I have and that person also, my child used to visit their house very frequently and their family who is, I'm sure, more than happy to speak on my behalf as well.

5

HIS HONOUR: All right, well just--

APPELLANT: I also have one, also a reference from an elderly lady who visits me everyday and I visit her, we have tea and coffee mornings together. She has also given me something in writing to present and if needed she can also attend.

10

HIS HONOUR: All right, well just take a seat for the moment. What's your position then Miss P , are you in a position to proceed today?

15

P : If it was later in the day. There's quite a bit to read in this matter and I support what both persons have said before, that there is a lot of evidence to support what, or support things in Miss favour that--

20

HIS HONOUR: Is that conceded Mr O ?

25

O : Yes your Honour, there certainly is. What is conceded is this your Honour, that the child - if I can just give you some history of this matter your Honour?

30

HIS HONOUR: Yes.

O : I think it's common ground that Miss is suffering from, or has certainly in the past been suffering from a personality disorder and that it's called, commonly called borderline personality disorder. Her psychiatrist and Miss both concur with that diagnosis. Now Miss was a Children's Court counsellor from the . It is conceded that if this child were to be returned to Miss , it would have to be on the basis that Miss would undertake regular therapy with a psychiatrist and that would most appropriately be Dr who is someone she's already had some contact with, and that she undertake supervision by the department and also that she enter into a number of other undertakings. If I can just give you some history though your Honour, when this matter first came before a Children's Court in December 2000 and an order was made that the child be made a ward for a period of 12 months, that was on--

40

45

50

HIS HONOUR: How old is the child by the way?

O : Two and a half now, born in of 2000. That was on the basis of the department conceding that the child should live with the matter, provided that the mother undertook suitable therapy and undertook, and was prepared to be supervised by the department. At that time

55

the mother consented to that, she made undertakings to the department that she would agree to all that. But very soon after those undertakings were made, that collapsed, the whole regimen collapsed and for some period the child continued to remain with her and the relationship certainly with her partner broke down and Miss didn't do the things that she had undertaken to do.

10 APPELLANT: That's actually been disproven--

O : Your Honour, the department--

HIS HONOUR: Just wait, let him have his say and then I'll hear you.

15 APPELLANT: Okay.

O : Miss has a fairly long history with the department. She has three other children who have been made wards. That doesn't mean necessarily that this child should be a ward because of that of course and I'm not suggesting that that is the case. But what I'm saying is, she knows very well how the department operates. The department is here to look after the interests of this child, that's the paramount consideration here. The department considered that it was not in the best interests of this child to remain with Miss unless the things that had been put into place and had been established were implemented and continued to be implemented. Now the problem was that they weren't, the whole thing broke down and by about the middle of 2001 it was obvious, to the department anyway, that this child was in danger and the child was--

35 HIS HONOUR: In danger of what though?

O : In danger of emotional and psychological damage, possible emotional and psychological damage if it remained--

40 HIS HONOUR: Caused by what problem?

O : Caused by Miss inability to manager her anger basically that was seen on a number of occasions by a number of people and there's evidence of that your Honour. What ultimately happened was that in October the child was removed, that's October 2001, the child was removed from Miss care and was placed in temporary foster care. Subsequently that temporary foster care changed to the care of Miss aunt and uncle. They couldn't cope. The child by this stage was displaying certain behavioural patterns which made it somewhat difficult for the carers to look after the child. The child was subsequently in I think it was April this year, at the request of Miss aunt and uncle, was placed into other care, foster care, which were the same carers as had originally had been looking after the child from October of 2001. The child is now with those persons, it

is a permanent placement and it is anticipated that the child would remain with those persons for the remainder of the wardship order.

5 APPELLANT: It's so easy that's what they did.

HIS HONOUR: Does Miss have access rights to the child?

10 O : Miss had access rights on a monthly basis. That was working as I understand it until June, it was working well but in June and I have an affidavit which would be the only other piece of evidence that I'd be seeking to tender, in June during an access visit certain things occurred which caused the department to have grave concerns and as a result of that there hasn't been any other access since then. If you'd just excuse me, I've just left the case with the Manager. The plan does continue for it to be monthly access.

20 HIS HONOUR: But it's not happening at the moment, is that the position?

25 APPELLANT: They've actually tried cancelling it, it's due for today and they've been ringing for the last few days to cancel it. They sent me a letter asking me to contact them, which I did several times all day Monday, all day Tuesday and apparently at 6 o'clock last night, it was sent down by, a young boy came to my place with a message but I don't have phone access now at my house because the department created a few stalkers and I had, whether they were media, very interested in really what the department was trying to cover up as to why they do this with my child, we didn't know, I had to have the phone taken off.

35 O : The reason it was cancelled today was because this appeal was on. You see for the child to be, has to be taken from the premises where it's at, that is at the foster carers and brought to a place where access can occur, which is at the department's office at and--

40 HIS HONOUR: Surely that's not a very satisfactory arrangement.

45 O : Your Honour, possibly in other circumstances it may well not be but in the circumstances of this case the department considered it was the only arrangement that was workable and it was certainly the only arrangement that was considered to be in the best interests of the child from the point of view of the safety of the child.

50 HIS HONOUR: I might return to Miss P , what's your position?

55 P : Your Honour, I've listened to what my friend has said. The bottom line is that all the anger displayed by Miss has been directed purely and solely at

departmental workers. That anger or displays of angry outbursts has not been to any other persons. There is clearly from day one been a conflict between the department and Miss . The difficulty is that that child was taken from Miss whilst she was breastfeeding. There was absolutely no evidence throughout the proceedings that that child was physically or deprived in any way. In fact she was meeting more than all her milestones.

APPELLANT: She was reading at nine months of age.

HIS HONOUR: Miss P , that may be the case but are you ready to proceed today?

P : If the matter could stand in the list till, I have that matter of and I also have a matter down in the Local Court for mention.

HIS HONOUR: Perhaps can I suggest that you tender the transcripts of the evidence before the lower court and--

P : I think if your Honour were to read those--

HIS HONOUR: If I said not before 2 o'clock, so I've listed it for tomorrow as well, so would you be ready at 2 o'clock?

P : I think so, yes.

HIS HONOUR: Miss , is that convenient

APPELLANT: I would be, so does that mean my access can still take place today, I haven't seen her in so long?

HIS HONOUR: I'm not sure about that, it's--

APPELLANT: It is booked and it was made as a permanent booking.

HIS HONOUR: I think it's been cancelled for today.

APPELLANT: Well they, when I spoke to their department yesterday they told me that the lady who was arranging it has been off sick, that's why it's been cancelled and then he went on to continue to tell me that it was my fault that the worker is sick and I said, "Look, you blame me for everything else, why not". Like it's not, I didn't, I don't even know the woman, I don't know how, I, I mean maybe, facetiously maybe I make people sick but I don't think it's--

HIS HONOUR: I'll say not before 2 o'clock, if you could tender the transcript. Is it with the papers? I've got one days transcript here but that's all.

O : Perhaps if I could have the Court file your Honour and the papers, I could go through it.

HIS HONOUR: Have you got a copy of the transcript?

5 APPELLANT: No your Honour, I don't have a copy of that yet.

10 HIS HONOUR: Have you got one Miss P , my associate will arrange for copies to be made available to each of the parties. Not until 2 o'clock then.

O : Might I have access to the file?

HIS HONOUR: Yes certainly.

15 MATTER STOOD IN LIST

HIS HONOUR: In respect of the matter, I didn't realise that the exhibits were so voluminous and I--

20 O : Yes your Honour, that's why I suggested two days were needed.

25 HIS HONOUR: Yes, well I'm still only about halfway through the material and it's going to take probably three hours to finish. So I think what I'll do is I'll adjourn this matter until tomorrow.

30 O : Very well your Honour. Your Honour, I have prepared a detailed chronology and summary of evidence, if I could hand up that. It's not in - I don't think it's in the form of a submission but as I see it it's detail of the evidence in the proceedings in a chronological form.

35 HIS HONOUR: Have you given that copy to--

O : I'll give it to Miss P and to Miss now.

40 P : Your Honour, what I was going to seek to do today is to hand up my submissions that I made in the--

HIS HONOUR: They're with the papers.

45 P : Are they, okay.

HIS HONOUR: So I'll adjourn it till 10 o'clock tomorrow. You will be back then?

50 APPELLANT: Yes, thank you.

HIS HONOUR: We'll do that then. Have you handed up the copy to me?

55 P : I do apologise.

ADJOURNED TO 29 AUGUST 2002

oOo