

**RE H (CARE PROCEEDINGS: INTERVENER)**

Court of Appeal

Dame Elizabeth Butler-Sloss P and Thorpe LJ

1 February 2000

*Care - Care proceedings - Intervention - Care proceedings relating to younger sister - Parents accusing older sister of lying and seeking to pervert course of justice - Older sister making, then retracting allegations of sexual abuse - Whether older sister entitled to intervene to protect own interests*

D, a 17-year-old girl, and C, 9 years old, made allegations of sexual abuse by their father, against whom criminal proceedings were being brought. D retracted her allegations to try to end the criminal proceedings, although she still claimed that the allegations were true. D was given leave to intervene in care proceedings concerning C, after relying upon *Re S (Care: Residence: Intervener)* in which a stepfather accused of impropriety to a niece was given leave to intervene in residence proceedings for his stepchildren. D's parents, who claimed that D had made up the case against her father, had made her sister, C, tell lies, and was seeking to pervert the course of justice, sought to distinguish *Re S* on the basis that it related to a perpetrator not a victim. The judge held that where satellite parties were to become involved in care proceedings because of allegations made against them, it was right that they should have leave to intervene and that the allegations against D were as serious as those against the parents. The parents appealed.

**Held** - allowing the appeal - the judge defined the underlying principle in *Re S* too broadly. There is no right for satellite parties against whom allegations are being made in care proceedings to intervene in such proceedings. Each case has to be looked at on its own merits. D was indeed at risk of being accused of having lied and making her sister lie about their father's behaviour, but any protection offered to her could only apply to civil proceedings. No protection would be available to her in criminal proceedings and it would not assist D to have protection in one set of proceedings when she would not receive it for the other. Further, the civil proceedings are largely funded by the State and D's intervention would prolong the proceedings and increase expenses.

**Case referred to in judgment**

*S (Care: Residence: Intervener), Re* [1997] 1 FLR 497, CA

**Cases cited but not referred to in judgment**

*BJ (Care: Third Party Intervention), Re* [1999] Fam Law 613, CA

*G v G (Minors: Custody Appeal)* [1985] FLR 894, [1985] 1 WLR 647, [1985] All ER 225, HL

*Caroline Budden* for the appellants/parents

*Lee Young* for the respondent/intervener

*Wendy Rowlinson* for the guardian ad litem and the local authority

**DAME ELIZABETH BUTLER-SLOSS P:** This is an appeal with the leave of the trial judge, his Honour Judge Milligan, from a decision of his made on 9 December 1999 at the Southampton County Court in care proceedings when, on an application by a 17-year-old, she was given leave to intervene in the care proceedings concerning her young sister who is

now 9. This is clearly a case where the direction will be on the order that there should be no identification of any party in the case or any person which might lead to the identification of either of the children, both the applicant for leave to intervene (who is the respondent) and, of course, her younger sister.

The care proceedings are brought in relation to allegations made by C, the 9-year-old, against her father. Predating those allegations by C are allegations of direct sexual abuse and inappropriate sexual activity in the household made by D over a number of years. The police are involved. There have been protection investigations as well as care investigations. The police see the girl, D, as the crucial witness in the criminal proceedings being brought against the father and possibly also against the mother, I am not sure. D is also the crucial witness (as Thorpe LJ said during argument, the cornerstone of the case) in the care proceedings. She is at the moment still under-age. She is isolated from her family. She is extremely unhappy at that and she has made a retraction of her allegations in order to try to bring the criminal proceedings against her father to an end. But interestingly, in the statement that she gave to the police, she indicated she did not retract the truth of the allegations, but she did not want to proceed against her father because she was so lonely and she wanted to go home. One cannot but have the most enormous sympathy for this girl in the very difficult situation in which she now finds herself.

There will be directions later this week, the case having been put in as a matter of some urgency, given by a judge on the directions both for the criminal trial and for the care proceedings, in order that they should be properly managed in the best way to deal with the needs of the children and, of course, the rights of the parties both in the criminal proceedings and in the care proceedings.

Before his Honour Judge Milligan on 9 December 1999 Mr Young, representing D (who has also represented her today), relied upon a decision of this court, *Re S (Care: Residence: Intervener)* [1997] 1 FLR 497. In that case a stepfather was accused of impropriety against his niece, who was by then an adult. The allegations were relevant to whether or not the mother of the children, who were his stepchildren, should or should not have a residence order. One of the problems of the case was that the father was found to have been guilty of some sexual impropriety, particularly pornography, and the difficulty was whether or not these children should go into care or whether they could go to their mother. Clearly if the stepfather was himself guilty of sexual impropriety with his niece, he would not be a suitable person with whom the children should be living in the future. In that case the judge refused the stepfather's application to intervene to protect his interests against these allegations of sexual abuse in the care proceedings. The Court of Appeal (of which I was a member) gave the appellant leave to intervene, though not to be a party, because of the seriousness of these allegations and the effect it would have, not only upon the mother's residence application, but upon him for the future. There is undoubtedly the power in the court to give leave to intervene to those who are not immediately concerned with the proceedings in suitable cases.

Mr Young raised the *Re S* case to his Honour Judge Milligan. He considered the relevance of it to the present proceedings. The case for the parents in the care proceedings (and I have no doubt the case for the father

in the criminal proceedings) is that this is a wicked pack of lies. Not only that D is telling lies, but perhaps more important - and this is the basis to a great extent of this application - that D has not only made up the case about herself, but she has set up her sister to tell a pack of lies and she is guilty of seeking to pervert the course of justice. Therefore, she was laying herself open to charges of perjury and perverting the course of justice. At the time the allegations were made, D was 16 and would have had the help of a guardian ad litem. By the time that she had become 17 (and she is now 17) that protection is no longer available.

Miss Budden, who has represented the parents today (who was acting below on behalf of the father) distinguished *Re S* to the trial judge on the basis that it related to a perpetrator and not to a victim. She also raised the point, as she has raised to us today, that the consequence of D's access to papers would proliferate the proceedings and would lengthen them, and that it was not suitable that she should be an intervener. The judge took the trouble to find out whether it would have any adverse effect upon the criminal proceeding, and was told that the Crown Prosecution Service had no objection to the application being made. The judge then said this:

'In my view the essential thrust of *Re S* is that where satellite parties are to become involved in Care Proceedings, not directly as parties but as in *Re S* as here, where allegations are made against them, it is right they should have leave to intervene.

I note the allegations against [D] are serious as they are against the parents. [D] is a vulnerable 17 year old away from home and in need of proper help and support.'

The judge gave her leave to intervene and gave leave for the court to consider this matter. I think the judge was right, on the view to which he came, to give leave.

When I first read these papers I was of the view that it would not be right for this court to intervene, that it was, as indeed it is, an exercise of the discretion of the court whether or not to allow someone who may be prejudiced to intervene in the proceedings to protect their interests where they would otherwise be unprotected. There is no doubt at all that, as I have already said, D is a minor; she is vulnerable; she is accused of telling a pack of lies and setting up her sister do so. Therefore she is at risk of being prosecuted for a conspiracy. Whether or not the police would ever do so, is not a matter that one could speculate on. It is interesting that the police are somewhat concerned at her attempts to retract her allegations to the extent of not proceeding against her father. Of course she is the crucial witness in the criminal proceedings and the police appear to have warned her that she might be guilty of perjury.

The judge, in my view, gave too broad a definition (if I may call it) of the underlying principle set out in the *Re S* case. Each of these cases clearly has to be looked at on its own merits. One has to identify, if leave to intervene is given, what is the particular reason why it is necessary for a person to intervene. It is not a run-of-the-mill application. Clearly it is not an application that should be granted because somebody is a victim or may be, as an alleged victim, the subject of robust cross-examination in care proceedings to the effect that the allegations are a pack of lies. That would

only happen with older children, since generally in care proceedings the children who are younger do not give evidence.

Quite clearly, as I have said, all victims cannot as such intervene and ought not to be given the right to intervene. There may be cases where victims might be given the right to intervene in care proceedings. What is clear is that they cannot intervene in criminal proceedings. In this case D clearly is at risk of being said to have set her sister up in a shocking fabrication, in which case she may be at risk. That may mean, in purely civil proceedings in the family court, that in certain circumstances she should have the protection of being allowed to intervene. But against that possibility has to be weighed in the balance a number of other factors. First, there is no right as such to intervene because you are a satellite party and allegations are made against you. I think, as I said, the judge expressed that too broadly. Secondly, there is no protection to this vulnerable 17-year-old in the criminal court. If, as I understand it, it is likely that an attempt would be made for the criminal proceedings to be heard before the civil proceedings (and I would have thought in this case it was highly desirable that that should be so, if it is possible) D will be giving evidence in the criminal court without any protection of any sort. She will be exposed to cross-examination, including the fact that she set her sister up. It cannot be any worse, when she then comes to give evidence in the care proceedings, because she will already have been exposed to the disagreeable state of being an unprotected witness in the criminal court.

I cannot at the moment see why, where there are parallel proceedings both in the criminal court and in the civil court, she needs the protection in one when she cannot have the protection in the other. That is a matter that was not raised with his Honour Judge Milligan, and indeed was not a matter which (I can understand why) he did not consider himself. It is, in my view, a highly relevant factor to put into the balance as to whether or not she should be given leave to intervene. Thorpe LJ raised it in these proceedings, and it seems to me a very important element.

There is another element. The care proceedings are civil proceedings and are largely, if not entirely, funded by the state, one way or another, either through the local authority, by ratepayers and State money. Both the parents, who are separately represented for care proceedings, and if this girl is allowed to intervene, D, will no doubt be represented on legal aid. There will be, inevitably, a proliferation of documents because, although it is suggested they should be edited and she might not get all the documents in the case, since she is crucial to the case she would have to have all the documents which concerned her. I would have little doubt that they would be at least half, if not the majority of the documents in the case. Of course, her counsel would have to have the right to examine his client in chief and to cross-examine every other witness in the proceedings. No doubt he would exercise the restraint that counsel always do, but he would have the right, where relevant, to deal with these matters in some detail. This would be an increase of the expense of these proceedings which is a relevant factor, even when one is urged (as we are in this court) to uphold the judge, whose primary task was looking at the welfare of this not yet 18-year-old girl.

In my view, the judge was in error in giving such a broad interpretation of *Re S*. He did not put into the balance the matters to which I have just referred, and in my view he came down on the wrong side without having

had the opportunity to consider this question of the criminal proceedings. It might have been a different case, in my view, if it were not for the criminal proceedings. Once they are there as well, I cannot see how this girl (who cannot have the help in one set of proceedings) really is going to gain a great deal from having the help in the other. It is suggested by Mr Young that the local authority would not protect her. Technically, of course, they will not. She is a witness. She is not their client, in the sense that their client is the little girl who is the subject of the care proceedings, who is also protected by a guardian ad litem. But I would have little doubt that counsel representing the local authority would make sure that D was properly cared for, because she is so important to them as a witness and she is a child. The judge himself is bound, in my view, to make sure that D within the care proceedings is properly looked after. Consequently, the real exposure to the isolation and the vulnerability is in the criminal proceedings, where she cannot obtain assistance.

Therefore, for all those reasons - although I understand why the judge did what he did - in this particular case it seems to me that he was wrong and we should set this order aside. I do not, however, say that in no case should a victim be supported. Nor do I say that in no case that a victim who may be the subject of criminal proceedings for not telling the truth should not, if necessary, be protected in other cases. Each case must be looked at on its own facts. But for the purpose of this case, I would allow the appeal and set the order aside.

**THORPE LJ:** I agree and for the reasons given by my Lady.

*Appeal allowed. Judge's order for leave to intervene set aside. No order for costs, save legal aid assessment.*

Solicitors: *Addison Madden & Cottin, Mew and Clover* for the appellant/parents  
*Bolitho Way* for the respondent/intervener  
*Larcomes* and *local authority solicitor*

PHILIPPA JOHNSON  
*Barrister*