

THE HIGH COURT

[2024] IEHC 444

RECORD NO. 2024 198 HP

**IN THE MATTER OF B, A MINOR, BORN IN 2009,
IN THE MATTER OF THE CHILD CARE ACT 1991 (AS AMENDED),
IN THE MATTER OF ARTICLES 40.3, 41, AND 42A OF THE
CONSTITUTION,
IN THE MATTER OF THE EUROPEAN CONVENTION ON HUMAN
RIGHTS ACT 2003 (AS AMENDED)**

BETWEEN:

B. (A MINOR)

SUING BY HIS MOTHER AND NEXT FRIEND Y.

PLAINTIFF

-AND-

THE CHILD AND FAMILY AGENCY

DEFENDANT

**T, Q, THE MINISTER FOR PUBLIC EXPENDITURE AND REFORM, THE
MINISTER FOR HEALTH, THE MINISTER FOR CHILDREN, EQUALITY,
DISABILITY, INTEGRATION AND YOUTH, IRELAND, AND THE
ATTORNEY GENERAL**

NOTICE PARTIES

**EX TEMPORE JUDGMENT of Mr. Justice Jordan delivered on the 3rd of May
2024.**

1. This is a further application in this ongoing litigation concerning B, a young person who is in a very vulnerable position and at extreme risk - out and about in

circumstances where there is a special care order in existence which is having, at this moment in time, no effect, and this is the second such special care order which has had no effect and it is one of a number of special care orders made in respect of B.

2. The special care order which was granted, and which exists, is a special care order in accordance with the rules, in accordance with the legislation, and it is a special care order drafted and provided to the registrar by the Child and Family Agency as part of its application for the special care order *i.e.*, in circumstances where the behaviour of the child poses a real and substantial risk of harm to his or her life, health, safety, development or welfare. That is the scheme, that is the situation in which the Child and Family Agency applies for these special care orders and that is, in terms of the orders made, a situation and a process which makes it manifestly obvious that special care orders have immediate effect.

3. If one looks at s.23H(2) it commences;

“A special care order shall specify the period for which it has effect and that period shall not exceed three months from the day on which that order is made unless that period is extended under s.23(j)”.

It is clear from the wording of the section that the order once made takes effect from the day on which the order is made. The section goes on;

“and shall commit the child in respect of whom it is made to the care of the Child and Family Agency”

4. It does not end there in terms of the knowledge of the Child and Family Agency that the special care order has immediate effect. It is pointed out in the submissions that in cases where special care orders have been granted and appealed, applications have been made by the Child and Family Agency for a stay on the order. It is utter nonsense for the Child and Family Agency not to acknowledge the position -

which is the position they have relied upon, the position they have asserted, and the position which is in accordance with the statutory framework in terms of the immediate effect of a special care order. It is surprising I have to say that this fact is not acknowledged so that we can get rid of this procedural wrangling that is wasting the time of the Court - in terms of the request that it address the ongoing failure of the Child and Family Agency to give effect to the Court order.

5. Adding in the words which it is proposed to add in, and I understand the reason for this application which I will come back to, but adding in the words which it is proposed to add in, would, in my view, be surplusage and is wholly unnecessary and is an action which would ignore the statutory framework which exists - special care orders have immediate effect. The Child and Family Agency needs that. The children in respect of whom the applications are made need that. Those who love them and are concerned about their welfare need that.

6. Addressing then the reason for this application, it is unfortunate that this matter was not addressed in a sensible fashion by an acknowledgement from the Child and Family Agency of the actual situation in relation to special care orders and this one - they have immediate effect. That is unfortunate. It is lamentable. The request to add in the words in this application is understandable in circumstances where this Court found in favour of the Child and Family Agency in the plenary proceedings, brought by B. suing by his mother and next friend. In my view, the Child and Family Agency was correct in the procedural defence which it relied on in those proceedings and that is apparent from the judgment. I did then express my view in relation to the immediate effect of special care orders but the proposed moving party in the motion to attach and commit understandably brings this application for fear that another procedural defence might succeed. It is perfectly understandable in the absence of any

comfort from the Child and Family Agency that it would not rely on a procedural defence which, in my view, would be devoid of any merit. It is understandable that this application comes before the Court.

7. There is of course the issue for the moving party, if bringing a motion for attachment and committal in respect of the failure to give effect to the special care order, as to what goes on the penal endorsement. In injunction proceedings, generally speaking, there will be a time limit or the word forthwith or failing that there should be an application to have a time limited. One is speaking of an entirely different set of circumstances if one is speaking about the enforcement of a Court order by a plaintiff who has obtained it against a defendant and wishes to enforce it against the defendant. Here we are speaking of a Court order obtained by the Child and Family Agency and the alleged or asserted contempt is its failure to give effect to the Court order. So what goes on the penal endorsement? It would seem to me, although it is a matter for the moving party, that the simple position is that the moving party is saying if you fail to give effect to the Court order you will be liable to the process of attachment and/or committal to prison for breach of the Court order or words to that effect in circumstances where it is, as I say manifestly obvious, that a special care order has immediate effect.

8. The position in relation to s. 23NK - insofar as that section is concerned I will say the following. It seems to me that a parent of a child, the parent of B, is perfectly entitled to bring an application before this Court in relation to the Court order which is in existence if something needs to be dealt with in the view of that parent - or of the guardian of the child or a relative. It seems to me that it is perfectly permissible. Is it permissible, is it an overreach in terms of s. 23NK of the Child Care Act 1991 for the applicant to bring this motion before the Court. I think not. I think it is perfectly

permissible, that is the first thing I will say. The second thing I will say is this, there is liberty to apply in the child care list for any stakeholder, any participant, any interested party. That is the standing position in the list and that has to be so in circumstances where one is dealing with vulnerable children. Not infrequently one of the participants will know something that the others do not which requires an urgent application to the Court, and not infrequently as here, a parent or a guardian may wish to apply to the Court for some intervention in accordance with the Act. And there is liberty to apply, there has to be, it is availed of not frequently but on occasion.

9. The parent is perfectly entitled to be here in Court making this application in light of what has transpired and in the absence of the Child and Family Agency acknowledging that the special care order has immediate effect and/or acknowledging that no procedural point will be taken in that regard. It seems to me having regard to the decision in the plenary proceedings that the moving party was left in the position that this application had to be made by her in this list.

10. I am declining to vary the order in any way because, in my view, it is wholly unnecessary so I am not making the order sought for that reason.