SHERIFF APPEAL COURT

[2016] SAC (Civ) 13
XC3/16

Sheriff Principal D C W Pyle
Sheriff Principal D Murray
Sheriff P Arthurson, QC

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL D C W PYLE

in appeal by

CC

Appellant

against

MAUREEN MANNS, LOCALITY REPORTER

Respondent

Appellant: [Cartwright, advocate; Black & Markie]
Respondent: [Scullion, solicitor-advocate; Anderson Strathern]

25 November 2016

[1] This is an appeal against the decision of the sheriff to refuse an appeal under section 160 of the Children's Hearings (Scotland) Act 2011 against the decision of the children's pre-hearing panel that the appellant was no longer deemed to be a relevant person in relation to the child, LH.

[2] The sheriff made a number of findings in fact which for present purposes can be summarised as follows:

a. The child, LH, is aged 8. The appellant is the partner of the child's father and has been so since the child was aged 2. The child's mother is not involved with the child and has no contact with him. The appellant and the child's father have never resided together as a couple and the child has never resided with the appellant;

b. The child's father has a significant sight impairment. It was confirmed during the course of the hearing before us that he is completely blind. As a consequence of a child protection order in April 2014 the child was taken into foster care and has been so since then. The local authority social work department is at present considering making an application to the sheriff for a permanence order. Prior to being taken into care the child lived with her father. During that time the appellant had been involved on a daily basis in his care, including toilet training, bathing, making meals and taking him to nursery. Although not contained in the formal findings in fact, it appeared that she had also attended meetings at the nursery and had been involved in discussions about the child's MMR vaccination. She had been offered the opportunity to participate in a parenting assessment but had decided not to because she thought that her own property, a one bedroom flat, was unsuitable. There would also be a practical problem caused by her owning a dog when the father also had a registered guide dog;

c. The social workers had concerns about the level of care being provided to the child. The appellant and the child's father abused alcohol and indeed the appellant had been found intoxicated. The child had been exposed to unhygienic conditions and had been found wandering the streets. As a result of these concerns the child protection order had been applied for and granted;

d. The appellant and the child's father were entitled to supervised contact with the child twice per week at a contact centre, which they both generally exercised. We were advised that since the decision by the sheriff the children's hearing had reduced contact to one hour once per week;

e. In April 2014 the children's hearing decided that the appellant be deemed to be a relevant person in respect of the child. She regularly attended subsequent hearings. On 17 March 2016 the pre-hearing panel decided that she no longer be deemed to be a relevant person on the grounds that she no longer played a significant part in the child's day to day life, she did not make decisions for him, she had no parental responsibility, all decisions were made by his father, the appellant and the father do not reside together and the child has been in foster care for two years.

[3] In reaching her decision the sheriff rightly said that the test was whether the children's hearing's decision was justified. It was not her role to have a re-run of the proceedings. The sheriff's decision was to be a factual one, rather than an exercise of a discretion. The welfare principle did not apply. She acknowledged that the cessation of the appellant's involvement with the child was because of state intervention but nevertheless concluded that a period of two years was simply too long for the appellant to continue to be deemed a relevant person.

[4] Section 81(3) of the 2011 Act provides that the pre-hearing panel of the children's hearing "must deem the individual to be a relevant person if it considers that the individual has (or recently had) a significant involvement in the upbringing of the child". The same principle is employed in Section 81(A)(3) which governs discontinuance of that status, namely that "the individual is no longer to be deemed to be a relevant person if [the pre-hearing panel] considers that the individual does not have (or has not recently had) a

significant involvement in the upbringing of the child." Section 160(3) provides that in the appeal the sheriff must confirm the determination by the pre-hearing panel "if satisfied that the determination… is justified". In an appeal to this court, we have to be satisfied that the sheriff had failed to apply that test or has made some other error of law pertinent to the issue before her (*W* v *Shaffer* 2001 SLT (Sh Ct) 86).

[5] In reaching her decision, the sheriff took into account a passage from Professor Norrie's book, *Children's Hearings in Scotland* (3rd edition), at para 5-13, in which he says the following:

> "Again, the concept of "recent" [significant involvement in the upbringing of the child] ought not to be too strictly interpreted: the aim is to ensure that those who have had an involvement in the child's upbringing are not excluded because of recent events. So a person who loses that involvement through state action should still be able to claim relevant person status, and so protect their right to challenge state action, until such time as their involvement in the child's upbringing was merely historical and of no contemporary significance. The timescale of "recent" involvement can obviously vary from case to case – and with the age of the child – but an involvement that ended more than a year previously is likely to be considered "recent" only in unusual circumstances."

We agree with that. But we do not understand it to mean, as the sheriff appears to do, that, no matter the state intervention, involvement of more than one year is likely not to be recent. Rather, we consider that Professor Norrie is, first, dealing with the circumstance where the only reason that the person's involvement has been lost is state intervention and, secondly, what is likely to be considered "recent" in the general sense of the term. In other words, state intervention of its own should not generally affect the person's status. Rather, his or her status might only be affected if other factors have also impacted to reduce his or her involvement. The reason for that is the obvious one: the state could engineer a delay merely to ensure that its intervention renders the person no longer to be deemed relevant. In the last sentence of the passage Professor Norrie is simply giving a general example of what might

be the length of the passage of time, which would render the past involvement no longer to be considered recent. In saying that, we do not rule out the possibility that even where the cause of the cessation of involvement is solely state intervention the passage of time will eventually be such that, as he says, the involvement is merely historical. Each case will depend upon its own facts and circumstances. But where, as here, the cessation of involvement was solely because of the child protection order and the appellant has continued to exercise contact with the child to the extent allowed her by the children's hearing, in our opinion the appellant continues to be a relevant person. The sheriff fell into error in conflating the two issues. For the avoidance of doubt, we do not suggest that the local authority in this case has engineered a delay in the manner we have mentioned.

[6] We were invited by the appellant to answer in the negative questions 1 and 5 in the stated case and in the affirmative the questions 2, 3 and 4, question 6 no longer having been argued as a point in the appeal. We are not satisfied that the questions posed are in proper form. Question 1, for example, deals with a finding in fact, 13, which is merely a replication of what the pre-hearing panel decided. The other questions are unnecessary if question 1 is reduced to a simple proposition in law, namely whether or not the pre-hearing panel was justified in reaching its decision, which is what the Act requires. Accordingly, we shall reduce the question posed to a straightforward one – Was I entitled to find that the pre-hearing panel was justified in reaching its decision? - and answer it in the negative.

[7] No issue of expenses arises.