

# Legal theory essay



**ASSIGN  
BUSTER**

To understand the point of law that the Judges applied to this case, we must first try to understand the material facts of the case.

The appellant, who herself had been taken into care by the respondents at the age of 11, and whilst under the respondents care; she became acquainted with a young man. She later had sexual intercourse with him at the age of 15 and consequence of this was she became pregnant with Kenneth. She re-established a relationship with a Mr and Mrs H, whom she started a relationship with, while she was in care. After the birth of Kenneth she was taught to look after him satisfactorily at the Rye Hill Family Care Centre where she was accommodated.

However while she was accommodated at the care centre, her interest in going out and meeting boyfriends grew and sometimes took priority over the care for Kenneth. But it was never disputed that the appellant loved her child and in the right frame of mind she could cope with his needs. The reason given for her behaviour was because the appellant was of the age of 16 and very immature at the time of his birth. Therefore because of her behaviour, the respondents issued the first summons to the court to make Kenneth a ward of the court. After the respondents were given interim care order, it was decided that the appellant and the minor should be placed together with a family, as she was getting increasingly tiresome of the discipline of the centre. It was then that the appellant and the child were placed with Mr and Mrs H.

It was the first time that she had experienced a family life as a benefit. However, because of her age and the fact that she was still craving a life

outside the care of Kenneth, she began arguments with the H's about the upbringing of the child. She stated to Mrs H at one point that Kenneth was 'costing her boyfriends', it was on this statement that the two had a lengthy discussion about Kenneth and the appellant agreed that it would be better for both herself and her baby, if Kenneth was to go to long term foster parents. Mrs H did not act on what the appellant had said until after the evening of the 31st of December 1983. The appellant, after going out and leaving the child with baby-sitter, telephoned and said that she was not going to return until the child had been put in foster care.

Based on the material facts from the beginning of the case, we can see that the respondents were concerned for the welfare of the child and of the appellant. The respondents had to look at the consequences that the child may face, if the child stayed in the custody of the appellant. It was about the moral and the well being of the child. If we first look at the idea of utilitarianism, it focuses on what is best for the bulk of the community; it is sometimes thought to be a check for the lawmakers. If we take the idea of utilitarianism in the case of *Re K D*, we could first argue, with this in mind, that what is best for the bulk of the community would be for a child to be with its natural parents.

This would be nature's way, and it would not matter if the child were born into poverty or homelessness, if it was in the best interest and welfare of the child and the child was not in any physical or moral danger, then to stay with the natural parent would be the ideal solution. As Templeman LJ stated within this case at 578 (g) " It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate, provided the child's moral and

physical health are not endangered. " Nonetheless, Rawls argued that the main problem with utilitarianism was " it fails to take in account the distinctiveness of persons", this shows that the consequences involved with this notion give a distinct conclusion. Nevertheless, what is good for the majority might not be good for the minority.

Just because it seems the right thing to do at the time, it means that it is the correct thing to do. It could be good for one person, maximum pleasure, minimum pain, but on the other hand, for another person it could be maximum pain and minimum pleasure. This perception is known as hedonistic, pleasure seeking. However, it can also be argued that if the natural parent cannot provide a settled and stable home for the child then this would be detrimental to the child's upbringing. Therefore giving cause to the local authority to take charge of the custody of the child. The second notion to consider when it involves the termination of access between a parent and a child is the idea of rights.

Rights focus on the individual, rather than the community at large. In the above case it is the right of the mother and the right of the child that we must first focus on. The European Convention for the Protection of Human Rights and Fundamental Freedoms addresses the right that the natural bond between a natural parent and a child should not be interfered with unless the child's welfare dictates so. It is all provided by art 8 of the convention: 1.

Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority

with the exercise of this right except such as is in accordance with the law and is necessary ...

for the protection of health or morals, or for the protection of the rights or freedoms of others. As the United Kingdom is party to the convention, we must adhere to these two principal rights. It has to be seen that public authorities are there to exercise a supervisory role over family life not one of control. It is the right of a mother to care and love her own child, however it is also the right of the child that they have a stable upbringing. Latey J commented in the case of *M v M* [1973] that to speak of a 'basic right to access' meant "not that a parent has any proportional right to access but that save in exceptional circumstances to deprive a parent of access is to deprive a child of an important contribution to his emotional and material growing up in the long term".

Again it is going back to the fundamental idea that the best place for a child is with a natural parent, because both the child and the parent can give to one another something that a local authority can never replace, nature love. It is only when the child's moral and physical welfare has a bearing on his emotional needs that a local authority can step in. As in the case of *Re K D*, it was after the appellant had left the child with Mr and Mrs H, that the respondents, knowing that the natural mother still had rights to her child, arranged for her to see the child for one hour a week in accommodation provided by the social services department. In a careful and extensive investigation that was carried out over four days by Hollis J, he concluded that the appellant was a 581 (a) "very young, immature and, it has to be

said, irresponsible mother who had left her child with short term foster parents who could not reasonably be expected to keep him indefinitely”.

It was at this point that the respondents had done everything reasonably to keep the mother and the child together. It was in a case conference that it was decided that any possibility of the mother and the child remaining together was not viable. This is when the local authority started thinking about the child’s right to stable family life, instead of the mothers right to care for her child. It was here that it was decided that Kenneth should be placed with long-term foster parents and he was subsequently moved into a suitable family. Kenneth was immediately integrated within the family, and settled extremely well into his new family. It was clear from a report, dated only a month after the child had been placed with his foster parents that the respondents were going to apply for an instant wardship for an order terminating all rights to access to the child by the appellant.

However, the rights of the mother were still foremost in the court as stated by Stephen Brown LJ, “ I recognise that the local authority have difficultly duty to perform. They are anxious to make arrangements which can be permanent for the welfare of this child but I think for the time being at any rate access should not be cut off. Certainly ...

I do not consider that it is right at this early stage to say that all hope of rehabilitation between this young, loving mother and her child should be terminated”. It is seen by the court that the consequences of terminating the relationship between mother and child at this early stage would be detrimental to both parties. Her being of a young age, does not stop her

missing her child and wanting a relationship with him, and therefore the way in which she is acting could be clouding her judgement concerning the well being of the child. This was also seen in a recent case of *G v United Kingdom (Minors: Right of contact)* 2000.

This case was about the fathers right of access to his children after divorce. It was seen that this case presented many complex arguments. In one sense the courts didn't want the children to be involved in any more undue stress however the father still had rights to see his child. However, it is a tendency for parents to use the children in a divorce hearing therefore causing the stress in the beginning. When the appeal case finally appeared before the House of Lords, the ward had been with his foster parents care for 21/2 years, he had bonded with his foster parents. At the tender age of 3, as Templemen LJ stated, 579 (b) " he could not cope with two competing mothers".

At such an age, the child could not cope with the concept of two mothers, and as a result of this, he was becoming increasable distress with each visit that the appellat took. As a consultant psychiatrist, who was asked to investigate the case, stated about the child's distress levels 584 (j) " of a much more intense degree than a typical separation anxiety such as one might see for children going to school, for instance". Another aspect that Dr Place investigation found was that to remove the child from his foster parents was in effect removing him from his emotional parents, who he was now regarding on for his stability and well being. In my opinion, the underlining issues within this case were if the mothers needs or right came before the child's. After doing everything possible to rehabilitation the child

with the mother, the respondents exhausted all avenues under her rights; the next logical step was to think about the needs and rights of the child. They had to think about the consequences of the child and what was in the child's best interest.

Obviously the fact that the child was showing acute signs of distress during access visits was causing concern for the respondents, who in reality, just wanted the child to be settled in stable and loving environment. Which, they believed that he was receiving from the foster parents and wanted the continuing relationship between them to maintain. This is the principle reason why the respondents were applying for the order of wardship to allow the foster parents to adopt; the consequences for the child over ruled the rights of the appellant.