



18 October 2017

PRESS SUMMARY

Armes (Appellant) v Nottinghamshire County Council (Respondent) [2017] UKSC 60 *On appeal from [2015] EWCA Civ 1139*

JUSTICES: Lady Hale, Lord Kerr, Lord Clarke, Lord Reed, Lord Hughes

BACKGROUND TO THE APPEAL

The appellant was in the care of the respondent local authority from the ages of seven to eighteen. The local authority placed her into foster care with Mr and Mrs A between March 1985 and March 1986, and with Mr and Mrs B between October 1987 and February 1988. She was physically and emotionally abused by Mrs A, and sexually abused by Mr B.

The case proceeded on the basis that the local authority were not negligent in the selection or supervision of the foster parents, but that they were nevertheless liable for the abuse perpetrated by her foster carers. She claimed that the local authority were liable for the abuse, either on the basis that they were in breach of a non-delegable duty, or on the basis that they were vicariously liable for the wrongdoing of the foster parents. Her claim was dismissed by the High Court and the Court of Appeal.

JUDGMENT

The Supreme Court allows the appeal by a majority of 4-1, finding the local authority vicariously liable for the abuse committed by the foster parents, but rejecting the argument that the local authority were liable on the basis of a non-delegable duty. Lord Reed gives the lead judgment, with which Lady Hale, Lord Kerr and Lord Clarke agree. Lord Hughes gives a dissenting judgment.

REASONS FOR THE JUDGMENT

References in square brackets are to paragraphs in the judgment

Non-delegable duty of care

A local authority are not under a non-delegable duty to ensure that reasonable care is taken for the safety of children in care while they are in the care and control of foster parents. Such a proposition is too broad, and fixes local authorities with too demanding a responsibility [49]. The following reasons are given:

- The Child Care Act 1980 (“the 1980 Act”) permits a local authority to arrange for children in care to spend time staying with their parents or grandparents, or other relatives or friends. Imposing a strict liability on local authorities for the lack of care of those relatives or friends would risk creating a conflict between the local authority’s duty, under section 18(1) of the 1980 Act, to give first consideration to the need to safeguard and promote the welfare of the child, and their interests in avoiding exposure to such liability. It would also risk creating a form of state insurance in situations where the local authority place the child with the child’s own parents [45].
- The 1980 Act required the local authority to “discharge” the duty to provide accommodation and maintenance for a child, including by placing the child with foster parents. This implies that,

although the local authority have numerous duties towards the child, their duty is not to provide the child with day to day care, but rather to arrange for, and monitor, the performance of that function by the foster parents [46-47].

- The Secretary of State makes regulations under section 22 of the 1980 Act imposing duties on local authorities in relation to the boarding out of children. The implication of section 22 is that the local authority's continuing responsibility for the child is discharged by boarding-out the child in accordance with those regulations, including by prior approval of the household, and subsequent inspection, supervision and removal. The statutory regime does not impose any responsibility for the day to day care of the child [48].

Vicarious liability

Applying the principles set out in *Cox v Ministry of Justice* [2016] UKSC 10 on the imposition of vicarious liability, the local authority are vicariously liable for the acts of the foster parents in the present case for the following reasons:

- Integration and business activity: The local authority carried out the recruitment, selection and training of foster parents, paid their expenses, and supervised the fostering. In those circumstances, the foster parents were not carrying on an independent business of their own, and it is impossible to draw a sharp distinction between the activity of the local authority and that of the foster parents. Thus the abuse committed by the foster parents against the claimant was committed by the foster parents in the course of an activity carried on for the benefit of the local authority [59-60].
- Creation of risk: The placement of children with foster parents creates a relationship of authority and trust between the foster parents and children in circumstances where close control cannot be exercised by the local authority. This renders the children particularly vulnerable to abuse [61].
- Control: The local authority exercised a significant degree of control over the foster parents: it exercised powers of approval, inspection, supervision and removal [62]. Micro-management, or a high degree of control, are not necessary for the imposition of vicarious liability [65].
- Ability to pay damages: Most foster parents have insufficient means to meet a substantial award of damages, whilst local authorities can more easily compensate the victims of abuse [63].
- There was no evidence to suggest that imposing vicarious liability would discourage local authorities from placing children in care with foster parents, and encourage them instead to place them in residential homes, at much greater cost. [68].

In response to the concerns raised by Lord Hughes: (1) The approach adopted would not have resulted in the imposition of vicarious liability if the appellant had been placed with her own parents. (2) This decision is concerned only with the legislation and practice that was in force at the relevant time, not with the current regime. (3) The courts' care not to impose unduly exacting standards in the context of family life applies equally to life in foster families [71-73].

Lord Hughes gives a dissenting judgment on the vicarious liability issue. He considers that the majority's approach would extend vicarious liability to family and friend placements under the current statutory regime, and consequently inhibit local authorities' practice of making such placements. Finally, he considers that it may result in undesirable litigation of family activity in the courts [87-90].

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>