



Press Summary

THE COURT ORDERED that no one shall publish or reveal the name or address of the children who are the subject of these proceedings or reveal any information which would be likely to lead to the identification of the children or of any member their family in connection with these proceedings. In addition, the Court reminds that section 12(1) of the Administration of Justice Act 1960 establishes an automatic restriction on reporting and publication in family cases involving children.

29 January 2025

The Father (Appellant) v Worcestershire County Council

[2025] UKSC 1

On appeal from [2024] EWCA Civ 694

Justices: Lord Reed (President), Lord Sales, Lord Leggatt, Lord Stephens, Lady Simler

Background to the Appeal

The appellant (“**the Father**”) applied for a writ of habeas corpus (a procedure enabling a court to order a person’s release from unlawful detention), seeking the release of his two children from what he claims is their detention by Worcestershire County Council (“**the Council**”). The children have been placed in the Council’s care under a care order made by a district judge in the Family Court under section 31 of the Children Act 1989. The care plan for both children is for them to be in long term foster care and both children are currently living with the same foster parents.

The High Court dismissed the Father’s application for a writ of habeas corpus on the basis that the “correct process” was for the Father to appeal the care order and applying for the writ was “inappropriate” and “wrong”. The Court of Appeal found that the High Court hearing had been procedurally unfair and set aside the judge’s order. The Court of Appeal considered the matter afresh and dismissed the Father’s application for a writ of habeas corpus for two reasons. First, the Father’s application for a writ of habeas corpus was not the correct process. Second, the children were not detained. The Father appealed to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the appeal. It holds that neither child is detained and therefore the Father’s habeas corpus application cannot succeed. The Court also considers

whether habeas corpus could be used if the children were detained. The Court concludes, on the facts of this case, it could not and that other remedies, such as an appeal, should be used to challenge a care order. Lord Sales and Lord Stephens give the judgment, with which the other members of the Court agree.

Reasons for the Judgment

The writ of habeas corpus is of the highest constitutional importance as it is a means by which the liberty of the individual is vindicated [1].

Challenging a care order under the Children Act 1989

The Father had a right to appeal against the care order to a circuit judge sitting in the Family Court in accordance with section 31K(1) of the Matrimonial and Family Proceedings Act 1984, as amended. The Family Procedure Rules 2010 (“FPR”) provide that permission to appeal is required [23]-[27]. The Father could also apply under section 39(1) of the Children Act 1989 to discharge the care order, as he retains parental responsibility [29].

There are procedural advantages of challenging the care order by way of appeal or an application to discharge the care order, rather than an application for habeas corpus. The Father and the Council would be parties to the appellate proceedings or the application. A guardian would be appointed under the Children Act 1989, who would be under a duty to safeguard the interests of the children. Therefore, the court would have the advantage of hearing submissions from all the parties, aimed at securing, as its primary concern, the welfare of the children [28], [30].

Challenging a care order on an application for habeas corpus

On an application for habeas corpus, the lawfulness of a care order is only relevant if it is an order for the detention of a child or an order under which a local authority may, in the exercise of parental responsibility, consent to the deprivation of a child’s liberty amounting to detention [31]. The effect of a care order is set out in section 33 of the Children Act 1989. While a care order is in force, the local authority is under a duty to receive the child into their care and to keep the child in their care, and the local authority has parental responsibility [33]-[34].

The ordinary exercise of parental responsibility under a care order by a local authority, or foster parents’ exercise of their delegated authority, will not deprive a child of liberty amounting to detention [37]. In some extreme or unusual circumstances, the improper exercise of parental responsibility by a local authority, or delegated authority by foster parents, may result in the deprivation of a child’s liberty amounting to detention. In such cases, the writ of habeas corpus will be an appropriate remedy. However, the appropriate order would be for the child to be released from the unauthorised detention, not that the care order should cease to have effect [38]-[40]. A claim that parental responsibility or delegated authority is being improperly exercised and a child is being detained, will need to have a “real prospect of success”. This must be determined in the context of the statutory regime for looked after children which contains a comprehensive set of obligations to ensure that the child is properly looked after and that the arrangements are monitored and scrutinised. For there to be a real prospect of success, there will need to have been failures in relation to these procedures by several individuals [41]-[42]. If there is a claim with a real prospect of success, it will be open to the judge dealing with the habeas corpus application to adjourn it under rule 87.4(1) of the FPR, so that the local authority can either terminate the foster placement or provide supports and services so that the child can be maintained in the placement [43].

The children in this case are not detained. They are living together in the same foster placement, and it is not suggested that there are any extreme or unusual circumstances [53].

Whether habeas corpus can be used where a care order results in detention

Although the Court concludes that the care order in this appeal does not result in the detention of the Father's children, the final section of the judgment considers the availability of habeas corpus where a care order does result in the detention of a child. This is because the procedural issues raised in such a situation are important [54]. In particular, whether habeas corpus can be used to challenge the lawfulness of a court order that authorises detention.

The Court first considers whether habeas corpus has been excluded by the primary legislation relating to care orders. The Court concludes that it has not due to the principle of legality. This principle provides that very clear words are required in primary legislation to remove important constitutional rights such as habeas corpus. Neither the Children Act 1989 nor the legislative regime which establishes the Family Court contains clear words excluding habeas corpus in this way [56].

However, the Court considers that there are other reasons why habeas corpus cannot be used to challenge a care order. A person detaining an individual will have a complete defence to a writ of habeas corpus by showing that they have lawful authority for the detention. Where a court order requires or authorises the detention, the person can establish a defence by pointing to that order. In that situation, the individual who is detained needs to challenge the lawfulness of the court order authorising their detention to pursue their claim to be released [58].

Habeas corpus cannot be used to challenge the lawfulness of a court order since the writ is directed to the person who holds the individual in detention rather than to the court which has made the order [58]. The Court discusses some authorities which suggest that habeas corpus could be used to challenge a court order, but concludes that they are either no longer good law or are inapplicable to a court order [62]-[71]. Accordingly, to succeed on an application for habeas corpus where detention is authorised by a court order, the applicant will first need to challenge the lawfulness of this order by other means.

The Court therefore considers whether judicial review would be available to challenge the lawfulness of a care order authorising the detention of a child. Care orders can be made by either the High Court or the Family Court. Judicial review would not be available to challenge an order made in the High Court as it has unlimited jurisdiction; an appeal or a request for reconsideration is the route to challenge such an order [59]. In contrast, the Family Court is of limited jurisdiction and could therefore be subject to judicial review [59]. However, judicial review is not available where there is a suitable alternative remedy, including a statutory right of appeal [82]. In this case, the Father had the suitable alternative remedy of either appealing the care order or applying to discharge it under the Children Act 1989 [60], [84]-[85].

The practical effect of this analysis is that the Father was not entitled to seek to challenge the care order using his application for habeas corpus as it is not a procedure capable of challenging the lawfulness of such an order, and he was not entitled to challenge the care order by way of judicial review, because he had a suitable alternative remedy available [93]. Therefore, even if the care order did result in the detention of the Father's children, his application for habeas corpus would have been dismissed [93]. Instead, if the Father wished to challenge the care order, he was obliged to do so using the procedural route specifically created by legislation for that purpose, namely the right of appeal within the Family Court or an application discharge the care order [94]. Habeas corpus claims cannot be used to cut across the elaborate and carefully balanced procedures contained within the Children Act 1989 [97].

References in square brackets are to paragraphs in the judgment.

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: [Decided cases - The Supreme Court](#)