



THE COURT ORDERED that no one shall publish or reveal the names or addresses of the Appellants who are the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the Appellants or of any members of their families in connection with these proceedings.

18 June 2020

PRESS SUMMARY

ABC (Appellant) v Principal Reporter and another (Respondents) (Scotland)
In the matter of XY (Appellant) (Scotland) [2020] UKSC 26
On appeals from [2018] CSIH 72 and [2019] CSIH 19

JUSTICES: Lady Hale, Lord Kerr, Lord Wilson, Lord Hodge, Lady Arden

BACKGROUND TO THE APPEALS

These appeals concern the role of siblings in the procedures by which children’s hearings in Scotland make compulsory supervision orders (“CSOs”) under the Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”). A CSO is an order in respect of a child which may (among other things) direct where the child is to reside and regulate the child’s contact with any person. The 2011 Act provides for certain persons to have (or to be deemed to have) “relevant person” status in relation to a child. This status confers a right to be notified of, and an obligation to attend, any children’s hearing in relation to the child. The status also confers ancillary rights, such as access to the papers, the right to make submissions, and the right to seek a review of any CSO. Under section 81(3) of the 2011 Act, a person is deemed to be a relevant person if that person has (or has recently had) significant involvement in the upbringing of the child. In most cases that would not include a sibling.

ABC is a 16-year-old. His younger brother, DEF, is subject to a CSO which regulates his contact with ABC. ABC is not a “deemed relevant person” in relation to DEF. ABC argues that the relevant person scheme is incompatible with his right to respect for his family life under article 8 of European Convention on Human Rights (“ECHR”) and is therefore outside the legislative competence of the Scottish Parliament. The Lord Ordinary dismissed ABC’s petition for judicial review but held that the test for deemed relevant person status in section 81(3) of the 2011 Act was too narrow to be compatible with article 8 of the ECHR, unless it was “read down” to include a broader range of people having established family life with the child. The First Division of Inner House of the Court of Session dismissed ABC’s appeal and reversed the finding that there was a need to read down section 81(3).

XY is a 24-year-old with three younger sisters who are all subject to CSOs. XY applied to be deemed a relevant person in relation to each of his siblings and was briefly granted this status. However, following a series of decisions by children’s hearings, sheriffs and the Sheriff Appeal Court, XY is no longer deemed to be a relevant person in relation to any of his siblings. The First Division of the Inner House of the Court of Session, applying its own decision in the ABC case, dismissed XY’s appeal against these decisions. XY argues that the provisions of the 2011 Act governing the grant and removal of deemed relevant person status (sections 81(3) and 81A(3)) are not compatible with his rights to a fair hearing and to respect for his family life under articles 6 and 8 of the ECHR. He argues that these provisions are therefore not within the legislative competence of the Scottish Parliament, unless they can be read down to render them compatible.

JUDGMENT

The Supreme Court unanimously dismisses the appeals. Lady Hale and Lord Hodge give the sole judgment with which the other Justices agree.

REASONS FOR THE JUDGMENT

The Supreme Court considers that article 8 of the ECHR provides the appropriate framework for analysis. The requirement of a fair hearing under article 6 does not add anything to that right in the present circumstances [27]. In each case, the relevant interest for the purposes of article 8 is the maintenance and development of the relationship between the sibling and the referred child [29]. In the context of a children’s hearing, respect is shown to that interest if, in the particular circumstances of the case, the sibling is enabled to have an involvement in the decision-making process, seen as a whole, to a degree sufficient to protect that interest [30]. The required degree of involvement will vary based on the nature and extent of the sibling’s relationship with the referred child.

The Supreme Court concludes that article 8 does not require public authorities to grant relevant person status to a sibling, who does not have, and has not recently had, a significant involvement in the upbringing of the child [51]. Whilst the guidance has not always been clear, there is a range of measures which can be used to ensure that the relevant public authorities comply with their duty to act compatibly with the article 8 rights of family members who are not relevant persons [41]. For instance, the Scottish Children’s Reporter Administration directs reporters, when arranging a hearing, to consider whether there is anyone other than a (deemed) relevant person who ought to be invited under the discretionary powers contained in section 78 of the 2011 Act [32]. Children’s hearings also have recourse to advice from the National Convener of Children’s Hearings Scotland, who would advise against refusing to obtain the views of a sibling of sufficient age and maturity [33]. Further guidance is provided in Children’s Hearings Scotland’s Practice and Procedure Manual, which directs children’s hearings to obtain information about a child’s relationships with siblings and to give careful consideration to how these relationships can be maintained and protected [35].

Under the Children (Scotland) Act 1995 and the Looked After Children (Scotland) Regulations 2009, the responsible local authority must obtain details of the child’s siblings and their contact with the child and prepare a “child’s plan” with arrangements for contact between the child and others [36]. In addition, the Principal Reporter, who is responsible for investigating whether a CSO is necessary, may require the local authority to provide a report or further information about a child, including relevant information about the child’s siblings [37]. The child or any relevant person may also make representations on behalf of the child’s wider family, including siblings [39]. Taken together, these mechanisms allow children’s hearings to show respect for the family life of those who are not entitled to the status of relevant person [38], provided that hearings are conducted in a practical and sensible manner and in line with the guidance of the Principal Reporter and Children’s Hearings Scotland [41].

As such, the Supreme Court holds that the relevant provisions of the 2011 Act are within the competence of the Scottish Parliament and need not be read down [50, 51]. Those who have a significant involvement in the upbringing of a child are those who make decisions for the child. Relevant person status is granted to such persons because CSOs interfere with their rights to make such decisions [46]. A sibling, who has not taken on such responsibility and does not face such interference, should not be given relevant person status. It would not be appropriate for every sibling to be required to attend all the children’s hearings under pain of criminal sanction [47], or to have comprehensive access to the referred child’s documents (which might include highly sensitive information about the child and other family members) [48], or to have the power to delay or disrupt referrals by withholding their agreement to the underlying grounds [47]. Nor would this be consistent with the statutory requirement for children’s hearings to minimise the number of people present at any given time [50].

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.

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