

Supreme Court dismisses appeal upholding care order procedures (*The Father v Worcestershire County Council*)

Expert reaction from Mark Blundell, barrister at 1 Garden Court

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“On the morning of 29 January 2025, the Supreme Court (the Court) handed down its unanimous decision to dismiss the Father’s appeal in the case of *The Father (Appellant) v Worcestershire County Council (Respondent)* [\[2025\] UKSC 1](#). The interest and general relevance of the case stems less from the specifics of the Father’s appeal, which was dismissed on the basis that the children (who were the subject of a final care order and were placed in long term foster care) were not ‘detained’, as from the Court’s analysis of whether applications for a writ of habeas corpus (an order compelling the immediate release of an individual that is being unlawfully detained) are ‘obsolete’ within family proceedings.

The Court considered the possibility of using habeas corpus in the ‘extreme or unusual circumstances’ of ‘a detention case’ (the example cited was if the foster carers had locked the children in their bedroom for a month). The Court considered an application for habeas corpus was, in principle, open in these circumstances, albeit it would not procure the return of a child to the applicant parent. Habeas corpus could effect the release of the children from unauthorised detention, but it would not act to discharge the care order, as a care order provides lawful authority for the detention (that is, a complete defence to the writ of habeas corpus).

To succeed on an application for habeas corpus where ‘detention’ is authorised by an order of the court, the applicant would also need to use the judicial review procedure to quash the relevant order. This could be achieved by an application to the High Court for habeas corpus under FPR Part 87, also seeking permission to apply for judicial review. However, judicial review will not be available in cases where suitable alternative remedies are available, such as an appeal or an application to discharge the care order (under [ChA 1989, s 39\(1\)](#)). In such cases, the application for habeas corpus will be summarily dismissed.

The Court concluded that the use of habeas corpus is not entirely obsolete, however, its scope in relation to children is limited and save for ‘wholly exceptional circumstances’ cannot be used to circumvent the procedures contained in [ChA 1989](#). Those ‘wholly exceptional circumstances’ would appear to be cases in which the following conditions are satisfied:

- the child is detained, and
- there is no lawful order authorising the child’s detention

OR

- the applicant can demonstrate that they have an arguable ground to challenge the detention order by way of judicial review having a realistic prospect of success, and

- no suitable alternative remedies are available (including statutory appeal or an application to discharge the order authorising detention) ”

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