

IN THE MATTER OF THE CHILDREN ACT 1989, SECTION 31

AND IN THE MATTER OF B

B E T W E E N:

A local authority

Applicant

-and-

R

First Respondent

-and-

A

Second Respondent

-and-

B

(By his Children's Guardian)

Third Respondent

Ms Amanda Jepson (instructed by the local authority solicitor) for the applicant
Ms Rebekah Wilson (instructed by Duncan Lewis Solicitors) for the first respondent
Mr Steven Ashworth (instructed by Helen Robbins Solicitors) for the second respondent
Ms Emma Hall (of Creighton & Partners Solicitors) for the third respondent

**APPROVED NOTE OF EXTEMPORE JUDGMENT OF HER HONOUR JUDGE STAITE
GIVEN ON 13 MAY 2020**

(1) B's parents are respectively R, the mother ('M') and A the father ('F'). The order which I made permitting the LA to share PR with the child's parents expires today, 13.05.20, at 5pm unless extended by further order made by me following the contested hearing which has taken place this afternoon. The child with whom the child is concerned is known within the family as B, and I shall refer to him by this in the course of my judgment.

- (2) Sadly B suffers from a very complex medical condition and has a diagnosis of Batten's disease, which is a rare genetic and life-limiting disease, with no current cure. He has a tracheostomy tube which needs changing once a month and has very limited cognitive functions. He requires constant care which until recently was provided to the parents by social care agencies, in conjunction with the care that the parents provided to their son, thereby enabling him to live at home with his parents and his adult sister who is 19 years old.
- (3) The basis of the app for an ICO was set out in a detailed statement prepared by the allocated SW, dated 23.04.20. There was also a statement of a care nurse specialist, which is in the core bundle. Although there appear to have been concerns regarding the quality of care provided to B in terms of the management of his specific need in 2018, matters appear to have come to a head in early April 2020 when, as outlined in the PS prepared on behalf of the LA for the hearing on 04.05.20, the parents appeared unwilling to seek prompt medical treatment for B on 05.04.20 when, according to the written evidence of one of the professional carers, B had dried blood visible from his tracheostomy tube, a high temperature and difficulty in breathing, which required urgent hospital admission. According to the LA evidence, F insisted on B's discharge from hospital at 2.30am on 06.04.20. However, F says in his statement that the doctors at hospital advised him that B could go home and that he, F, should contact an ambulance if anything else happened or B's condition worsened. I observe in passing that the discharge letter from the hospital would appear to confirm F's position in this respect.
- (4) On 06.04.20, test results from the hospital revealed that B had tested positive for Covid-19. According to F's evidence, he and M continued to care for B at home, even though they were feeling unwell. They disagree with the suggestion in Ms M's statement that they were preoccupied with their own ill health rather than caring for B. But they do accept that his diagnosis of Covid-19 was a source of great concern for them, in circumstances where they also felt unwell with possible symptoms.
- (5) On 07.04.20 B had a temperature of over 39 degrees, and according to the evidence of L, the carer, was coughing fresh blood. The carer was so concerned by the deterioration in B's condition that she asked the parents to call an ambulance. When the parents refused to call an ambulance, she called for one. And on admission to hospital B required an emergency tracheostomy tube change and was placed on a ventilator for 3 days.
- (6) F says in his evidence that looking back he now realises that L was right to call the ambulance, and that B did get well after the hospital treatment. He said he had been scared about B going to hospital in light of the media

coverage at the time about going to hospital with Covid symptoms. F said that on 07.04.20 he had felt mentally and physically all over the place and that when the ambulance had arrived he and M had put their trust in the paramedics and that they did not feel able to accompany B to the hospital. Gradually B recovered, having had seizures at hospital on 18.04.20, and respiratory depression requiring 2-3 litres of oxygen on admission.

- (7) F says he had found a small cylinder of oxygen for B, prior to the ambulance arriving. But it is clear he now accepts he should have been more proactive in attending to his son's needs on 07.04.20.
- (8) On 09.04.20 F was admitted to hospital with Covid-19 and remained in hospital to 30.04.20. He was on oxygen but not placed on a ventilator. M also contracted Covid-19 and is now recovering.
- (9) Although it was submitted on behalf of the LA on 04.05.20 that the parents were neglectful in failing to visit B after hospital admission on 07.04.20, it seems to me that in the context of their own health anxieties at the time, this was in the particular circumstances of the case an unfair criticism of these parents and their parenting capacity, particularly when viewed in the context of the parents' committed care of their son albeit with significant outside support and intervention during his life to date.
- (10) It was also submitted on behalf of the LA at the earlier hearing that at an inter-disciplinary meeting on 30.04.20 neither parent had been prepared to consider palliative care for B at a hospice and had required him to remain in hospital for a further 2 weeks. The minutes of that meeting were requested by me for the hearing today and there is no indication from those that the professionals did discuss with the parents the proposal for B to go to the hospice, although there was mention of F saying the Hospital was a safe place for his son and that he wanted him to remain as an in-patient for a further 2 weeks. It was confirmed that the hospice had not been discussed with the parents, and the view of the professionals that the parents would probably not consent to B's removal to the hospice. At hearing on 04.05.20 the solicitor instructed for F at short notice did make it clear that the parents consented to B being discharged from the Royal London Hospital to the hospice following that hearing.
- (11) Nevertheless I made the ICO which was expressed to expire at the conclusion of this hearing. In light of the submissions advanced on behalf of the LA, which includes concerns about the parents' resistance to B being transported from the hospital to the hospice. Additional evidence produced for today's hearing included the CRIS police report which followed concerns on the part of social services in April 2020 that the parents had failed to seek medical urgent

assistance for B and that they had prioritised their own needs and neglected the needs of B, who was described as a vulnerable young person with very complex needs. I note that reference is made in the police evidence to the SW to commenting that there were no previous concerns about cruelty or neglect and that the child was usually well cared for and that the parents' Covid reaction had been irregular. The view of the police officer engaged in the investigation was that the family appeared more in need of support than police involvement.

(12) At the first hearing B's Child's Guardian, Mr J, supported the making of an ICO on the basis that the LA needed to share PR for a vulnerable and non-verbal adolescent boy so they could determine issues around his placement. Reference was made by the CG to B being in the late stages of Batten's disease, a disease which is always terminal.

(13) However, having read the statements of both parents for today's hearing and having a clear understanding that the parents are in agreement for B to remain at Richard House for the time being, until they were well enough to resume his care, the CG considered that an ICO was no longer necessary or proportionate. He commented that until last month the parents had been coping reasonably well with B's complicated care needs albeit with a lot of professional help. In the view of the CG, the family had found themselves in a crisis with all the family falling ill with Covid or Covid symptoms in rapid succession. He said that unfortunately when the situation became unmanageable for the parents, B's condition deteriorated and he became critically ill.

(14) The CG said this in his latest position statement, "But for the Covid-19 outbreak, this situation would not have arisen and now that the parents are less sick, the circumstances have changed in that they can cooperate fully with health and social care services."

(15) The independent stance taken by the CG in advance of the hearing today, now that there has been a clearer appraisal of the papers and a better understanding of the situation in the family home during April 2020 and the course of the pandemic, entirely mirrors my own. While the LA were of course right to draw the attention of the court to the manifest shortcomings in the care given to B by his parents, particularly on 05.04.20 and 07.04.20, which led to his condition deteriorating to a critical level, it is necessary in the current climate of the pandemic to pause and to reflect on the very real challenges these parents faced individually and together, when they were told firstly that B had tested positive for Covid-19 and when subsequently F tested positive for Covid-19 a few days later which required hospital admission for approximately 3 weeks.

- (16) I have no reason to doubt his written evidence that he was in a bad way on admission. He didn't know where he was or what was happening, and he was one level down from being admitted to Intensive Care. M also suffered from Covid-19 and while I reiterate that their care of B appeared to have been seriously compromised during this period, the LA in my judgment do not appear to have sufficiently considered the very real difficulties faced by the parents in managing their own health issues in April 2020.
- (17) On my analysis of the evidence, I sense that any limitations in their care of B was construed by the carers and the SW a little too hastily as neglectful behaviour on their part in terms of their overall ability to provide safe ongoing care for B .
- (18) Moreover their behaviour appears to have been viewed by the LA as sufficiently risky and/or obstructive to justify a care plan as set out in the LA's PS for today's hearing that B should not be accommodated in the family home for the foreseeable future and should be accommodated either in the hospice or within a specialist foster placement pending psychological assessment of the parents.
- (19) Having listened to the submissions today I am not satisfied these parents have been in any way culpable in their failure recently to meet the needs of their son, nor do I find they have set out in some way unreasonably to prioritise their own needs over their son's needs. In my judgment I find the personal circumstances of the parents during the Covid crisis have not been properly factored in to the LA's case and analysis, and that the LA in all the circumstances have been precipitous in asserting that these parents have been unable or unwilling to provide appropriate and safe care for B now or in the foreseeable future.
- (20) I therefore do not propose to renew or extend the ICO granted by me on 04.05.20, and I am satisfied that a section 20 agreement for B to be accommodated meets the justice of the case and is proportionate to the current circumstances and arrangements for his care.
- (21) I am satisfied that it is in the best interests of B to be [voluntarily] accommodated rather than for parental responsibility to be shared with the LA in this very sad case where B has limited life expectancy and where all aspects of his welfare needs have to be managed with great sensitivity.
- (22) For the time being B will remain at the hospice with today's order recording that parents will take no steps to remove him from Richard House pending

any further order of the court unless agreement is reached between the parents and health and social services for his removal elsewhere.

(23) In my judgment B's return home is a decision to be made, if it is made at all, by the medical and social care teams, in conjunction with his parents at the appropriate time. And I agree with the CG that if disputes arise in relation to future medical treatments for B, this will have to be determined by a High Court Judge and the LA will not achieve more in this regard by having an ICO in place, particularly where I am satisfied that following the parents' recovery from Covid they are willing to cooperate with professional agencies in respect of their sons' needs both now and going forward.