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Case No: ZE20C00621

IN THE FAMILY COURT AT EAST LONDON

6th and 7th Floor
11 Westferry Circus
London
E14 4HD

Date: 13/04/2021

Before:

HER HONOUR JUDGE REARDON

Between:

LONDON BOROUGH OF NEWHAM

Applicant

- and -

THE CHILD AC

Respondent

(Through his Children's Guardian)

MS RABIA MIAH (instructed by London Borough of Newham) for the Applicant

MS NAOMI YESHUA (of Williams & Co) for the Respondent

JUDGMENT

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HER HONOUR JUDGE REARDON :

1. This is the local authority's application for a final care order in relation to a child known as AC, said to be born on [date in 2008] and therefore aged 12. For reasons I will come to explain, there is some concern that that is not, in fact, his correct date of birth and that C is not his correct surname. The application for a final order is supported by the guardian on behalf of AC. His parents have not been located and it is not known, indeed, whether they are alive. They have played no role in these proceedings.

2. The application was issued by the local authority on 10th November 2020. At an initial hearing on 18th November, I directed evidence and skeleton arguments on the issues of jurisdiction and whether the interim threshold criteria were met. At a subsequent hearing on 11th December 2020, I accepted jurisdiction on the basis of habitual residence and also made an interim care order, finding the interim threshold criteria met on the basis of the evidence as it was before the court on that date. In particular, the account that was then being given by AC as to his history meant, in my judgement, that there were reasonable grounds to believe that he was suffering significant harm at the relevant date, attributable to the care being given or likely to be given to him not being what it would be reasonable to expect a parent to give.

3. At that hearing, I directed further evidence as to AC's circumstances and also required the local authority to file a skeleton argument setting out the findings it would be inviting the court to make in order to establish the final threshold criteria. I also directed a final analysis from AC's guardian. Those directions have all been complied with and the parties agree that the court should

consider today whether or not to make a final care order. None of the evidence is disputed, although much of it, through no fault of the local authority, is contradictory and unclear. Therefore the hearing today has proceeded on the basis of submissions.

4. The background is as follows. The local authority became aware of AC through a referral made by the police in March 2020. They had been contacted by a charity called Doctors of the World in Newham. The charity said that AC had arrived in their office unaccompanied. He was accommodated by the local authority in a foster placement.
5. Initially AC told social workers that he was aged 15 and that he had been in the United Kingdom for about a year. He said he had arrived with his father, his stepmother and another boy whom he did not know, and that they had lived in Bristol for a time. He said that his father had died about five months before the local authority became aware of him and that his stepmother had then thrown him out of the home. He said he had lived for some time on a camp site in Bristol.
6. The local authority attempted to trace AC's family or friends. He gave them an address in Bristol but the occupants of that property said that he was not known to them. He also gave the name of a Mr Q who he said had cared for him for a time in Bristol. The local authority has been able to contact Mr Q. He has told them that he came to know AC through a night shelter which he was supplying with food from his restaurant. He has denied that he has any family connection or any prior knowledge of AC.

7. Mr Q has been asked to undertake a DNA test but has declined to do so, saying that he is concerned that the process of testing would expose him to a risk of contracting covid-19. He has also said that if he were required in future to take a DNA test, that would cause him to withdraw from AC's life. Mr Hannan appears to be a significant figure for AC and the local authority has arranged some contact between them, at AC's request, which is supervised by the foster carer. The issue of whether there is any biological connection between them is still outstanding and it does not appear likely that this will be resolved in the foreseeable future.
8. The local authority has made extensive enquiries about AC's background, including enquiries of the Home Office. It transpires that a child with AC's name entered the United Kingdom from Bangladesh on a six month visa valid between October 2018 and April 2019. He came as a family group with two adults and another child, all of whom were Bangladeshi nationals. According to the Home Office records, the male with whom AC entered the country, a man called DC, was his father and the female, RP, was his mother.
9. According to the passport on which he entered the country, AC was born on [date in 2008], which would make him now 12 rather than 15 as he had initially said. The local authority has subsequently been informed by the Home Office that both AC and the other child with whom he entered the UK, who is apparently now in the care of children's services in Leeds, are part of an investigation into identity abuse and that the children and their alleged parents are not, in fact, related.

10. An asylum application has been made on AC's behalf and that is progressing. On 6th February 2021, so since the last hearing in these proceedings, AC met with his immigration solicitor and during the course of that interview gave a new and different account of how he had come to this country. He subsequently gave permission to his solicitor to share that account with the local authority. He said that his previous account had been false and that he had travelled to the UK with people who had adopted him from an orphanage in Bangladesh. He said that he had been left at the orphanage by his parents and that he had not seen them since the age of about 5. He said that the name C was his adopted surname and that he did not remember his birth name. He said that he had been left in the UK by the people who accompanied him here and that he had had no contact with them since.
11. The local authority have attempted to discuss his background further with AC but he has made it clear that he does not wish to say anything else about it.
12. On 20th January 2021 the local authority was able to speak to someone from the British High Commission in Dhaka. The local authority was informed that the High Commission had traced the two people who appeared to have travelled to the United Kingdom with AC from Bangladesh. They had both been interviewed. Both said that they had no children and denied travelling with AC. They were interviewed at their home and the fact that they were childless was confirmed by a neighbour. Further information from the High Commission indicates that the identities of the two adults who appear to have entered the United Kingdom with AC have been used by multiple Bangladeshi nationals to travel to the UK. That suggests that the people who were

interviewed by the High Commission have been the subject of identity fraud and that the identities of those who actually did travel with AC are still unknown.

THE LAW

13. The position of unaccompanied asylum seeking children such as AC was considered by Mr Justice Peter Jackson, as he then was, in *Re J* [2017] 4 WLR. I observe at this stage that while jurisdiction was accepted in *Re J* on the basis that the children in that case were found to have no habitual residence, I reached a different conclusion earlier in these proceedings on the particular facts of this case. By the time the local authority issued proceedings for AC in November 2020, he had been in foster care for eight months and was attending school. I found on the basis of the evidence before me that he had gained habitual residence in the UK and I accepted jurisdiction on that basis.
14. The other issue considered by the court in *Re J*, which is a live issue in these proceedings, is the question of whether or not, and if so on what basis, the threshold criteria in section 31 of the Children Act are met. *Re J* concerned two young boys believed to be 9 or 10 years old who entered the United Kingdom shortly before the proceedings were issued, having left North West Afghanistan some months previously. The judgment records that the children's fathers were both missing or dead but that their mothers were thought to be still living in Afghanistan. Both children spoke of the village that they had come from and of missing their mothers. No investigations were possible due to the area from which the children had travelled being in a state

of war. All of the information provided came directly from the boys. The Judge observed that there was no reason to think that it was not true, but good reason to believe that it was probably incomplete.

15. In that case the court found the threshold criteria met, the court saying this:

“15. In this case, the threshold criteria have undoubtedly been crossed because the children have certainly faced the risk of significant harm and have, indeed, suffered significant harm at the time the proceedings were brought as a result of being sent across the world without any parental protection. Whether the children are to be described as abandoned or just sent out into the world makes no difference. It also seems to me that the fact that the children may have been sent out of Afghanistan for their own benefit does not prevent the threshold for care proceedings being met. That was a decision that was taken either by the parents or the parents were not in a position to exercise parental responsibility so that it was taken by others. The fact that the children might have suffered worse harm by staying does not mean they have not suffered significant harm and risked suffering significant harm by going.”

In paragraph 17 the Judge said:

“Returning to the question of the threshold, Mr Jones [the advocate for the local authority] reminds me that the relevant test is the attribution of the harm to the parental behaviour, not the parents' culpability.”

16. The remainder of the judgment considers the question of when it will be appropriate for local authorities who take up responsibility for unaccompanied asylum seeking children to issue care proceedings, and when these children should be accommodated by the local authority simply exercising its duties under section 20 of the Children Act. In paragraphs 21 to 23 of the judgment the Judge sets out the benefits and disadvantages of each option.
17. As I said to the advocates during the course of submissions, my concern in this case is not with the advantages that a care order will bring to the promotion of

AC's welfare. I am satisfied that in the circumstances of this case the local authority was right to bring care proceedings and I am also satisfied, subject to the threshold criteria being met, that it would overwhelmingly be in AC's interests for the local authority to share parental responsibility for him. The issue, in my view, is not whether a care order would be in AC's best interests but whether, considering the facts of this case in the light of the applicable law, the threshold criteria which would allow me to make such an order are made out.

DISCUSSION

18. Much of the evidence, including the entirety of the guardian's case analysis, is focused on issues of welfare. The parties are agreed that AC's welfare requires that he remain living in foster care provided by the local authority. He is doing well in his current placement, although he has asked to move to a placement which is a better cultural and religious match and the local authority is attempting to arrange that for him. He is attending school and while his school say that he is a quiet and reserved child, there are no concerns about his presentation or behaviour.
19. As both the guardian and the social worker have pointed out, currently there is no one in this country who is in a position to exercise parental responsibility for him.
20. The issue as to the threshold criteria was identified as an issue by me at the first hearing in the proceedings. I declined at that stage to make an interim care order on the basis of the very limited information available to me. At the further hearing at which an interim order was made, I held that the interim

threshold criteria were met on the basis of the evidence as it was before me at that date. At that time AC's account was that he had been brought to the United Kingdom by at least one of his parents and abandoned here by that person. I made it clear that although I was prepared to find the interim threshold criteria met, the court would be concerned to look very carefully at the evidence relating to AC's parentage at the final hearing. Since that hearing, of course, further relevant information about that has come to light from AC's immigration solicitor and from the High Commission in Bangladesh.

21. The evidence of the local authority is limited in terms of matters that may be relied on to support threshold findings. Again, I make no criticism of the local authority, which I am satisfied has undertaken all the enquiries that could reasonably have been expected of it in order to establish the background to AC's arrival in this country. In the social worker's final statement she says:

“The local authority has carefully considered the other options such as AC remaining in care and subject to section 20 but it was concluded that this would not be in his best interests, particularly given his age and the developmental stage in his life.”

While I am very sympathetic to the local authority's reasoning, with respect to the local authority the issue is not one of AC's best interests but of threshold and if the threshold criteria cannot be met, then regardless of what might be in AC's best interests I will have no power to make the order the local authority seeks.

22. The local authority has prepared a final and revised threshold document. In that document it initially sets out the findings it seeks as to the significant

harm that AC was suffering at the relevant date. The document includes findings to the effect that for a period of time prior to the relevant date, probably for about a year, AC was essentially homeless in the Bristol area, not being cared for by any adult and not accessing education.

23. Starting with the first limb of the threshold criteria, I am in no doubt and I find that AC was suffering significant harm at the time the local authority initiated protective measures. I make that finding on the basis of the matters set out in the local authority's threshold criteria which are amply supported by the evidence.

24. It is the second limb, that of parental attributability, that I find much more difficult. There is nothing in the local authority's threshold document that sets out explicitly what parental act is said to have given rise to the harm that AC has undoubtedly suffered. In submissions, Ms Miah for the local authority suggested that the threshold criteria were met on the basis that AC has been abandoned either by the adults who brought him to the UK, if they are indeed his parents, or by his birth parents who abandoned him at the orphanage, if that account given by AC is true. In her skeleton, Ms Miah makes a creative argument by analogy with the line of cases relating to uncertain perpetrators. I have considered this argument but it does not, in my judgment, afford a route for the court to sidestep the issue of attributability. In those cases it is necessary always, if the threshold criteria are to be met, for a parent to remain in the "pool".

25. Ms Yeshua on behalf of the guardian argued as follows. She said that someone somewhere has taken a decision that has caused AC harm. She

argued that if his parents were alive and playing any role in his care at the time that he was sent to the United Kingdom, that was the action to which the harm he has suffered is attributable.

26. The final version of the local authority's threshold document includes a pleading that the threshold criteria are met on the basis that AC is beyond parental control. I was not addressed on that and it may well be that it simply slipped into the drafting. I make it clear there is no evidence that AC is beyond parental control or was at the relevant date and the threshold criteria cannot be met on that basis.
27. I turn first then to whether it is possible to make any findings at all about AC's parents. He himself has given different accounts. He said at first that his father was DC. The evidence now obtained from the British High Commission sheds doubt on that and, in any event, AC has subsequently said that that was untrue. His most recent account is that his parents left him in an orphanage when he was young and he was subsequently adopted by DC and RP, the people who brought him to the UK. His account, however, is scanty and I must, in my judgment, be very cautious before accepting it, both because AC has given different accounts on different occasions and also because the evidence suggests that he is very guarded about his background and may well feel that he has good reason not to tell what has happened to him.
28. There is substantial evidence from the social worker, the guardian and the school that AC presents as a reserved and guarded child who has refused to discuss his background in any detail at all. I note also in relation to AC's history that there is an uncertainty about his age. The local authority are

proceeding on the basis that he is, indeed, 12 as the passport on which he entered the country suggests. However, for a period of time, until that document was located, AC had been telling the local authority that he was aged 15 and the guardian has commented that he presents as older than 12, although she acknowledges that may simply be because of the experiences that he has had, and the harm he has suffered may have made him self-reliant.

29. I consider also the evidence from the Home Office and the British High Commission in Dhaka. That evidence points towards a conclusion that the people who accompanied AC to the United Kingdom were not his parents, adoptive or otherwise. The more likely conclusion on the basis of that evidence, particularly the investigations carried out by the High Commission, is that they were essentially people traffickers paid to bring AC and the other child to the United Kingdom.

30. During the course of submissions, I asked the advocates to consider a scenario which is, in my view, at least possible and may on the evidence currently before the court be the most likely. That is that AC was, indeed, left by his parents at an orphanage when he was quite young and lived there for several years before the decision was taken by whomever was caring for him, with or without his agreement, to send him to the UK. He was then trafficked here and warned not to give information about his arrival in the country. In those circumstances, I asked the advocates to consider what parental act had given rise to the harm that he had suffered. Ms Miah pointed out that his abandonment in the orphanage had the potential to cause harm but accepted that that may, in fact, have been the responsible and loving act of parents who

found themselves unable to care for him and that it may not have been possible for them to foresee a situation some years later where their son would be sent abroad and left without an adult to support and meet his needs.

31. Having considered the evidence before me and returned to the relevant law, I have concluded that in this case, unlike in *Re J*, there is insufficient evidence on which I am able to make a finding that the threshold criteria are met. I reach that conclusion with considerable reluctance because, as I made clear to the advocates during the hearing, I need no persuading that a care order would bring powerful advantages to AC in terms of his welfare. It gives me real anxiety to contemplate this vulnerable young boy growing up with no one in this country able to exercise parental responsibility for him. Nevertheless, there is, in my judgment, insufficient evidence to make a finding on the balance of probabilities that there has been any act of a parent to which the significant harm that AC has undoubtedly suffered can be attributed.

32. The case differs from *Re J* in that there is much more uncertainty as to AC's background and, in particular, his parentage. In *Re J* it was possible for the court to find not only that the children had parents but that the parents had been involved in their care sufficiently recently for them to have been instrumental in the decision to send the children abroad. In AC's case by contrast there are a number of scenarios, of which the one I have outlined above is only one, in which his parents may be entirely unaware of and/or innocent in the events which brought him to the United Kingdom in such dangerous circumstances, and in which he has been exploited by people who have little or no connection to him for their own gain.

33. I reach that decision, as I have said, with much regret. I would have preferred to be able to make a care order and to confer parental responsibility for this vulnerable young man on the local authority. As I have found myself unable to do so, the local authority will simply have to do its best for AC under its duties otherwise under the Children Act. It may be possible in future for a family to be found which is a better cultural match for AC, and a family which may in due course be prepared to accept him not only into their home but as part of their family, and there are orders that might be made in future which would confer responsibility on another family for AC. But that is some time for the future and for the time being the only option for AC, in my judgment, is continued accommodation under section 20 of the Children Act.

(Discussion re order follows)