



Neutral Citation Number: [2020] EWHC 3124 (Fam)

Case No: PR20C01113/PR20C000547

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Sitting Remotely

Date: 20/11/2020

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between:

Lancashire County Council

Applicant

- and -

G

First

- and -

Respondent

N

Second

Respondent

Ms Louise Boardman (instructed by **Lancashire County Council**) for the **Applicant**
Mr Michael Jones (instructed by **Roland Robinson and Fenton**) for the **First Respondent**
The Second Respondent did not appear and was not represented

Hearing dates: 13 November 2020

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 18 November 2020.

MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. On 23 October 2020 I gave judgment in this matter authorising the deprivation of G's liberty in an unregulated placement. G is 16 years old. The decision was published as *Lancashire CC v G (Unavailability of Secure Accommodation)* [2020] EWHC 2828 (Fam). At this hearing G remains represented by Mr Michael Jones of counsel, through her Children's Guardian. The local authority remains represented by Ms Louise Boardman of counsel. Whilst the local authority contended at the date of the last hearing, and continue to contend at this hearing, that G is in urgent need of a secure placement, and whilst the Children's Guardian remains opposed to that course of action, favouring a regulated non-secure placement, it remains the case, nearly a month later, that no such placements of either type are available for G anywhere in the United Kingdom.
2. Within this context, G has remained for nearly a month, and continues to remain, in an unregulated placement that is sub-optimal having regard to G's highly complex welfare needs and that is not prepared to apply to Ofsted for registration. Whilst G has remained relatively settled in that placement, recently there have been some worrying signs that this period of calm is fragile and will be temporary.
3. In these circumstances, once again the local authority finds itself compelled to advance an unregulated placement as being the *only* option available to safeguard G's welfare. Once again, the Children's Guardian remains unable to give her support to G being placed in this placement under the auspices of an order depriving G of her liberty, albeit that she recognises that this remains, in reality, the only option currently available for G. Once again, the court is presented with the *fait accompli* that I described in my initial judgment, namely, the need to retain G in a placement that is sub-optimal in terms of G's wider welfare needs because the alternative is discharging her into the community where she will, I remain satisfied on the evidence before the court, be at a very high risk of fatal self-harm.
4. Within this context, and for the reasons I set out in my previous judgment, the application of the best interests principle continues to be an almost transactional exercise based on the narrowest of welfare considerations, if it can be said to be the application of the best interests principle at all where the court in effect has no choice but to accept the only option offered to it.
5. Whilst G remains in an unregulated placement outside the statutory regime laid down by Parliament under s 25 of the Children Act 1989, it is necessary for the court to monitor closely the extent to which the unregulated placement continues to be in G's best interests. In particular, it would not be appropriate for the court simply to give an open ended authorisation until such time as the local authority is able to locate a suitable placement (see the guidance issued by President of the Family Division entitled *Practice Guidance: Placements in unregistered children's homes in England or unregistered care home services in Wales* at [1]).
6. There is a cost to placing the High Court in what is, essentially, a regulatory role as a result of the acute shortage of clinical provision for placement of children and adolescents requiring assessment and treatment for mental health issues within a

restrictive clinical environment, of secure placements and of regulated placements described as in my previous judgment. These proceedings have now been before a Deputy High Court Judge on two occasions and before a Judge of the Division on four occasions, including this hearing. Within this context, it is sobering to examine the cost to date, in both money and time, consequent upon the unavailability for G of a secure placement or regulated non-secure placement. This is not in anyway to suggest that resources are being inappropriately deployed by those agencies concerned with G's welfare, but rather to highlight the financial and wider resource consequences of the position reached in this case. From the information that has been made available to the court by the parties, it is clear that:

- i) The cost to the local authority of instructing counsel for the five hearings on 8 October, 21 October, 23 October, 26 October and 3 November 2020, including preparation, conferences and advocacy is some £2,130. Further such costs will have been incurred for today's hearing, the details of which are not yet available.
 - ii) The costs incurred as a result of the time spent on the case by the solicitor for the local authority, including preparation and perusal of all documents, emails in and out, telephone calls and other sundry items of work is some £6,191.
 - iii) The cost to the Legal Aid fund of instructing solicitor and counsel to attend the six court hearings on behalf of G totals approximately £5,400.
 - iv) The local authority's Access to Resources Team has spent a total of 141 hours endeavouring to locate a suitable placement for G, at a total cost of some £1,993.
 - v) Mr Jones informs the court that the time spent by CAFCASS employees on this one case totals 52 hours, incurring a cost of some £1,350.
7. The cost to the local authority of G's unregulated placement is £15,212 per week. In the circumstances I have set out above, a lack of adequate provision for secure accommodation and regulated provision for children has led in this case to the additional expenditure to date of some £17,000 of public money without any appropriate result for G. The foregoing figures do not include the cost to the public purse of six hearings before the High Court. At least one further hearing will be required.
8. In addition, as Mr Jones again points out before this court, the longer term costs to the mental health and /or criminal justice systems of failing at this stage appropriately to meet G's welfare needs whilst still a child, including providing her with appropriate therapeutic intervention, are likely to be even greater.

BACKGROUND

9. The background is set out in my previous judgement and I do not need to repeat it here. The following matters are, however, pertinent by way of update.
10. As set out in my previous judgment, the unregulated placement in which G is currently placed does not intend to seek Ofsted registration. Ahead of this hearing,

the placement has again confirmed to the local authority that it does not wish to register the placement with Ofsted in circumstances where G's placement is intended to be an interim placement and, once G has left, the placement will return to its core function of providing supported accommodation for children leaving care.

11. A report from the Mental Health Team has now been filed dated 2 November 2020. That report confirms that the identified therapeutic intervention that G needs cannot begin until she is placed in a secure longer term placement. In the circumstances, no real intervention can be offered in a therapeutic context until G has settled into a medium to long-term placement. Accordingly, the continued lack of a suitable placement for G is delaying the therapeutic help she urgently needs.
12. As I have noted above, whilst G has remained relatively settled in her current unregulated placement, recently there have been some worrying signs that that period of calm is fragile and will be temporary. G is due to attend Court on 17 November 2020 in respect of the criminal charges of assault and criminal damage which took place on 8 October 2020 at her previous placement. Within this context, in her updating statement the social worker states that:

“It is highly likely that [G] has had a settled period but that she is beginning to struggle at this time. This again has been a pattern observed by the professionals as [G] escalates and then presents in crisis.”

LAW

13. The relevant law is likewise set out in my previous judgment in this matter and, once again, I do not need to repeat it here.
14. In deciding whether to continue to authorise the deprivation of G's liberty in her current, unregulated placement the court may grant such an order under its inherent jurisdiction if it is satisfied that the circumstances of the placement constitute a deprivation of liberty for the purposes of Art 5 of the ECHR and if it considers such an order to be in the child's best interests.

DISCUSSION

15. As when this matter was last before me, and in the foregoing circumstances, G, a vulnerable young woman with multifaceted difficulties and at high risk of serious self-harm or suicide still has nowhere to go unless the court authorises the continued deprivation of her liberty at an unregulated placement that is not equipped fully to meet her complex welfare needs, that will not seek registration and which the Children's Guardian remains unable to endorse as being in her best interests.
16. Once again, the stark choice thus faced by the court is to refuse the continued authorisation of the deprivation of G's liberty in an unregulated placement, which will result in her discharge into the community where she will almost certainly cause herself possibly fatal harm, or to authorise the deprivation of G's liberty in an unregulated placement that all parties agree is sub-optimal from the perspective of her welfare because that unregulated placement remains the only option available.

17. Applying the legal principles set out in my first judgment in this matter, and on the basis of the evidence before the court, I remain satisfied that in the unregulated placement G is deprived of her liberty for the purposes of Art 5 of the ECHR. The restrictions that will be imposed on G in that placement remain as follows:
- i) Locked car doors when being transported to the placement with three to one supervision.
 - ii) Three to one supervision at all times when in the placement.
 - iii) The doors in the placement will be locked where there may be a risk to G and staff and due to the risk of arson.
 - iv) G will be escorted whenever she is away from the placement.
 - v) Staff will use reasonable and proportionate measures to ensure that she does not leave the placement and to return her to the placement if she does leave.
 - vi) Reasonable and proportionate measures may be used to restrain G when she is distressed.
 - vii) G will not be permitted access to her mobile phone.
 - viii) G will be subject to a 'waking watch' every ten minutes during the night.
18. Within the foregoing context, I remain satisfied that G is unable to consent to the deprivation of her liberty, is subject to continuous supervision and control and is not free to leave the placement.
19. Further, and once again with deep reservations, I am remain satisfied on balance that it is in G's best interests to authorise the deprivation of her liberty in her current placement notwithstanding that the placement is plainly sub-optimal from the perspective of meeting G's identified and highly complex welfare needs and is an unregulated placement. As set out above, in the absence of an appropriate secure placement (on the local authority's case) or regulated non-secure placement (on the case of the Children's Guardian), the current placement continues to represent the *only* option for keeping G safe in the broadest sense.
20. In determining that, on balance, the placement remains in G's best interests, I have in particular borne in mind the following information concerning the arrangements for the placement provided to the court ahead of this hearing in the statement of the social worker:
- i) There is a multi-disciplinary team around G comprising a Home Treatment Team, the [named support team], the adult Mental Health Team, the Children Looked After nurse, the police and Children's Social Care.
 - ii) To seek to avoid the need for any crisis management, the multi-disciplinary team have compiled and distributed risk management plans which are geared at managing risky behaviours. The completed documents have been shared with all parties and the Mental Health and Home treatment team which provide out of hours support to care staff,

- iii) G has a self-harm management plan.
 - iv) The local police officer is in the process of completing a trigger plan for officers when an emergency call is made and how best they deal with G in a crisis situation and health services and the local authority are supporting this work, which will be shared when completed.
 - v) The police, the local NHS Health Trusts and the North West Ambulance service have been alerted regarding the significant risk G poses to herself and others and alerts have been placed on their systems.
 - vi) Weekly multi-agency meetings are held to review the risk management plans in place with respect to G and to reflect and respond to the changes in her behaviours and presentation.
 - vii) Forensic CAMHS began a detailed assessment of G on the 2 November, the completion of which is due in 12 weeks.
 - viii) Dr O has an appointment to speak with G on 20 November 2020.
21. The local authority continues its tireless work to try and find G a placement that will meet fully her highly complex needs. I will list the matter for a further hearing in 14 days in the hope that such a placement will have been found or, failing that, to again review the authorisation to deprive G of her liberty at her current, unregulated placement.

CONCLUSION

22. Since I handed down my first judgment in this matter on 23 October 2020 the Children’s Commissioner for England has published a briefing paper entitled “*The children who no-one knows what to do with*”, dated November 2020 (which paper quotes certain passages from my previous judgment in this case).
23. Mr Jones, on behalf of G has provided a copy of that document to the court. Within the context of the concerns I expressed in my previous judgment in this case and the matters I have been required to detail as part of my analysis above, the following observations of the Children’s Commissioner are of particular note:
- i) There is currently no work being done to forecast provision and to co-ordinate provision of secure accommodation and regulated placements in order to match need.
 - ii) On information available to the Children’s Commissioner, there are some 200 children awaiting a place in secure accommodation.
 - iii) On the information available to the Children’s Commissioner, during 2018/2019 12,800 children spent some time accommodated in unregulated placements with no regulatory oversight by OFSTED.
24. For the reasons I have given, I am once again satisfied that the court is left with no option but to make an order authorising the deprivation of G’s liberty at the unregulated placement located by the local authority. Once again, this is the only

placement available and the priority must be to keep G safe. Once again, I harbour grave reservations about this decision.

25. I will, once again and more in exasperated hope than expectation, direct that a copy of this judgment shall be sent forthwith to the Children's Commissioner for England, to the Rt Hon Gavin Williamson CBE MP, Secretary of State for Education, to Sir Alan Wood, Chair of the Residential Care Leadership Board, to Vicky Ford MP, Minister for Children to Isabelle Trowler, the Chief Social Worker and to Ofsted.
26. That is my judgment.