Neutral Citation Number: [2017] EWHC 2189 (Fam)

Case No: FD17P00423

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/08/2017

Before :

MR JUSTICE HAYDEN

- -

Between :

London Borough of Southwark
- and -
F

- -
- -

Ms Samara Brackley instructed by **Local Authority**
Mr Craig Richardson (instructed by **Vinters Solicitors**) pro bono for the **1st Respondent Mother**
Mr Jay Banerji (instructed by **Miles & Partners Solicitors**) for the child

Hearing dates: 24th August 2017

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Judgment Approved

HAYDEN

This judgment was delivered in Open Court. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Hayden :

1. I am concerned with F. He is a young person aged 14 years of age. Since June of this year F has been subject to a Care Order in favour of the London Borough of Southwark. This followed a process of careful investigation and assessment during the course of public law proceedings, the primary objective of which was to identify how F's welfare interests might best be met. F was assessed by Dr Derek Blincow, a Child and Adolescent psychiatrist. This occurred as recently as March of this year and I have seen a detailed report, some 28 pages filed in the care proceedings and dated 3rd April 2017. Dr Blincow has over 25 years of experience as a Consultant psychiatrist in all aspects of child and adolescent mental health. Additionally, he has expertise in mental health aspects of Child Protection assessment and treatment. He is currently lead psychiatrist at the Priory Hospital's High Dependency Adolescent Unit.

2. It is invidious to attempt to encapsulate the careful reasoning and detailed analysis in Dr Blincow's report in a few lines or phrases. However, the following need to be highlighted:

   i) F is a young person with a complex care history, who has suffered a degree of emotional and perhaps physical neglect as well as being under considerable stress;

   ii) He has experienced significant disruption to his care and has developed insecure, avoidant pattern of attachment characterised by overly developed sense of self reliance and a correspondently distance relationship with adults whom he does not see as safe, or authoritative or dependable;

   iii) F has gone against societal norms such as to warrant a diagnosis of conduct disorder;

   iv) All this has undermined F's educational engagement, leading to a exclusions, special educational provisions and placement in a residential unit;

   v) F is at heightened risk of future mental health difficulties, including of developing a personality disorder.

   vi) Dr Blincow contemplated future offending substance abuse profound challenges informing mutually supporting relationships and compromise ability to parent in the future.

3. In the light of this raft of difficulties, the welfare conclusion in the care proceedings was that F should be placed in a residential unit. He absconded from that unit two days before the final Care Order was made, having been placed there on interim arrangements. The judge who conducted the proceedings, District Judge Alderson, issued a Recovery Order on the 23rd June 2017 but it was not possible to implement this until the 8th August of this year when, Miss Brackley, counsel on behalf of the local authority, tells me that F was discovered quite by chance during the course of a police operation in a 'crack den', as it has been referred to, in Peckham.

4. The Local Authority issued an application on 11th August 2017 to place F in secure accommodation. This has, since that time been their only plan. There is no other nor, in my judgement, can there be any. Having been unable to identify a suitable secure placement, the Local Authority issued a deprivation of Liberty Application (DOLS) on 11th August 2017 alongside an application for a Secure Accommodation Order. The plan at that stage was for F to be placed in a residential unit, with 2 to 1 supervision, until a secure unit could be identified for F. The objective underpinning this thinking was to secure F in a residential placement and to shore it up, reinforce it, with appropriate additional safeguarding measures.

5. The case comes before me today to seek a continued authorisation of the deprivation of liberty first granted by Mr Justice Moor on the 11th August and reviewed a week later by Mrs Justice Parker. Throughout this time, the local authority were continuing their search for a Secure Accommodation Unit, recognising that the status quo was far from satisfactory and insufficiently safe.

6. The Local Authority's application is made pursuant to **s.25 of the Children Act 1989**. Under those provisions a child may not be placed in secure accommodation unless it appears as follows:

   i) he has a history of absconding and is likely to abscond from any other descriptions of accommodation and;

   ii) if he absconds he is likely to suffer significant harm;

   iii) Or that if he is kept in any other description of accommodation he is likely to injure himself or other persons.

7. In **London Borough of Barking and Dagenham v SS [2014] EWHC 4436(Fam)** I refused the Local Authority's application for a secure accommodation or Order in respect of a victim child trafficking and exploitation. I made this observation:

> *"It scarcely needs to be said that restricting the liberty of a child is an extremely serious step, especially where the child has not committed any criminal offence, nor is alleged to have committed any criminal offence. It is for this reason that the process is tightly regulated by the Children Act 1989 in the way I have set out, but also in the Children (Secure Accommodation) Regulations 1991 and the Children (Secure Accommodation No.2) Regulations 1991. The use of s.25 will very rarely be appropriate and it must always remain a measure of last resort. By this I mean not merely that the conventional options for a child in care must have been exhausted but so too must the 'unconventional', i.e. the creative alternative packages of support that resourceful social workers can devise when given time, space and, of course, finances to do so. Nor should the fact that a particular type of placement may not have worked well for the child in the past mean that it should not be tried again. Locking a child up (I make no apology for the bluntness of the language, for that is how these young people see it and, ultimately, that is what is involved) is corrosive of a young persons spirit. It sends a subliminal and unintended message that the child has done wrong which all too often will compound his problems rather than form part of a solution.'"*

8. It is clear from all this that I, in common I believe with most Judges in the Family system, regard the making of the type of order contemplated here as a measure of a last resort. For this order to be effective, it does not require F's consent see: **Re W (A Child) [2016] EWCA Civ 804**. It follows from the truncated history that I have just set out that those characteristics identified by Dr Blincow and his forecast of the likely consequences of F's dysfunction have already come to pass. There are real grounds for believing that F is involved in serious gangland activity, that he finds employment as a drugs courier or deliverer. He has been investigated for an offence of rape, though this has been discontinued and he finds himself before the youth court facing two serious charges of robbery. He already has a conviction relating to knives.

9. The kind of order that the local authority seek is, as I am at pain to emphasise, absolutely a measure of last resort and it is a significant deprivation of F's liberty. Any court will consider the grant of such an order with very great care and having heard what I have heard, and been provided with the documents that have been made available to me today, I am satisfied that not only is there no alternative but that nothing else will do. It needs to be stated in unambiguous terms: F is a danger to himself; to other vulnerable young people; to the public generally and in particular to those charged with his care.

10. That test in section 25 is a predictive one. Much of the analysis involved in safeguarding inevitably is. Last night, however, there was an incident in the residential unit which causes real and profound cause for concern. F was involved in an altercation, his social worker tells me, at around 3 o'clock in the morning. It escalated. It endured for about an hour and it involved two young men, one of whom was F, trying to get into a secure office and to a kitchen in order to retrieve knives. There was much goading about the use of knives. I have little doubt that was a frightening episode for those involved in or witnessing it. I fully accept that those who work within this unit are genuinely afraid of F. He can be a very intimidating individual. It is important to say, not always, not all the time and not to everybody. I sense that he has some limited insight into his own behaviour and at some level desires to change but he is emotionally, entirely out of control.

11. Miss Brackley tells me and I accept, that her Local authority, the London Borough of Southwark, have made all attempts humanly possible to identify a secure accommodation unit. This is a search that has been made day after day, I have been told, for a period of two weeks. The central agency responsible for monitoring and allocating these places is called the Secure Children's Homes and it operates along with the National Secure Welfare Commissioning Unit. None of the advocates in this case has been able to identify anyone within these organisations prepared to acknowledge ultimate responsibility, neither have the social services nor the Guardian. The structures are opaque, they ought to be transparent.

12. One of the units within the purview of those organisations is a unit called Aycliffe. Miss Brackley and the social worker were today able to make contact with that unit. There is a bed available as I deliver this ex tempore judgment at 17:10 but it seems that it cannot be allocated because there is not sufficient staff or resources available to support the placement, nor, and this I accept, can that be reinforced by the local authority providing its own, and they agree, inevitably untrained staff. Thus, the situation arises that F cannot find accommodation of the type the court has deemed necessary to meet his interests and those of the wider public, nor can he remain in his present unit because the staff there have their own obligations to those within their care.

13. F's mother has been here at court all day and is represented by a solicitor advocate who appears pro bono in order to assist the court, his client and the other professionals. I express my gratitude to him. M supports the local authority's application.

14. There is therefore an impasse in respect of which I am unable to achieve a resolution.

15. Ultimately, the responsibility for this must lie with the Minister of State for Education. I am going to direct that a note of this judgment be provided to her. I have also delivered this judgment in open court because I believe it is genuinely a matter that falls within 'the public interest'. In this I follow the approach of the President of the Family Division only a few weeks ago in the case of **Re X (A Child) No 3 [2017] EWHC 2036 (Fam)**. In that case Sir James Munby set out the submissions of Counsel addressing a situation strikingly similar to this. I propose to incorporate those here:

> *"The latest position statement prepared by Mr Jones is dated 28 July 2017. In the course of his submissions he said this:*
>
> *A central concern in this case, which cannot be ignored, is not only the complete inadequacy in respect of available child and adolescent mental health placement provisions, but also the apparent lack of availability of any suitable temporary placements.*
>
> *…"To say the current situation in England and Wales for children with [X]'s (it is accepted unusually high) level of needs is of concern is perhaps an understatement. This is a child who is subject to a care order and who is accordingly owed support by the local authority pursuant to its duties to her as a looked after child. This is also a child who has significant mental health and emotional issues, which make her behaviours both dangerous and uncontrollable. More than this, she is highly vulnerable. Despite all of these factors, she has been placed in a situation where weeks and months have gone by with there being no placement available for her countrywide … The provisions for placement of children and adolescents requiring assessment and treatment for mental health issues within a restrictive, clinical environment is worryingly inadequate. One has to question what would have happened in this case had [X] not received a criminal sentence? Given the level of her behaviours, where would she have been placed? What provider would have accepted her given that secure units were unwilling to do so prior to her receiving a custodial sentence?"*
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> *This child has fallen into a "gap" in the system. Her behaviours are so extreme that no residential or supported living placement sourced by children's services can meet her needs, whilst there is clearly inadequate provision from the NHS and health services of placements, which can manage her mental health needs. Her time at [ZX] has amply demonstrated that placement in secure accommodation cannot meet her needs and is inappropriate.*
>
> *"… This case has demonstrated the inadequacy of the current secure accommodation resources in England and Wales (leading to this local authority having to place in Scotland) and*

> *has now gone on to demonstrate the inadequacy of suitable provisions for children with high level of mental health issues, which necessitate assessment and treatment in a secure setting. Placements for vulnerable children and adolescents, be it within secure accommodation of mental health provisions, are a scarce resource."”*

16. The President did not consider that even these remarks went far enough. He added the following comments to which nothing need or indeed can be added:

> *“I agree with every word of that. My only cavil is that Mr Jones' language is perhaps unduly moderate. The lack of proper provision for X – and, one fears, too many like her – is an outrage.”*

17. All that I can do, is list this case before me again tomorrow morning. I intend to continue to list it so that the heat is never allowed to reduce and the urgency of F’s situation not allowed to fade. I will require the Director of Social Services for Southwark to attend tomorrow and I will require the person ultimately in charge of the decision making in Aycliffe to be available by telephone at 10:30am. This is not a target to be aimed at; it is an order to be complied with in respect of which non-compliance will be a contempt. Counsel for Local Authority has also undertaken to ensure that the Secretary of State receives a copy of the note of this judgment as soon as it is available.