



Neutral Citation Number: [2021] EWHC 559 (Fam)

Case No: FD21P00050

IN THE HIGH COURT OF JUSTICE
FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/3/2021

Before :

THE HONOURABLE MRS JUSTICE JUDD DBE

Between :

London Borough of Sutton

Applicant

- and -

X ('the Mother)

1st Respondent

-and-

Y ('the Father')

2nd Respondent

-and-

Z(A Child)

3rd Respondent

Z (A Child) 2nd Judgment

**Ms Morgan QC and Mr. Barnes (instructed by the South London Legal Partnership) for
the local authority**

**Mr. Momtaz QC and Mr. Butterfield (instructed by Heald Nickinson Solicitors) for the
mother**

Mr. Stevenson (instructed by McMillan Williams Solicitors) for the father

Mr Powell (instructed by TV Edwards Solicitors) for Z

Hearing dates: 29th January 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MRS JUSTICE JUDD DBE

This judgment was delivered in private. 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.

Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed to be 10:30am on 11 March 2021. A copy of the judgment in final form as handed down will be automatically sent to counsel shortly afterwards

Mrs Justice Judd:

Introduction

1. This is the second judgment I have given in care proceedings relating to this young person, Z who is 13 years old. I give this judgment on the making of a final care order, and also an order authorising Z's deprivation of liberty for a period of three months.
2. The last judgment was given by me in July 2020, highlighting the very grave situation for Z because no suitable secure accommodation could be found despite extensive searches. In the end I authorised Z's deprivation of liberty in a council home rented for that particular purpose, where Z was to be cared for, and if necessary, contained, by four members of staff.

Background

3. The background is set out in my previous judgment (*London Borough of Sutton v X, Y and Z (DOLS: Lack of Secure Placement)* [2020] EWHC 1827 (Fam)), and so I will not repeat much of the detail here. Suffice it to say that Z was living at home until late 2019 when the authorities became involved because of Z's absconding. Matters quickly escalated and Z was accommodated. Three placements broke down because of Z's dysregulated and at times violent behaviour. In December 2019 a secure accommodation order was made and Z was placed in a regulated secure unit. In that placement, unfortunately Z's behaviour deteriorated, and there were episodes of violence and self harm. Z needed to be restrained on several occasions. In May the secure unit gave notice on the placement. There followed the difficulty in finding an alternative placement that would meet Z's needs.
4. In my judgment I stated that the only placement option before the court was clearly sub-optimal but that there was really no other alternative. The Secretary of State for Education was invited to be represented at that hearing, but no suggestions could be offered to help find Z a suitable place. The Children's Commissioner was informed as well. With considerable misgivings, I made the DOLs order sought.

Events since July 2020

5. This case is an example of how things do not always turn out as expected. Everyone, including me was concerned that the lack of properly approved and regulated secure accommodation – having with it facilities to assist a troubled young person such as Z - would compound the harm being suffered and make Z even more vulnerable. However, that did not happen. The move led to a very substantial improvement in Z's behaviour and apparent well-being. Z settled down very well in the new placement. Relationships with the family gradually improved, and the number and severity of incidents declined. Z started a new school, made some friends, and was gradually able to go out more frequently.
6. There were still some incidents, but there were fewer of them generally they were of lesser severity than they had been before Z's move. There was one incident where Z smashed some glass and threatened a member of staff with it in November but that was quickly contained.

The Issues Resolution Hearing on 20th December

7. Matters had improved so much by this point that the local authority decided not to make a further application for a deprivation of liberty order. I had a remote meeting with Z and the Guardian, and Z was delighted to be granted more freedom. Z's hope was to be reunited with family before too long. It was not possible for me to make a final order on that day because of some outstanding issues with the threshold, and the case was adjourned until early January to see whether the parties could resolve things between themselves.

Events thereafter

8. After Christmas, a number of things happened. First, by agreement Z began to spend almost every day in the family home. Second, another young looked after person joined Z in the unit. Much thought had gone into this, and the local authority felt that it would benefit Z to have someone else in the placement, not least because Z had complained on more than one occasion of loneliness (and this is not at all surprising). However, these two young people joined together to break the rules of the placement. There was a serious incident in the street, and Z made some threats of criminal damage to staff property. On 15th January Z displayed some serious challenging behaviour. On 22nd and 23rd January there were further incidents, including an occasion when the two young people absconded and were found to be seriously intoxicated. On 25th they both absconded again and were found some hours later and brought back.
9. These incidents obviously represented a serious setback, and given Z's age and vulnerability, the local authority once again applied for a deprivation of liberty order. I adjourned the next IRH for some four days, and it was relisted on 29th January.

The resumed IRH and the position of the parties.

10. At this hearing the local authority asked the court to make a final care order. The local authority stated that the time had come for the court to make a final order on the basis that with a young person of this age and history, there are bound to be 'ups and downs' in their level of progress, which means that the care plan – including contact – simply cannot be written in stone. The parties all agree that there has to be a final care order in this case, and further delay will not achieve anything, nor is it in Z's best interests. The parents have put forward a basis on which they are prepared to concede the threshold which the local authority pragmatically accept is a sufficient basis upon which the order can be made.
11. Ms Morgan QC and Mr. Barnes for the local authority also asked me to make a DOLS order for a period of six months, to allow for a period of stability without coming back to court.
12. Mr. Momtaz QC and Mr Butterfield for the mother, and Mr. Stevenson for the father asked for the court to consider adjourning the case for a short period of time for them to take further instructions from their clients in relation to the care plan, as contact and work towards rehabilitation will clearly have been affected by recent events. They agreed with the making of a DOLS order although suggested that a shorter period than six months would be appropriate.
13. The Guardian was somewhat neutral as to the question of making a final care order, although during his oral submissions Mr. Powell stated that the Guardian could see advantages in making a final order without further delay. The Guardian and Z's solicitor had been to see Z who they reported was very upset about the new DOLS order, but they took the view that Z did not have capacity to instruct a solicitor directly and supported the order as being necessary for Z's protection.

My decision

14. It is my view that further delay in this case is inimical to Z's welfare. Z is conscious of the proceedings and needs to know that a decision has been made. Also, a further adjournment does not have any real purpose. All the parties agree that there will have to be a care order in this case. I agree that the threshold is met, and consider it appropriate to accept the parents' proposals. It is not proportionate or in Z's interests for threshold to be further litigated for it would cause considerable stress without there being any certainty as to the outcome. There would be difficulties in proving some matters put forward by the local authority because they would rely on Z as a witness, and doing so might further damage the relationships within the family. The difference that it would make to the care plan is hard to discern, as it is Z's well being, wishes and feelings which will be a stronger guide to such important matters as contact and rehabilitation.
15. The care plan in December was hopeful of a smoother and quicker journey towards rehabilitation than is realistic now. Z was having a lot of contact with the family over Christmas but is reluctant to see the parents at the current time. I cannot say what will happen over the next few months, but it is very likely that things will ebb and flow in a way that makes it impossible for the care plan to be too precise. The court is not here to manage the local authority's implementation of the care plan apart from approving the permanence provisions, and contact arrangements pursuant to s34(11). Whilst I entirely understand the parents' concern about the effect upon Z of having the other young person in the placement, these are matters which, once it is accepted that a care order is in the best interests of the child, are a matter for the local authority taking into account the views of the parents and the welfare of Z.
16. I indicated at the hearing that I consider that making a care order is in Z's best interests, subject to seeing and approving the final care plan. I have now had the opportunity to do so, and accordingly make the order sought.

Deprivation of liberty order

17. As stated above, all the parties agree that the making of this order is in Z's best interests. Z is only 13, with a difficult history. Things improved a great deal between July and December, but there were a number of episodes around Christmas and in January where Z absconded and was at risk of significant harm. This demonstrates the need for an order at the moment.
18. I have considered whether to make the order for six months and can see the force in the local authority argument. Nonetheless, given the fact that recent events followed a longer period when things were better, I think the order should be reviewed in three months' time. I think that this will give Z some hope at this point that there is something to work towards. It may be that the order has to be extended on the next occasion, but I hope it will not.
19. In the meantime, I can only express my gratitude to all the parties for their assistance in this difficult case, and to express the hope that the improvement that Z demonstrated will continue, despite some recent setbacks.