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Neutral Citation number: [2024] EWFC 61

Case No: NE23C50505
19 March 2024

IN THE FAMILY COURT
SITTING AT NEWCASTLE UPON TYNE

Before :

MR JUSTICE PEEL

Between :

A Local Authority

- and -

D and Others

Applicant

Respondents

Laura Doherty for the Applicant
Edmund Jackson for the First Respondent
Paul Caulfield for the Second Respondent
Grace Morton for the Third Respondent
Eleanor Irons for the Fourth Respondent
David Ashman for the Fifth to Seventh Respondents
Lewis Sharp for the Eighth Respondent

Hearing date: 21 February 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 19 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE PEEL

Mr Justice Peel :

1. These are public law proceedings concerning four children aged between 4 and 15 years old. An IRH is listed on 28 March 2024 and a three-day final hearing on 15 April 2024. The Local Authority (“LA”) plan is for the children to be removed permanently from the parents under a care order, with a possible plan for adoption of the two younger children. This is strongly resisted by their mother (“M”).
2. The issue today is an application by M for consideration of how she is to attend court at the upcoming hearings in circumstances where she is currently barred from doing so as a result of a risk assessment carried out pursuant to the HMCTS Protocol for Managing Potentially Violent People (“PVP Protocol”).
3. The essential facts so far as material to this application are not really in dispute. M has a history of drug misuse and mental health instability, and has been diagnosed with borderline personality disorder. She is presently living in a homeless person unit.
4. She attended at the court building on 19 January 2024 at around 12.50pm. This was not the day of a listed hearing in these proceedings, and she had no reason to attend court. She passed through security and made her way to the first floor. Once there she went to the first-floor toilets. When she came out, she went back down to the security reception on the ground floor and handed in a knife, wrapped in plastic and bound in tape, before exiting the building. The knife was impounded. It had a blade approximately 3 inches in length, and a handle approximately 4 inches long. It is not clear how she was able to secrete the knife through security.
5. There is nothing to suggest that, although the knife incident was reported to the police, M is by reason of criminal proceedings prevented from attending court in person or remotely.
6. In accordance with the PVP Protocol and the risk assessment carried out by the local Court Service, an order was made by a judge on 26 January 2024 which barred M from entering the court building for a Case Management Hearing on 1 February 2024; although she could not attend, she was represented and the hearing was effective. The court plainly had the power to make that order under FPR 2010 r27.3 and, in any event, under its general duties and powers to manage cases actively. M was ordered to file a C2 application and statement in support setting out reasons why she should have access to the court building reinstated.
7. Pursuant to that order, M has filed the appropriate application and a witness statement in which she admits to the facts outlined above. She says that she acted in this way to draw attention to knife crime and the, as she puts it, lax security measures at the court.
8. Permission has been given by the court for her to attend future court hearings remotely. However, her lawyers have carried out their own risk assessment as a result of which they will not offer the facility of M attending remotely from their offices, or permit a member of their staff to attend upon M at another facility or location where remote access could be provided. M’s accommodation at the homeless unit is unsuitable for remote access; the connection is inadequate and there is a lack of privacy. Both are vital ingredients, particularly for a lengthy final hearing; the Equal Treatment Bench Book (April 2023 revision) at Appendix E requires the court to take these matters into

account. The LA, which likewise has carried out a risk assessment, will not permit M to attend their offices, nor facilitate M in accessing by video link from any other location. She might in theory be able to join a link by telephone but that seems to me to be highly unsatisfactory for a final hearing lasting a number of days.

9. Accordingly, there is little doubt in my judgment that if she is not able to attend in person, she will have great difficulty in being able to participate in the proceedings at all. The consequence would be an inability to hear the evidence and submissions, give oral evidence, and communicate meaningfully about the case with her lawyers. She would therefore not have access to justice in proceedings affecting her and the children profoundly.
10. Broadly, all parties acknowledge the potential risk posed by M, appreciate the need for M to be able to participate, and put themselves in the hands of the court as to the way forward. All acknowledge the need for a fair hearing. None opposes, in principle, M attending at court in person provided that appropriate security arrangements can be put in place.
11. The PVP Protocol, which applies nationwide, has been in place for some time but it is probably fair to say that its existence has not been universally known, and it has been only patchily implemented. All that changed after a horrific, life-threatening assault on a sitting circuit judge (at a different court) in November 2023 by a litigant in person. The PVP protocol was updated, and all courts were required to review and implement their processes. The dangers to court users (judiciary, staff, parties, witnesses, legal representatives and visitors) from potentially violent persons attending at court are self-evident.
12. Equally, that must be balanced within the needs of access to justice which is a fundamental right both under common law and pursuant to Article 6 of the European Convention on Human Rights.
13. I do not propose to set out general guidance on how this balancing exercise is to be carried out. I am dealing with this case, in this set of circumstances. Other facts will require other solutions. Each local court will have its own resources, demands and practices.
14. In this case, the most significant features to weigh in the balance when determining how the right to access to justice can best be achieved, whilst taking proper steps to protect all those potentially at risk, appear to me to be as follows:
 - i) M is clearly a potential risk. To enter the court building with a dangerous knife, and smuggle it through security speaks for itself. Her background of drug misuse and mental health issues adds to the risk factor. Her explanation that she wanted to draw attention to knife crime seems implausible to me. She is involved in proceedings which involve the possibility of her children being removed permanently from her care, which inevitably is likely to be emotionally demanding for her and risks triggering volatile reactions. An expert chartered forensic psychologist, instructed in connection with the proceedings generally, was asked about the knife incident and commented that "...[M] responds impulsively based upon her emotions....In my opinion until [M] engages in work to treat her emotional dysregulation incidents such as the above are likely

to continue". It follows that there is a present and continuing risk of similar behaviour, including potential acts of threats or violence.

- ii) Should M attend court, protection must be afforded to the judiciary, staff, witnesses, legal representatives and anyone else involved in the case. And in my judgment that protection must extend to all judiciary, staff, court users and other persons present in the court building who have nothing to do with this particular case.
 - iii) Due regard must be had to the rights under Article 6 and Article 8 of other parties in the proceedings, including the children whose very future rests on the outcome. A potentially violent person represents a risk to those rights in terms of disturbing due process, causing delay, and generating upset, fear and, in the worst case scenario, physical harm. But it is also in the interests of all to ensure that M can participate effectively so as to assist the court in reaching a balanced, fair decision, taking full account of all the evidence and submissions. That is particularly so in a case such as this where it is a public authority which is seeking authorisation from the court to interfere with the rights of the family in question, and remove children from their care. M is a primary participant in the proceedings as the mother of the children. She is not a peripheral witness. The stakes for the family are undeniably high. Such litigation requires a particularly anxious appreciation of the entitlement to the parent to put their case and have a fair trial; **Re S-W [2015] EWCA Civ 27**.
 - iv) As things stand, unless she is able to attend the court building, M will not be able to participate effectively or at all. That is an unusual state of affairs (in many, perhaps most cases, remote access is workable) but one which requires particular attention to ensure that a manageable solution can be found.
15. No party has asked me for an order that the risk assessment carried out by the Court Service should be disclosed. I did not hear argument on this, but in my judgment, it is hard to see how it could ever be appropriate for a judge to order that such a document be provided to the potentially violent person and/or the parties in general. These are internal risk assessments carried out by, or on behalf of, HMCTS. They are not for public consumption.
16. On the other hand, a person affected by the assessment is entitled to have some sort of understanding of the basis of the assessment, i.e why a particular measure has been imposed. Here, the rationale for the risk assessment is not difficult to discern as the basic facts, outlined above, are clear. In some cases, the reasoning will be less obvious. It seems to me that it would usually be appropriate for the gist of the reasoning to be given to the affected potentially violent person, whilst taking care to ensure that none of the information provided prejudices or puts in danger a particular source of information. It will be for the potentially violent person, if dissatisfied with the arrangements resulting from the risk assessment, to apply to the court for further consideration of the steps required to enable access to justice. Although in this instance a court hearing was listed to consider the way forward, I would expect that in most cases it can be dealt with swiftly on paper.

17. In this case, given that remote attendance for M is not workable, it seems to me that M must be permitted to enter the court building for hearings provided that the following arrangements are put in place and adhered to:
- i) M shall attend the building and be met by her legal representative at security, who should have passed through security before meeting M.
 - ii) M is not to be accompanied by anybody (for example a friend or associate) in the court building except her legal representatives and security.
 - iii) M is to go through full security checks, including passing through the arch, being wanded and being patted down.
 - iv) M's mobile phone will be removed for the duration of her time in the court building, and returned to her when she leaves.
 - v) M shall, when not in court for the hearing(s), ordinarily stay in a separate consultation room which will be made available for her and her lawyers. The security staff will stay immediately outside the room.
 - vi) M is not permitted to take liquids into court.
 - vii) No fewer than 2 security guards will accompany her at all times save when she attends the toilet. Upon exiting the toilet, she will be thoroughly searched by security, and the toilets thereafter will be checked.
 - viii) 2 security guards will sit on either side of her in court. She will sit at the back of the court save when she gives her evidence.
 - ix) When the court hearing or court day finishes, there shall be a staggered exit so that M leaves the court building before anyone else involved in the case.
 - x) If M refuses to undertake any part of this process, entry may be barred or, if she has already entered, she may be excluded from the building.
18. I suggested these measures to the parties, who agreed them. The measures have been agreed with the local Court Service. In this respect, I note that (i) the Court Service has a duty to ensure the safety of all court users, (ii) it is the Court Service whose responsibility it is to follow the PVP Protocol and make the risk assessment and (iii) it is the Court Service which has to provide the resources to manage and mitigate the risk. It is not for a judge to make orders against the Court Service. The order I make will record the operative measures as recitals rather than incorporate them as orders. There would be no purpose in making an order which the Court Service is unable to fulfil, and to do so could create confusion, generate delay and perpetuate the risks. There needs to be consultation and cooperation between the Court Service, judiciary and the parties to ensure that access to justice can be provided in as practicable a way as possible.
19. The measures set out above in my judgment represent a fair balance of the competing rights, particularly under Articles 6 and 8, and a proportionate response to the potential threat.

20. At the risk of repetition, these measures which I have outlined will not be necessary or appropriate in each case. The facts of this case are unusual. The response to each PVP Protocol incident obviously depends on the circumstances, taking into account local demands, resources and practices.