

IN THE FAMILY COURT AT CANTERBURY

Canterbury Combined Court and Family Court Hearing Centre
The Law Courts
Chaucer Road
Canterbury
CT1 1ZA

BEFORE:

HIS HONOUR JUDGE SCARRATT sitting as a Deputy High Court Judge

BETWEEN:

A COUNTY COUNCIL

APPLICANT

- and -

**A
CHILD (VIA THE GUARDIAN)**

**(1) RESPONDENT
(2) RESPONDENT**

Legal Representation

Miss Sophia Stapleton (Counsel) on behalf of the Applicant
Miss Joyce Hitchman (Solicitor) on behalf of the First Respondent
Mr Simon Johnson (Counsel) on behalf of the Second Respondent

Other Parties Present and their status

None known

Judgment

Judgment date: 28 June 2021
(start and end times cannot be noted due to audio format)

Reporting Restrictions Applied: **No**

“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.”

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His Honour Judge Scarratt:

1. A was born in 2004. He is aged almost 17 years old. The application today is for a Care Order and Deprivation of Liberty Order for a further 6 months.
2. A is represented. There is a Guardian who represents A's interests and those of his brothers. The case in respect of his brothers has been dealt with and they are living with his parents who appear today Mr and Mrs J. They are represented as well.
3. The Local Authority issued proceedings for the three children of this family in February 2019. A long time ago. All three children had been adopted by Mr and Mrs J back in 2006. The background is detailed, and I intend to refer to some of the important matters but not all of them in this short judgment.
4. By 2015 there were incidents of physical violence with A being physically abusive towards his mother. Hitting her and holding a knife to her throat. In 2017 A was permanently excluded from school due to seriously hurting another pupil. The parents received support.
5. In 2018 A's aggression towards his mother and his siblings worsened. There was a threat to kill his mother by A and he punched her. In May 2018 police attended A's home because again he had attempted to attack his parents.
6. It is right to record that A had an early diagnosis of ADHD, impulsive disorder and complex trauma within attachment relationships. There was also a diagnosis of possible depression. These diagnoses remain and I shall not refer to the medical experts who have seen A, but there is no real change in his diagnosis. Save that, thankfully, currently A appears to be taking his ADHD medication because there have been substantial periods of time when he had not done so, triggering, of course, the sort of behaviour that is well documented.
7. The Local Authority searched for a residential placement with onsite education because A had been permanently excluded from school. He spent some time at one placement where he had to be restrained because of his violent behaviour.
8. There were concerns that he was involved in drug dealing and in February 2019 it was reported that A was only spending a few nights a week at the placement and the other nights at home; later A left the placement and returned home. All the time there were incidents at home and A was reported missing and there were concerns of drug dealing and county lines.
9. In June 2019 A was placed with family friends, a Mr and Mrs G, following a serious threat to A's mother by A with a knife and there were bail conditions. Following that, in July 2019, A received a 9-month Referral Order from the Magistrates' Court.
10. He attended school whilst living with Mr and Mrs G, but he was sent home from school in July 2019 when he is alleged to have pulled a knife on his girlfriend. The following month he strangled his then 15-year-old girlfriend causing her, it is alleged, to lose consciousness momentarily.

11. That month, A assaulted his mother again and assaulted his girlfriend again and he was arrested and in September 2019 he was accommodated pursuant to section 20 of the Children Act 1989 and again placed in a residential placement.
12. He broke bail conditions, he went to his girlfriend's house, he was further arrested and eventually was transported to a new placement a long way out of county. It was not long before he was again arrested for a breach of his bail conditions in September 2019.
13. He moved from this placement in October 2019 to a new residential placement and before the year was out, that is 2019, A went missing on a great number of occasions, possibly 30, and the allegations of criminal activity and assault continued.
14. In December 2019 A was convicted of harassment, criminal damage and an assault on his girlfriend and he received a sentence of youth rehabilitation for 18 months, a supervision requirement for 18 months, an activity requirement for 24 days and electronic monitoring for 6 months and a Restraining Order was made for 3 years.
15. The second placement broke down, for various reasons which I need not go in to here, and in January 2020 he went again to live with the family friends, Mr and Mrs G. He remained there for six months or so when in June 2020 the placement broke down following A being arrested for threats to kill Mrs G and the other children in the household.
16. In June 2020 A was moved to yet another residential placement well out of county. He absconded from there within a few days and he was brought to court for a breach of the previous court order and he was placed on bail including a curfew from 9pm to 6am.
17. He was sent to yet another residential establishment where there was supervision for 24 hours a day. Deprivation of Liberty (DoL) restrictions were made for the first time pursuant to the court's inherent jurisdiction. They were amended on 1 July of that year to include the possibility of four to one supervision if necessary and appropriate.
18. He was sentenced to a 6-month Detention and Training Order on 14 July. He was released on 12 October 2020, but on 6 November he was recalled on the remainder of his licence; upon his release in January of this year, 2021, he moved to another placement close to London. There the placement provided three to one staffing during the daytime, CCTV and surveillance.
19. The matter came back before Court because of the DoL Order and the Court, in January 2021, declined to make a further DoL Order, it having not previously worked and the Court decided, as it were, to give A a chance to show that he could improve his behaviour because there had been some improvements in his behaviour which had been noted. This course was supported by the Guardian.
20. Sadly, A's behaviour soon deteriorated, he absconded from the placement and was allegedly involved in shoplifting and robbery attempts. This led to him being placed in yet another placement as he could not return to his previous placement because there had been allegations on Facebook alleging that A had absconded with a 13 year old girl and her family had been calling him online, amongst other things, a child abuser and a danger to young girls.

21. The matter came back to court in February of this year where I granted a further application for a Deprivation of Liberty Order. That was extended in March 2021 until a hospital placement for A could be found. He had to move placement because of damage from a storm caused to the establishment and at the end of March 2021 A moved to the new placement.
22. It was there that he started to take his ADHD medication daily. He attended CAMHS for mental health screening but, sadly, he stopped taking his medication in May of this year.
23. In May 2021 he was made the subject of a 6 month Rehabilitation Order and that order requires him to engage with a youth officer, engage in meaningful activities and to adhere, of course, to an electronically monitored curfew; on 15th May A absconded again and it is reported that he had been using cannabis and that he had absconded with two girls. He was missing for 24 days.
24. The current position is that, when he went missing in May, he went back to his parent's home in June and it does appear from the documents that he has become a victim of exploitation. He has reported himself to his YOT worker that he has been forced to carry knives and being involved in fights and the evidence of that is in the papers and I am not descending into detail but he was arrested on 3rd June of this year in possession of a knife. He gave a false name and was placed in an emergency foster placement. He immediately absconded from that placement and on 14th June he was made subject to bail conditions at the local Magistrates' Court; on 16th June he absconded from his placement. He was at this point not taking his ADH medication and on 16th June he returned to the placement and the security arrangements were reviewed.
25. All along, the parties agreed that what was required in this case for this very troubled young person, still a child, was secure accommodation. There was a history of absconding and behaviour which made him a significant risk to himself and to others, as I have briefly set out, and it is absolutely certain that he is a person likely to continue to abscond and present as a risk to others and himself. There is clear evidence that A has put himself at risk and others at risk when he has gone missing.
26. There is evidence from the psychiatrist who has looked at the situation and examined A that he is only likely to engage with recommended treatment in a secure setting. But the reality is that there is no identified secure accommodation that is available for A now and the matter comes before me today to make the Final Care Order and to continue a Deprivation of Liberty Order for 6 months. Threshold is met - everybody agrees that because he is beyond parental control and that the Court is able to and should make a Final Care Order.
27. The Local Authority and the social worker Mr K have done their level best, I know, to try and find secure accommodation, but the Local Authority is unable to approach secure placements directly. Any Local Authority must make a referral to the Secure Welfare Coordination Unit and I know that this Local Authority has repeatedly made such referrals and that searches have been conducted across England and Wales and Scotland.

28. There is a criticism of the Secure Welfare Coordination Unit in that there appears to be a certain lack of transparency because it is not explained in any detail at all why, if there is a placement available, it would not be suitable for this particular young person.
29. The Local Authority is notified daily, I think, of the number of referrals nationally being considered and the number of available placements but the name of any placement with the vacancies are not provided to the Local Authority and I have a report from the assistant director of this Local Authority explaining the process.
30. It seems to me that a Local Authority ought reasonably to know where the places are available and that the social worker should at least be able to discuss the matter directly with a secure placement so that the secure placement has all the relevant details and that it can reconsider its decision if at all possible.
31. I have had cause in the past, in my judgments, to criticise the lack of available placements for vulnerable people such as A. A is a threat and risk to other people, and I have given a little detail of the assaults, threats to kill, using knives etc but he is also a real threat and risk to himself. He is, as his counsel has described, a victim of the system.
32. He, whilst of course he ought to take more responsibility for himself, has difficulties, not least the ADHD, and I am pleased to read and hear that he is making some progress in the residential placement that he is now in but the fact of the matter is, as Mr B, the Guardian, points out today, addressing the Court in submissions, that these are residential homes. They do not provide and are not secure accommodation. I am being asked to make and I will make in a moment a Deprivation of Liberty Order ensuring three to one supervision if deemed necessary. This residential placement/home may, I am told, find that difficult and I have some sympathy because it is a residential home and not secure accommodation.
33. I am told that there was an incident yesterday during contact when the parents had to crawl out of a window because, as the parents say, A was antagonised by a member of staff which in fact made matters worse. I am going to receive a report on that for my peace of mind but I am reassured by the parents particularly, who have addressed the Court extremely coherently today, that many members of the staff there are very helpful and assist A when required. But the fact of the matter is that this young person A, whilst he does not want to go into secure accommodation (I have read his instructions to his counsel) should be in secure accommodation for his own safety and the safety of others.
34. In a previous publicised judgment of mine on this topic, I said that I was at my wits end with the system because it was failing young people and, in that particular case, a young person was sent hundreds of miles to secure accommodation – far away from his family and the area in which he had lived.
35. There are a number of authorities, well known to professionals, criticising the current dearth of secure accommodation units and I make no criticism of the Local Authority or the social worker for their attempts at securing secure accommodation for A.
36. Action and funding are required from the government. In *Re S (Child in Care: Unregistered Placement)* [2020] EWHC 1012 (Fam) (Family Division, Cobb J, 28 April 2020) his Lordship said:

“S’ case is depressingly all too familiar to those working in the Family Court and as I believe indicative of a nationwide problem. There is currently a very limited capacity in the children social care system for young people with complex needs who need secure care.

It appears that demand for registered places is currently outstripping supply. This is the frustrating experience of the many family judges before whom such difficult cases are routinely presented. It is also the experience of the Children’s Commissioner to whom I have forwarded a number of redacted documents in this case with the agreement of the parties”

He went on to say:

“The crisis caused by the coronavirus Covid 19 pandemic will plainly have impacted on the provision of secure accommodation of present and made the task of finding a bed in a secure unit for S yet more difficult, but I wish to stress that the problems raised in this case are not related to the pandemic. The absence of satisfactory secure provision is a chronic problem which in recent years has become even more acute to the significant detriment of a large number of very damaged young people in our society.”

37. With great respect to his Lordship I agree entirely. Indeed, his Lordship calls it a:

“Frustrating experience”

I find it rather more than frustrating. I find myself to be sad and, frankly, embarrassed that I am not able to serve and assist this very troubled young person in the way that I would wish to do.

38. My own feelings are set out well my Knowles J in Re Q (A Child) (DoLS: Lack of Secure Placement) [2021] EWHC 123 (Fam) where her Ladyship said:

“To be blunt Q is being failed by the care system given the inability to locate a suitable secure placement in which he can receive the intensive therapeutic work which he so plainly and urgently needs. If he does not receive this work soon, he will be a huge risk to young children and others. The nature of his likely offending behaviour also places him at risk of being a victim of serious harm both in the community and in custody.

As this judgment makes clear Q is, through no fault of his own, a profoundly damaged young person who desperately needs care and help. The window of opportunity to tackle and address his difficulties is running out since he will be 18 years old in just over a year’s time.

At that point no order that this court can make could prevent him from leaving a placement and living in the community where he will be at significant risk of harm himself and where he will present a significant danger to others”

It struck me, when reading the judgment of Knowles J in the case of Q, that if I replace Q with A, every single word that her Ladyship, a very experienced family judge, has said, applies in this case.

39. A has been totally failed by the care system. It saddens and troubles me. McDonald J in the case of A Borough Council v E (Unavailability of Regulated Placement) [2021] EWHC 183 (Fam) at paragraph 35 said this:

“Finally, I am compelled to note that this yet another case in which the Court is once again faced with approving an unregulated placement by reason of a lack of any other option consequent on the continuing paucity of regulated provision for children in this jurisdiction.

I set out the ever-growing list of such cases and the difficulties they cause for the vulnerable children who are the subjects of them in detail in Lancashire CC and G. Since that case was published there has been at least further published judgment that of Gwyneth Knowles J and Q dealing with very similar issues.

The need for these resource issues to be addressed for the benefit of the highly vulnerable children with which the Courts are concerned in these difficult and troubling cases remains as grimly pressing as it ever was”

And, with great respect to McDonald J, I agree with every word he has said particularly in his last sentence:

“The need for these resource issues to be addressed for the benefit of the highly vulnerable children with which the Courts are concerned in these difficult and troubling cases remains as grimly pressing as it ever was”

40. In a moment I will make the orders sought. This judgment, when approved and published, shall be sent by the Local Authority to the Children’s Commissioner for England, the Secretary of State for education and the Minister for Children as well as the Chief Social Worker and the Secure Welfare Coordination Unit. I do not think that they can receive enough judgments from Her Majesty’s judges which set out the grim reality of the situation for people in A’s position who are a danger to themselves and to others and for whom being placed in residential placements is simply not the answer.
41. I have been asked by all the parties to make these comments and I hope that the comments that I have just made will be read and acted upon by those in authority in government and elsewhere. I am not optimistic. No one should underestimate the grim reality of the position and the personal angst that I feel as a judge, entrusted as I am with these difficult cases, not being able to assist this young person and his family.
42. I pay tribute to Mr and Mrs J, if I might at this point, for the way that they have dealt with the real pressures that A has put upon them, the worries of this litigation and the knowledge that A is not being best served by the state by the lack of secure accommodation and the appropriate therapeutic treatment

43. As I say the threshold is met. A is beyond parental control. A Care Order is sought by the Local Authority. It is not opposed by any party. It is the only option in this case. A is almost 17.
44. I now turn to the application pursuant to the inherent jurisdiction for a Deprivation of Liberty Order. As I have outlined in my brief summary of the background of this case, I have made such orders in the past and I will make an order now. The reasons for the continuation of the Deprivation of Liberty Order remain the same as when it was first granted. This child must be kept safe. He is a danger to himself and to others. I am not able to place him in secure accommodation which everybody wants bar A himself. In my judgment the restrictions need to be imposed upon him to safeguard him and others.
45. There has been discussion this morning concerning the tightening up, if I can use that expression, of what is proposed by the Local Authority and I intend to do that. The parents particularly, Mr and Mrs J, were concerned yesterday - only yesterday - at contact about the supervision not being adequate and I have taken account of that and of all the submissions that I have heard.
46. The restrictions I impose on A will be as follows: (1) that he will not be allowed to leave the placement without permission and only then if accompanied. (2) minimum of three to one supervision when out of placement, (3) there will be no access to social media by A unless he has earned that privilege, (4) professionals and workers in the placement are to have access to any social media communication he makes if indeed he has earned the privilege of accessing social media, (5) it follows that professionals and workers in the placement have access to A's social media accounts, (6) A is to hand all devices to members of staff when he goes to bed if he has them as a privilege and they should be returned to him in the morning if he has earned that right as a privilege, (7) his finances are limited and are to be limited and he is not to have access to more than £12 per week cash, (8) his savings are to be deposited into a bank account opened for him but managed by a party with parental responsibility, (9) external doors are to be secured and one member of staff is to be outside A's room during evenings to prevent him from leaving the property. All windows in A's room are to be secured so that they can only be opened for ventilation and (10) physical restraint can be used in the event that A attempts to leave the property without permission or without being supervised or if he should act in any way that endangers himself or others.
47. Those are the restrictions that I impose, and they will last for a period of six months from today.
48. I expect the Local Authority to continue their search for secure accommodation and of course if they find such a placement the matter should revert to court immediately and I shall reserve the matter, as I have done in the past, to myself.
49. I very much hope that the matter can be resolved by finding the appropriate placement. I say no more. I have said enough about my anxieties about the lack of placements for young people in A's circumstances and I hope very much that such a placement can be found sooner rather than later.
50. As for the current placement, I am pleased to note that there are signs, green shoots perhaps, that A is improving his behaviour.

51. As far as I am aware the staff have been properly trained in restraint but it may well be that the manager of the placement needs to look at the CCTV of what happened yesterday at contact and to make whatever amendments he would wish for the organisation of the establishment – including further training in respect of restraint techniques if deemed appropriate. I say n more.
52. That is the judgment of the Court.

This Transcript has been approved by the Judge.

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