



NEUTRAL CITATION: [2021] EWHC 3527 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
SITTING AT THE ROYAL COURTS OF JUSTICE

Date: 09/12/2021

Before :

MR L. SAMUELS QC

Between :

A LOCAL AUTHORITY

Applicant

- and -

(1) A MOTHER

(2) A FATHER

(3) F

(4) A GUARDIAN

Respondents

Kate Mather appeared on behalf of the Local Authority
Sarah Branson appeared on behalf of the mother
Laura Martin appeared on behalf of the father
Jessica Lee appeared on behalf of F
Paula Bloomfield appeared pro bono on behalf of the Guardian

Hearing dates: 7, 8, 9 December 2021

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.

Re F (A Child) (Care Order: Deprivation of Liberty)

.....

Mr L. Samuels QC sitting as a Deputy High Court Judge

This judgment was delivered in private. The judge has given permission for this version of the judgment to be published. This version of the judgment may be published only on condition that the anonymity of the children and their family is preserved and that there is omitted any detail or information that may lead to their identification, whether on its own or in conjunction with other material in the judgment. This includes, but not exclusively, information of location, details of family members, organisations such as school or hospital, and unusual factual detail. All persons, including representatives of the media, must ensure that this condition is complied with. Failure to comply will be a contempt of court

1. At the centre of this case is a teenage girl Fiona. Fiona is 14 ½ years old. Her mother is Gillian and her father is Harry. Fiona's parents separated when she was very young. Fiona has a brother called Ethan who is 16 years old.
2. Fiona has been present throughout this hearing and has spoken directly to me to explain her views.
3. I have attempted to write this judgment in language that Fiona can understand. I am invited to publish this judgment by all parties in accordance with paragraph 17 of the 2014 Practice Guidance on the Publication of Judgments. This judgment does not raise any new point of law or procedure, but Fiona and her intermediary told me at the conclusion of my oral judgment that Fiona had found it helpful that I had explained matters to her in the way that I did. I have anonymised all names and locations.
4. Fiona grew up living with her mother and brother. She has had more limited contact with her father. Difficulties started in about 2015, when Fiona was 9, and she began to feel suicidal. This has been linked to her witnessing an assault on Ethan by her mother's partner at that time. In 2016 Ethan's behaviour became problematic. He could be violent and aggressive towards his mother and towards Fiona. That must have been very upsetting for Fiona. Ethan spent some time living with his father, but his father became homeless so Ethan had to return to his mother's home.
5. In 2019 Fiona began to self-harm and attempted to take her own life. That must have been very frightening for Fiona's parents. I can see from the social worker's chronology at C8 and C9 that six separate serious incidents are recorded. Fiona was admitted to hospital four times. In September 2019 Fiona's mother decided that she could no longer keep Fiona safe and she asked the local authority to look after her. When a local authority looks after a child with the agreement of her parents this is called a section 20 placement (s.20 Children Act 1989).
6. Away from home Fiona continued to struggle. Her attempts to self-harm and to take her own life continued. Sadly, in October 2019 she had to be sectioned (under s.136 Mental Health Act 1983). This meant that she was detained in hospital for her own protection. She spent a number of weeks in hospital receiving treatment.
7. On 19 November 2019 the local authority decided to begin court proceedings in respect of Fiona. They did so because they were worried about her and needed to make longer term plans for her. Fiona's mother agreed at the time that she could not safely care for Fiona.
8. On 13 December 2019 the local authority applied to place Fiona in a secure unit (a secure accommodation order under s.25 Children Act 1989). Fiona's parents agreed with that plan "with a heavy heart". The court made the order on the basis that Fiona had a history of running away and that if she did so again she would be likely to suffer

significant harm. She was also likely to hurt herself if she was living in a different type of accommodation.

9. Fiona stayed at the secure unit for over a year. During her time there she was assessed as having Autistic Spectrum Condition. It was really positive that Fiona's self-harming behaviours reduced during her time at the home. As a result, everyone agreed that she could move to a less secure setting.
10. There was a lot of discussion and planning for Fiona's next move. It was agreed that she would move to A Children's Home. Although that is a long way from Fiona's home with her mother, everyone agreed that it was the best place for her. Fiona's parents agreed that the court would make an interim care order in place of previous secure accommodation order. An interim care order is an order that means that the local authority shares decision making for Fiona (parental responsibility) with Fiona's parents. As a result, the local authority, Fiona's mother and Fiona's father have to agree on the plans for Fiona. If they do not agree then the local authority can have the final say, subject to any decision that the court might be asked to make. Fiona moved to A Children's Home on 11 February 2021. She saw this as part of a plan to return home to live with her mother. This has been her consistent wish which is shared by her mother.
11. At the same time as the move to A Children's Home was being planned, the local authority asked the court to make an order authorising it to deprive Fiona of her liberty there. That is an extreme order only used in very rare circumstances. Fiona's parents agreed that this order was necessary at that time to keep Fiona safe at A Children's Home and the court agreed as well.
12. I have read a lot of reports about how Fiona has been getting on at A Children's Home. There are, in particular, two reports from the registered manager of the home. The last of these was completed about a fortnight ago. These reports show the considerable progress that Fiona has continued to make. There have been some worrying events but she has, in general, responded well to the structure there. What is particularly positive about A Children's Home is that therapeutic intervention is part of their day-to-day practice. Fiona sometimes finds it difficult to see the need for individual therapy with a professional such as a psychologist so there are worries how she would manage back at home with her mother when individual sessions (through CAMHS) would be all that would be available to her. She has not always engaged as much with her education as everyone would wish her to.
13. Fiona has spent time with her mother unsupervised near to A Children's Home and has visited her family home. Those times have all been really positive. Fiona usually takes her medication, has spent time with a friend in Cornwall during the summer (supervised by staff) and has also spent time with a friend in London (again supervised). These visits went well. She enjoys attending the local gym, swimming, eating out, shopping and going to the cinema. She independently shops and cooks meals for herself. She has

developed some positive relationships with staff members and seems mainly to get on well with other residents. She has a love of dogs and looks after the staff dogs really well. She is working towards having her own dog living with her at the home. She is very excited about that.

14. Staff at A Children's Home have been supervising Fiona's eating because sometimes she makes herself sick afterwards. However, staff there have not had a concern about this for some time. They no longer consider it necessary to supervise her after she has eaten which is again very positive.
15. The local authority recognises the considerable progress that Fiona has made. They are worried, however, that this progress may not continue if she returns home too quickly. They would like her to commit herself more to engaging in the therapy offered to her at A Children's Home. This is because these services may not be available when she returns home and would certainly not be available if she said she refused to accept them. They believe that the therapy would help Fiona greatly. The local authority is actively planning for Fiona to return home. However, before this can happen they say:
 - (a) She needs to avoid any self-harming or suicidal behaviours for another 3 months;
 - (b) She needs to engage in the therapy offered to her;
 - (c) She needs to become more resilient in herself;
 - (d) She needs to go to school;
 - (e) Contact with her mother should continue to go well;
 - (f) Fiona needs to comply with these conditions because she understands how important they are not just because she wants to go home; and
 - (g) Fiona's mother should continue to engage openly and honestly with the local authority and the local authority needs to be satisfied that she can safeguard Fiona from harm.
16. The local authority asks me to make a care order in their favour. As with the existing interim order, a care order would mean that the local authority will share decision making with Fiona's mother and with Fiona's father. This would mean that the local authority, Fiona's mother and Fiona's father have to agree on the plans for Fiona. If they do not agree then again the local authority can have the final say, subject to any decision the court may be asked to make. The local authority maintains that it is also necessary and proportionate for me to extend the existing order authorising them to deprive Fiona of her liberty. They have amended the proposed restrictions after hearing the submissions of the other parties. They rely on the history of this case and that whilst Fiona has made considerable progress there have been set backs as set out in their final statement, in particular at the end of June 2021 and then in July and August 2021.
17. Fiona's mother agrees that she cannot come home immediately, much as she would want her to. She does not disagree that Fiona's situation has to remain stable and that she needs to engage in the therapy offered and in her schooling. However, Fiona's

mother is worried about the negative comments that have been made about her in the assessments carried out by the local authority. She is worried that, when the time comes, the local authority will decide that it is not safe for Fiona to return home based on what she considers to be old and unfair assessments of her.

18. Fiona's mother has said that she would prefer to be the person making the decision about when it is safe for Fiona to return home, not the local authority. She has said that there is no need for the court to make a care order. Fiona's mother would prefer for her to agree to Fiona staying at A Children's Home voluntarily under a section 20 placement. This would mean it would be her decision as to when Fiona should return home. Although Fiona's mother tells me now that she does not oppose the making of a care order she does not actively support it. It is a shame that the parties have not been able to reach complete agreement on this issue.
19. Fiona's mother originally said that she agrees that an order depriving Fiona of her liberty is necessary but now, having considered this further, she opposes it. She questions whether the regime at A Children's Home and the restrictions currently placed upon Fiona amount to a deprivation of her liberty. The fact that restrictions may become necessary in the future would not be a reason to make such an order now (*Hertfordshire CC v NK and AK* [2020] EWHC 139). For example, Fiona currently has access to the grounds at A Children's Home using her fob, is allowed to be unsupervised for 15 minutes at a time and rarely has her belongings searched or faces restrictions on her use of her telephone. The last time she was subject to physical restraint was on 27 June 2021 (and this was the only time at A Children's Home). In any event, these restrictions are not, she says, proportionate or necessary given the progress Fiona has made in recent months.
20. Fiona's father is very pleased about the progress she has made at A Children's Home and wants her to return home when she ready to do so. He supports the mother's concerns and proposals. He would like to be able to see Fiona unsupervised and is willing to sign a written agreement with the local authority so that this can happen. Like the mother, he did support the making of an order authorising the deprivation of Fiona's liberty but he now welcomes some scrutiny and analysis to ensure it is necessary and proportionate.
21. Fiona's Guardian has produced a very recent and detailed report. She praises Fiona for the progress she has made and Fiona's mother for her considerable commitment to Fiona. She clearly loves her daughter very much and wants her to return home with her. The Guardian has visited Fiona at A Children's Home. She met a close friend of Fiona's who is a little older than her and has helped her focus on getting better. Fiona and the Guardian chatted about her dog and Fiona's hope that he will move in with her when she moves to 'Gold Level' which would represent four months incident free. They discussed Fiona's plan to return home by September 2022 ready to start Year 11 at her former school where she would complete her GCSEs. Fiona was a little critical about

the lack of support she says she receives at A Children's Home. She believes she would have been fine had she gone home a little sooner.

22. The Guardian says that Fiona not seen her brother Ethan for 2 years and they do not speak with each other or exchange messages. Ethan is now subject to a care order and is living away from home. However, he comes home for contact with his mother. Fiona believes she would be able to manage being with Ethan again, but Ethan has said he does not want to see his sister at the present time. Both the local authority and the Guardian are worried about how Fiona will manage the relationship with Ethan once she returns home and whether their mother will be able to manage their different needs and make Fiona feel important.
23. The Guardian agrees with the local authority that Fiona will not receive the same level of therapeutic intervention if she was to return home at the present time. She believes that Fiona should stay at A Children's Home for now. She worries that although Fiona has agreed to stay there at the moment, she may change her mind. She knows that Fiona's mother has always wanted her to come home, which is entirely understandable. The Guardian says that she has no doubt that Fiona will return home but she worries that if the decision is left to her mother, this will happen too soon. She says that could be catastrophic for Fiona. Any return home could happen very quickly without any opportunity for support services or therapy to be put in place. The worst thing that could happen for Fiona would be for her to return home too quickly and then for her to come to harm at home or for her to have to move again.
24. The Guardian supports the necessity for an order depriving Fiona of her liberty in this case. She maintains that the restrictions do amount to a deprivation of liberty and are needed to keep Fiona safe.
25. The Guardian suggested that it might be possible for the local authority and Fiona's parents to reach an agreement. If that were to happen it would be positive for Fiona as she would see everyone working together to reach the best outcome for her. There has been considerable discussion between the parties during this hearing and it is positive that no-one has asked me to hear any oral evidence. However, complete agreement has not been achieved, despite everyone's best attempts.
26. Fiona has attended this hearing and has been separately represented. She has a solicitor, a barrister and an intermediary to help her with communication. This is very important as this case is all about her and her future. She has been assessed as having the capacity to play a full part in these proceedings. I have read her statement. She agrees that she should remain at A Children's Home at the moment but would like a clear plan as to when she is going to go home. She wants to aim for summer 2022 so she can plan her education. She is on track for good grades in her GCSEs and her attendance at school has improved. She believes that her mother should make the decision as to when she should return home, not the local authority. She is confident that they will come to the

right decision together about that. She would like the opportunity to spend time overnight with her mother. She says she understands that therapy is necessary and promises to engage better with it.

27. I spoke to Fiona yesterday (8 December). She impressed me as a mature, intelligent and articulate young person. That mirrors the impression she has made on the professionals in this case. She told me that she wants to become a doctor and has already considered the specialist fields she is interested in. She clearly has a love of animals including both cats and dogs. She is excited about the plan for her to complete the Three Peaks Challenge and also the plan for her to travel to Spain. She very much wants to travel the world, as she should.
28. Fiona spoke for about 20 minutes to explain to me why it is not necessary for me to make an order depriving her of her liberty. She was articulate and persuasive which is why I asked her in our meeting whether she had considered becoming a lawyer. She reminded me that she had been subject to restrictions since the age of 12. Since then she has made huge changes and considerable progress. She has not attempted to take her own life for 18 months. When she attempted to leave the placement in June 2021 it was to get some space not with the intention of killing herself. When she compares herself to other young people at A Children's Home she believes she is one of the lowest risks, yet she is subject to this order and many others there are not. The order is not necessary she says. She can be restrained without such an order. Many of the restrictions are not in fact used, such as entering the bathroom when she is there. She is a teenager and teenagers are impulsive, but overall she has not presented a risk for a long time now and these orders are meant to be used as a last resort. It is not necessary at the moment to make such an order. These are her human rights and she objects to the proposed deprivation. These orders should not be used to make other's lives easier. If the order was removed she would be able to make more progress and live a more normal life. Staff at A Children's Home do not necessarily appreciate that the order is permissive only and her life is more restricted because of the order. She is willing to stay at A Children's Home but wants to see the clear steps set out for her return home. There is a real risk that she will become institutionalised. She has made so much progress and recovery, but this has been through her decisions. She wants to live her life, to travel and to get a good job. Every young person struggles at times, but they do not need to be on a DOLS order. This may be seen as the easy option, but it does not mean it is the best option.
29. As the judge in this case, I want to praise Fiona for the progress she has made. It is really good that she has had 4 months now without an incident. It is also great that she wants to do well in her GCSEs. If she can achieve high grades that will help her on the path to a successful and fulfilling career. Fiona is an intelligent girl with a bright future. With a good education there is no limit to what she can achieve. It is a delight to hear that she wishes to become a doctor and I have every confidence she will succeed with this.

30. I agree with everyone that Fiona needs to stay at A Children's Home for a little longer. It is very frightening when a child tries to hurt themselves and even more so when they try to take their own life. Fiona needs to be kept safe. She also needs expert help to understand why she has behaved in this way, what the triggers are and how to stop herself doing this again. Life can be stressful, particularly for a young person. She needs to develop resilience to protect her from acting in a way that could be harmful. How she will manage contact with her brother will also need to be tested.
31. I understand why Fiona emphasises to me that there have been no incidents since August 2021 (apart from the tattoos which is less serious I accept). That is extremely positive, but it needs to be maintained so everyone can have confidence that a new pattern of behaviour has been established. Four months is a long time for a young person I know but I would urge Fiona to be patient and to keep up the good progress she has made. I think it is very important that Fiona has been able to recognise when she feels like hurting herself and has been able to tell staff at A Children's Home.
32. I agree that everyone should work towards Fiona coming home in time to start the school year in September 2022. This will be really important. I agree, as Fiona says, that there must be clear steps set out to achieve this and I am grateful to the local authority for producing a transition plan. As I have said in the hearing, I expect this to happen if Fiona continues to make good progress. I agree that the transition plan sets out the best way forward for her. It is also important that Fiona's mother receives an up to date and fair assessment of her ability to care for Fiona. I am glad that the local authority has agreed to that.
33. I am clear that the decision about when it is time for Fiona to come home should be one that is agreed by the professionals working with her. I agree with the Guardian that it could be dangerous for Fiona to return home too soon or without proper planning and support services in place.
34. I do not think it is fair on Fiona and her mother to leave them to make this important decision. Fiona understandably wants to come home as quickly as possible. If she knows it is her mother's decision she will ask her to allow her to do so at some point, probably not that long away. Her mother may then find herself in a difficult position. If she says yes it may be too soon. But if she says no then Fiona may be upset with her. This could lead to problems between them. I think it is better if the final decision is made by the local authority. I believe Fiona recognises this from my discussion with her.
35. Contact between Fiona and her parents will also be extremely important going forward. I understand that agreement has been reached for Fiona to spend time overnight at her mother's home and some time unsupervised with her father. Fiona will hopefully find that contact to be enjoyable and it will be a good test for when she eventually returns

home. It will also be relevant to see how the relationship with Ethan develops and the impact this has on Fiona.

36. I turn finally to consider the necessity of an order authorising Fiona's deprivation of liberty. I have thought long and hard about this, particularly after speaking with Fiona.
37. The law on this issue is well known and summarised in the case of *Salford CC v NV, AM and M* [2019] EWHC 1510. Fiona has as much a right to her liberty as any other person. That right is protected by Article 5 of the European Convention on Human Rights and Article 37 of the United Nations Convention on the Rights of the Child. Any interference with Fiona's liberty must be in accordance with the rule of law, and only used as a measure of last resort and for the shortest possible time.
38. Where a local authority has care of a child, they cannot deprive that child of her liberty without the agreement of a judge. Case law has established that a child is deprived of her liberty when she is subject to continuous control or supervision and is not free to leave.
39. I do not think this situation is comparable to that in the Hertfordshire CC case. In that case the young person was living in semi-independent accommodation and was able to leave the property which was not locked. He could leave to be with his mother whenever he wished and could spend as long as he wanted to with her. He had unlimited access to his mobile phone and neither he nor his room were ever searched. I see no reference in that case to any history of physical restraint.
40. I do consider that the restrictions imposed upon Fiona amount to a deprivation of her liberty. She is not free to leave the perimeter of the property and her access to the outside areas has to be earned and can be withdrawn at any time. She is not free to be outside the placement unsupervised by an adult. The proposed restrictions would enable staff to enter the bathroom when she is in there to make sure she is safe. It would enable them to be able to search her and remove her possessions if they were concerned about her safety. I appreciate these may not happen very often at the moment, but they are a necessary safeguard. Fiona is monitored every 15 minutes and there is CCTV in the communal areas. I do consider that these proposed measures, when viewed as a whole, would amount to a deprivation of her liberty. When I compare Fiona's situation to that of another child of her age, she is under a great deal more control and supervision than that other child would be. At 14 the doors to that child's home would not be locked to prevent her leaving. She would be able to be outside the property unsupervised to go to school and to see her friends or go to the shops. She would be able to lock the bathroom door and to have privacy when she needs it. She would not be subject to monitoring every 15 minutes.
41. I have considered the argument that Fiona's situation is no different from the other residents at A Children's Home. The difficulty with that is that I do not have much

information about their individual circumstances. There can be a number of reasons why the distinction has been made. On close analysis their situation may not amount to a deprivation of liberty. Alternatively, it may do so but for some reason no order may yet have been sought. To my mind what is important is to concentrate on Fiona's situation and not worry too much about the other residents at A Children's Home.

42. The next question for me is whether I am satisfied that such a deprivation of liberty is in Fiona's best interests, whether it is proportionate and whether it is necessary to keep her safe. I have listened to, heard and reflected upon what Fiona and her mother have said, but I have no doubt that these restrictions are necessary and proportionate, for the time being. As I have said, I can see why her family and the professionals trying to help her have been very frightened by her behaviour. She has hurt herself in a significant way, most recently in the summer of 2021. She has also tried to take her own life. I know that was in the more distant past but no-one would want to take a risk of that happening again. We all need to be sure that Fiona's behaviour has changed and changed for good. She needs to be patient with us and understand our worries. Her positive progress needs to continue for a little longer and to be stress tested. As Fiona herself told me all teenagers are impulsive. But not all teenagers hurt themselves or attempt to do so. I have considered and further amended the proposed regime of control and supervision to be annexed to the order. I have carefully reviewed these proposed deprivations and consider them to be proportionate and necessary given the history of this case.
43. However, as I have already said during the hearing I would not agree an order authorising this for a further 12 months. This would be too long. Everyone expects Fiona to be home by September 2022. If that has not happened the court will want to know why and to review, in any event, the ongoing necessity for a DOLS order. I will therefore make the order to last until 26 August 2022 in line with the revised position of the local authority and guardian. I have considered the alternative date in May as proposed by the mother, but I think that is a little too soon. I would emphasise the restrictions authorised are permissive only and are not a requirement. I know the local authority understands that but there should be further communication with A Children's Home to underline that point. It would not be right for Fiona to be subject to a greater degree of control of supervision than is strictly necessary to protect her from harm, simply because of the terms of the DOLS order that is in place.
44. That is my judgment.

9 December 2021

L. Samuels QC