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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
CAERNARFON DISTRICT REGISTRY
SITTING AT PRESTATYN JUSTICE CENTRE .

Prestatyn Justice Centre
Victoria Road
Prestatyn
LL19 7TE

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Before:

HIS HONOUR JUDGE GARETH JONES
(Sitting as a Deputy Judge of the High Court)

Between:

A LOCAL AUTHORITY

Applicant

- and -

(1) THE MOTHER Respondents

(2) THE FATHER

(3) X (a Child)

(By the Children's Guardian)

MR. JULIAN LLOYD appeared as Counsel for the Applicant
THE FIRST RESPONDENT attended remotely
THE SECOND RESPONDENT did not appear and was not represented
MR. SION GWYN appeared as Solicitor for the Children's Guardian

Approved Judgment

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HIS HONOUR JUDGE GARETH JONES:

1. There is before me today the return date of an application following the making of an interim DoLS order on the 10th May 2022 potentially to extend that order on a final basis, the case having been timetabled in May to the present hearing today on 11th August.
2. The parties to this application and their legal representation are as follows: -
3. The local authority is represented today by Mr. Lloyd, counsel.
4. The subject child X (who is 14 years of age), is represented by Mr. Gwyn (solicitor) and by the Guardian Miss Jones.
5. X's birth mother is present remotely. She represents herself.
6. So far as the birth father is concerned he has not attended this hearing today and has taken little part in the proceedings.
7. A final care order in respect of X was made in November 2019 and more recently the child has been resident in a residential facility out of area (considerably out of area in the South-East of England).
8. The interim authority allowing her to be placed there and allowing her to be deprived of her liberty in order to safeguard her was made initially on 10th May 2022 on an interim basis, the application to be considered on a final order basis today. (See above).
9. It was during this period that the Court was alerted to difficulties with regard to X's placement. The Guardian was aware of these because she visited the placement herself, as indicated in a position statement filed on her behalf today. I read that Miss Jones travelled to the South East of England on 15th July to see X. The position statement describes quite clearly the difficult circumstances which related to that placement. X was anxious to leave there as speedily as possible. She obviously was not content with her circumstances. She expressed a wish to return to her previous placement in Scotland, and the placement itself apparently had expressed to the Guardian views which were critical of the local authority's performance in their care of X (as a looked after child). In terms, in paragraph 9 of the position statement the Guardian indicated that the placement in the South East of England stated that a local authority social worker had not been to visit X at the placement. They were concerned at the lack of information being shared by the local authority and the lack of proper care planning in respect of X.

10. Consequently, when the Guardian became aware of the breakdown in X's placement at the residential facility in the South East of England on or about 29th July 2022 when X allegedly assaulted a member of staff there, the Guardian indicated in her position statement that she was not altogether surprised by the development (she having visited the placement as I said a few days before then).
11. The breakdown of the placement on 29th July left the local authority in a difficult position. Initially X had been arrested by police in the South East of England and she remained in police custody. She was interviewed by police officers on 29th July and I read that no further action was to be taken in respect of the alleged assault.
12. However the residential placement, hardly surprisingly, were not prepared to allow X to return to the placement. They gave immediate notification of termination of that placement, which left the police in the position that they had to accommodate X at a police station, using a foamy sofa bed in a room within the police station, under a police protection order which was made by them.
13. A social worker from the local authority then travelled, or had to travel to the South East of England to retrieve X and bring her back to this local authority area. That led to an overnight stay in the Staffordshire area because of the distance involved and upon her return, X was accommodated in a training flat available to the local authority that being staffed and overseen by two female members of staff and this arrangement has endured thereafter.
14. There have been other placements. Apparently three different bed and breakfast accommodations have been used. Council housing stock is not available. Apparently demand for that stock is presently under strain for the reasons indicated in paragraph 3.10 of Miss Williams (the local authority social worker's) recent statement, and an external agency has now been engaged to provide staffing to oversee the current placement on a "two to one" basis, effectively carers overseeing the placement on a rota basis. It follows from all of this, and it is conceded by the local authority and specifically mentioned by X's Guardian, that the current placements are entirely unregistered and the local authority needs to provide suitable accommodation for X as swiftly as possible.
15. Initially, once the Court was alerted to the present difficulties, it was indicated that the local authority was contemplating making an application for a secure accommodation order under section 25 Children Act 1989 (if that placement was in England), or under section 119 of the Social Services and Wellbeing (Wales) Act 2014 (if the secure accommodation was located in Wales).
16. Presently it appears to be the position that X's behaviour has stabilised since her return to this area. She is having familial contact and the situation is not as difficult as it appeared to be when she was accommodated residentially out of area. It is presently accepted by the local authority that the criteria for the making of a secure accommodation order would not be met and consequently no application of that kind is presently before the Court.
17. So far as X's status is concerned, she remains subject to the final care order made in 2019. She is a looked after child. The local authority therefore are free to make arrangements in respect of her placement (be that a foster care placement, residential

placement, or indeed familial placement), provided that there is no deprivation of liberty involved, where the inherent jurisdiction of the High Court has to be engaged to authorise a placement of that kind.

18. Therefore the local authority (in effect) has a free hand to make the arrangements necessary for X's accommodation without any further recourse to the Court unless specific orders are sought, more particularly any secure accommodation order if her circumstances were to deteriorate markedly; or, alternatively, a further application for a deprivation of liberty order.
19. Since 26th July 2022 applications under the inherent jurisdiction have to be issued from the High Court in London. They are gatekept there. Arrangements are thereafter made either for the hearing to be conducted in London or for the application to be remitted to the local court. The local District Registries of the High Court no longer have jurisdiction to issue the application and the local authorities generally are aware of these revised arrangements by notification of the President of the Family Division.
20. It follows that if no order is made today and the interim order is discharged or lapses by passage of time, the involvement of the Court and the Guardian will cease. That does not mean to say, however, that the concerns expressed within the Guardian's position statement and by me today should be ignored.
21. The difficulties with regard to residential placements, the availability of them and the suitability of many unregistered placements is an extremely controversial topic at the moment. Only today (on the national news) I heard a request by Ofsted in England that they be given greater powers to review unregistered placements, expressing concern about the quality of very many of these placements located in England.
22. So far as the jurisdiction in Wales is concerned it is Care Inspectorate Wales which is responsible for the oversight of registered and unregistered placements. It is to be hoped that CIW will take such active steps as their colleagues in England to make sure that the present arrangement in Wales (which is as unsatisfactory as in England) is swiftly brought under a better measure of control.
23. In many respects it seems to me that the situation in Wales escapes appropriate media and other scrutiny by politicians in the Senedd and others, simply because the jurisdiction (so far as the number of children are concerned) is so much more limited than in England. In England this is a scandal. It has been a scandal for some time. The President of the Family Division has drawn attention to it. High Court Judges regularly send their judgments to the Department for Education in London urging them to take appropriate action.¹
24. In Wales, the situation regrettably receives far less attention, far less public attention from politicians and potentially less oversight and scrutiny. Local authorities in Wales are getting away with a situation which does not apply in England. That is a situation which should be altered. The Children's Commissioner in Wales needs to be far more actively engaged. Cafcass Cymru (as an independent agency) within Welsh

¹ See Practice Guidance in unregistered children's homes in England, or unregistered care home services in Wales (2019) and Tameside MBC v C & Others (2022) IFLR 1334 and A Mother v Derby CC & Others (2022) FLR 1.

Government framework needs to “rattle the cage” of Welsh Government far more than it is doing to bring this situation speedily to a resolution.

25. I am minded today to make a transcript of my decision available (to be obtained at public expense) to be sent to the director of Cafcass Cymru so that something is done urgently about this situation.
26. Unregistered placements in England are no longer available for children who are under the age of 16 from September 9th 2021. That is the position so far as the relevant statutory instrument in England is concerned.² I simply do not understand why Welsh Government has not replicated this provision so far as looked after children in Wales are concerned.
27. As I said already, this Guardian has conscientiously expressed her concerns to me. I share them. I suspect the local authority shares them as well, but they are caught in a situation where they simply do not have the resources to make the appropriate arrangements available for X.
28. I have indicated already in discussion that it would be a good plan if this local authority and a neighbouring local authority (and indeed others in North Wales) were to group together and finance a comparatively limited scale residential placement which could accommodate a comparatively small number of children. Thankfully in North Wales we are not talking about huge numbers of children who require orders of this kind, but this would save (I would imagine) local taxpayers and general tax payers’ money because it is well known that these residential placements out of area are extremely expensive. They dwarf the expense of public school education so far as the weekly costs of the facilities are concerned; and, accordingly, it seems to me that it would be an appropriate measure of economy. It would mean that children could be accommodated closer to their home area (allowing family members to have contact with them) if urgent action was taken on an all-Wales basis to form a network of residential placements of this kind which could be available to children.
29. It is not ultimately my responsibility to make those arrangements. I am part of the Judiciary. I am not part of the public administration so far as Government is concerned, but I make this plea as an individual Judge who has been responsible for many cases involving the care of children in North Wales for many years. The current situation is unsatisfactory. It needs to be resolved as swiftly as possible.
30. I make an order today to discharge the deprivation of liberty interim order made in May of this year.
31. I think it is preferable if this local authority needs to make another application of this kind that it issues a fresh application which should be gatekept in the usual way from London. It will probably come either before myself or Judge Lloyd.
32. I direct that a transcript be made available of today’s judgment at public expense and I will make that available to the local authority, to the director of Cafcass Cymru who may disclose it to the Children’s Commissioner and CIW. So far as the parents are concerned, they may make it available to the local Senedd member so that the situation

² See Case Review (England) Regulations 2010 as amended.

is drawn to the attention of Welsh Government. As a consequence, this County Council may be publicly identified as an authority which is not able to make arrangements for children in the customary way. This County Council is not the only Local Authority in that position, but I regret to say that many members of the public at present are unaware of how serious the situation is.

33. So far as the Family Court is concerned, I have nothing to fear from scrutiny. I have no desire to operate in a situation where the public is ignorant of what is going on so far as North Wales is concerned. It is other public authorities who largely adopt defensive positions in that regard. The Family Court has no interest whatsoever in maintaining secrecy to prevent what is a generally appreciated to be a scandal from being made more generally known.
34. That concludes my judgment.

(This judgment has been approved by the Judge.)

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