



Neutral Citation Number: [2021] EWHC 2584 (Fam)

**IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/09/2021

Before:

Mr Justice Poole

Between:

NOTTINGHAMSHIRE COUNTY COUNCIL

Applicant

and

(1) LH

(2) PT

(3) LT (a child by her Children's Guardian LC)

Respondents

Mr Ward (instructed by **Solicitor for Nottinghamshire County Council**) for the **Applicant**

Ms Davis (instructed by **Hawley & Rodgers solicitors**) for the **First Respondent**

The Second Respondent did not appear and was not represented

Miss Hodges (instructed by **Tallents solicitors**) for the **Third Respondent**

Ms Watkinson Solicitor Advocate for Hill Dickinson LLP) for the **NHS Trust**

Hearing date: 23rd September 2021

JUDGMENT

This judgment was delivered in private at a hearing by MS Teams. The anonymity of the children, members of their family, the hospital where the child is being accommodated, and the NHS Trust responsible for that hospital 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.

Mr Justice Poole:

Introduction

1. The court has been invited by the applicant local authority to find that it is in the best interests of a 12 year old girl, LT, who does not have a psychiatric condition requiring hospitalisation, to be deprived of her liberty on an acute psychiatric admission unit. The unattractiveness of the application is compounded by the following evidence from the Consultant Psychiatrist on the unit, Dr N, in reports dated 17 and 22 September 2021, supplemented by information provided by the advocate for the Trust responsible for the unit:
 - a. The unit is for adolescents. LT is the youngest person to have been admitted to the ward in the five years that Dr N has been working there.
 - b. LT's hospital admission was unplanned and not supported by any clinical evidence that it was either necessary or appropriate from a treatment perspective.
 - c. There are usually some nine other adolescents on the unit all suffering from acute psychiatric conditions.
 - d. The local authority has provided three support workers to work alongside healthcare staff on the unit to care for LT. The staff on the unit have raised concerns about the training of the support workers, and the conduct of one of them.
 - e. Multiple changes in staffing, over crowdedness, and noises cause LT sensory overload and she tends to have a panic attack which can then lead on to distress episodes.
 - f. LT has had at least ten incidences of ligature since admission requiring some level of restraint to remove. These are new risks not evident in her case history before admission to the unit. In Dr N's opinion they can all be directly attributed to the admission.
 - g. On 20 September after a prolonged period of distress and self-harm through ligature when there was a shift change of staff as well as high levels of aggression towards a number of staff. LT was administered a dose of Promethazine by intra-muscular injection to sedate her and prevent harm to herself and staff.
 - h. LT is having an adverse effect on the ward environment and affecting other vulnerable young persons' wellbeing and support. Other patients have alleged that LT's conduct is "triggering" them.
 - i. Two beds on the unit – which Dr N describes as a "national resource" – have had to be closed off because resources are being diverted to caring for LT.
 - j. A psychologist cannot now enter the ward due to the risk posed by LT, which adversely affects the service provided to the patients.
 - k. There are already signs that the ward environment is having a detrimental effect on LT's mental health and she is rapidly learning maladaptive coping mechanisms.
 - l. It is not expected that LT will settle and improve whilst on the unit. To the contrary, "we expect LT to struggle more in the coming days as she develops relationships with peers. She is likely to find this challenging. We remain

- concerned that she will compete negatively with peers to gain more care from staff.” [Dr N’s report of 20 September 2021]. LT has recently disclosed that she seeks out restraint since she finds comfort in being held by female staff.
- m. The ward is “a highly stressful and restrictive environment which will not only adversely affect LT psychologically but is likely to result in long term negative impact on her behaviour. There is a high risk of her becoming not only institutionalized but also becoming one of the many sad revolving door cases.” [Dr N].
 - n. Dr N’s view is that it is “harmful to her wellbeing” for LT to remain on the unit. He says that he is “very concerned that prolonged admission in an acute mental health setting will have a detrimental effect on LT and every hour she spends on the unit is harmful to her.”
 - o. LT has been a little more settled over the past 12 hours or so but there is no overall change since Dr N’s second report.
2. The sole reason why the Local Authority invites the court to find that it is in LT’s best interests to be deprived of her liberty whilst accommodated in the acute psychiatric admissions unit is that there is nowhere else for her to go – nowhere in the whole of the country - such is the national shortage of accommodation suitable for vulnerable children such as LT. The local authority are not able to provide any information to the court to give cause to believe that accommodation would be identified as available for her were I to adjourn the case for another few days.
 3. This case has striking similarities to *Wigan MBC v W, N and Y* [2021] EWHC 1982 (Fam) in which MacDonald J refused to authorise the deprivation of liberty of a 12 year old who, like LT, had diagnoses of ADHD and Autistic Spectrum Disorder, and who was inappropriately placed on a hospital ward - in that case a paediatric ward - when he did not meet the relevant criteria for detention under the Mental Health Act 1983. Mr Justice MacDonald set out the applicable law in that case and in *Lancashire County Council v G and N* [2020] EWHC 2828. Recently, the Supreme Court in *Re T* [2021] UKSC 35 considered the exercise of the court’s inherent jurisdiction to authorise the deprivation of liberty of children in unregistered placements when no secure accommodation was available. I am also assisted by a third, first instance judgment of MacDonald J, *Tameside MBC v AM and others* [2021] EWHC 2472 (Fam). I adopt the analyses in those judgments of the law applicable to the exercise of the inherent jurisdiction in a case such as the present one, including the very helpful summaries by MacDonald J at [34] of *Wigan MBC* and [61] of *Tameside MBC*.
 4. There is no dispute in this case that LT is deprived of her liberty whilst accommodated at the psychiatric unit. She is continuously confined there. I need not rehearse the legal tests for determining whether LT is or will be deprived of her liberty – they are clearly met in this case. There is no consent to the deprivation of liberty and it is imputable to the state. As the case law establishes, the court may grant an order under its inherent jurisdiction authorising the deprivation of a child’s liberty if it considers such an order to be necessary, proportionate, and in the child’s best interests.
 5. It is important to emphasise that the court is being invited to authorise deprivation of LT’s liberty at the psychiatric unit. It is not for the Court to direct that LT be deprived of her liberty. Further, the court is not being asked to, and cannot, direct the local authority to accommodate LT in a particular placement. The local authority’s legal

responsibility to accommodate LT remains whether or not I authorise the deprivation of her liberty at the psychiatric unit or elsewhere.

6. How did we get here? The Local Authority was first alerted to concerns about LT and her elder sister, K, in late 2018. Their parents had separated and their mother was struggling with her own mental health and sought support. In January 2020 there was a domestic abuse incident between the mother and her partner, H, witnessed by LT. In November 2020 the mother contacted the Emergency Duty Team at the local authority advising that she could not manage LT any more, blaming LT's behaviour for the breakdown of her marriage. A few days later the mother reported that she was suicidal due to LT's violence in the home towards other family members. From June 2021 problems within the home, and the challenging nature of LT's behaviour, escalated alarmingly. There were numerous reports of LT being violent in the home, absconding, running out in front of traffic, and requiring restraint by police officers due to her aggression. On 15 August 2021, despite two support workers being present in the family home to assist, LT managed to jump from her upstairs bedroom window. LT's mother made repeated requests for LT to be accommodated by the local authority as she was unable to cope with her at home.
7. On 7 September 2021, the mother's partner, H, reportedly strangled LT. K told police that she saw LT's eyes roll backwards and she was frothing at the mouth. He was subsequently arrested and is on police bail with a condition excluding him from the family home. He has a history of alcohol abuse and is currently in a psychiatric unit as a voluntary patient having expressed suicidal thoughts.
8. On 14 September 2021, LT reportedly assaulted her sister. The police were called. LT absconded from the family home, jumped in front of traffic, and attacked police officers. It took six police officers to restrain this 12 year old girl over a period of two hours. In the police car LT began trying to ligature herself with the seatbelts. She was taken to a "place of safety" under s. 136 of the Mental Health Act 1983, namely to a suite at A Hospital that is allocated for that purpose. On assessment it was considered that LT was not suitable for detention under the MHA 1983. A is an adult hospital. No alternative bed could be found and so, late on 15 September 2021, LT was admitted to the unit for acute adolescent psychiatric admissions at B Hospital, where she remains.
9. LT has been diagnosed with Autistic Spectrum Disorder (ASD) and more recently Attention Deficit Hyperactivity Disorder (ADHD). Alongside this she is extremely anxious and has frequent panic attacks. Attachment difficulties are also evident given her disruptive upbringing and the relational difficulties she has experienced. Dr N advises the court that LT might now also be exhibiting trauma symptoms. In the opinion of the clinicians who have seen LT, Dr N advises, she is "not detainable [under the Mental Health Act 1983] on the grounds that she is still not suffering from a mental illness of a nature or degree which makes it appropriate for her to receive treatment within a hospital setting." She does not have a psychiatric condition. Dr N advises that her degree of distress is due to her social circumstances and her presentation "must be viewed in the context of serious safeguarding concerns within the family home, exacerbated by parental difficulty in maintaining safety." LT needs a therapeutic placement.

10. This matter first came before me on Friday 17 September 2021 in the urgent applications list in the Family Division of the High Court. LT and K were represented by an appointed Children's Guardian. Their mother was represented. Their father is terminally ill in hospital and had not been served with the application. With the support of all parties, I made an interim care order in respect of LT. I was informed that searches had failed to identify an alternative placement to which LT could be moved. I gave permission under s.100 of the Children Act 1989 to the local authority to apply to invoke the inherent jurisdiction and I authorised the deprivation of LT's liberty at the hospital until 4pm on Monday 20th September. I was greatly assisted by Ms Watkinson for the Trust responsible for B Hospital, and by the first report from Dr N albeit that it was provided only five minutes before the hearing began.
11. At a second hearing at 3.00 pm on 20 September I was informed that still no alternative placement had been identified. LT was in fact being managed in isolation due to Covid-19 precautions but was due to come out of isolation on 22 September. With reluctance but accepting that a further, short authorisation, was in LT's best interests, I found that it remained in LT's best interests to continue to be deprived of her liberty on the unit whilst urgent attempts to find an alternative placement continued, but I extended the authorisation only until Thursday 23 September by which time LT would have been on the unit for over a week. The guardian and mother did not oppose the extension of authorisation. I expressly warned all parties that the court may well not authorise any further deprivation of LT's liberty. I alerted them to the decision of MacDonald J in *Wigan MBC* (above).
12. At the hearing today, 23 September 2021, I have considered a further statement from the social worker, SK. On 21 September there was an expression of interest from the operator of a placement that was in fact in the vicinity of LT's home, but it withdrew after it reviewed the restrictions that would need to be in place, as a minimum, to ensure LT's safety. It appears to me that the placement was clearly unsuitable since it would not offer even one to one supervision. The social worker had discussed the potential move with LT who was distressed and stated that she wanted to go home. The mother understands that LT ligatured twice when told that the placement was not available and is concerned that LT was informed about a potential move before it was confirmed. All agreed on 20 September 2021 that it would be beneficial to LT to have direct contact with her mother on the unit. The mother attended the unit for contact, as planned, but it was decided that it was not in LT's interests that it go ahead because LT was distressed having been told that the potential move to a placement was not going ahead. The mother complains that she has not been included in planning discussions. In person contact with K will require careful planning and management in any placement. The social worker expresses concern about the effect on LT of any sudden move. The fact remains however that the psychiatric unit was always wholly unsuitable from the first day LT was accommodated there, and the urgent need to move her from the unit has been evident now for over a week. Clearly, all discussions with LT with regard to her accommodation need to be carefully handled by experienced and trained professionals.
13. LT wants to return home but she is subject to an interim care order because there are reasonable grounds to believe that she would be at risk of suffering significant harm at home because her mother has been unable to care for and protect her and LT has been beyond parental control. That is the case even though her mother's boyfriend is not presently living at the family home, in particular because concerns have been expressed,

including in the Guardian's position statement to the court today, that the mother does not understand that it would be a risk to her children for her boyfriend to return home. To say that the threshold for an ICO is met rather understates the risk to LT were she to return home, even with support workers to assist her mother, as the history of events shows. The Guardian is very clearly of the view that it would not be safe for LT to return home at present.

14. As I have indicated, the court is not being asked to direct where LT should be accommodated, but to authorise and thereby render lawful, the deprivation of her liberty at the psychiatric unit. By Art 5(1) of the ECHR no-one shall be deprived of his liberty save in circumstances described by Art 5 and in accordance with a procedure prescribed by law. The inherent jurisdiction has been described as the "ultimate safety net". Lady Arden said in *Re T* (above) at [192]:

"The inherent jurisdiction plays an essential role in meeting the need as a matter of public policy for children to be properly safeguarded. As this case demonstrates, it provides an important means of securing children's interests when other solutions are not available."

In many cases the High Court does exercise the inherent jurisdiction to authorise the deprivation of a child's liberty in unregistered placements, which the courts are ill-suited to monitoring, on the grounds that there is no other available solution. In the present case, however, the proposed continued accommodation of LT in a psychiatric unit cannot possibly be described as a means of properly safeguarding her. Depriving her liberty in that setting would not provide her with a safety net – it would not keep her safe or protect her. To the contrary every hour she is deprived of her liberty on this unit is harmful to her. Her accommodation on the unit has exposed her to new risks of harm and will continue to do so. I cannot find that it would be in LT's best interests to be deprived of her liberty on the psychiatric unit.

15. If the inherent jurisdiction is a means of meeting the need *as a matter of public policy* for children to be properly safeguarded then, in my judgment, it is also appropriate to take into account the adverse impact of continued authorisation on the other vulnerable children and young people on the unit.
16. The existing authorisation continues until 4pm today. No plan has been made in the event that I do not extend that authorisation even though I asked the local authority to address that eventuality at the last hearing. Despite the uncertainty and discomfort that my decision will cause, I am not prepared to authorise the continued deprivation of LT's liberty on the psychiatric unit beyond the time previously authorised. Any further applications should be reserved to me.
17. Naturally, the court is acutely concerned for LT and what will happen to her now. It is deeply uncomfortable to refuse authorisation and to contemplate future uncertainties. However, LT is a looked after child and the local authority must find her an alternative placement – it has a statutory duty to provide accommodation for her and to safeguard and promote her welfare whilst in its care, under Part III of the Children Act 1989. The state has obligations under Arts 2, 3 and 8 of the European Convention on Human Rights (see Sir James Munby in *Re X (No. 3) (A child)* [2017] EWHC 2036 at [36]). I

do not doubt that the local authority has striven to find alternative accommodation but that the national shortage of resources has led to the current position. Nevertheless, authorisation of the deprivation of LT's liberty in a psychiatric unit which is harmful to her and contrary to her best interests would only serve to protect the local authority from acting unlawfully, it would not protect this highly vulnerable child.

18. I acknowledge the admirable work of the police, social workers, doctors, nurses and other professionals who have engaged with LT. I am grateful to the NHS Trust which has not been joined as a party but which, through Ms Watkinson and Dr N's evidence, has provided considerable assistance to the court.
19. I have directed that a copy of this judgment is to be provided to the Children's Commissioner for England; to the Secretary of State for Education; to the Minister for Children; to the Chief Social Worker; and to Ofsted.