Neutral Citation Number: [2018] EWHC 2828 (Fam)

Case No: LV18C02463

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/10/2018

Before :

THE HONOURABLE MR JUSTICE HAYDEN

- -

Between :

Liverpool City Council **Applicant**
- and -
(1) A.M.
(2) M.R
(3) D
(By her children's guardian)

Respondents

Alder Hey Children's NHS Foundation Trust

Interested Party

- -
- -

Mark Twomey QC (instructed by **Liverpool City Council)** for the Council**,**
Mr Neil Mercer (instructed by **Kirwans Solicitors**) for the First Respondent,
Ms Margaret Parr (instructed by **MSB Solicitors**) for the Second Respondent,
Ms Joanne Lomas (instructed by **Morecrofts Solicitors**) for the Third Respondent,
Mr Michael Mylonas QC (instructed by **Hill Dickinson LLP** for the Interested Party

Hearing dates: 5 October 2018

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Judgment Approved

This judgment was delivered in public. 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.

THE HONOURABLE MR JUSTICE HAYDEN :

1. I am concerned here with a young girl, D, who, earlier this year came to the Local Authority's attention, presenting with a wide variety of challenging behaviours.

2. Her parents, who have had their own difficulties, were struggling to manage her. D had become extremely aggressive, often physically pulling at her parent's clothing. She was speaking very little and only in short quite aggressive phrases. In June her

parents consented to her being placed outside the family at a residential care home for children with autism and learning needs.

3. Though D had spent the years 2014-17 in Iraq she had, prior to that, lived in the UK for, I am told, six years consecutively. It was at that time that D's learning needs and her autism were identified.

4. Pursuant to s20 Children Act 1989, her parents agreed for D to be accommodated at Eden House in Macclesfield but there too she displayed what appeared to be even more violent and disturbing behaviour, for example, she would regularly hit out at staff and spit at them and sometimes urinate on them. The staff felt it was important to keep D under strict observation twenty-four hours a day. It was necessary to take the precaution of locking doors to try to contain her.

5. On 18th June, the staff at Eden House reported that they could not monitor D with the limited resources open to them. D had made an escape. In doing so she put herself at considerable peril. D managed somehow to scale a six-foot-high wall and run through a barbed wire fence into a very busy main road. She was found by the police, in a distressed and agitated condition and returned. The following day D's behaviour had reached such an alarming level that the staff at Eden House felt the need to call an ambulance because they were afraid that D would seriously injure herself. They were also extremely concerned about D's general well-being. The ambulance took D to Macclesfield Hospital in Cheshire where D was admitted.

6. The following day, in the course of an initial assessment, the Child and Adult Mental Health Services ("CAMHS") identified that D might be suffering from Post-Traumatic Stress Disorder. They were alert too, to D's autism. It is clear that during her time in Iraq D had been exposed to some of the atrocities of war.

7. In her earlier UK medical records, which are quite extensive, in consequence of the needs that I have referred to above, there is not the slightest suggestion that D exhibited behaviours of the kind I have been referring to above. Thus, it seems reasonable to assume, for the present, that much of her extreme behaviour may be a consequence of what she witnessed in Iraq. This I understand to be the general, tentative, consensus of those who are seeking to help her.

8. On 25th June D was collected from Macclesfield Hospital and, to my mind rather surprisingly, returned home to her parents with two family support workers providing 'intensive support'. Whilst this decision seems very difficult to rationalise it must also be recorded that D has repeatedly expressed a wish to return to her parents. That remains her position to date.

9. It was, in the event, a wholly unsuccessful plan and it disintegrated within hours. The following day D was reported missing to police by her father. The father asked that when D was recovered she be taken to Alder Hey Children's Hospital as he believed he simply could not keep D safe. It was, sadly, felt necessary in the end to convey D to Alder Hey Children's Hospital in handcuffs. When D arrived, she was screaming and assaulting staff, she was attempting to self-harm by putting ligatures around her neck and a plastic bag over her head. It was decided that there should be both staff and security guards on the door to protect the other children as well as to prevent D harming herself.

10. It is self-evident that the local authority, who have responsibility for this young girl, needed to find a safe, secure, residential placement in which therapeutic work could be commenced to address her obvious raft of needs. As of yesterday (which was D's birthday), D remained in Alder Hey Hospital with no residential placement yet identified.

11. The intolerability of this situation hardly requires to be stated, it is obvious. The detail of quite how desperate the last five months have been for D and for the staff at Alder Hey Hospital is truly alarming. This is an observation which I do not make lightly. A statement by the Local Authority contains the following important paragraph:

> *"On Monday 2nd July 2018 the Local Authority Placements Team renewed the search for a suitable placement for D. Discussions took place with CAMHS as to whether a Tier 4 bed was required but it was decided that D's needs and behaviour did not meet the criteria for Tier4."*

12. I do not need to burden this Judgment with that issue. However, an extensive search for a therapeutic placement was undertaken throughout the UK with repeated emails being sent to multiple providers. Unfortunately, due to there being a limited number of placements available and demand being high, no offers of placements were made that were remotely suitable to D's identified needs. The Placements Team contacted commissioners in other Local Authorities, requesting any intelligence concerning potentially suitable placements. I have been told that they obtained a Residential Framework Placement list to ensure that they were contacting every possible provider.

13. The case has been heard by HHJ De Haas QC, the Designated Family Judge for Liverpool and Merseyside whose robust and determined case management is clear from the papers. Having failed, entirely, to achieve a placement, over so many months Judge De Haas, yesterday, in desperation and no doubt exasperation, ordered the case to be transferred to me. I have interposed it into my list to be heard, as it has been throughout, in open Court with, I note, the press in attendance.

14. With the help of Counsel, I have for several hours tried to review, as best I can, what has been happening. It is not possible in this ex tempore judgment to set out the full chronology of these past few months. Mr Mylonas QC, who appears on behalf of the Trust, has drawn to my attention a particularly alarming fact. The Alder Hey Hospital, specialising as it does in the treatment of profoundly sick children, regularly has four to five air ambulances arriving every day. He told me that he had been informed by his clients that the noise of those air ambulances caused real distress to D and that it was the view of those treating her that it triggered memories of her experiences in Iraq. She displayed conspicuous behavioural problems at such times. At no point had Judge De Haas been informed of this.

15. Initially, when D was admitted to Alder Hey Hospital she had a standard cubicle alongside other patients. Gradually, as her behaviour became even more violent, cubicles near to her had to be closed off. Eventually, by 7th September 2018, eight cubicles had been closed. In simple terms this means that eight beds, at this highly specialist hospital, were rendered unavailable to seriously ill children. In addition, I

have been told, that this has had an impact not only on the adjacent placements but on neighbouring wards. The Local Authority's documents record the following, which require to be set out in their full context:

> *"On 7th July 2018 the Local Authority contacted a local provider, 'IDEM Living', to discuss whether it would be possible for them to set up a bespoke placement for D. Initially this was not considered feasible but at the beginning of August IDEM Living advised that they would, if the placement was still required, purchase a property to open a new children's home solely for D. However, this would take at least six months as OFSTED registration would need to be granted.*
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> *In discussion with IDEM it was agreed that D could be assessed for a place at Melwood, a home that was not yet registered but in respect of which the registration process was about to commence. The Local Authority were in agreement with this plan but were extremely mindful of the fact that D needed to be discharged from Alder Hey hospital as soon as possible.*
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> *On 11th September 2018 the Placements Team contacted another local provider, 'Keys – Embrace' Children's Home, to see if they could provide a 'holding' placement, pending D's assessment and potential move to Melwood. Keys stated that they would be willing to assess D for a placement but that they currently had no vacancies. A young person was due to 'move on' and Adult Services were seeking a placement. However, this it had not yet been identified. Between the 11th to the 13th September Keys visited D on a number of occasions to complete a full assessment. It was agreed that, should a vacancy arise, they would offer the 'holding' placement.*
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> *On 10th September Paul Gillespie, a Senior OFSTED Inspector within the section that undertakes registrations of children's homes, was informed by IDEM that registration would not be obtained until the end of October. The urgency of D's situation was explained and he was asked whether OFSTED could give priority to the registration of Melwood. Mr Gillespie, I am told, was very helpful and agreed that this could be done. Mr Gillespie advised that as long as IDEM Living returned all their references and that the statutory checks were returned from the local authorities then the registration process would be expedited.*
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> *On 11th September Mr Gillespie contacted IDEM Living, and advised that OFSTED 'would speed up the registration process' but that they (Liverpool City Council) needed to send all their documentation, without delay. Mr Gillespie advised that OFSTED had already made progress and that they were to visit the home on 13th September. They considered that registration was likely to be completed by the following week. It seems clear that it must have been obvious to all concerned that as far as D was concerned the situation was absolutely critical. Unfortunately, this was not the case and there had been a miss-communication within IDEM Living.*
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> *On 13th September I contacted the Placements Team to advise them of the fact that OFSTED would be sending requests for statutory checks and asked that the statutory checks be undertaken on the same day that they were received and returned to OFSTED. This did take place. A statutory check was sent to another Local Authority and the Director of Children's Services in Liverpool contacted his counterpart in Halton and asked for this to be attended to in order that there was no unnecessary delay.*
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> *I was on annual leave from 14th September returning on 24th September and on return was updated on the state of play regarding registration and IDEM's assessment of D. On 25th September IDEM advised that they would be unable to offer a placement to D as they did not feel able to meet her needs.*

> *In discussion with the Placement Team it was agreed that a child who was to move to an IDEM placement from Keys could move to Melwood and D could take his place at Keys- Embrace.*
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> *The Local Authority and Embrace worked together to develop a Transitions Plan for D from Alder Hey to Embrace. This would be implemented as soon as a date was known for when the other child would move to the placement at IDEM.*
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> *IDEM Living advised the Local Authority that OFSTED were to register the children's home on 22nd October 2018 as there was a requirement for three staff members to complete some specific training. This training was to take place on 20th and 21st October. The earliest date for transfer of the young person from Embrace to IDEM was 22nd October but this was dependent upon the OFSTED registration being received."*

16. In a statement presented within the proceedings prepared by Mr William Weston, the Hospital's Associate Chief Operating Officer, the following paragraph appears:

> *"On Friday 7th September 2018 as a result of the level of R's challenging behaviour the Police attended on the ward. They were required to remove D from the ward, with the use of handcuffs and held her within the section 136 room as a place of safety for both D and other Hospital patients. This is not an appropriate use of this facility. The section 136 room is a designated place of safety for children and young persons who are identified as requiring a mental health act assessment, having been brought in by Police from the community. The inappropriate occupation of this room has the potential to result in vulnerable children and young persons from being denied access to an appropriate place of safety at a time of crisis.*"

17. The statement concluded:

> ***"As set out within the clinical report, the continued placement of D in hospital is itself a precipitating factor in the escalation of her challenging behaviours"*** (my emphasis).

18. Since D's admission the Hospital has required 24-hour duty security guards to assist, as well as Family Support Workers and additional nurses. More particularly, since the escalation of behaviour, on 6th September, there have been four security guards 24 hours each day.

19. Mr Mylonas drew my attention to a further incident which requires to be stated in full:

> ***"On Friday 7th September, nine members of nursing staff were physically injured and one security guard. This has had both an emotional and physical impact. Six members of staff are on sick leave as a result and one member of staff has resigned. The whole of the staff establishment on ward 4C and several additional clinical staff are in an extremely distressed state and requiring psychological counselling and support."*** (again, my emphasis).

20. This is truly shocking. It is almost impossible to comprehend how or why it could occur and be permitted to continue for so many months. I am acutely conscious of the pressure on resources relating to Child and Adolescent Mental Health but even against that background this situation reaches a wholly new and entirely

unacceptable level of concern. The extent of the distress to D but also to the nursing staff, doctors, the auxiliary staff, the other children, the other parents, is frankly difficult to comprehend and, in my judgement, indefensible. In unambiguous terms, I am bound to record that the situation has fallen far short of meeting even D's most basic needs.

21. It is D who is my paramount concern in this application, but it is self-evident that the professionals involved in her care should not have been asked to tolerate this situation for more than a matter of hours at best. It is unconscionable that they have been required to do so for so long. Again, in explicit terms, D has been caused 'significant harm', which phrase I use in the context of Section 31(2), Children Act 1989. Thus, the State, from whom D was entitled to expect care and support has become an agent of harm.

22. Those who work in social work, medicine, paediatric care and, those who work with children, all do so because they are determined to do their best and make things better for them. I do not doubt that that was the situation here too. But, I cannot avoid the conclusion that I have reached. D has been subjected to profound physical and emotional harm. One of the Counsel before me has suggested that it goes further and amounts to inhuman and degrading treatment in breach of D's Article 3 rights. I have not heard enough evidence properly to make any declaration to that effect. That may be for another Court on another day.

23. It is testimony to the commitment of all those involved that when D has been calmer and more placid efforts have been made to take her outside and to make life generally more pleasant for her. I am told that she has be able to enjoy music, for example. Even on these occasions however, there have been unanticipated triggers provoking D's distress. Mr Mylonas told me that D saw, in the grounds of Alder Hey Hospital, a monument erected in memory of Alfie Evans, a case which involved the death of a child and which received extensive publicity. D was extremely traumatised by seeing this tribute and, I am told, developed a morbid preoccupation with her own death.

24. To describe what has happened in this case as "of concern" or "unsatisfactory" is wholly inadequate. Judges in the Family Court, the Criminal Courts and the Administrative Court are all too familiar with the challenges facing professionals in this area of work and the difficulties in finding and allocating thinly dispersed and geographically scattered resources. But even for those who may have become case hardened this case is profoundly disturbing.

25. This morning an email was received confirming that the placement which had been in prospect for some time but had not, as of yesterday, gained OFSTED certification had been approved very early this morning (before 9am). This, says Mr Twomey QC on behalf of the Local Authority, is entirely 'coincidental' or 'fortuitous'. He urges me not to be sceptical that the transference of the case to the High Court (in open Court) has finally provoked action. I am unconvinced. There are now a growing number of cases in which it has been necessary for the High Court to intervene in these issues, to focus minds and achieve anything approaching satisfactory outcomes. I have already given a judgment on this point: **Re: LB**

Southwark v F [2017] EWHC 2189 Fam. The former President of the Family Division, Sir James Munby, made clear his own views on the point with pellucid clarity in **Re: X (a Child, No 3)** [2017] EWHC 2036 Fam. They are entirely apposite here and must be restated:

> *"And, lest it be thought that I have overlooked the point, given the by now well documented and repeated attempts by X to take her own life, the State's* positive *obligations under Article 2 of the Convention are plainly engaged: see, for example, Rabone and another v Pennine Care NHS Trust (Inquest and others intervening)* [2012] *UKSC 2, [2012] 2 AC 72. I remind every agent of the State involved with her of the duties owed to X under Articles 2, 3 and 8 of the Convention."*

26. The emphasis on the Convention rights of the child and the corresponding obligations of the state resonate with Counsel's submissions here (see para 19 above). Sir James Munby goes on to draw conclusions which bear a striking similarity to my observations here:

> *" 37. What this case demonstrates, as if further demonstration is still required of what is a well-known scandal, is the disgraceful and utterly shaming lack of proper provision in this country of the clinical, residential and other support services so desperately needed by the increasing numbers of children and young people afflicted with the same kind of difficulties as X is burdened with. We are, even in these times of austerity, one of the richest countries in the world. Our children and young people are our future. X is part of our future. It is a disgrace to any country with pretensions to civilisation, compassion and, dare one say it, basic human decency, that a judge in 2017 should be faced with the problems thrown up by this case and should have to express himself in such terms."*

27. Young people, like D, profoundly disturbed by their life experiences, whatever they may have been and with a raft of physiological and mental health problems are surely some of the most vulnerable in society. It is a tragedy that despite the will to do so it has not been possible to do far better than this.

28. Today I have scrutinised an interim care plan which is, of necessity, in skeletal detail. Mr Twomey has been able to flesh it out. It is contemplated that D will move to the identified unit in the week commencing 22nd October 2018. I am told that there will be therapeutic provision on site, full CAMHS support, opportunity for D to be able to socialise and structures in place for D to see her parents. Crucially there will be a supportive medical regime and staff who are appropriately trained in managing D's behaviour in a way that will compromise her dignity as little as possible.

29. I hope that this hearing today has done something to galvanise constructive action, time will tell. If there is any risk to this placement, in terms of its continuing availability (I have been told that there have, historically, been several false dawns), then the case is to be returned to me **on short notice** by the Guardian's team. Otherwise, the case will continue to be scrutinised by HHJ De Haas.

30. Ms Lomas, who appears on D's behalf, tells me, depressingly, that it has not yet been possible to undertake a psychological assessment on her client. It follows that even the most rudimentary understanding of D's psychological needs remains far from clear. There is, however, information from CAMHS which is sufficient to inform the therapeutic support at the residential unit, at least initially.

31. A meeting with a psychologist had been arranged for D to attend a couple of days ago. For reasons that I need not set out it was cancelled. A new date has been fixed. It should be regarded as set in stone. I highlight this to draw it to the attention of HHJ De Haas in her future case management.