



Neutral Citation Number: [2021] EWHC 2593 (Fam)

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/09/2021

Before:

Mr Justice Poole

Between:

NOTTINGHAMSHIRE COUNTY COUNCIL

Applicant

and

(1) LH

(2) PT

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

(No. 2)

Respondents

Miss Chatterjee (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: 24th September 2021

JUDGMENT

This judgment is provided to the parties on a confidential basis. 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. On 23 September 2021 I refused to exercise the inherent jurisdiction to authorise the continued deprivation of the liberty of LT, a 12 year old child who was being confined in an acute psychiatric admission unit for adolescents. She does not have a psychiatric condition requiring hospitalisation. She is a looked after child but the local authority had not been able to find anywhere else in the whole country to accommodate her. Evidence before the court demonstrated that it was harmful to LT for her to remain on the unit. The only reason the local authority sought to keep her on the unit was that it had been unable to find any alternative placement. I had previously been prepared to authorise the deprivation of LT's liberty on the unit whilst urgent efforts were made to find alternative accommodation but by 23 September 2021 LT had been on the unit for over a week. She had just come out of isolation (as a Covid-19 precautionary measure) and it was anticipated that this would, if anything, increase the distress to her. Still no alternative accommodation had been identified. I refer to my judgment Nottinghamshire County Council v LH, PT and LT [2021] EWHC 2584 (Fam).
2. The authorisation for the deprivation of LT's liberty which I had previously granted on 20 September 2021, expired at 4pm on 23 September 2021. On the morning of Friday 24 September 2021, I heard a fresh application by the local authority for the court to authorise the deprivation of LT's liberty under the inherent jurisdiction. The local authority had come up with an alternative placement. It proposed to use an empty children's home as a bespoke placement for LT. The home would be available to accommodate her from Monday 27 September 2021. I allowed more time for information to be obtained about the proposed placement, then heard the application at 4.00 pm on 24 September 2021. At the hearing I authorised the deprivation of LT's liberty at the placement. This judgment sets out my reasons.
3. Notwithstanding the court's refusal to authorise deprivation of LT's liberty, she remains on the unit, she is not allowed to leave and she has been subject to physical restraint. I was told by Ms Watkinson for the NHS Trust responsible for the psychiatric unit where LT continues to be accommodated, that there has been a deterioration, as anticipated, since she left isolation on 23 September 2021. Her continued presence is causing escalations in the behaviour of the patients on the unit. She is now being taunted by other patients who are dissatisfied with the amount of support that LT is receiving and the disruption her presence on the unit is causing. LT required restraining on 23 September 2021. This has caused LT to become agitated. She threw a drink-filled cup towards a patient. She has again tried to self-ligature.
4. The local authority's plan now is to apply for a Secure Accommodation Order. However, according to evidence put before the court from Mr Edwards, Director of Youth Families and Social Work at the local authority, there are currently approximately 50 children nationally on a waiting list for secure accommodation and those with behaviours such as LT's often remain towards the back of the queue. Hence, he advises, it is "highly unlikely that this will be a viable solution for LT." Accordingly, as what Mr Edwards refers to as "the least bad immediate alternative available", the

local authority proposes to transfer LT to the W Children's Home from Monday 27 September 2021. This is a registered children's home which is currently empty after previous residents have departed. It can accommodate up to four children but for so long as LT is there, she will be the only resident. The staff on site are unqualified and have no experience of managing children who self-harm but the local authority plans to rely on agency nurses, using the same agency as currently provides nurses to work alongside the NHS staff to care for LT on the psychiatric unit. On handover, the Trust will provide advice and materials about managing LT to assist those caring for LT at the new placement.

5. I have been reassured that the agency nurses have training in the use of control and restraint techniques that may be used when transferring LT to the new placement, and whilst she is accommodated there. Other staff are also to undergo training. A new manager has been deployed to the children's home. She has been managing another children's home which recently received a good/outstanding report from Ofsted. W Children's Home is registered with Ofsted but it will now be operated in a very different way from how it was being operated at the time of its last inspection which was earlier this year. In effect, the local authority is creating a bespoke placement for LT as a bridging provision before a more settled solution can be found.
6. The restrictions on LT's liberty whilst at the children's home will be:
 - i) During waking hours LT will be accompanied by staff members inside the home on a 3:1 basis and outside the home on a 3:1 basis. LT is not permitted to leave the placement without supervision.
 - ii) At night times, LT's movements in and out of her bedroom will be monitored by way of a door alarm.
 - iii) The staff at the placement are permitted, should it be necessary, to remove from LT and from her room, any items which may cause her harm.
 - iv) LT is to be accompanied on transport at all times, including on transfer from the psychiatric unit at B hospital to the W Children's Home.
 - v) Within the placement all doors and windows may be kept locked at all times to prevent LT from causing harm to herself physically or putting herself at risk by absconding or otherwise, and to prevent harm to others.
 - vi) Regular observations will be conducted to mitigate the risk of harm and to monitor LT's health and wellbeing;
7. Medical restraint will not be used. Regular medication is to be administered by staff at the placement. There is a care plan in place for LT but it requires re-consideration in the light of this new placement, including the provision of therapeutic services and activities. However, the immediate priority is safely to transfer her out of the psychiatric unit and to W children's home.
8. Mr Edwards understandably expresses concern for the safety of those who will be caring for LT at the placement, as well as the safety of LT. Nevertheless, there are

advantages to LT being in the children's home as opposed to the psychiatric unit. The Consultant Psychiatrist, Dr N, has reported to the court that LT's repeated self-ligaturing is a new behaviour associated with her confinement on the unit. The triggers for her distressed episodes from being in a noisy, over-crowded unit surrounded by a number of adolescents with acute psychiatric conditions who appear to be increasingly hostile towards her, will be removed upon leaving the unit. If the transfer to W Children's Home is successful, LT will no longer be in a placement that is designed for patients with psychiatric conditions which she does not have. W is reasonably near to LT's family home and will be a setting that is better suited than a busy psychiatric unit for her to have contact with her mother and sister.

9. The local authority and Guardian agree that it would be very unsafe for LT currently to return home. She very recently put her life in grave danger when absconding from home after attacking her sister and then jumping in front of traffic. There is also a risk that her mother's boyfriend may return to the home. He recently attacked LT as described in my previous judgment. According to Dr N, the causes of LT's current behaviour and her extreme vulnerability are likely to be found in her experiences at home. The restrictions currently necessary to keep LT safe could not be effectively put in place at her family home.
10. The transfer of LT to W Children's Home is fraught with difficulty. LT wants to go home and currently reacts violently when her wishes are frustrated. A social worker is to speak to LT about the proposed move over the weekend, to show her a virtual tour of the new placement, and to answer any questions she may have. This will be done in liaison with the Trust, the Guardian, and LT's mother. I have encouraged the mother, who is able to speak to LT on the unit, to support LT to accept the transfer to W Children's Home. LT can be told that it is not safe for LT to return home at present but, if she is accommodated somewhere where she can be kept safe, then it is possible that there may come a time when she can return home. She can be told that some items from her own home could be taken to W to help her to settle in and that it should be easier for her to have direct contact with her mother at W than it is on the psychiatric unit.
11. The local authority has statutory duties to accommodate and safeguard LT who is a looked after child. As Lady Black said in *Re T* [2021] UKSC 35At [145]:

“How can a local authority fulfil these duties in the problematic cases with which we are concerned if they cannot obtain authorisation from the High Court to place the child in the only placement that is available, and with the ability to impose such restrictions as are required on the child's liberty? It is such imperative considerations of necessity that have led me to conclude that the inherent jurisdiction must be available in these cases. There is presently no alternative that will safeguard the children who require its protection.”

Nevertheless, although the inherent jurisdiction must be available in these troubling cases, it cannot be treated as a rubber stamp to authorise the deprivation of a child's liberty whenever the court is told that there is no other option available. I remain of the view that LT's continued accommodation in the acute psychiatric admissions unit is not in her best interests, even though no other option is available (at least until Monday 27 September 2021). I have reached a different decision in relation to the current application. Having considered the plan for LT to move to W Children's Home on

Monday 27 September 2021, it is clear that the restrictions there will amount to continuous confinement and a deprivation of LT's liberty, without consent, and that such deprivation will be imputable to the state. I am satisfied that it is necessary and proportionate and in LT's best interests to be deprived of her liberty there, and for the purpose of her transfer there. At the hearing I authorised the deprivation of LT's liberty from Monday 27 September 2021, with the restrictions as set out above. The authorisation shall extend to 4pm on 29 September 2021. I shall review the authorisation at a further hearing at 10.30 am on Wednesday 29 September 2021 by which time LT should be at W Children's Home. Any urgent applications that may need to be made before then if the plan to transfer LT to W Children's Home is derailed, shall be heard by me.

12. Mr Edwards says that the decisions he has now had to make in respect of LT are some of the most difficult he has had to make in his professional career of over thirty years. I fully acknowledge the extreme difficulties faced by all those involved in these decisions, and in caring for LT. This case demonstrates the consequences of the national shortage of secure and other suitable accommodation available for vulnerable children. It has caused avoidable harm to this child, anguish to her mother, stress for numerous professionals and carers, disruption to other vulnerable children and young persons, and avoidable expense to the NHS and the local authority. I direct that a copy of this judgment is provided to some of those who might be able to address the root cause of the problems this case demonstrates: the Children's Commissioner for England; the Secretary of State for Education; the Minister for Children; the Chair of the Care Review; the Parliamentary Under Secretary of State in the Ministry of Justice, Lord Wolfson QC; the Chief Social Worker; and Ofsted. It will join a number of similar cases brought to their attention.