Neutral Citation Number: [2024] EWHC 133 (Fam)

Case No: FD23P00607

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 January 2024

Before :

MR JUSTICE CUSWORTH
- -

RE V (A CHILD) (LIMITS ON EXERCISE OF INHERENT JURISDICTION)

Between :

LONDON BOROUGH OF ENFIELD	**Applicant**
- and –	
A MOTHER	**First Respondent**
- and –	
A FATHER	**Second Respondent**
- and –	
V (a child)	**Third Respondent**

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- -

William Dean (instructed by the **London Borough of Enfield**) for the **Applicant**
The **First** and **Second Respondents** appeared in person
Susan Stamford (instructed by **Eskinazi & Co, part of GT Stewart Ltd**) for the **Child**

Hearing dates: 24 January 2024
- -

JUDGMENT

This judgment was handed down remotely at 10.30am on 29 January 2024 by circulation to the parties or their representatives by e-mail and by release to The National Archives.

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This judgment was delivered in private. 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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mr Justice Cusworth :

1. This is an application for leave by the London Borough of Enfield to seek an order from the court under its inherent jurisdiction in relation to children. The local authority seeks an order making a 17 year old child, V, a ward of court, in circumstances where immediately before her 17th birthday in November 2023, she was the subject of an interim care order. Both her younger siblings remain the subject of interim care orders made at the same time.

2. There is a hearing listed (IRH and potential early disposal) in the care proceedings in February 2024, in which there are as yet undetermined allegations made against the children's parents, including sexual abuse, physical abuse and inadequate care.

3. V is currently in a different foster placement from that of her younger siblings. She is separately represented and is a highly intelligent young person. She is represented by Ms Stamford of counsel, who argues that there is no jurisdiction available by which the local authority can make this application, given that the interim care order has now lapsed. Even if there is jurisdiction, she says that no leave should be given in circumstances where V is clearly indicating that she wants to go home. V spoke to her solicitor to express those views on 21 January 2024, and has also made it clear that she is keen to speak to me today.

4. I have also heard from V's father in person, who attends with his wife, and they both support V's position.

5. Mr Dean for the local authority argues as follows. He accepts that the interim care order has lapsed and that no further care order is appropriate. He also accepts the strictures placed upon the exercise by the court of its inherent jurisdiction in relation to children by s.100 of the Children Act 1989 ('the 1989 Act'). He accepts that no

order could be made which would have the effect of placing V into care, or to be accommodated (s.100(2)), but points out that she is already being accommodated, which can only be under s.20 of the 1989 Act, on the basis that although the care order has lapsed, V has accepted that she should remain in her previous accommodation whilst this application is being determined.

6. He also accepts that leave can only be granted if there was no other way of achieving the result sought by the local authority (s.100(4)), which is essentially a continuation of the current arrangements, albeit I am told with a tightening of the arrangements whereby V sees or speaks to her parents. He also says (the second limb) that there is reasonable cause to believe that if the inherent jurisdiction is not exercised V is likely to suffer significant harm.

7. In the situation of a child, who had been the subject of a care order prior to their 17th birthday and living in foster care, and who wishes to continue to be accommodated thereafter, I agree with Mr Dean that s.20(11) of the 1989 Act would prevent the child's parents from removing them from that accommodation. However, here V would not wish to remain so accommodated.

8. He draws a distinction between a situation (following Thorpe LJ in *Re E (a child)* [2012] EWCA Civ 1773) where a child is required to be accommodated (covered by s.100(2)), and one where a child is voluntarily accommodated.

9. In addition to *Re E* (above), I should add that I have also been referred to the following authorities by Mr Dean: *A City Council v. LS and others* [2019] EWHC 1384 (Fam); *Re Q (a child)* [2019] EWHC 512 (Fam); and *Re M (jurisdiction: wardship)* [2016] EWCA Civ 937.

10. The issues which concern the local authority, and explain their application, are (i) that there remains a series of serious undetermined allegations against V's parents, and in particular her father; and (ii) there is evidence from her school and elsewhere that V has historically spoken of contemplating suicide. At to (i), these allegations will be dealt with in the care proceedings insofar as they impact upon her younger siblings. The court saw fit in April 2023 to make ICOs in relation to all 3 children, and the perceived risks which justified those orders have not yet been the subject of any determination. They remain a genuine cause of concern which justify the local authority having sought to find a way to maintain the status quo, notwithstanding the lapsing of the care order in respect of V. As to (ii), V's suicidal references evidently constitute a separate and equally legitimate concern for the local authority. They do have to be considered however in the context of her currently clearly expressed wish to be allowed to return home.

11. In these circumstances, if a child in V's position were to be genuinely voluntarily accommodated by the local authority, and wished to remain so, then an application within wardship may, I accept, be justified, provided that it passed the tests mandated by s.100(4) of the 1989 Act, in that there was reasonable cause to believe that without an order being made, the child was likely to suffer significant harm, and there was no other means to achieve the desired orders. I am satisfied that such an order, although highly unusual, might in the right circumstances be an appropriate use of the jurisdiction.

12. However, here V is making it very clear through her counsel that she does wish to return home. This means that the effect of the order which I am asked to make would in effect be to require her to be accommodated going forward by the local authority,

contrary to her wishes and those of her parents. That would be contrary to s.100(2)(b) of the 1989 Act, where the requirement for accommodation must look to the future, and not to the past situation.

13. That she has been voluntarily accommodated since November 2023 when the ICO lapsed, does not, in my judgement, grant the court the ability to disregard s.100(2)(b) when the clear evidence from V is that she is not agreeing to be further provided with accommodation. The effect of the order sought would be to convert what has up to now been voluntary accommodation into ongoing involuntary provision.

14. Consequently, in those circumstances, I am not prepared to grant leave to the local authority to make this application for the court to exercise its inherent jurisdiction. Mr Dean had suggested that, whilst he acknowledged that V's expressed wishes would present him with significant difficulties on any substantive application, he should be granted leave none the less. He acknowledged, rightly, that the prospects of success of the substantive application will always be a relevant matter to consider at the leave stage. However, whilst those limited prospects are a further matter which I weigh in the balance, I have as indicated come to the clear view that this application falls foul of s.100(2)(b), and I will not therefore give leave for it to proceed.