

Neutral Citation Number: [2023] EWHC 3361 (Fam)

Case No: FD23P04243

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Sessions House,
Lancaster Road,
PRESTON
PR1 2DP

Date: 15th December 2023

Before :

HIS HONOUR JUDGE BURROWS
(sitting as a High Court Judge, pursuant to s. 9(1) SCA'1981)

Between :

LANCASHIRE COUNTY COUNCIL
- and -
CLAIRE X
(by her children's guardian)
(NUMBER 2)

Applicant
Respondent

Emma Barron-Eaves (instructed by **Stephenson's**) for the **Local Authority**
Trish Hassell (of **Waddington & Son**) for the **Children's Guardian**

Hearing date: 15 December 2023

JUDGMENT

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, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

HIS HONOUR JUDGE BURROWS:

1. The court is once again concerned with CX. On my calculation, this is the thirty-first hearing in this case including those convened for care proceedings that ran alongside this application under the inherent jurisdiction. I have considered this from the point of view of ensuring that cases are dealt with speedily, and that every hearing should count. I am satisfied that due to the circumstances of this case, this number of hearings has been necessary and appropriate.
2. The background to this case is contained in the judgement I handed down as LCC v. Claire X [2023] EWHC 2667 and which is available on the National Archives and Bailii.
3. This young woman's life has been chaotic and disturbed for at least a year. Lack of stability will have caused damage to her and her life prospects. However, she has been consistent in her wish to cause herself potentially fatal harm. Her dedication to self-harm and her ingenuity in causing it has left those caring for her with no option but to put in place considerable restrictions on her liberty in order to keep her safe. I outlined the factual history in some detail in my earlier judgment and it is a disturbing read.
4. My primary concern of course is CX's welfare. I know I share this concern with those from the local authority as well as the children's Guardian. We are all desperately worried CX will kill herself or do herself permanent catastrophic harm. All the efforts of the local authority, the Guardian and the court are aimed at keeping her safe. However, I am also very worried about the overall direction of travel. The local authority has been involved in "firefighting", namely urgently responding to crises, albeit with inadequate resources, and with no opportunity to step back and survey the overall landscape and make long terms plans for CX. Those responsible for treating CX's mental health have not been able to put in place a care plan designed to address her underlying conditions. I am told CAMHS in the West Midlands are taking her welfare very seriously. In an effort to provide some continuity in planning, the present CAMHS worker assigned to CX has shown real

interest and concern and will be remaining with her if she moves to Wolverhampton, that being the best offer presently on the table.

5. However, the past lack of overarching planning is likely to have long-term implications for CX and her well-being. The utter chaos of the past 12 months and the absence of actual or appropriate mental health care must have affected her future development.
6. I used the word “appropriate” deliberately because CX’s Article 5 rights are obviously engaged here. She has been deprived of her liberty for almost the whole of 2023. In fact, the only time she has not been detained is when she has actually escaped from detention. Other than that, she has been under continuous control and supervision and has not been able to leave where she has been placed throughout the last year. This satisfies the test in the Cheshire West case including the modified comparator for a child. The restrictions on her liberty have gone way beyond those expected of a healthy 15 year old child. Furthermore, she is subject to a full care order and any deprivation of liberty has to be authorised by this court which, in turn has to apply the law according to Article 5 of the human rights convention.
7. I have to remind myself that I have to be satisfied in all conscience that the circumstances of CX’s detention are in accordance with Article 5 (1) of the European Convention. Relevant to CX’s case is (e) namely the lawful detention of persons of unsound mind. That is why I have been so exercised by the issue of diagnosis by the mental health authorities for a child who plainly has a mental disorder. It is well established that if the justification for detention, particularly for a lengthy period, is unsoundness of mind then appropriate treatment must be available to assist the detained person by focusing on treating her “unsound mind”. In the case of Roman v. Belgium [2019] ECHR 105 the European Court of Human Rights made it clear that the court must consider the period of confinement when considering article 5 detention but also whether “therapy measures” are available so as to give the detained person a real chance of release.

8. Although there has to be a level of flexibility in this case because of the lack of services for young people suffering from the sort of challenges faced by CX, the direction and speed of travel has been very concerning. This young woman, subject to state detention for nearly a year, has for most of that time received little if any therapy aimed at her mental health. Until recently even the mental health trust in the Midlands has not provided such treatment. The underlying causes of her disordered behaviour have not been addressed. The efforts of the local authority, approved by the court have been concerned to keep her alive, which is of course critically important, but little else. I have been increasingly anxious that detention in this case without therapy or treatment is unjustifiable under the convention because of its duration.
9. When the dust settles on this case it may be those representing CX will have to consider whether action should be taken against the state, or at least some of its organs for a breach of her article 5 rights.
10. In the meantime, I am satisfied that the direction of travel, notwithstanding its glacial pace gives me justification to authorise the present care plan and to deprive CX of her liberty yet further.
11. I am told that the Lancashire option, in Preston, is unlikely to be available in the short to medium term. There are still issues with the other facility that has been identified in Lancashire. The most likely will be somewhere called Z Care which offers a solo placement at a children's residential home at Wolverhampton, where another young person from Lancashire resides and it is hoped will move on soon. It is hoped CX can move there soon and will then experience stability which will enable CAMHS and other services to provide her with the care, assessment, and treatment she needs, all of which is in her best interests.
12. I am very concerned about CX's education. From what I read CX is an intelligent and interested young person. She has been learning remotely on her iPad through Waterloo, an educational provision. Because it was thought she was moving back to Lancashire soon and would then return to face-to-face learning at a "real" school,

notice has been given by Waterloo. However, if she is not moving to a real school, it is hoped Waterloo will be able to keep her present education provision in place.

13. These are all incredibly difficult issues for the social worker and her team who have had to deal with the micromanagement of this young woman's life for so long. They are concerns for the court, so far as they are relevant to making decisions about available options. I invite the local authority, when it is clear CX is about to move and where she is going to move to, to provide the court and the Guardian with a "sketch" as to what sort of services are going to be available to her. I do not expect anything more precise because the social worker simply does not have enough hours in the day to provide what she would like to. If I have an adequate outline as to what is in store in Wolverhampton or wherever the place may be, and the Guardian is satisfied, and so am I, I will be happy to approve the move and a care plan on the papers. I think we ought to fix in principle a date in the New Year and I would suggest a date in the third week of January 2024 just to review the situation.

14. I make it clear the door of the court is always open if this case needs to return at short notice and over the Christmas period there will be out of hours judges available if the matter is urgent. I approve the plan that is being put before me until then I hope by then I will have been given adequate information to be able to approve the move itself without a further hearing.

15. That completes this judgment.