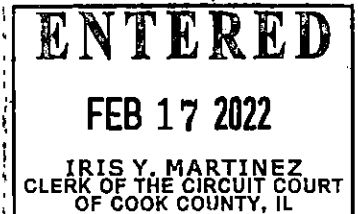


In the Circuit Court of Cook County, Illinois
County Department, Child Protection Division

In the Interest of
J [REDACTED] C [REDACTED]

)
) [REDACTED]
)

Order



For reasons set forth below and has been set forth on the record during proceedings on February 17, 2022 (and in previous proceedings) the court holds Marc Smith, DCFS director, in contempt of court and finds him \$1000 a day effective as set forth in detail below. The contempt finding and the \$1000 a day fine is based upon the fact that Director Smith has refused to comply with this Court's orders to place the child in a clinically appropriate setting,

History of the Case

J [REDACTED] was born on September 15, 2005. She became psychiatrically hospitalized in August, 2021 for self harming behaviors and harmful behaviors toward others. She has many mental health diagnoses including depression, bipolar disorder, ADHD and schizophrenia. She is also severely delayed with an IQ of approximately 57.

On September 28, 2021 she was placed in the temporary custody of DCFS pursuant to a dependency petition. On November 18, 2021 DCFS placed the child in a foster home. According to testimony from the DCFS supervisor, she lasted in that home for only a few hours before being sent to Ingalls Hospital where she was kept in the emergency room for three days awaiting psychiatric placement. On November 22 it was determined that she no longer required hospitalization and she was returned to the foster home where she again lasted only a few hours before being again sent to the emergency room at the same hospital where she was kept for an additional two days before being discharged back to the foster home on November 25. Again she remained there only for a few hours before her conduct escalated and she was sent back to Ingalls Hospital where she remained in the emergency room for approximately two weeks awaiting appropriate placement. On December 6 she was placed in a DCFS shelter but remained

there briefly before DCFS agents brought her to Lurie's Children's Hospital. She remained there despite the hospital's protestations that she was beyond medical necessity for over a month.. She then went to a temporary foster home but her conduct escalated and on the same day was transferred to Comer's hospital. She remained in the emergency room briefly before DCFS again placed her in the same temporary foster home. A few hours later her conduct escalated and DCFS brought her the same day went to Jackson Park Hospital. She remained in the emergency room there for two days before being sent back to the temporary foster home but on the same day went back to Jackson Park Hospital where she again languished in the emergency room until January 20 when she went to a DCFS shelter. Two days later the agency brought her to St. Anthony's Hospital emergency room. She remained there for three days before DCFS brought her back to the shelter but was there only a day before she went back to St. Anthony's. The next day she was transferred back to the shelter and four days later she was back at St. Anthony's. On February 4 she was placed in the shelter and on February 6 was back at St. Anthony's emergency room. She remained in the emergency room for an additional four days before being transferred to another shelter on February 10. Not surprisingly, her behavior escalated and she was psychiatrically hospitalized at Hargrove hospital on or about the same day.

This Court has ordered Director Smith and his agents to place J [REDACTED] in a clinically appropriate placement on several occasions. Instead, in the 144 days the child has been in the DCFS system she has been moved on at least 25 occasions. She sat in emergency rooms in hospitals on approximately 10 occasions for over 30 days and was hospitalized in a medical unit for over a month against the protestations of that particular hospital. On six occasions she was placed in foster homes (two homes) where she lasted hours before she had to be removed. According to the DCFS supervisor's testimony, the goal for this child has been residential care since at least December 8, 2021. Since that date DCFS agents have moved her at least 18 times.

Response of Director Smith

Director Smith, through counsel, now argues that since her present placement in a psychiatric facility is required he can no longer be held in contempt. In effect she is appropriately placed, at least temporarily. Director Smith also argues that this court cannot hold him in contempt because, as the court understands it, his actions are protected by the BH consent judgment

entered into a 1991. In the past Director Smith has argued that this court has no jurisdiction over what happens to children in DCFS care because of the separation of powers doctrine.

Background

Because of the Director's defense, the court sets forth a brief history leading up to the present contempt judgment.

Pursuant to recent statistics DCFS has provided to the court, as of November 30 of this year, 58 children statewide, and 18 in Cook County, were detained in psychiatric facilities beyond their discharge date. According to the same statistics, 159 children statewide and 52 from Cook County were detained in residential facilities past the date on which they were ready to be discharged. From what the court has heard children cannot get out of psychiatric facilities because children cannot get out of residential facilities and hence there is a bottleneck. The cause for the bottleneck appears to be lack of appropriate placements for older DCFS wards. Lack of foster homes. Lack of group homes.

This problem has long preceded the present administration but the present administration is aware of the problem and, at least in the present cases, seems to have ignored it. Exacerbating the issue is the fact that DCFS has closed over 460 residential beds in the last several years. Apparently the plan, according to the testimony, was for the agency to open therapeutic foster homes but, according to the testimony, these homes were not opened.

Lauren Williams, an associate Deputy Director, testified that DCFS has closed 460 residential beds in Illinois since 2015. According to her testimony the agency planned to replace these residential beds with "therapeutic foster homes." However, the agency has, to date, opened less than 30 of these therapeutic homes and only 10 in Cook County. (Testimony of Lauren Williams, Associate Deputy Director, Placement Resources, page 37 – 42, July 3, 2019, 19 JA 382) In that same case, a DCFS expert, Dr. Marc Friedman who is board-certified in both child and adult psychiatry, testified that he did not understand why the Department took away these necessary residential beds. He stated that shuttering these facilities caused a "crisis."

The testimony of these two individuals along with others was that DCFS intended to change its philosophy from residential to “highly structured therapeutic” foster homes. These witnesses implied that in hindsight this was a mistake. The highly structured therapeutic homes were never opened and the residential beds never replaced. Instead, all judges in this division consistently are told by DCFS agents to be patient while they try to place an increasingly number of disturbed children into a decreasing number of residential placements and appropriate “specialized” homes. Several years ago this argument had some merit. But after years of children deteriorating in inappropriate and dangerous placements the courts must act.

According to DCFS statistics, in FY 2020, DCFS had 314 children in psychiatric hospitals beyond the date of discharge. For fiscal year 2021 the number of children in psychiatric hospitals beyond the date of discharge increased to almost 356 children kept on an average of 55 days beyond the date of discharge. What makes these figures so disturbing is that in 2014 only 75 DCFS children were kept in mental health facilities beyond the date of discharge. By 2015 that figure had doubled to 168 and today the figure is quadrupled over what was in 2014. Very clearly this was the result of the closure of the residential beds.

As these and other cases demonstrate, DCFS seems to have no strategy on how to deal with this crisis although it has been years in the making and the agency – at least its workers and supervisors – admit that the shuttering of residential beds without replacing them with something else has been disastrous for children. Currently the court encounters through these cases and others a situation where children are psychiatrically hospitalized but then kept well beyond the date of discharge because the agency does not have a residential placement available and/or appropriate therapeutic foster homes. After the child has languished in the psychiatric facility for a period of time he/she is frequently placed in a “temporary” shelter which is inappropriate and which turns out not to be temporary. On the other end children in residential facilities frequently cannot be discharged because they require specialized/therapeutic homes of which there are not enough.

Over the past several years judges in the Juvenile Court of Cook County have increasingly struggled with the number of children kept by the state guardian, DCFS, in psychiatric facilities

and/or institutional temporary placements (previously known as shelters) long beyond the date on which they should have been discharged. Further, this is a statewide problem.¹ Because of this continuing problem, the Presiding Judge of the Child Protection Division has set up a docket (beyond medical necessity) to which judges in this division refer cases of children languishing in this quagmire. The undersigned judge hears this docket.

Authority of the Court

The public policy of the State of Illinois is that the relationship between the court and a juvenile is that of parens patrie (In re Minor, 205 Ill. App. 3d 480, 492, 563 N.E.2d 1069, 150 Ill. Dec. 942 (1990)), and a court, when it perceives a substantial injustice, will intervene on the juvenile's behalf, even where the juvenile is represented by counsel.----- People v. Vincent K. (In re Vincent K.) 2013 IL App (1st) 112915

"It is within the realm of judicial authority to assure that the action of the members of the executive branch does not deprive the residents of an institution of rights conferred by statute or by the Constitution. Dixon Association for Retarded Citizens v Thompson 91 Ill 2nd 518, 533 (1982)

Right to Remedy and Justice: Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly. Illinois Const., Art. I, § 12

Children Who Are Wards of the Court and of DCFS Have Certain Statutory and Constitutional Rights

J [REDACTED] has a right to "custody, care and discipline as nearly as possible equivalent to that which should be given by his or her parents...." 705 I LCS 405/1 – 2 Further, she has "a right to services necessary to her safety and proper development, including health, education and social services." 705 I LCS 405/1 – 2 (3) (b) *The legislature has imposed upon DCFS the duty to provide social services to certain children and to provide rehabilitative and residential services for them. (Citation) The Constitution recognizes a protectable liberty interest which requires DCFS to provide minimally adequate care and treatment of children in its custody.*" In Re VH

¹ The Supreme Court Committee on Juvenile Courts presently has a subcommittee studying the issue.

197 Ill App 3d 52, 60 (1st Dist, 1990) citing, Youngberg v Romeo 457 US 307 (1982) and BH v Johnson 715F Supp. 1387 (N.D. Ill. 1989) see also KH V Morgan 914 F 2nd 846, 851 (7th Cir. 1990)

In the present case, Director Smith and his agents have not provided custody care and discipline similar to what a good parent should provide. They failed to give J [REDACTED] services necessary for her proper development. For years Smith and his predecessors ignored their duty "to provide social services to certain children and to provide rehabilitative and residential services for them." Further, in this case, there is no question but that J [REDACTED] has not received "minimally adequate care and treatment" as the Constitution demands.

Obligations of DCFS, the Guardian

Smith and his agents have argued in this case and other cases, that they are doing their best and there are insufficient resources at their disposal. However, as Deputy Director Williams and others have testified, DCFS has shuttered almost 500 residential beds without creating alternatives. Smith and his agents have known about the "insufficient resources" but they have ignored their obligation under the statute to provide rehabilitative and residential services for children. 755 ILCS Chapter 23, 5001 et seq. Moreover, if they believed resources were insufficient for Jania they had the obligation to "*create an appropriate individualized, program – oriented plan for such ward.*" 20 ILCS 505/5 (H).

Smith and his agents also argue that the court should defer to the federal BH consent judgment entered into by DCFS in 1991. The appellate court accepted this argument in a similar case in 1996. In that case, *In re MK*, 284 Ill. App. 449 (1st Dist.1996), the public guardian had sued DCFS because in the previous fiscal year, 116 DCFS wards had remained in hospitals beyond the date they were ready for discharge. DCFS argued that the then recently decided BH consent judgment would resolve the matter. The court upheld the trial court's dismissal pointing out that the public guardian "has failed to demonstrate that the federal forum has been ineffective in addressing the particular issue presented here or that the parties in BH have abandoned their efforts to reform DCFS." (At page 459)

The BH consent judgment which is now three decades old has no doubt brought about some reform. However, 31 years after the entry of that judgment, a judge who entrusted a child to the care of the state guardian, DCFS, should not ignore his or her responsibility to that child by deferring to an ancient federal consent judgment. *"The public policy of the State of Illinois is that the relationship between the court and a juvenile is that of parens patrie (In.re Minor, 205 Ill. App. 3d 480, 492, 563 N.E.2d 1069, 150 Ill. Dec. 942 (1990)), and a court, when it perceives a substantial injustice, will intervene on the juvenile's behalf, even where the juvenile is represented by counsel.-----."* People v. Vincent K. (In re Vincent K.) 2013 IL App (1st) 112915

ORDER

This court holds Director Marc Smith in contempt of court for reasons above stated. His argument that J■■■■ is presently in an appropriate setting, a psychiatric facility, is fatuous. Smith and his agents ignored this court's orders to place the child in a clinically appropriate setting. Smith and his agents have violated J■■■■'s statutory and constitutional rights as set forth above. And, they have disregarded their personal statutory obligations. By moving J■■■■ on at least 25 occasions through emergency rooms and foster homes within a 144 day period of time, he and his agents exacerbated her placement in that psychiatric facility rather than in the residential placement she deserves.

The Director is not being held in contempt of court for violating J■■■■'s constitutional and statutory rights. The court entered orders directing him to place her appropriately because of that. The director is being held in contempt of court for ignoring the court's orders directing him to place the child appropriately. With respect to his defense that she is now placed appropriately, as stated above, that defense is fatuous.

The court fines Director Smith \$1000 per day for every day J [REDACTED] is not in a clinically appropriate residential placement² after that point in time when she is ready for discharge from Hargrove Hospital, her present placement, or upon her discharge from that hospital whichever occurs first. The Director may purge this contempt by placing J [REDACTED] in a clinically appropriate residential facility or by informing this court before she is ready for discharge from Hargrove that Director has indeed found a clinically appropriate placement and further informing the court the date on which the child will be placed appropriately.

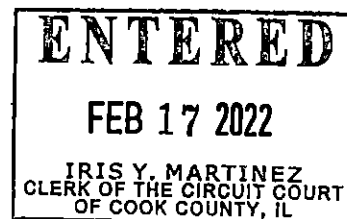
Epilogue

We judges, pursuant to statute, remove children from their parents and families because, we tell them, we will provide for them “custody, care and discipline as nearly as possible equivalent to that which should be given by his or her parents....” We judges tell the parents, and more importantly the children, that *“A child's best interest is not part of an equation. It is not to be balanced against any other interest. In custody cases, a child's best interest is and must remain inviolate and impregnable from all other factors-----”* In re Ashley K., 212 Ill. App. 3d 849 (First Dist. 1991)

In 1900, the Juvenile Court issued its first annual report. The court was the first of its kind in the nation. It proudly pointed out 121 years ago: *“The law, this (Juvenile) Court, this idea of a separate court (for children) to administer justice... (And to act) like a kind and just parent ought to treat his children... has gone beyond the experimental stage and attracted the attention of the entire world....”*

If we judges cannot protect these children, our legal wards, from the vagaries of bureaucratic malfeasance, the lofty language in Juvenile Court Act is empty verbiage “full of sound and fury. Signifying nothing.”

Patrick T Murphy



² The court orders residential placement as a purge because that is the goal DCFS set on December 8. If the director and his agents present evidence to the court that the child can be placed appropriately and clinically in other circumstances the court will, of course, defer to the guardian.