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

In the Interest of	)
C R – M	) 21 JA 689
	)

Order

For reasons set forth below and has been set forth on the record during proceedings on January 6, 2021, the court holds Marc Smith, DCFS director, in contempt of court and fines him $1000 a day effective noon on January 13, 2022 with such fine being stayed until 4 PM January 18, 2022. The contempt finding and the $1000 a day fine is based upon the fact that Director Smith has disobeyed numerous court orders directing him to place the minor in a clinically appropriate placement and to take the minor out of the temporary shelter to which he has been confined since August 14, 2021. (See order of November 14, 2021) Director Smith can purge himself of the contempt by removing C from the shelter and place him appropriately.

History of the Case and the Issue[1]:

The above named minor became a temporary ward of the court on or about July 28 of this year and at the same time came in to the temporary custody of DCFS. The court ruled that it was a no-fault dependency case because of his severe mental health issues which his mother was not equipped to deal with. His father is not involved.

[1]C's case is not unique. Indeed, part of the DCFS defense has been that it cannot find appropriate placements for individuals like C because the agency does not have access to enough appropriate placements. Judges in the Cook County Child Protection Division have over the past several years increasingly encountered too many youngsters kept by the state guardian in mental institutions and shelters far beyond the date on which appropriate placements should have been found. For that reason the presiding judge of the division has instituted the beyond medical necessity docket heard by the present court on Thursdays. The court has updated an order on these cases regularly over the objection of DCFS which argues that such an order combining children's cases violates the Juvenile Court Act. DCFS has also argued that judges do not have the authority under the Juvenile Court Act to, in effect, second-guess their decision. For those reasons, the court sets forth not only a history of this particular case but a more general history of all cases because, even according to the DCFS defense, those cases impact on C's. Also this history describes the conundrum facing judges in these cases.

DCFS agents originally informed the court that C "needs to be in a foster home that is supportive, that can model positive behaviors, where there are no power struggles or threatening behaviors." He became a ward of the court and of DCFS as of November 5, 2021. Initially DCFS placed C with his grandparents but because of his mental health issues they could not care for him. He was then placed at a temporary shelter in Chicago where he slept in a utility room. On August 14, DCFS placed C at a temporary shelter in Mount Vernon Illinois, 279 miles from Chicago and from where his mother lives. DCFS informed the court that C needed a "therapeutic foster home". According to the website of the shelter, this is a "temporary" placement of no more than 30 days. C has now been at the "temporary" shelter for 145 days.

On January 6, Director Smith testified that he and his agents had scrupulously attempted to find an appropriate placement for the child. On the same date, the regional director for DCFS, Jacqueline Dortch, testified. She stated that DCFS had contacted 10 separate agencies looking for an appropriate specialized or therapeutic foster home. Eight foster agencies had declined and 2 are still open. She agreed that DCFS had recommended family therapy, individual therapy and in-home parent counseling but that because of the distance between Mount Vernon and Chicago the first and third component could not be accomplished. She stated that the monthly rate for a specialized foster home is $1400 and for a therapeutic foster home is $1700 per month. The monthly cost at the Mount Vernon temporary shelter is $9715. She testified that C does not require residential care but should be placed in an appropriate foster home, specialized or therapeutic. She further agreed that the temporary shelter in which C[redacted] is now housed "mirrors" a residential facility.

C *as part of a larger mosaic*

Pursuant to the most recent statistics which 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 wards 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.

Clearly, this court cannot tell the director how to run his agency or even where to place a child. However, the director's defense, that despite his best efforts, he cannot find an adequate placement for the child, lacks a scintilla of credibility when he, his agents and predecessors have closed almost 500 residential beds and failed to create alternatives. He is much like the fabled defendant throwing himself on the mercy of the court because he is an orphan – after he murdered his parents.

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 within the child welfare system but that reform has not been universal, as the present factual scenario affirms. 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 a 30-year-old 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

This court further recognizes that the state legislature has mandated that C 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 He further has "*a right to services necessary to (his/her) safety and proper development, including health, education and social services*." 705 I LCS 405/1 – 2 (3) (b) C is constitutionally entitled to minimally adequate care and treatment. **"***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 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)

Based on the testimony and evidence the court finds that the director and his agents (and predecessors) have violated C's constitutional and statutory rights.

The director is not being fined or held in contempt for that violation but for his refusal to follow valid court orders that he comply with the statutory and constitutional mandates and provide adequately for the child.

The legislature has further mandated that director and his agents have the obligation to provide rehabilitative and residential services for children. 755 ILCS Chapter 23, 5001 et seq. If DCFS

has no appropriate program or facility for a child in need of care, *"the Department shall create an appropriate individualized, program – oriented plan for such ward."* 20 ILCS 505/5 (H).

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…."*

The premise that the court, and all parties connected to the court, including the state guardian, must act like a kind and just parent is the foundation upon which the child welfare system – the juvenile court – has been established. The guardian's position that the court has no authority over it or must defer to the federal courts or that judges cannot inquire when DCFS mistreats a child betrays the foundation upon which the juvenile court was built.

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…." If that truly is the case, we cannot bury our heads in the sand while children are being deprived of that statutory right.

"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)

Patrick T Murphy