

Case No. LS23P00808

Neutral Citation Number: [2023] EWHC 3538 (Fam)

**IN THE HIGH COURT FAMILY DIVISION AT LEEDS
IN THE MATTER OF RN**

**Leeds Family Court
1 Westgate
Leeds LS1 3BY**

27 June 2023

Before:

**HIS HONOUR JUDGE HAYES KC
SITTING AS A SECTION 9 DEPUTY HIGH COURT JUDGE**

Between:

BK and CK

Applicants

and

LEEDS CITY COUNCIL

1st Respondent

And

FN

2nd Respondent

NIGEL PRIESTLEY, Solicitor, for BK and CK.
NATALIA ESCORIZA, Counsel, for Leeds City Council.
FN did not attend.

Hearing Date: 27 June 2023

JUDGMENT

HIS HONOUR JUDGE HAYES KC:

1. These proceedings concern a 14 year old girl, RN.
2. The application before the court today is made by BK and CK. They are represented by their Solicitor Nigel Priestley.
3. The 1st Respondent to today's application is Leeds City Council, represented by Natalia Escoriza of Counsel.
4. RN's father, FN, is named as the 2nd Respondent to this application. He did not attend today's hearing. Nor has he participated in private law proceedings (under Case No. LS22P01169) in relation to RN.
5. I can state the background briefly. RN and her older sister TN were made subject of a Child Protection Plan in March 2021 due to emotional abuse by their mother, MN. There was police involvement and, on 2 July 2021, RN and TN moved to live with the Applicants (who are family friends) where they have remained since. Sadly, their mother died in December 2022 after suffering a terminal illness. The children have had no relationship with the father for many years. On 14 December 2022, the court made an order (headed "interim child arrangements order") that, until further order of the court, RN shall reside with the Applicants. By then, TN was 18 years old. The proceedings have been case managed by Lay Justices thereafter. They have not been concluded and when this inherent jurisdiction application was issued, both applications were listed before me.
6. The Applicants apply for a declaration under the inherent jurisdiction of the High Court. The proposed wording of the declaration is set out in section 3 of their application form. They ask the court:

"...to declare that the children were children looked after by the Local Authority since date of the placement in July 2021 up until the ICAO [interim child arrangements order] being made in December 2022".
7. The application form refers to "children" in the plural. This is a reference to both RN and TN. However, TN is no longer a child. She is now 19 years old.
8. In seeking to make this application under the inherent jurisdiction of the High Court, the Applicants rely upon the ruling by Mr. Justice MacDonald in the case of Salford City Council -v- W and others [2021] EHC 61 ("the Salford case").

9. I must decide as a preliminary issue whether the application is properly made under the inherent jurisdiction of the High Court or whether the application ought to have been issued in the Administrative Court.
10. Mr. Justice MacDonald in the *Salford* case was faced with the same question but in different factual circumstances. His detailed Judgment sets out the principles that he distilled from the case law. On the particular facts of that case, he accepted that the application could proceed under the inherent jurisdiction rather than in the Administrative Court. However, he observed that disputes about the correct legal status of children (which in turn have financial implications) are more commonly dealt with in the Administrative Court. MacDonald J expressly stated that he was *not* altering the general proposition that ordinarily such challenges to Local Authority decision making would be dealt with by way of judicial review in the Administrative Court.
11. It is therefore important that I identify the particular facts which led MacDonald J to take a different course in the *Salford* case. In paragraphs 93 and 94 of his Judgment, he stated:

“[93] Finally, the court must ask itself if the course proposed by Mrs Z and Mr Y and by the mother is the most effective way of resolving the issues raised. Given that (a) determining the application for a declaration in these proceedings would, notwithstanding that the application claims no other remedy, serve a useful purpose in circumstances where the issue of financial support is relevant to the issue of special guardianship that is before this court, (b) that these proceedings are already on foot with much of the material relevant to the determination of the application for a declaration already before this court, (c) that in the circumstances the determination by this court of the application for a declaration may avoid the need for further and expensive proceedings in the Administrative Court depending on the response of the parties to this court’s decision and (d) this court dealing with the issue would thereby likely reduce delay and expense in a manner consistent with the overriding objective to deal with matter expeditiously and fairly whilst saving expense and allotting the matter an appropriate share of the court’s resources I am, on balance, satisfied that this court hearing the application for a declaration is the most effective way of dealing with the issue.

[94] In all the circumstances, notwithstanding that the application by Mrs Z and Mr Y claims no other remedy, and that issues of this nature are more commonly dealt

with in the Administrative Court, I am satisfied that, in the particular circumstances of this case it is appropriate for the court to determine the application for a declaration under the inherent jurisdiction in the manner contemplated by the Court of Appeal in Re B. This decision does not alter the general position, recognised in Re B, that the appropriate forum for challenging a decision of the local authority of the kind that gives rise in this case to an application for a declaration under the inherent jurisdiction will ordinarily be by way of judicial review”.

12. The reference in paragraph 93 to proceedings “already on foot” is highlighted in other parts of MacDonald J’s ruling. For instance, at paragraph 90, he stated that resolving the disputed legal status of the children would allow Mrs. Z and Mr. Y and the local authorities concerned “to proceed on a clear factual basis”, adding that the court was “already seised of proceedings”.
13. On behalf of the Applicants, Mr. Priestley contends that this application was properly issued under the inherent jurisdiction rather than in the Administrative Court. He makes the following submissions to advance that proposition:
 - a) Where (as here) there is a dispute as to whether or not children had the status of looked after children, and this has a bearing on the financial support that will be payable going forwards for RN, the Salford case is authority for the proposition that that dispute can and should be resolved in an application under the inherent jurisdiction.
 - b) Although the Salford case involved existing care proceedings, there is nothing to confine it to such proceedings. He submits that it applies also where there are existing private law proceedings.
 - c) He highlights that, although the current application is for a Child Arrangements Order in respect of RN, the Applicants have notified the Local Authority that they seek a Special Guardianship Order. He submits that (as in the Salford case) before the court can determine whether such an order should be made, there needs to be clarity about the level of financial support that will be paid to the Applicants. That, in turn, will be affected by whether RN previously had the status of “a looked after child”.
 - d) The key objective is to avoid delay and adopt the most efficient process so that all issues (declaratory and welfare) are resolved by the same court.
 - e) Therefore, he submits, the application has been properly issued as an inherent jurisdiction application rather than in the Administrative Court.
14. On behalf of Leeds City Council, Ms Escoriza makes the following counter-submissions:
 - a) Leeds City Council are not parties to the existing private law proceedings. This case is unlike the Salford case where there were existing care proceedings in which the Local Authority was already a party.

- b) There is no need for Leeds City Council to be joined as a party to the private law proceedings. Leeds City Council support the Applicants in their aspiration to secure the welfare of RN through a private law order.
 - c) The only issue that divides Leeds City Council and the Applicants is the contention that RN (and her older sister TN) were looked after children between July 2021 and December 2022. Essentially, this is a dispute relevant to financial provision. It is not a dispute about the welfare of RN and where she should remain living. Leeds City Council fully supports her remaining with the Applicants.
 - d) Leeds City Council do not accept Mr Priestley's submission insofar as he contends that the *Salford* case is authority for the proposition that, whenever there is an issue about the legal status of a child/children which has financial implications, this can be resolved through an inherent jurisdiction application. If that were to happen routinely, there would be a proliferation of inherent jurisdiction applications rather than such cases ordinarily being heard and determined, as they always have been, as judicial review proceedings in the Administrative Court.
15. Faced with these competing submissions, I must examine whether the facts of the present case are similar to those in the *Suffolk* case, and would therefore justify this court taking the same route as was taken by MacDonald J in that case.
16. I have weighed into my consideration that, in the *Suffolk* case, the court was to address whether or not to make Special Guardianship Orders in respect of the subject children. MacDonald J observed that, as part of addressing that proposed plan, the court would be informed about the financial assistance available to the Special Guardians. He reasoned that, where there was an overlap between that and the resolution of the children's legal status, it was a proportionate and efficient use of court time to deal with both in the same court. I have asked myself whether, given the Applicants say that they too will be seeking a Special Guardianship Order in respect of RN, using the inherent jurisdiction to resolve the dispute with the Local Authority is also the correct route in the present case. However:
- a) In the *Suffolk* case, there were *existing care proceedings*. The Local Authority, the applicants for a declaration ("Mrs. Z and Mr. Y") and the subject children were *already parties to those proceedings*. MacDonald J took into account that, because such proceedings were happening, *much of the material relevant to the determination of the declaration application was already before the court* (emphasis in italics added).
 - b) This is not the situation in the present case. There are no linked care proceedings. Rather, the Applicants have issued a private law application for a Child Arrangement Order in respect of RN. The only respondent to that application is RN's father (FN). Leeds City Council is not a party to those proceedings.

c) In the *Suffolk* case, the subject children in the care proceedings were also the subject of the declaration sought. None of them had reached adulthood. By contrast, in the present case, RN remains a child, but TN is an adult. There are no linked family proceedings concerning TN. Insofar as her name appears on any orders or application documents, that is legally inaccurate. I note that TN was named as a child on the inherent jurisdiction application form. She ought not to have been. The form expressly states that it is for children only.

17. I find that the circumstances of the present case are therefore materially different to the particular facts which led to MacDonald J ruling as he did in the *Suffolk* case. There is an established court, namely the Administrative Court, and an established cause of action, namely judicial review, when this type of dispute arises. Notably, when the Applicant's Solicitors wrote to the Local Authority on 10 March 2023 setting out their case (naming both RN and TN), their letter was referred to as a "*Letter before action – judicial review pre-action protocol*". The Local Authority treated it as such and responded setting out their counter position. To get the current application to the state where an informed decision can be made on the evidence would, in effect, involve using the inherent jurisdiction to replicate the same case management and hearing structure of the Administrative Court. MacDonald J was careful to point out that his approach in the *Suffolk* case was in the particular circumstances of that case. He highlighted that there were care proceedings involving the same parties already afoot and relevant material already before the court in those proceedings. It is in that context that MacDonald J emphasised that he was not altering the general position, recognised by the Court of Appeal in *Re B* [2013] EWCA Civ 964, that the appropriate forum for challenging a decision of the Local Authority in this type of dispute will ordinarily be by way of judicial review.
18. For the reasons I have given in this Judgment, I do not consider that the facts of the present case justify departing from that ordinary approach. It follows that this application ought not to have been issued in this court under the inherent jurisdiction. It should have been issued in the Administrative Court. Today's order will record that decision and go no further. Plainly, nothing I have said has any bearing on the substantive issue that divides the Applicants and the Local Authority. It is purely a determination of the appropriate court forum to resolve their dispute.
19. It follows that there is nothing which justifies a transfer to the High Court of the current private law application for a Child Arrangements Order in relation to RN under Case No LS22P01169. That application should proceed in the Magistrates Court as had been intended. That court is the correct tier of court to decide that issue, applying s.1 of the Children Act 1989, not least in circumstances where the Father is not taking any active role in opposing the application.

HHJ Hayes KC
Sitting as a Section 9 Deputy High Court Judge

27 June 2023