



Neutral Citation Number: [2019] EWFC 50 (Fam)

Case No: ZW17C00477

IN THE FAMILY COURT

Sitting at the Central Family Court

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF THE ADOPTION AND CHILDREN ACT 2002

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2019

Before:

MRS JUSTICE THEIS

Between:

	A Local Authority	<u>Applicant</u>
	- and -	
	A Mother	<u>1st Respondent</u>
	- and -	
	A Father	<u>2nd Respondent</u>
	- and -	
	RP (by her children’s Guardian)	<u>3rd Respondent</u>
	- and -	
	LR	<u>4th Respondent</u>

Mr Francis Wilkinson (instructed by **Local Authority Legal Services**) for the **Applicant**
Ms Julie O’Malley (instructed by **Sweetman, Burke and Sinker**) for the **1st Respondent**
Ms Jo Porter (instructed by **Freemans Solicitors**) for the **2nd Respondent**
Mr Kieran Pugh (instructed by **Duncan Lewis**) for the **3rd Respondent**
Mr Tom Wilson (instructed by **Goodman Ray**) for the **4th Respondent**

Hearing dates: 21st – 24th May 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MRS JUSTICE THEIS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. 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.

Mrs Justice Theis DBE:

Introduction

1. This matter concerns a child, RP, now just over 2 years of age. The local authority issued care proceedings in September 2017. Their care plan is for care and placement orders. RP's mother, and father, oppose the local authority plans, they support a care order with a plan for placement of RP in Poland with foster carers. The Children's Guardian supports the local authority plan.
2. RP's current foster carer, LR, is also a party to these proceedings, following a direction joining her at the hearing on 1 May 2019. She has recently been approved as an adopter by the local authority and if the local authority plan is approved meetings are scheduled by the end of June to consider whether she should be matched with RP.
3. RP has been the subject of legal proceedings for most of her life. These proceedings were commenced when she was 6 months old. The original application included the mother's three older children, W, 15 years, K, 13 years and O, 9 years. Although these children are RP's half-siblings, they are referred to during this judgment as her siblings.
4. There have been two main causes of the delay in this case. First, the abduction of K and O to Poland in November 2017, and the eight-month delay in securing their return here in June 2018. The hearing of the care proceedings before HHJ Rowe Q.C. started in June and resulted in the three older children being placed in foster care in Poland in December 2018, pursuant to care orders and care plans approved by HHJ Rowe Q.C. in October and November 2018. HHJ Rowe Q.C. had also made a care order in relation to RP in October 2018 approving a plan for her placement in Poland, in a separate foster placement to the older three children. The second cause of delay was the care order in relation to RP which was the subject of a successful appeal by her foster carer, LR, this was determined by the Court of Appeal on 31 January 2019 (*Re RP (A Child)(Foster Carer's Appeal)* [2019] EWCA Civ 525). The care order was set aside and remitted for a re-hearing. The appeal was allowed on the basis that the fact that LR had put herself forward to care for RP was not properly considered and as a result there was a failure to recognise, analyse or place weight upon RP's attachment to LR, her willingness to care for RP or the impact on RP of the loss of a primary attachment relationship. In addition, there had been a failure to consider alternative frameworks, such as a special guardianship order. The matter was listed for directions before me on 8 February 2019 and the case timetabled for hearing this week.
5. The Polish Embassy have taken an active part in these proceedings which has been of great assistance. A representative has attended all the hearings before me, as they have done in the previous hearings. They have submitted written material about the options for the care of the children in Poland, in addition to information through the Central Authority, and it was agreed, at the conclusion of the evidence in this hearing, written submissions could be made by them, which they have submitted.
6. There are already four substantive judgments in this case: the judgments of HHJ Rowe Q.C. on 2 August, 18 October and 5 November; and the Court of Appeal on 31 January 2019 (*Re RP (A Child)(Foster Carer's Appeal)* [2019] EWCA Civ 525).

7. There was no appeal against the threshold findings made by HHJ Rowe Q.C. in August, which are set out in the schedule dated 2 August 2018. In summary, she found the parent's relationship was 'toxic' and the children had been exposed to domestic abuse between the parents. The father had sexually abused W, and there were inappropriate boundaries for the children, whilst in the care of both, or either parent. The mother failed to recognise the risks of such behaviour, was unable to protect the children from such harm and had consistently failed to co-operate with the local authority. Additionally, HHJ Rowe Q.C. found the parents and the maternal grandmother colluded to abduct K and O to Poland, concealed the whereabouts of RP and that W was beyond parental control. It was against that factual background that the court is considering what order meets the lifelong welfare needs of RP.
8. The mother accepts that she is not in a position to care for RP now, she seeks her placement in Poland which she says will best meet her cultural and identity needs, enable her to have more contact with RP and her siblings and, if the mother's situation improves, for consideration to be given to RP returning to her care. The father supports the mother, although he does not seek to play any role in RP's life in Poland. His plan is to move permanently to Italy to live with his mother.

Relevant Legal Framework

9. There is no issue in this case that the threshold criteria are met and the court should make a care order, albeit there is an issue about the care plan as outlined above. In deciding whether to make such an order RP's welfare is the courts paramount consideration having regard to the matters set out in the welfare checklist in section 1 (3) Children Act 1989 (CA 1989).
10. The local authority have made an application for a placement order, which engages the court in consideration of the lifelong welfare needs of the child as set out in section 1 Adoption and Children Act 2002 (ACA 2002), having regard to the welfare checklist set out in s 1 (4).
11. The starting point in considering these applications is for the court to undertake what is known as a *Re B-S* analysis (*Re B-S (Children) (Adoption Order: Leave to Oppose)* [2014] 1 WLR 563) and only consider adoption when having undertaken the analysis of the placement options nothing else will do, following the approach set out by McFarlane LJ (as he then was) in *Re G (Care Proceedings: Welfare Evaluation)* [2014] 1 FLR 670 namely that

'What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh in its own internal positives and negatives and each option is then compared, side by side, against the competing option or options'.
12. In *Re T (A Child) (Early Permanence Placement)* [2017] FLR 330 at [50] Munby P made clear the care judge *'is concerned at most with consideration of adoption in principle, not with evaluating the merits of particular proposed adopters.'*
13. However, as *Re M'P-P Children) (Adoption: Status Quo)* [2015] 2 FCR 451 makes clear, in conducting the balancing exercise the court is required to (in that case between placement with a family member unknown to the child and a foster

carer/prospective adopter with whom the child had a strong and beneficial attachment) weigh in the balance the impact of a change from the status quo, and the value of the relationship with a foster carer in accordance with section 1 (3) (c) CA 1989 regarding the likely effect on the child of any change and the focus in s 1 (4)(f)(i) ACA 2002 upon the value to the child of any particular relationship continuing. In *Re M'P-P* McFarlane LJ stated as follows:

[48] The validity of the status quo argument is certainly well established in the pre-CA 1989 authorities. In D v M (Minor: Custody Appeal) [1982] 3 All ER 897, Ormrod LJ said:

'... it is generally accepted by those who are professionally concerned with children that, particularly in the early years, continuity of care is a most important part of a child's sense of security and that disruption of established bonds is to be avoided whenever it is possible to do so. Where, as in this case, a child of two years of age has been brought up without interruption by the mother (or a mother substitute) it should not be removed from her care unless there are strong countervailing reasons for doing so. This is not only the professional view, it is commonly accepted in all walks of life.'

Factors in any particular case relating to the status quo will fall to be considered in a case to which CA 1989, s 1 applies under s 1(3)(c) where the court must have regard to 'the likely effect on [the child] of any change in his circumstances'. [49] In more recent times the prescient observations of Ormrod LJ, which were made at a time when the early work of John Bowlby and others on 'Attachment Theory' was available, have been borne out by the enhanced understanding of the neurological development of a young child's brain that has become available, particularly, during the past decade. As a result, the importance of a child's attachment to his or her primary care giver is now underpinned by knowledge of the underlying neurobiological processes at work in the developing brain of a baby or toddler.

[50] In the context of 'attachment theory', the wording of ACA 2002, s 1(4)(f), which places emphasis upon the 'value' of a 'relationship' that the child may have with a relevant person, is particularly important. The circumstances that may contribute to what amounts to a child's 'status quo' can include a whole range of factors, many of which will be practically based, but within that range the significance for the child of any particular relationship is likely to be a highly salient factor. The focus within CA 1989, s 1(3)(c) is upon the 'likely effect on' the child of any change. The focus in ACA 2002, s 1(4)(f)(i) is upon 'the value to the child' of any particular relationship continuing.

[51] It is not my purpose in this judgment to express a view upon the relative importance of attachment/status quo arguments as against those relating to a placement in the family. Each case must necessarily turn on its own facts and the weight to be attached to any factor in any case will inevitably be determined by the underlying evidence. In any event, for reasons to which I have already adverted, it is not necessary to do so in this case as, unfortunately, the judge does not appear to have engaged in any real way with the effect on the children of moving them from the care of their primary, and only, attachment figure or with the value to them of maintaining that relationship.'

McFarlane LJ continued, at [53-54]:

[53] In the context of ‘change’, the changes listed by the judge are all practical, environmental or cultural, whereas, from the focus of a two-and-a-half year old child the most important change is likely to be that his ‘mother’ has dropped out of his life. That is so with respect to the changes listed during the checklist analysis and also later during consideration of the positives and negatives of each option (see para [28](a) h above). The welfare checklist requires regard to be had to the effect on the child of such a change and, I am afraid, there is no indication in the judgment that any regard was had to that factor. In like manner, as I have already explained, there is no consideration of the ‘value’ of the relationship with Y during the judge’s analysis under ACA 2002, s 1(4)(f).

[54] Conversely, when the judge came to list the positive features with respect to Y, the fact that the children had established a strong and entirely beneficial primary attachment to her is not mentioned when it should surely have been at the top of the list; the fact that they were attached to her and she was not simply their current foster carer was, on her side of the case, what the case was all about, yet it does not feature as a factor. The judge’s reference to the establishment of ‘a family life together’ which is entitled to ‘proper and full weight’ has the ring of an argument based upon rights rather than, more importantly in the context of the children’s welfare, their emotional reality.’

14. In *Re B (A Child) (Sibling Relationship: Placement for Adoption)* [2018] 2 FLR 1 Munby P confirmed that *Re T* did not require the court to ignore particular attributes of a proposed adoptive placement, which are relevant. As he observed at paragraph [25] ‘...there is nothing in *Re T* to say that the court can ignore a crucial factor which is necessarily concomitant with a particular placement’. In that case the fact that the child’s sibling was already placed with a particular placement option was a factor ‘concomitant’ with that placement, as was the loss of that factor a relevant consideration in considering the alternative placement.
15. The validity of the approach whereby the court can take into account a fact ‘concomitant’ with the likely adoptive placement while respecting the principle in *Re T*, was endorsed by the Court of Appeal in this case *Re RP (A Child) (Foster Carer’s Appeal)* [2019] EWCA Civ 525 where Baker LJ stated at paragraph [59] – [60]:

’59....In Re M’P-P, McFarlane LJ was underlining the statutory obligation on courts to identify relevant relationships and consider the value to a child of those relationships continuing. In many cases, the relationship arising for consideration will be with the birth family. But there is no reason why this requirement should not extend to other relationships identified by the court as relevant, including a relationship with a foster carer. For the reasons identified by McFarlane LJ, where, as here, a child, particularly a child of this age, has formed a strong bond with a foster carer, it is manifestly in the child’s interest for the court to consider the likelihood and value of that relationship continuing. I am quite sure that Sir James Munby P was not intending to suggest otherwise in...Re T...For my part, the court’s statutory obligation when considering an application for a placement order is to identify any relevant relationship and consider the likelihood of that relationship continuing and the value to the child of its doing so may extend to a

relationship between a child and foster carers who have put themselves forward as prospective adopters.

60. I do not accept that the appeal is based on the assertion that it was a fait accompli that the foster carer would be positively assessed for adoption and matched with R. There was certainly no guarantee that LR would be approved as an adopter. It was, however, the local authority's case before the judge that adoption by LR was their preferred and proposed option. There was, therefore, plainly a likelihood that the relationship would continue and it was therefore important for the court to take that factor into account.'

16. Therefore, the cases make clear, as helpfully summarised by Mr Wilson in his closing submissions:

(1) That at the final hearing of care proceedings the court is not considering the merits of a particular adoptive placement. As *Re T* sets out the trial judge is concerned with adoption in principle and should not undertake a direct comparison between an adoptive placement and other placements.

(2) However, *Re B* and *Re RP* make clear that in circumstances where information is known about the likely adoptive placement and there is a factor 'concomitant' with it which is plainly relevant, there is nothing in the above principle which requires the court to ignore that factor.

(3) One such factor may be that the proposed adoptive placement would enable a relationship of value to continue, which in accordance with s 1 (4) (f) ACA 2002 the court needs to take into account. This includes taking into account the relationship between the child and a foster carer/adopter, as is the likelihood that the status quo in terms of placement and attachment figure would continue.

(4) It follows that in such circumstances factors in the welfare determination must include the benefit to the child of the status quo in terms of placement and continuity of primary attachment figure, and the detriment to the child of being removed from that person's care.

(5) Ultimately the court must undertake the necessary balancing exercise, attaching such weight as is considered appropriate to those relevant factors, while resisting being drawn into a comparison between the two placements.

Relevant Background

17. The mother is Polish and the father Romanian. The mother came here to work from Poland and W, K and O joined her here at different times, and they have at times been joined here by the maternal grandmother. The children returned to Poland for holidays. The fathers of W, K and O are Polish and remained living in Poland. K and O have the same father who is reported to have played some part in their lives when the children were in Poland.

18. The family became known to the local authority in 2016. At that time the mother was pregnant with RP and in a relationship with the father. The concerns centred on the mother's allegations of domestic abuse from the father and allegations made by W

about the mother's care and concerns W had been exposed to sexual behaviour. During the period up until September 2017 the local authority investigated the allegations and assessed the parent's ability to care for the children. Due to increasing concerns about W's absconding behaviour and the mother's inadequate parenting proceedings were issued in September 2017. W was made the subject of an interim care order and the three younger children remained in the mother's care under interim supervision orders.

19. In October 2017 W was made the subject of a secure accommodation order and concerns increased for the younger children as K and O had been removed from school and the parents and maternal grandmother refused to disclose where the children were. Despite HHJ Rowe Q.C. making interim care orders followed by High Court orders for the recovery of the children K and O were abducted to Poland on 13 November, and shortly afterwards RP was found in an address connected with the parents which they had refused to disclose. RP was placed with LR, where she remains to date.
20. Following the 7-day fact finding hearing in June HHJ Rowe Q.C. gave a full and comprehensive judgment on 2 August. She made detailed findings, concluding the threshold criteria were established on the following findings:
 - (1) that RP's father had accessed pornography websites showing pictures of teenage girls;
 - (2) that in 2016, when sharing a bed with the mother and W, RP's father had touched W's private parts;
 - (3) that the boundaries within the household were wholly inappropriate and that, as a result, W was exposed to a sexualised regime of care which caused or contributed to her vulnerability to child sexual exploitation;
 - (4) that without significant insight and change, the mother would be unable to protect her children from such exposure in future;
 - (5) that the mother had consistently failed to cooperate with the local authority and deliberately tried to subvert the relationship between W and the staff at her residential home;
 - (6) that the children had been exposed to domestic abuse between the mother and RP's father, and that there had been a toxic relationship between the adults about which they had sought to minimise the evidence;
 - (7) that in October 2017, the mother had removed K and O from the school roll for two weeks, saying she did not want them talking at school about what was going on at home;
 - (8) that over a period from June 2017 to January 2018, W had been beyond parental control;
 - (9) that W's emotional neglect had caused her to harm herself by cutting on a number of occasions;

(10) that in November 2017, the mother, RP's father and the maternal grandmother had colluded to hide the three children from professionals and to arrange the abduction of K and O to Poland.

21. At that time the local authority plans were for care orders for all four children, W to remain at the specialist unit she was at, K and O to be placed together and RP to be placed for adoption under a placement order. The mother sought the care of all 4 children, if that was not permitted, she supported their placement in Poland, either with her mother or in foster care. The mother's position was supported by the father. Having weighed and evaluated the various placement options for the children HHJ Rowe Q.C. considered she did not have sufficient information to reach a final conclusion and adjourned the matter so further information could be obtained about placement options in Poland, and for there to be an assessment of K's needs.
22. By the next hearing, on 20 September, there was further information from the Polish authorities. The local authority plan was unchanged, save that in a statement filed the day before the September hearing the local authority reported that LR wished to put herself forward to care for RP long term. The parents continued to seek the children's placement in Poland and the Children's Guardian position changed, her revised recommendation was to support the placement of the younger three children in Poland and W to remain here. This change was the subject of some critical comment in the Court of Appeal hearing as it appeared with little notice or appropriate analysis of the options. HHJ Rowe Q.C. indicated her conclusions that W should remain in England, at least until the conclusion of her current therapeutic support, and the three younger children, K, O and RP should return to live in Poland in foster care. The reserved judgment was given on 18 October 2018. HHJ Rowe Q.C. made final care orders for the younger 3 children, the local authority having changed their care plan to accord with the conclusions reached by HHJ Rowe Q.C. When W learned of the plan for the younger children to go to Poland, she became unsettled and distressed, as a result HHJ Rowe Q.C. did not make a final order in relation to W until a further hearing on 5 November, when she made a care order with a plan for W to go to Poland.
23. On 5 November LR's solicitors invited the local authority to ask the court for permission to disclose the judgments to LR. When the local authority refused, they applied to the judge who, on 21 November, ordered disclosure of the relevant information. On 4 December HHJ Rowe Q.C. refused an application on behalf of LR for permission to appeal the order relating to RP but granted a stay for 7 days to enable an application to be made to the Court of Appeal. An appeal notice was filed on 6 December. Moylan LJ extended the stay and listed the matter on 30 and 31 January.
24. The older 3 children, W, K and O went to Poland on 10 December, where they remain all placed with foster carers in the same place.
25. Following LR's appeal being allowed on 31 January 2019 the matter was listed before me on 8 February 2019. Directions were made leading to the listing of this hearing.
26. Five substantive issues have arisen during the directions hearings that have taken place since then. Firstly, the application by LR pursuant to r16.25 Family Procedure Rules 2010 (FPR 2010) for the Children's Guardian to be discharged. Following detailed submissions on 1 March 2019 I granted that application and a new Children's

Guardian was allocated. Secondly, the FPR 2010 Part 25 application on behalf of the mother for a further parenting assessment of her. Having heard submissions on 25 March 2019 I refused that application. Thirdly, the parents issued an application seeking an order to prevent RP accompanying LR on a holiday in Thailand in April 2019. It was not necessary to determine that application as the local authority informed the court on 29 March 2019 that it did not support RP going on that holiday and had made arrangements for respite care. Fourthly, the local authority issued an application to discharge the direction for disclosure of the Prospective Adopters Report on LR to the parties in these proceedings. After receiving written and oral submissions on 1 May 2019 I granted that application. Fifthly, LR made an oral application to become a party at the hearing on 1 May 2019 which, after hearing submissions, I granted. A previous direction had been made permitting LR to be represented at hearings and for the local authority final evidence and care plan to be served on her.

27. LR was approved by the local authority as a prospective adopter on 14 May 2019. A planning meeting is scheduled next week to discuss matching between LR and RP and the expectation is LR and RP's position will be considered by a matching panel before the end of June. The allocated social worker confirmed in his evidence this plan has been agreed at Director level and has the support of the Independent Reviewing Officer.
28. On 12 and 15 April 2019 the mother failed to attend pre-arranged appointments with the social worker to discuss the findings made by HHJ Rowe Q.C.
29. All four children lived in the same home up until November 2017, although W's behaviour had deteriorated before that and she had spent some periods in secure accommodation. RP was placed with LR in November 2017 and from then until June 2018 RP had no contact with W, K and O (save for contact with W on RP's birthday in March and possibly other occasions as well). On K and O's return to the jurisdiction sibling contact was re-commenced weekly for about a month, rising to 6 or 7 times in the following two months and then reducing to monthly or bi-monthly until W, K and O went to Poland in December. Since then it has been limited to skype contact, during the parents contact with RP, initially via the mother's telephone and more recently via a dedicated laptop at the contact centre, due to concerns that the mother had posted videos of RP on the internet.
30. RP's twice weekly contact with her parents has at times been sporadic in frequency, for example there was a gap in the father's contact with RP between October 2018 and January 2019. The mother attended contact more regularly during this time. Since January 2019 the parents have attended contact twice a week, although there remain difficulties with the parents' timekeeping and consistency, with the result that contacts have had to be cancelled. The contact that has taken place has been good and the one observed by the Children's Guardian recently was described in her report as being '*excellent*'.
31. The mother has had some contact with W, K and O in Poland. According to the most recent information there have been at least 4 occasions of contact between January and May 2019 when she has been able to take the children out from the foster carer into the community for a couple of hours. The mother said in evidence that she

thought there were more occasions than recorded when contact had taken place. Nothing in the papers from Poland indicate there are any concerns about that contact.

The Evidence

32. In addition to the detailed material in the court bundle the court heard oral evidence from the allocated social worker, both parents and the Children's Guardian.
33. The social worker has been allocated to this case since October 2017. In his detailed final statement, he set out why he considered RP's welfare needs will be met by the court making care and placement orders. At paragraph 7 of his statement he set out his analysis of the realistic options for future placement for RP.
34. In his oral evidence he agreed the quality of contact between the mother and RP was good. He was clear the contact arrangements were well established and clear, whilst he accepted sometimes the contact times changed the parents were informed of the position at the previous contact. He said the main difficulty had been the parents' lateness in attending contact. He agreed the siblings in Poland joining the contact by Skype was not ideal for RP, but that W and O in particular tried to engage with RP. He also accepted that both W and O want RP to come to Poland.
35. When pressed by Ms O'Malley, on behalf of the mother, about his analysis of the placement options he said whilst he recognised RP's Polish background and culture, he considered her *'primary need is legal permanency and living with a family she can call her own'*. His concern about placement in Poland is that it did not give RP *'legal permanency'* which he considered her welfare needs demanded. He rejected any suggestion he was comparing how each jurisdiction dealt with these cases. He said he factored into the balance in reaching his conclusion the need to preserve RP's Polish identity and the need for contact with the birth family, including her siblings. He considered that need could be achieved in other ways, such as indirect contact and welcomed the additional information in the report of the Children's Guardian from LR about the steps she would be prepared to take to promote the relationship between RP and her siblings and RP's Polish identity. He confirmed what the Children's Guardian reported confirms what he has discussed with LR.
36. He was asked why the contact book was stopped. He explained it was due to comments that had been put in the book by the father criticising the care LR was giving RP, which was not the purpose of the book. Following that information was shared verbally.
37. He was asked about the comments that are reported to have been made by LR at the time of the hearing in September indicating a lack of tolerance to Polish nationals. He said this would be an issue that would be considered in the matching process but was not the experience he had of LR and her attitude to RP's background and identity.
38. He was pressed as to why he rejected a special guardianship order when it had the benefits of preserving RP's links with her biological family. His concern was based on the background of the case, in particular the abduction, and the consequent risks that would undermine the stability of the placement. He has concerns about the lack of honesty from the parents, and referred to the different accounts the mother had given in her statement filed in these proceeding which were not supported by the

information from the Polish authorities (for example, regarding the mother's assertion that she was working for a company in Poland that it turned out had not operated for 10 years). Whilst he agreed the mother had not sought to undermine the placements of the older children in Poland he still considered, bearing in mind his knowledge of the mother and the background, the risk of undermining the placement of RP pursuant to a special guardianship order remained.

39. As regards the risks and benefits of RP going to Poland he set those out in his statement. He agreed with Ms Porter the importance of sibling contact for RP, not just in the short but also the long term. She pressed him on his analysis of the long term placement option in Poland and he agreed that further factors in favour are that RP would not be placed with the birth family and RP would be in a stable setting, although he said he understood that such a placement did not have the certainty of adoption.
40. The social worker agreed with Mr Wilson that LR willingly hosted contact between the siblings at her home when K and O first returned from Poland in June 2018 and that LR is open to arrangements for future sibling contact. He considers LR will promote RP's identity.
41. The mother was directed to file a statement in early May, although the time was extended on two occasions it did not materialise. She filed a statement on 28 March in support of her application for a further parenting assessment.
42. In her oral evidence the mother confirmed she was not putting herself forward as RP's carer as her personal circumstances did not permit it. She confirmed she plans to live in Poland, it is where she says she has been since January, that is what she describes as her '*permanent address*'. She has had to return to England for contact and court hearings. When she does, she sofa surfs between 3 friends, who each have children and two are single mothers. She refused to give any details about these addresses, saying the people she stays with want to protect their privacy. She denied she was in a continuing relationship with the father or that she lived with him. She said they only met at court or when they went to contact, and occasionally at other times.
43. She explained her difficulties in attending contact with RP has been due to difficulties with her phone and being between here and Poland. When asked to describe RP her face lit up and she gave a description of RP, saying what activities she enjoys, that she tries to get her to count or say colours in Polish to help her understand Polish words as well. The mother confirmed she co-operated with the authorities in Poland and explained the process that needs to take place for her to take any of the children out of the foster home there.
44. In confirming her wish for RP to be placed in Poland she said she did not agree to any order that did not achieve that, she would appeal and take any legal steps to help secure RP to come to Poland. In her view she didn't think RP's placement with '*LR can match Polish cultural needs and traditions*'. When asked whether she accepted LR would take steps to promote RP's cultural needs she responded '*I am not judging her – she took someone's child so not respecting cultural needs*'. In her view the sibling relationship is important and should be maintained, as she observed '*All adoption cases end up the same way – looking for biological family*'. The mother

considered that RP had better care when she cared for her, than with LR and that she did have concerns about RP's hygiene.

45. When pressed by Mr Wilkinson, on behalf of the local authority, why she didn't file a final statement she said she was in Poland and gave details of the difficulties the other children were experiencing. According to the mother O is in hospital with a high fever, W had been in hospital and a court hearing in relation to an application for a secure accommodation order for W was listed in Poland on 6 June. The mother said this was because W had had difficulty adapting to Poland and had difficulties in making friends. She accepted what was set out in paragraph 13 of her most recent statement about having full time employment was untruthful, as was the contract of employment that was attached to her statement. In answer to questions from Mr Pugh she accepted her wish was to have the care of the children in the future, when asked when she would be in a position to do that she wasn't sure but said even if there is a wait RP would have the benefit of being in Poland having contact with her mother and her siblings.
46. In addition to his two written statements the father gave oral evidence. He confirmed if RP went to Poland he would not move there and would not have contact with RP. He feels strongly RP should have contact with her siblings. His plans are to move permanently to Italy to look after his mother and says his prospects are better there regarding a job and accommodation. He agreed he wrote in the contact book what he considered were his concerns about LR's care of RP, which he described as *'broken nails, hair dirty and she was eating crisps'*.
47. Like the mother he refused to give any details about where he was staying, including that he didn't know the name of the road or the station where he said his friend would be picking him up from later that day. Regarding his work he said he has difficulty in holding down a job because of the court hearings and contact, but was extremely vague about any other details. He accepted he had not attended contact with RP between 5 October and 4 January, he couldn't give any reason for that other than he didn't want to disturb the contact RP was having with K and O and he was in financial difficulties. Like the mother he does not accept the findings made by HHJ Rowe Q.C. about his involvement in the abduction of K and O.
48. He feels it would be best for RP if she was placed near her siblings in Poland, as it would mean she would not be totally cut off from them. He was not able to consider LR was an important person in RP's life, as he said the mother will fight for her and the mother will *'settle down in Poland'*. He confirmed to Mr Pugh, on behalf of the Children's Guardian, that in his view the most important thing was for RP to be near her siblings. He agreed he told the Children's Guardian that he was going to Poland but that had now changed, and his plans are to go to Italy. He hoped the mother would have all the children back in her care.
49. In oral evidence the Children's Guardian confirmed that the recommendation and analysis in her report hadn't changed. She agreed the observations she made of the mother's contact were excellent. She accepted there was a bond between RP and her mother, although in her view that is different to the attachment that she considers exists between LR and RP. She agreed the mother helped RP speak Polish during the contact. When taken to the records of the report of the remarks made by LR in September last year, she agreed they should be explored with LR but in her meetings

and observations with LR she picked up no such views. On the contrary she found LR willing to explore ways for RP's Polish identity and contact with her siblings to be maintained in some way.

50. The Children's Guardian was clear that the balancing exercise she has undertaken was to consider whether adoption in principle would meet RP's lifelong welfare needs, as she has for placement in Poland and RP being placed under a special guardianship order (SGO). She remained clear having undertaken the necessary balance between the competing placement options for RP that the prospect of permanency that comes with adoption best meets her lifelong needs. Within that she includes the need for RP to continue to know and learn about her Polish identity and maintain her knowledge of and relationship with her siblings and birth family. She recognises that RP has a bond with her mother, but in her view attachment is different, as it relates to who is RP's primary carer.
51. The Children's Guardian agreed the parents had not sought to undermine RP's placement. She carefully considered placement under a SGO, recognising as it does, maintaining the legal relationship with the birth family. However, she considered such an order would not give the permanency that comes with adoption. In her view the parents have remained clear, they would not give up on RP and her concern centres on a SGO not giving sufficient security that comes with an adoptive placement. She recognises RP's cultural needs but considers they can be met in other ways. She agreed LR was open to promoting contact, and there are creative ways this could be achieved.
52. The Children's Guardian was pressed by Ms O'Malley that if RP has such a secure attachment with LR this fact can bode well for a move to another placement. However in her view a move for RP is likely to be very traumatic and devastating for RP. She agreed there was ongoing review about any placement in Poland. She accepted from Ms Porter that the significant negative consideration to the placement in Poland was the lack of permanency, although she acknowledged such a placement has oversight in Poland and that such a placement would have the positive considerations of maintaining cultural and familial links for RP whilst she is in a regulated placement. However, she maintained her view that even with all those positives it doesn't outweigh what she considers RP needs, which is permanence. The Children's Guardian described RP's relationship with LR as being very valuable to her, she looks to LR as her primary carer. In her view any move from LR would be '*very traumatic for her...it would be very detrimental to her welfare*'. If that happened in the short-term RP would have '*no understanding what was going on*' and in the long term '*It could potentially be very damaging because of the attachment – to lose that would be psychologically damaging for her*'.

Discussion and Decision

53. The court is extremely grateful to all counsel who have filed detailed and comprehensive written submissions. Mr Wilkinson, supported by Mr Wilson and Mr Pugh, submit that when the court undertakes the relevant balancing exercise in considering the realistic placement options for RP the welfare analysis comes down in favour of an adoptive placement as meeting RP's lifelong welfare needs and as a result her welfare requires the court to dispense with the parents consent under s 52 ACA 2002 and make a placement order.

54. Ms O'Malley and Ms Porter submit when that exercise is undertaken that the evaluative process, if undertaken giving proper consideration to the advantages of placement of RP in Poland results in that placement option best meeting RP's lifelong welfare needs.
55. The additional detailed information about the placement in Poland has been extremely helpful. The most recent information confirms consent to RP's placement in foster care by the District Court at Elblag. The letter dated 8 May 2019 from the Municipal Social Welfare Centre in Elblag states that the relevant Act provides '*for a temporary nature of foster care, i.e. the child should be placed in a foster family for a certain period of time to allow for regulation of the child's legal situation (termination of parental authority of the child's parents) and reporting the child to the adoption process, or until return to the natural family...*'. The letter confirms that in the event RP's parents are deprived of parental authority over the child, the child will be reported to the Adoption Centre in order to find an adoptive family. The letter states '*At the moment, it is difficult for us to comment on [RP's] future, as her situation will depend on the court's decision once she is placed in a foster home*'. The letters identify the name of the proposed foster placement, how it would be monitored and supported and confirm that contact with the mother and RP's siblings could take place once per week. The letter from the Ministry of Justice dated 9 May 2019 confirms that RP could stay in foster care until she is 18 years. As Ms O'Malley observes this process is not dissimilar to what takes place in this jurisdiction in similar circumstances.
56. In the letter dated 16 May at paragraphs 18 – 20 the Polish Embassy suggests that any care order made here could be enforced in Poland but notes at paragraph 20 '*In the event of any further hearings in relation to the deprivation or limitation of parental responsibility, either ex officio (including upon information from a relevant institution) or upon parental application, representation from the parents would be invited*'.
57. Turning now to consider the realistic placement options for RP there are essentially three; (i) care and placement orders; (ii) care order with placement in Poland; (iii) SGO in favour of LR. Taking them in turn.

Care and Placement orders

58. In favour of such an option is that RP would have the stability and be able to form secure emotional attachments, her educational, health and developmental needs would be met, and she would not be exposed to the harm caused as a result of the parents chaotic lifestyle. She would have the stability of a placement throughout her minority and would be placed within a family who have given a lifelong commitment to her.
59. Against such a placement are the loss of her relationship with her birth family, she would be separated from her cultural heritage, which includes the language and ceasing to be a Polish national. She would be living in a separate country from her parents and siblings, would only have indirect contact with her parents and siblings with any decision about direct contact being left at the discretion of the prospective adopters, with the added complexity of the siblings living in another jurisdiction.

Care Order and placement in Poland

60. In favour of such a placement are RP's care, educational and psychological needs would be met in a supported and structured placement, which is the subject of regular reviews. RP would be able to maintain contact with her parents and siblings and her cultural heritage needs will be met as she would be growing up in her mother and siblings' country of origin.
61. Against such a placement are that RP would be separated from LR, a significant person in her life, she has not lived in Poland before and may be subject to further moves of placement.

SGO in favour of LR

62. In favour of placement under an SGO is that RP would maintain her relationship with LR with the stability and security that would provide. Her wider educational, health and developmental needs would be met. She would not be exposed to the harm caused by her parents chaotic lifestyle as LR would exercise enhanced parental responsibility that comes with an SGO and RP would maintain her legal ties with her birth family.
63. Against such a placement is that RP would be separated from her cultural heritage by being raised in the UK, she will be living in a different country from her parents and siblings and such an order may not provide the permanence and stability of an adoptive placement.
64. Whilst I agree with HHJ Rowe Q.C. that this is a difficult case it has to be recognised time does not stand still for RP, or for that matter the parents. RP has been the subject of proceedings for 86 weeks, over three quarters of her life. During that time, she has experienced extended periods of time when she has not seen her siblings, due to their abduction for a period of 8 months, or her father between October 2018 and January 2019. She has also been the subject of changing plans and decisions about her future care. Whilst this court has regard to the background, the decision about what order meets RP's lifelong welfare needs has to be made on the evidence before the court now.
65. Having considered each realistic option for RP's future care and carefully weighed in the balance the competing considerations for and against each option I have decided that the court should make care and placement orders. I have reached that conclusion for the following reasons:
 - (1) RP's wishes, if she were old enough to express them, would be to be cared for in a safe and secure environment with emotionally warm carers that are able to develop and promote her changing developmental needs. She would wish to have her sense of identity in relation to her cultural heritage preserved, her mother and siblings are Polish and her father Romanian. This aspect is likely to become increasingly important for her as she grows older.
 - (2) RP is described as a clever and engaging child, and her needs include those relating to her cultural heritage, including her language needs. Whilst recognising the impact on her needs of being brought up in the UK rather than Poland, where she would experience her cultural needs and the Polish language first hand, there are other ways those needs can be met if she remains living in the UK, which would be more than a superficial exposure to such matters. This would be through

the work that would be undertaken with any prospective carers to ensure those needs are met, including maintaining exposure to the Polish language and culture. In this case there are already established links with the authorities in Poland that will enable arrangements for indirect contact to be put in place between RP and her mother and siblings. The revised local authority plan provides a more creative and child focussed way for sibling contact to be maintained in a way that meets RP's needs for security and stability. The revised plan includes suggesting attempts are made to create a 'talking book' as both RP and O, in particular, like books and this would make contact and communication more enjoyable and effective. Also, there could be the exchange of videos and/or photographs. This would be facilitated through the Permanence Team at the local authority.

- (3) RP has a relationship with her parents and siblings that has been maintained through contact. Whilst there have been gaps in the parents contact the evidence demonstrates that despite those gaps RP has a bond with her parents. It is recognised that if the court makes a placement order that regular contact with the parents will be lost and will be limited to two occasions of written contact a year. RP's existing relationship with her siblings is more equivocal due to the extended periods when there has been no contact and the unsatisfactory nature of the skype contact, despite the best efforts of the older children to engage RP. It is recognised that the sibling relationship is one that will remain important for RP both in the short and long term and should be maintained in a way that is consistent with RP's welfare. The established involvement with the Polish authorities and the revised local authority plan provides a way those needs can be met.
- (4) RP's relationship with LR is described as a strong attachment, not only to LR but to her wider family. RP is still very young, she identifies with LR as her primary carer which bearing in mind her age is a very significant relationship in her day to day life and is an important part of her emotional and psychological development. The likelihood is that if the court makes a placement order that relationship will continue, as the Children's Guardian said in oral evidence the likelihood of that was '*extremely high*'.
- (5) The evidence of the social worker and the Children's Guardian, which I accept, is that any move from LR's care would be devastating for RP and likely to cause her considerable emotional and psychological harm. Whilst it is recognised steps could be taken to ameliorate such harm through planning and managing a transition, with ongoing contact, that is going to be more difficult in this case if RP was to move to Poland due to the distances.
- (6) RP's needs are for security, stability and permanence so she can build on the secure attachments she has made to date. Even taking into account the enormous benefits for her cultural heritage, with the ability to maintain her relationship with her mother and her siblings through direct contact the likelihood is that a move to Poland will cause her considerable emotional and psychological harm due to the inevitable severance of her attachment with LR as her primary caregiver and the inevitable loss of that relationship. In her report, which I accept, the Children's Guardian said '*the impact [of a move] would be devastating for [RS] and it is likely she would struggle to attach to another carer in the timescales that are appropriate for her*'. If the court made a placement order it is likely RP's relationship with LR will continue. I take into account the evidence, which I

accept, that supports LR's long standing and continued commitment to contact between RP and her siblings and her parents and the assessment of the social worker and Children's Guardian of her willingness to do that in the future. The concerns raised by the note of the previous Guardian in September will need to be explored with LR, but the balance of the evidence supports her continuing commitment to contact and ensuring RP's cultural needs in the widest sense of both her parents are met. As the Children's Guardian states in her report '*LR is extremely positive about sibling contact and understands the relevance and importance of it. LR was very open with the children visiting her home when they returned from Poland in June 2018...she would not be opposed to future contacts taking place within her home in the future if it was felt appropriate and safe to do so*'.

- (7) I recognise the established principle that judicial and social care provisions in other member states should be treated with mutual respect. The information about the placement details in Poland suggest that there would be a period of inevitable uncertainty for RP whilst consideration was given whether to terminate parental rights and, if so, to consider an adoptive placement. Such uncertainty, even with the benefits of being placed in Poland and being in close proximity and having contact with the siblings and the mother, would be contrary to RP's welfare in circumstances where she will also have had her attachment with LR severed by the move and the detrimental consequences for RP's emotional and psychological health that I have found would flow from that.
- (8) Whilst it is right an SGO would have the benefit of preserving RP's legal relationship with her birth family it would, in my judgment, expose RP to the risks inherent in any future applications. Both parents have maintained their opposition to RP remaining in LR's care, as they said in evidence they would continue to seek RP's placement in Poland and would use any legal means to achieve that. The history of abduction can't be ignored neither can the recent posting of video clips accompanied by messages complaining about orders or decisions made in these proceedings. Whilst I accept they have taken no active steps to undermine RP's placement with LR, the findings made by HHJ Rowe Q.C. related to RP as well. Having heard both parents give oral evidence it is clear their negative feelings about RP's continued placement with LR are not far below the surface. Additionally, as has been demonstrated in the evidence, the mother is not someone who has a history of co-operating with professionals. She has lied on many occasions, most recently in her statement about securing a full-time job with an agreement attached. When faced with different evidence from the Polish authorities she accepted was this was simply untrue and had been concocted by her. Neither parent could provide even the most basic information about where they were staying here, their evidence was vague and evasive. I consider if an SGO was made there is the real risk of repeated applications to the court, which even if managed by the court, would have the effect of undermining the stability of the placement to the detriment of RP's welfare needs.
- (9) The court must weigh in the balance the importance of family ties including the right of the child to preserve its identity in accordance with Article 8.1 of the UN Convention on the Rights of the Child, they should only be severed in very exceptional circumstances and only when nothing else will do. I accept everything

should be done to preserve personal relations and support restoration of family relations but that can't take place in a vacuum, without regard to the lifelong welfare needs of the child. Having regard to the lifelong welfare needs of RP any order other than a care and placement order, endorsing the plan for her to be placed with prospective adopters is contrary to her lifelong welfare needs. I agree with the conclusions of the Children's Guardian.

(10) I fully recognise and weigh in the balance the loss for RP if a placement order is made of her legal relationship with her birth family and her loss of her Polish nationality but I am satisfied her welfare needs require the stability and security that can be provided with the placement order and her other welfare needs regarding her cultural heritage, language and contact with her birth family can be met in other ways.

66. I am satisfied that RP's welfare requires the court to make a care order and dispense with the consent of both parents pursuant to s 52 ACA 2002 and make a placement order.