

**MISS RECORDER HENLEY**

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**Before:**

**MISS RECORDER HENLEY**

**IN THE FAMILY COURT  
SITTING AT NEWCASTLE UPON TYNE  
In the matter of the Children Act 1989**

**Case No. NE18C00253**

**In the matter of**

**C (born in the month of August 2016)  
A (born in the month of January 2013)**

**BETWEEN:**

**LA**

**Applicant**

**-and-**

**(1) M**

**(2) F**

**(3) A and C**

**(Minors, acting through their Children’s Guardian, Alison Clough)**

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## JUDGMENT

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### Representation

Applicant – Miss Hedley

Respondent Mother – Mr Crawley

Respondent Father – Mr Peel

Respondent Children – Mr Flower

### Introduction

1. This is an application for care and placement orders brought by LA.
2. The Court is concerned with A (born in the month of January 2013) now aged 5 years old and C (born in the month of August 2016) now aged 2 years old. Both are currently placed in local authority foster care pursuant to Interim Care Orders.
3. The Mother is M (born in the month of March 1994) aged 24 years, she is present in Court and represented by Mr Crawley.
4. The Father is F, (born in the month of March 1990) aged 28 years old, he is present in Court and represented by Mr Peel.
5. This matter comes before the Court for an adjourned IRH in public law proceedings on the basis that it may be treated as a Final Hearing if the Mother failed to attend this hearing and failed to file final evidence. I dealt with this matter last week for IRH when I adjourned it to today. The Mother has failed to file any evidence in these proceedings and between the CMH in April 2018 and now has failed to

engage in these proceedings. She did however, attend the IRH last week and indicate that she wished to contest these applications. I made very clear to her that she must engage with her solicitor, file final evidence and attend today's hearing if she wished to contest these proceedings and that if she failed to do so I would treat this hearing as a final hearing and could make findings against her and final orders in her absence. The Mother was legally represented at that hearing.

6. The Mother has failed to file final evidence since that time. The Mother has attended this hearing and has indicated that she no longer opposes the making of these orders.
7. These proceedings were issued on 6<sup>th</sup> April 2018. This is the second set of care proceedings in respect of these children. On 11<sup>th</sup> August 2017, by consent I approved the children being placed in the care of the Mother and made 12 month Supervision Orders in respect of each child in favour of this local authority. Sadly within a matter of months that placement proved not to be a viable one for the children and they were placed back in local authority foster care on 5<sup>th</sup> March 2018 originally on a voluntary basis pursuant to s.20 Children Act 1989, and then pursuant to ICOs which I granted on 26<sup>th</sup> April 2018.

### Background

8. The local authority has had involvement with the family since September 2016 as a consequence of domestic violence in the parents' relationship. The Mother remained in this relationship despite suffering emotional and physical abuse. Both children were exposed to domestic violence during the parents' relationship. The children were made the subject of Child Protection Plans on 23<sup>rd</sup> September 2016. A condition of the Child Protection Plans was that the Mother and children were not to have any contact with the Father.

9. In early October 2016, in breach of the Child Protection Plans, the Mother permitted the Father back into the family home for a period of two weeks. The Mother was not honest about this to professionals at the time.
10. On 17<sup>th</sup> October 2016 C (then aged 12 weeks) was found to have sustained bruising to his face.
11. As a consequence of the actions of the Mother's aunt, the Police were contacted and medical care and assessment for C were arranged in respect of his injuries. The children were taken into Police Protection on 17<sup>th</sup> October 2016 for this to be achieved.
12. The police attended the family home on the 18 October 2016 and father was found hiding in the loft. Mother was present in the home and both father and mother were arrested for their aggression, the mother was also arrested for obstructing a police officer. Whilst in custody the Father denied causing C's injuries and it is understood initially blamed A for the injuries to C.
13. Paediatric opinion was that C's bruises were non accidental in nature and required the infliction of a degree of force beyond that which a young child could have caused.
14. The Mother agreed to both children being voluntarily accommodated in local authority foster care pursuant to s.20 Children Act 1989, on 18th October 2016.
15. On the 19th October 2016, the parents admitted that they had not been honest and the Mother stated that she had in fact left the Father alone with C for one hour.
16. In his discussions with the then Children's Guardian Julie Doyle the Father accepted that he had caused C's injuries and accepted that the Mother's disclosures

- of domestic violence perpetrated by him were true. The Mother failed to take appropriate action at the time that C's injuries were inflicted for fear that her ongoing relationship with the Father would be uncovered. The Father has subsequently pleaded guilty in the criminal courts in respect of causing C's injuries.
17. M separated from F during the previous proceedings and that separation had been maintained to the satisfaction of both the LA and CG.
  18. At an IRH on 11<sup>th</sup> May 2017 the court was informed that the LA sought to rehabilitate the children to the care of their mother to which all parties were in agreement. The rehabilitation of the children to the care of M commenced on 12<sup>th</sup> May 2017 and took place successfully.
  19. At the adjourned IRH on 7<sup>th</sup> June 2017 the CG felt the placement with M was untested at that time and sought for there to be a testing out period before the matter was concluded by the court.
  20. The matter then came before me for a Final Hearing on 11<sup>th</sup> August 2017. The local authority's care plans provided for the children to remain in the Mother's care under the auspices of Child Arrangement Orders and a 6 month Supervision Order. Contact with the Father was to take place on a supervised basis only, supervised by appropriate adult supervisors nominated by him. At the time of the conclusion of those proceedings he had failed to nominate anyone as suitable to perform that role and therefore no contact was taking place. The parents agreed the LA's care plans, the Father preferred a 12 month Supervision Order, the Mother did not oppose a 12 month Supervision Order but preferred a 6 month Supervision Order. The Children's Guardian supported the LA's care plans but argued that the Supervision Orders should be for a period of 12 months and that in light of the Mother's social isolation, the LA should refer her to a befriending service and should visit her at least once per week.

21. In so far as the Father's contact was concerned the parties agreed at Court that eight weekly indirect contacts for the Father should be attempted with the support of the LA and reviewed thereafter and that the Father should engage in hair strand testing and work with the LA with a view to attempting to establish supervised contact on a direct basis. I approved this arrangement and after hearing submissions on the duration of any public law orders, I granted Child Arrangement Orders providing for the children to live with the Mother and 12 month Supervision Orders to support that placement.
22. Unfortunately, contrary to what assessments indicated to the Court at that time, these plans quickly fell apart. The Mother failed to engage with the local authority during the Supervision Orders and would not accept support in any meaningful way.
23. The Mother has had a history of entering into domestically abusive relationships, not only with the Father but with other adult males and experienced domestic abuse during her own childhood. She remains very dependent upon her family for support.

#### Positions of the parties

24. The local authority seeks care and placement orders in respect of both children on the basis that they should be placed for adoption together.
25. The Mother does not actively oppose the making of these order but does not consent to them. I commend her for adopting this realistic position.
26. The Father accepts that he cannot care for the children and that there are no suitable placements for them within the family, on that basis he does not oppose the making of these orders, but cannot consent to them.

27. The Children's Guardian fully supports the local authority's applications.

Threshold criteria

28. During the previous set of public law proceedings the Mother conceded that the threshold criteria for the making of public law orders pursuant to s.31 Children Act 1989 was crossed, making the following factual concessions:

- (a) On examination by medical professionals on 17<sup>th</sup> October 2016 C (aged 12 weeks) was found to have sustained bruising to his face. These injuries are non accidental in nature and were inflicted by the Father.
- (b) Father accepts causing the injuries to C.
- (c) Mother minimised the conduct of the Father and placed the children at risk of harm from their father's conduct.
- (d) Mother and Fathers relationship was characterised by domestic violence which was witnessed by A.
- (e) The mother prioritised her relationship with Father over the children and placed them at risk of significant harm by:
  - a. Allowing him to enter and remain in the family home
  - b. Allowing him to be the sole carer for C for approximately one hour.

29. The local authority seeks the following findings in these proceedings in satisfaction of the threshold criteria:

- (1) There were previous proceedings for A and C under case number NE16C00850 whereupon the threshold was met and a supervision Order was made for a twelve months until August 2018 with the children remaining at home living with their mother M.
- (2) This is accepted by the Father.

The Father has now pleaded guilty to the offences against C

The Father pleaded guilty on the basis that there was no intent to cause harm and was sentenced to 26 weeks custody suspended for 12 months. In addition he has to undertake 12 months of supervision which includes 20 days of rehabilitation activity requirement (RAR).

(3) The Mother has assaulted A by punching or slapped her in the stomach causing her physical harm.

(4) The Mother has failed to protect both A and C from domestic violence resulting in both A and C suffering emotional harm and being at risk of physical harm:

a. A was able to describe a time when 'G' pushed her mother up against a wall.

b. On the 30 September 2017 the police received a phone call asking for the Mother's sister to be removed from the property as there was a fight between the Mother and her sister N.

c. On the 16 January 2018 A disclosed that her mother had been hurt by a man called G and that she was frightened of the males she was describing.

d. The Mother has allowed three males who the professional have concerns around to be in the family home and around the children.

(5) The Mother has shown poor insight into the effect of emotional abuse upon the children leading them to be at risk of emotional harm:

a. A had been told not to tell anyone G's name.



- b. A reported to the school that her mother had told her to say that she had been lying about G being at the home.
  - c. On the 5 March 2018 A told school that G was at home in bed with the first respondent and that she had been left frightened downstairs on the settee.
  - d. On the 16 March 2018 there was an assault at the property when G assaulted Louise Quinn at the Mother's home.
  - e. A has reported that she had to be quiet when the health visitor knocked on the front door and sit with her mummy so the health visitor would go away.
  - f. On the 17 November 2017 the school reported that A had emotionally regressed.
  - g. On the 8 January 2018 the Mother turned up drunk and behaved aggressively toward the home owner when the children were present. The police were called and the first respondent was taken home
  - h. In direct work with A she describes her dream as her mother playing with her.
- (6) The Mother has shown an inability to work with professionals
- a. The Mother was not contactable between September 2017 to mid-October 2017 to allow the children to be seen by professionals in the family home.
  - b. The Mother was not open regarding her relationships including denying being in a relationship with CM
  - c. By November 2017 there were seven failed visits by the health visitor to the family home
  - d. A has reported that she as told to sit quietly when the health visitor came to the front door.

- e. There was an incident around the 5 January 2018 when two males were collected by taxi from the Mother's home. The Mother initially denied that the men were in her property.
  - f. The Mother had repeatedly not told professionals about on going relationships and which males were around the children even though she was aware of the concerns that were raised regarding her lifestyle choices.
- (7) The Mother demonstrates an on going lack of stability for the children leading to the children being at risk of emotional and physical harm:
- a. In November 2017 the Mother was forty five minutes late in collecting A from school
  - b. The children have spent a considerable amount of time with other family members rather than in the care of their mother.
- (8) The Father has attended the family home trying to speak to the Mother causing her to become distressed and to call the police. This put the children at risk of suffering both physical and emotional harm:
- a. On the 15 August 2017 the Father called at the home of the Mother
  - b. On the 17 August 2017 the Father had been attempting to add the Mother to his Face Book page.
  - c. 13 September 2017 the Father attended the Mother's home address causing her to call the police.
- (9) The Father pleaded guilty to an offence of Harassment without fear of violence at South Tyneside Magistrates' Court on 12th February 2018 and was sentenced to an 18 month community order that has 15 days of a rehabilitation activity requirement. In addition he was to undertake the Building Better Relationships Programme. The Judge also made a restraining order for four years which

stipulates that he must not contact in any shape or form M save as directed by the Family Court and he must not be within 100 metres of her address or any address where he knows she lives.

30. The parents do not oppose the making of these findings and I am satisfied on the basis of the local authority's unchallenged written evidence and in the absence of any evidence on behalf of the Mother to contradict this evidence or provide any different account, that these findings are made out and I make each and every finding sought on the balance of probabilities.

31. I am satisfied on the basis of these findings that the threshold criteria for the making of final public law orders pursuant to s.31 Children Act is crossed and that each child has suffered and is at risk of suffering significant physical and emotional harm.

#### Legal Framework in respect of welfare decisions

32. I remind myself that each child's welfare is my paramount consideration. That is section 1(1) of the Children Act 1989. In considering what orders to make I have regard to the Welfare Check List found in section 1(3) of the 1989 Act.

33. In relation to the threshold criteria of section 31(2) Children Act 1989 I have regard to whether I am satisfied that the children have suffered or are at risk of suffering significant harm. I am satisfied on the basis of the findings that I have made that each child has suffered significant harm in the form of physical and emotional harm. I am satisfied that both children are at risk of significant physical and emotional harm.

34. Once satisfied that the threshold for the making of an order is established, I must then consider the local authority plans for each child, keeping the child's welfare as the court's paramount consideration. The court must take into account all of the

- relevant circumstances of the case and must remember that any delay in determining the welfare decision is likely to prejudice the child's welfare. I remind myself I should not make an order unless I consider it would be better to do so than not.
35. When considering which orders if any are in the best interests of each child I start very clearly from the position that, wherever possible, children should be brought up by their natural parents and if not by other members of their family. The state should not interfere in family life so as to separate children from their families unless it has been demonstrated to be both necessary and proportionate and that no other less radical form of order would achieve the essential aim of promoting their welfare. In Re B [2013] UKSC 33 the Supreme Court emphasised this, reminding us such orders are "very extreme", and should only be made when "necessary" for the protection of the child's interests, "when nothing else will do". The court "must never lose sight of the fact that (the child's) interests include being brought up by her natural family, ideally her parents, or at least one of them".
36. I have looked again at the words of the then President in Re B-S (Children) [2013] EWCA Civ 1146 as well as the judgments in Re B (supra) and reminded myself of the importance of addressing my mind to all the realistic options for the children, taking into account the assistance and support which the authorities or others would offer.
37. In considering whether to make public law orders I have had close regard to the Article 6 ECHR and Article 8 ECHR rights of each parent and of each child, but I remind myself that where there is tension between the Article 8 rights of the parent or adult family member, on the one hand, and of the child, on the other, the rights of the child prevail; *Yousef v The Netherlands* [2003] 1 FLR 210.
38. When considering whether to make a placement order, it is trite law that I must be satisfied that any orders I make are a lawful, necessary, proportionate and a

reasonable response to each child's predicament. The granting of a placement order represents the most drastic curtailment of the rights of these parents and of the children under Article 8 of the European Convention on Human Rights and Fundamental Freedoms, which can only be justified by pressing concerns for their welfare. However, in construing both the Convention and domestic law, I have the assistance of the decision of the Supreme Court in *Re B (A Child)* [2013] UKSC 33 followed by the decisions of the Court of Appeal in *Re P* [2013] EWCA 963 and *Re G* [2013] EWCA 965. Those cases firmly re emphasise that a placement for adoption is a "very extreme thing" and "a last resort to be approved only when nothing else will do". Both domestic and Convention law do require a high degree of justification before adoption can be endorsed as "necessary", the term in the Convention or "required", the term in the Adoption and Children Act.

39. I must apply the welfare checklist found in section 1(4) of the Adoption and Children Act 2002, and I must be satisfied that the making of a placement order accords with each child's welfare throughout their life.
40. If I conclude that each child's welfare throughout their life demands that such an order is made then the law requires me to dispense with the consent of the parents to the making of a placement order in circumstances in which they oppose the applications.

### Evidence

41. This hearing took place on 16<sup>th</sup> August 2018. During this hearing, I have heard from the legal representatives for each of the parties. I have read the bundle of documents filed for these proceedings. I have not heard any oral evidence and have not been invited to do so.

## Welfare analysis

42. Given these children's ages and the lack of available placements for them within their birth family there are just two possible placement options for them, with the Mother or a placement for adoption.
43. The Mother has failed to engage in these proceedings since April 2018 and her attendance at contact sessions with the children has been poor resulting in a reduction in the contact proposed for her. She has failed to file any evidence and appeared to be resigned to a position in which the children will not be returned to her care.
44. The Mother worked hard during the previous proceedings to demonstrate that she could care for the children safely however, within a very short period of time following the conclusion of those proceedings the Mother has demonstrated that professionals' confidence in her was misplaced and that she has been unable to work openly and honestly with professionals, has failed to engage with support on offer to her and has failed to keep the children safe from further domestic abuse. Very sadly the Mother has been unable to maintain changes to her lifestyle or implement any of the work that she has done to enable her to make safe choices with regards to her relationships.
45. A and C have been in foster care since 5<sup>th</sup> March 2018. This is the second period of foster care that they have experienced in their short lives. Each of them have experienced disruption to their attachments and moves of placement. They have not had consistent and stable care, residing with multiple carers and in very different home environments. Whilst in the Mother's care they were cared for by other members of the family without professionals being aware of those arrangements at the time.

46. A has been exposed to domestic abuse and has witnessed her Mother being assaulted. She has been coerced by her Mother not to inform professionals about the Mother's relationships and to assist the Mother to conceal what was happening in the home. She has suffered significant emotional harm and her emotional needs have been neglected by the Mother. She is likely to require therapeutic intervention to address these issues once she is in a settled placement.
47. C is a happy baby who is settled in his foster care placement. He suffered significant physical and emotional harm whilst in the care of the parents and his attachments have been disrupted. Both children enjoy a close relationship with each other and have never been placed separately. They need a stable, permanent placement that can meet their needs and keep them safe.
48. Adoption provides the greatest sense of legal stability and permanence for a child who cannot be placed within the birth family. It is a placement of last resort because it results in the total severance of a child's ties with their family of origin, save for, usually, limited indirect contact via the post box system. The child is given a new family, and as a result there is a loss of previous identity and usually a loss of all direct contact with the birth family, as is proposed here.
49. Adoption offers each child the greatest opportunity of a secure placement not only during their minority but also for the rest of their lives, if the Court concludes that they cannot be safely cared for in their family of origin. Adoption would allow them to live their lives free from the state intervention that long-term foster care would bring for them and would allow them to be permanently and securely claimed by a family.
50. There is a risk that an adoptive placement can break down which can have a devastating impact upon the child concerned. This risk can be ameliorated by careful and informed matching of a child with its prospective adopters. One of the greatest causes of placement breakdown is the adopter not being fully and properly

informed of the child's potential emotional and behavioural difficulties and background. I am satisfied that adoption is a realistic plan for each of these children and that they are suitable for adoption. In being invited to approve an adoption plan I have had the benefit of being provided with each child's Child Permanence Report and Record of Agency Decision Maker's decision, which satisfies me that these are realistic and achievable care plans for these children.

51. In balancing the placement options in this case, I acknowledge that ideally these children would be placed with the Mother however, the Mother has sadly demonstrated that she is unable to keep these children safe and they have continued to suffer significant harm in her care notwithstanding the second chance she was given in having the children rehabilitated to her care during the last proceedings. I also acknowledge that both parents love the children and that the children love them. I am however satisfied that the Mother has now amply demonstrated an inability and unwillingness to work openly and honestly with professionals and that she is incapable of sustaining necessary changes to allow her to meet the need of the children and keep them safe. I have no confidence that if given any further opportunities she would be able to make required changes to her lifestyle or be able to make safe relationship choices within a timescale commensurate with the needs of these children. The Mother has demonstrated a pattern of engaging in domestically abusive relationships, of lying to professionals about these relationships and of failing to protect the children from domestic abuse. I accept the unchallenged evidence of the local authority and the Children's Guardian and am satisfied that any further delay in the determination of these children's final placements is not in their best interests.

52. I am satisfied that nothing but adoption will do for the children and that given their close sibling relationship, that they should be placed for adoption together and should not be separated. I approve the care plans filed in respect of each child, including the proposals for contact and make Care Orders in respect of each of them.



53. I must now turn to consider the local authority's application for Placement Orders in respect of each child.
54. In considering whether to make a Placement Order I must consider not only what is in each child's best interests during their minority but also what is in their best interests throughout their lives. Having already concluded that nothing but adoption will do for them, a Placement Order is the order which provides the local authority with the legal permission required to put the care plans that I have already approved into effect. I am clear that it is in each child's best interests throughout their lives to be adopted and thereby claimed not only throughout their childhoods but also into adulthood.
55. There is a pressing need for plans to be implemented for each child without delay – they are already 5 years old and 2 years old respectively. They have each been the subjects of two sets of public law proceedings and have spent two periods of time in local authority foster care. I have come to the firm conclusion that the only plan, which meets each child's needs, is one of adoption and that that plan needs to be implemented without delay. Consequently, I have no hesitation in concluding that each child's welfare requires me to dispense with their parents' consent and I make a placement orders in respect of each of them.