

THE FAMILY COURT AT OXFORD

CASE NO: OX18C00113

IN THE MATTER OF s31 CHILDREN ACT 1989

Date: 21<sup>st</sup> March 2019

Before: HHJ Vincent

**Between:**

**OXFORDSHIRE COUNTY COUNCIL**

**Applicant local authority**

**-and-**

**M**

**First Respondent mother**

**-and-**

**F**

**Second Respondent father**

**-and-**

**BABY EMMA**

**(acting through her Guardian, CG)**

**Third Respondent child**

James Turner, instructed by Oxfordshire County Council  
Roma Whelan, instructed by Truemans solicitors for the mother  
Kara Cann, instructed by BH&O Legal solicitors for the father  
Oliver Powell, instructed by Oxford Law Group solicitors for the child

Hearing dates: 20<sup>th</sup> and 21<sup>st</sup> March 2019

**JUDGMENT**

*Editorial note: I have used a made-up name for the baby in this case and for her older sister. In the judgment read and provided to the parties I used first names for everyone, but in this anonymised version, I refer to the parents as M for mother and F for father. I have used made-up initials for the foster carers to protect their anonymity. I have used the initials SW for social worker and CG for children's guardian.*

## **Judgment for M and F**

### **Emma**

Emma is 6 months old.

She is a happy and healthy baby.

F and M love Emma with all their hearts.

F and M have gone to every contact with Emma. They love spending time with Emma. They like making her smile and laugh. They like to buy clothes and toys for her. They have tried their best to take care of her.

F and M want Emma to live at home with them. They want to care for her and to give her everything she needs.

### **F and M**

F and M are kind and caring people.

F and M need help from other people to manage things. These are some of the things they need help with:

- managing their money
- shopping for food, choosing and cooking healthy food
- going to the doctor to keep healthy
- organising appointments
- looking after Emma

F and M have worked hard to learn how to care for Emma. They have listened to the people teaching them. They have tried hard to do the things they have learned.

F and M enjoyed learning to shop for food and cook with [*name redacted*]. They have already made some big changes. They do not eat takeaways any more. They have been eating healthy food.

F and M know they still need a lot of help to care for Emma. They worry they are not doing things right. They worry about feeding Emma. They worry about how to hold her safely.

When they are looking after Emma they need to have somebody with them who can answer their questions and who can make sure that Emma is safe.

## **Lucy**

Lucy is Emma's older sister. When she was a baby she had a bad injury called a skull fracture. Lucy's injury happened when F and M were looking after her. The Court decided that F and M were not able to keep Lucy safe. That is why Lucy lives with her aunty.

## **SW**

SW is Emma's social worker.

SW is kind and patient. SW has spent a lot of time with F, M and Emma. F and M trust SW. SW has helped F and M learn how to look after Emma.

It was SW's job to do the parenting assessment. The parenting assessment finds out good things about M and F as parents. The parenting assessment also finds out what the worries are about M and F as parents.

These are the good things SW found out about M and F:

- they love each other
- they love Emma and Lucy
- they are a good team
- they are kind to each other and to other people
- they are friendly to social workers and other professionals
- they listen to advice
- they have gone to all the contacts with Emma
- they try hard to take good care of Emma

These are the worries that SW has about M and F:

- They need a lot of help to look after Emma
- they are not confident to look after Emma on their own
- they do not always know what is safe and what is dangerous for Emma
- it will be hard for M and F to learn any more about parenting. They could not do another parenting course, because going to the group with other people is too hard for them
- Their health conditions make it hard to care for Emma.
- As Emma grows she will need to be looked after in a different way than she is as a baby. M and F will find it difficult to keep up with Emma's changing needs.

SW has thought about ways to help M and F so they could care for Emma.

SW thinks that Emma can only be kept healthy and safe if there was someone helping F and M all the time.

They need somebody to remind them what Emma needs. They need somebody there to make sure that Emma is safe.

## **CG**

CG is Emma's guardian. He was Lucy's guardian in the case about her. CG knows F and M well.

CG sees that F and M love Emma and that she means the world to them.

CG sees that F and M have worked well with SW. He sees that they have done everything they can to try to be the best parents for Emma.

When F and M were looking after Lucy the Court found they were not able to keep Lucy safe.

CG says F and M would have the same difficulties with Emma. He thinks that F and M could not keep Emma safe.

CG knows that it is not F and M's fault that they cannot look after Lucy or Emma.

## **A and B**

A and B are Emma's foster carers.

They love Emma and they are doing a great job of caring for her.

F and M have said that if they cannot look after Emma, they would like her to stay with A and B.

If Emma stays with them, A and B said they would let F and M visit Emma once a year. They will also arrange for Emma to see Lucy.

## **My decision**

I read all the papers in the file.

M wrote me a letter. She told me how much she loves Emma and how much she and F want to care for her. I would like to thank M for the letter. M told me her feelings really well.

I listened carefully to the lawyers.

I know that F and M love Emma and Lucy.

It is not their fault that they are not able to care for Emma by themselves.

I have to think about what Emma needs.

If Emma went to live with F and M I think that F and M would not be able to look after her. I do not think they could keep Emma safe. I am worried that the same thing that happened to Lucy might happen to Emma. I am worried that Emma might have an accident and get hurt.

F and M would need somebody with them all the time to help them care for Emma and to keep her safe.

I do not think that this is a good plan. These are my reasons:

- The local authority cannot find a person to go and live with F and M for all Emma's childhood.
- If different people were taking turns to help look after Emma, she might be confused about who was supposed to be looking after her.
- The helper would tell F and M all the things to do to look after Emma. But it might feel like the helper was the mum and dad, not F and M.

Emma needs to be looked after by carers who can keep her safe and can give her all the things she needs.

I do not think F and M can look after Emma.

There is no one else in F and M's families who can look after Emma.

I have decided that Emma should stay with her foster carers. I think the local authority should be allowed to make plans for Emma to be adopted. This way I know that she will be loved, kept safe and well looked after for the rest of her life.

I know this will make F and M sad. I am sorry to make them sad but I have to do what I think is best for Emma.

I am pleased that A and B will arrange for Emma to see F and M once a year. I am pleased that they will arrange for Emma to see Lucy.

F and M showed me photos of Emma's christening. I saw a photo of Lucy and Emma together. They looked beautiful. I saw another photo of the girls with F and M. I am glad that F, M, Lucy and Emma have this memory of a happy day to treasure forever. I know they have lots of other happy memories of their times with Emma.

It made me happy to know that SW was at the christening and that A and B were there too.

Even though Emma is not living with F and M, Emma will always know that F and M love her very much and want her to have a happy life.

Joanna Vincent

HHJ Vincent  
Family Court, Oxford

20<sup>th</sup> March 2019

## Judgment

1. I am grateful to all the professionals for the sensitivity and kindness they have shown in this case.

## The Law

2. I must first consider whether the threshold for making any orders as set out at section 31 of the Children Act 1989 is crossed.
3. If the local authority establishes that threshold is crossed, the Court then goes on to consider what orders should be made, having regard to all the circumstances of the case and with particular reference to the factors set out at section 1(3) of the Children Act 1989.
4. Whenever a court is coming to a decision relating to the adoption of a child, the Court must also have regard to section 1 of the Adoption and Children Act 2002, in particular the factors set out at the checklist at section 1(4) of that Act.
5. With respect to the application for a placement order, section 21 of the Adoption and Children Act 2002 states that the Court can only make a placement order against parental consent where it is satisfied that consent should be dispensed with.
6. In reaching my decision Emma's welfare is paramount and her welfare has been at the forefront of my mind throughout this hearing. The court should not make any orders unless it is satisfied that it is both necessary and proportionate to secure Emma's welfare – the Court must take the least interventionist approach.
7. I have regard in particular to the case of Re B [2013] UKSC 33 in which the justices of the Supreme Court considered the approach the Court should take where the local authority's application is for adoption. Lord Neuberger said at paragraph 104 of his judgment:

*'... adoption of a child against her parents' wishes should only be contemplated as a last resort – when all else fails. Although the child's interests in an adoption case are 'paramount' (in the UK legislation and under article 21 of UNCRC) a court must never lose sight of the fact that those interests include being brought up by her natural family, ideally her natural parents, or at least one of them.'*

8. Baroness Hale said at paragraph 198 of Re B:

*'Intervention in the family must be proportionate, but the aim should be to reunite the family where the circumstances enable that, and the effort should be devoted towards that end. Cutting off all contact and ending the relationship between the child and their family is only justified by the overriding necessity of the interests of the child.'*

9. Miss Cann has reminded me of the well-known words of Hedley J in Re L (Care: Threshold Criteria) [2007] 1 FLR 2050, para 50:



*'Society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent ... it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done.'*

10. When considering cases in which parents have learning disabilities, Miss Cann has helpfully referred me to the judgment of Sir James Munby, President, in Re D (Adoption) (No 3) [2017] 1 FLR 237:

*'(2) People with a learning disability are individuals first and foremost and each has a right to be treated as an equal citizen. Government policy emphasises the importance of people with a learning disability being supported to be fully engaged playing a role in civic society and their ability to exercise their rights and responsibilities needs to be strengthened. They are valued citizens ...*

...  
*(3) It is important that a court approaches these cases with a recognition of the possible barriers to the provision of appropriate support to parents including negative or stereotypical attitudes about parents with learning difficulties possibly on the part of staff in some Trusts or services...*

...  
*(4) This court fully accepts that parents with learning difficulties can often be "good enough" parents when provided with the ongoing emotional and practical support they need. The concept of "parenting with support" must underpin the way in which the courts and professionals approach wherever possible parents with learning difficulties. The extended family can be a valuable source of support to parents and their children and the courts must anxiously scrutinize the possibilities of assistance from the extended family. Moreover the court must also view multi-agency working as critical if parents are to be supported effectively. Courts should carefully examine the approach of Trusts to ensure this is being done in appropriate cases. In particular judges must make absolutely certain that parents with learning difficulties are not at risk of having their parental responsibilities terminated on the basis of evidence that would not hold up against normal parents. Their competences must not be judged against stricter criteria or harsher standards than other parents....*

...  
*(7) Children of parents with learning difficulties often do not enter the child protection system as the result of abuse by their parents. More regularly the prevailing concerns centre on a perceived risk of neglect, both as the result of the parents' intellectual impairments, and the impact of the social and economic deprivation commonly faced by adults with learning difficulties. It is in this context that a shift must be made from the old assumption that adults with learning difficulties could not parent to a process of questioning why appropriate levels of support are not provided to them so that they can parent successfully and why their children should often be taken into care. At its simplest, this means a court carefully inquiring as to what support is needed to enable parents to show whether or not they can become good enough parents rather than automatically assuming that they are destined to fail. The concept*

*of “parenting with support” must move from the margins to the mainstream in court determinations ...”*

11. Lord Neuberger also made the same point at paragraph 105 in Re B (A Child) [2013] UKSC 33:

*‘The assessment of that ability to discharge their [parenting] responsibilities must, of course, take into account the assistance and support which the authorities would offer....It means that, before making an adoption order in such a case, the court must be satisfied that there is no practical way of the authorities (or others) providing the requisite assistance and support.’*

12. I have these authorities firmly in mind. All parties in this case acknowledge that the local authority has approached this case with sensitivity and understanding of the parents’ learning disabilities. No criticism is made of the parenting plan or assessment and I am satisfied that the parents have been enabled by all concerned to fully participate in these proceedings and that they have been helped to develop their understanding of and some insight into the local authority’s concerns for Emma.

### Threshold

13. Paragraphs 1-5 of the threshold document are agreed. Paragraph 6 is perhaps slightly controversial as it refers to the PAMS assessment which was carried out after protective measures were taken in respect of Emma. However, on a balance of probabilities I am satisfied that the matters identified in paragraph 6 and alleged as facts to form the basis of threshold did exist at the time proceedings were issued. This is not a case where the fact of the parents’ learning disabilities is relied upon of itself as a threshold matter. The threshold document sets out clearly the ways in which the parents’ ability to care for Emma is compromised and why that places her at risk of significant harm. I find that paragraph 6 is proved.

14. The threshold findings are annexed to this judgment and set out in the final order.

### Evidence

15. No challenge was made to the evidence filed. The social work is of a very high quality and SW has provided valuable advice, support and assistance to the parents. She has earned their trust and respect. She has spent a great deal of time with them and put in place a number of measures designed to teach, build confidence and support the parents. SW’s comprehensive assessment took into account the history of the previous proceedings with Lucy, but she has maintained an open mind and has strived to consider all options that might enable the parents to develop their parenting skills and to be supported in their care of Emma.
16. It is to the parents’ credit that they have worked so hard to try and understand the local authority’s concerns, to do all they can to learn, and to become the best parents they can be to Emma. Their love for her and their commitment to her is not in doubt. They have shown a greater degree of insight into the local authority’s concerns than they

showed around the time of the previous proceedings relating to Lucy. They have generously acknowledged the very high standard of consistent and loving care that she has received from her foster carers.

17. I have had regard to the experienced guardian's comprehensive and well-reasoned recommendations, formed after a thorough review and analysis of the evidence in this case. Knowing the parents from the first set of proceedings involving Emma's older sister, he is very well placed to assess the level of progression since then. Sadly, his view is that although there has been some progress in some areas, in many ways the parents are in a very similar situation than they were when they cared for Lucy. In some ways they are less well positioned to care for a baby, as at that time they were in supported accommodation but now they are not.
18. There are still very significant concerns about their ability to anticipate and identify Emma's needs, and particularly to identify risks and how to protect her from harm. There are very significant concerns about their abilities to manage basic tasks such as feeding. There is a worry that caring for Emma will only get harder as she grows and her needs change. Even with effectively round the clock support in place, the parents would struggle to meet all Emma's needs, not just physical, but emotional and educational. There is a risk that any helper or combination of helpers would effectively have to take over much of the parental role, and this would be confusing for F and M but also for Emma.

#### Welfare analysis

19. For the reasons set out in my easy-read judgment for the parents, the overwhelming evidence is that, very sadly, the parents are unable to meet Emma's needs now or throughout her life. There is no question that they love her very much and would wish to care for her if they could. Through no fault of the parents, if Emma were in their care, she would be at continuing risk of significant harm now as a vulnerable baby but also in the future. As her needs became more complex and different, they couldn't keep up with them.
20. The local authority has, in accordance with the guidance in Re D, done all it reasonably can to consider measures of support that could be put in place to support these parents, but sadly, there is no package that could realistically be put in place. The parents would need constant supervision and direction in respect of every aspect of Emma's care and development.
21. Long-term foster care is not an option that would meet Emma's needs. She is a tiny baby and her needs can and should be met by living in a family setting without unnecessary state intervention.
22. I am pleased to know that Emma has already received a very high standard of care from her current foster carers who love her and have devoted themselves to her from the minute she entered their care. If it were possible, they would be committed to caring for her throughout her life. F and M recognise that the foster carers can provide a great

deal to Emma and have said that if they cannot have her in their care, they would like her to remain living with them.

23. It is to the foster carers' credit that they have acknowledged the bond between F and M and Emma, and how important it will be for Emma to maintain family links with her birth parents, and with Lucy.
24. I have had regard to all the factors on the welfare checklists and to Emma's and her parents' right to a family life. The Court should not make any order unless to do so is required to meet Emma's welfare needs and any order made should be proportionate, and not extend beyond what is necessary to meet those needs. I have considered all realistic options for Emma.
25. I am satisfied that in all the circumstances the only order that can be made to meet Emma's welfare needs is one that separates her from her family and looks to place her for adoption. Nothing less will do to secure her welfare. I will make a care order to the local authority. I approve the care plan that she remains with her current carers, with a plan that in time they may in time apply to adopt her.
26. I am satisfied that in all the circumstances Emma's welfare requires that a placement order is made, authorising the local authority to place Emma for adoption. I formally dispense with the consent of her parents to the placement order because her welfare requires it.
27. I endorse the proposal that whether in a foster placement or adopted, if she were with her current carers, Emma would see her parents once a year and that she would also have contact with her older sister Lucy twice a year.

Joanna Vincent

21<sup>st</sup> March 2019

HHJ Vincent

Family Court, Oxford

## **Threshold findings**

The threshold criteria pursuant to Section 31(2) of the Children Act 1989 are satisfied on the basis that, as at the relevant date being 2nd August 2018, Emma was likely to suffer significant harm, such harm be attributable to the care given or likely to be given to her if the order were not made, not being what it would be reasonable to expect a parent to give her.

In making this decision the Court makes the findings of fact set out below:

- a. Emma's older sibling, Lucy, suffered physical harm, emotional harm and neglect in the care of her parents. Lucy was made subject to a Special Guardianship Order on 30th September 2015.
- b. 1st Respondent mother, M, and 2nd Respondent father, F, have been unable to make the necessary changes to their parenting. Both parents lacked insight into the concerns of the Local Authority during the pre-birth assessment.
- c. Both 1st Respondent mother, M, and 2nd Respondent father, F, have learning disabilities and have difficulty understanding the development stages of a child or the daily needs of a child to be kept clean, fed, warm and stimulated
- d. In May 2015 – within proceedings for Lucy - expert psychologist Dr Nick Keene undertook full psychological assessments of M and F. In respect of M, Dr Keene stated: "M is remarkably immature for her years and found it hard to focus on the serious issues under discussion ....On several occasions she has made comments which show an alarming lack of appreciation of Lucy's current level of understanding and behaviour. This suggests that on the basis of the evidence currently available, M has very little understanding of a child's developing cognitive and emotional needs." In respect of F, Dr Keene stated "he is still likely to struggle with more abstract information such as involved in learning about children's emotional and social needs as they grow older"
- e. Expert psychologist Dr Nick Keene undertook capacity assessments of mother and father in October 2018. He concluded whilst both parents have a diagnosis of mild learning disability they were able to instruct solicitors
- f. The joint PAMS assessment of mother and father dated 12th February 2019 concludes: "F's health needs means that he is unable to care physically for Emma on his own.....he is unable to change Emma's nappy although he has the knowledge to do this and can direct M.... M's health is causing her pain and restricts her physical care of Emma.....the parents do not prioritise their own health care needs.....they have mobility issues that affect everything they do....M has little knowledge and understanding of child development and struggles to appreciate that babies do not do things on purpose".