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Case No: OX19C00007

**IN THE FAMILY COURT SITTING AT OXFORD IN THE MATTER OF s31
CHILDREN ACT 1989 AND IN THE MATTER OF W, X, Y AND Z**

Date: 25th January 2020

Before: HHJ Vincent

Between:

OXFORDSHIRE COUNTY COUNCIL

Applicant

and

a mother

First Respondent

and

a father

Second Respondent

and

W, X, Y AND Z

(Through their Children's Guardian)

Third to Sixth Respondents

Mavis Amonoo-Acquah, instructed by Oxfordshire County Council
Lesley Jones, instructed by Reeds solicitors for the First Respondent mother
Edward Kirkwood, instructed by BH&O Solicitors for the Second Respondent father
Lucy Hendry, instructed by Oxford Law Group for the children's guardian

JUDGMENT

Hearing dates: 20th, 21st, 22nd, 23rd, 24th January and 5th February 2020

Introduction

1. The parents have been married for twelve years and have four children. Their three boys, W, X and Y, are nine, seven and five. Their daughter Z is two and a half. She has Down's Syndrome and a number of health issues which make her care needs complicated. Z's file of medical records runs to over 2,500 pages.
2. The father was born in Syria in 1964 but moved to the UK in his early twenties and has been a British citizen since 2002. The mother was born in Russia in 1984, moved with her mother and sister to Syria when she was twelve and stayed there until her marriage in 2007 when she came to live with her husband in the UK.
3. The Local Authority issued proceedings on 21st January 2019 due to rising concerns about the parents' abilities to give Z the care she needed, and to manage the competing needs of their three active boys. The boys had been referred to CAMHS to explore whether they met the diagnosis for autism, although professionals had suggested that developmental delay could be explained in part by neglect of developmental needs for interaction, stimulation and play within the home. There was a further concern that the mother was using physical chastisement inappropriately. Mother accepted this but said in her initial response to threshold that she no longer physically chastises her children and accepts it is wrong. Z had recently been admitted to hospital. She was significantly underweight, behind in her development, her mother had been observed to handle her roughly at times and there were concerns that she was being left in her cot for long periods at a time.
4. The boys have been subject to interim supervision orders since 25th February 2019. Z has been in foster care since the start of proceedings. She is now thriving and making significant progress in all areas of her development. She continues to see her parents twice a week, at one of those sessions she also sees her older brothers.
5. Because of the complexity of Z's situation, the need for documents to be translated, and potential kinship assessments overseas, I allocated the case to the exceptional track. However, while I envisaged that the case may not conclude within the statutory twenty-six weeks, I did not expect them to go on as long as they have. There have been a number of delays in this case. None of them have been caused by the parents and it is not acceptable that for them they have had the stress of Court proceedings hanging over them for so many months.
6. In April the local authority invited the Court to approve the outsourcing of its parenting assessment to an Arabic speaker, MA. His assessment was due in on 12th July 2019. The original final hearing was listed in early September 2019. Unfortunately the parenting assessment had still not been served by 26th August, causing a delay to the local authority's final evidence being completed and so at a case management hearing on that date I vacated the final hearing and relisted it to start on 4th November.
7. On 4th November the independent social worker did not attend Court as he was double booked. In any event the hearing could not be effective because the translation company, Translation Express, instructed to translate the local authority evidence for the parents in good time for them to read it and respond to it, had only provided those documents the

Saturday before the hearing. On inspection by the Court appointed interpreters, it appeared they had been translated using a computer programme, and whole sections of the documents made little sense. I had no option but to adjourn again to afford the parents the chance to understand the case against them and to prepare statements in response.

8. This final hearing was listed the first available week thereafter which unfortunately was not until 20th January. On that day it transpired that the independent social worker had not read any documents connected with the case since preparing his report the previous August. As requested I gave him a day to catch up and re-timetabled. We finished the evidence and submissions in three and a half days. I am grateful to the skilled interpreters who have assisted the parents in understanding the proceedings and in giving their evidence. I thank counsel for sticking to the timetable that we agreed and for their concise submissions. Unfortunately, I then had to delay handing this judgment down because I needed more than the couple of hours left on the Friday to prepare it, was struggling with a winter virus so could not complete it over the weekend, and started another five-day case the following week.
9. For all these setbacks and delays I extend my apologies to the parents.

Positions at final hearing

10. All parties agree to the making of twelve-month supervision orders in respect of the three boys.
11. In respect of Z, the local authority invites the Court to make a care order with a plan for her to remain in long-term foster care. The local authority's plan is supported by the guardian, but is opposed by the children's parents.

The law

12. I must first consider whether the threshold for making any orders as set out at section 31 of the Children Act 1989 is crossed. The parents dispute two allegations in the local authority's threshold document, annexed to this judgment, but in principle they agree that threshold is crossed and therefore that the Court has jurisdiction to make public law orders.
13. Having established 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.
14. Section 1(1) of the Children's Act tells me that in reaching my decision the children's welfare shall be my paramount consideration. Section 1(2) provides that the Court should have regard to the general principle that any delay in determining the question of their upbringing is likely to prejudice their welfare. Section 1(5) of the Act provides that the court should not make any orders unless it considers that doing so would be better for the child than making no order at all. So the Court should only make an order if it is necessary.

15. Further, I have regard to the case of Re B [2013] UKSC 33. Although that case concerned adoption, the need for the state to act in a way which is proportionate in all cases is stressed. A court must never lose sight of the fact that it is usually in a child's interests to be brought up within their natural family. 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.'

Evidence

16. I have read the documents in the trial bundle which include statements from all parties, parenting assessment by MA the independent social worker, social work statements, sibling assessment and care plans, medical reports and contact case notes.

17. I heard oral evidence from MA, from Z's social worker NH, each of the parents, ably assisted by their translators, and from the guardian.

MA

18. MA's report was prepared after spending a significant period of time with the parents and observing three sessions of contact. He highlighted relevant cultural issues and is concerned that the parents should be given every opportunity to improve their parenting. He identified the challenges that parenting three active boys as well as a daughter with very significant disabilities would present to any parent. In his view the local authority has been too ready to criticise the parents, and should have questioned why the parents had not been able to take on board all the lessons they wished them to learn, and developed different strategies to empower the parents and provided them with the support they needed to parent their children at home. In his assessment the parents are willing and able to do parent with that support.

19. It was right that MA should emphasise that the parents should not be treated in a less favourable way because they had a different language and culture, nor for having a disabled child. However, in the circumstances of this case, there is no evidence that the local authority has made assumptions about the parents connected to their culture, or that misunderstandings have arisen as a result. The extensive medical records and case notes show that both parents can converse in English, but translators were regularly used to assist. There is no evidence to suggest that the parents were unable to understand the issues of concern, or had not grasped the steps they needed to take to ensure they could meet their children's needs.

20. The local authority and the guardian consider that MA appeared to accept the parents at face value when they assured him they could provide the children with the care they needed, and that he did not seek to test what they said in light of the evidence from the local authority and health professionals in which concerns had been raised.

21. MA was right to highlight the positives of these parents, but I would agree that in both his written report and oral evidence he did appear to be unwilling to entertain the idea that

there were any grounds for concern. In the circumstances, the impression was that he had lost some objectivity. For example, in cross-examination he was taken to notes of contact sessions where either the parents had struggled to manage the boys' behaviour or had been very limited in their interactions with Z, and been unable to pick up on any of her cues or offer her comfort. He said repeatedly that the concerns identified had no doubt been taken out of context, or were being interpreted in an unduly negative way. He was quick to find an interpretation or explanation that exonerated the parents from any potential criticism, even with regard to situations where the parents themselves have acknowledged that their parenting fell below what could reasonably have been expected.

22. Another record shows a sustained period where the boys are left to their own devices and it gets out of control. They are rough with Z, at one point two of them climb onto a snooker table where she had been sitting playing a gentle game with the balls. The boys are shouting and fighting, throwing the balls, the reporter suggests that neither parent had control over the situation. MA said well the father did not intervene but maybe he was doing something else like preparing food. He was taken to the contact note in which the mother had been feeding Z a banana very fast, continuing to put more in her mouth even though it was full. The contact supervisor had asked her to slow down, the mother replied she likes it fast, the supervisor pointed out again that her mouth was full and she could choke, but the mother continued feeding her. MA said *'the child didn't choke .. there was no adverse effect'*, and suggested that communication issues were at the root of the problem. Another note records the mother being told that Z should not be given food because she had recently had an operation, the mother then giving her a biscuit, Z screaming wildly and the mother then being unable to soothe her. MA again suggested that communication was likely to be the heart of the problem. In response to a contact note which described the room being silent, the parents not interacting with their children at all, he said, *'sometimes silence can be better'*.
23. MA said that his observations of the family together and of feeding of Z had been fine. I do not doubt this, but that does not mean that the evidence of times when it has plainly not been fine can safely be overlooked. MA said that provided the mother was given plain instruction he could not see why she would fail to cope with the instructions – unless, he said, she felt intimidated and overpowered. There are two difficulties with this statement. Firstly, there is a significant body of evidence of the mother having been given plain instruction but not being able to cope. Secondly, there is evidence, from a number of professionals but also from the mother herself, that she does frequently feel intimidated and overpowered by a situation. She was taken to notes of a contact session when Z had been crying and crying, getting increasingly distressed, and her mother had been prompted to interact with her, to try and distract or soothe or comfort her but had sat motionless watching. She said to me, *'the situation was larger than me at the time I wasn't living with her I didn't know what would calm her down. She was crying abnormally.'*
24. I accept MA's point that the parents should be judged in the context of the impact of having a disabled child and the sometimes difficult and long process it took to reach acceptance of that. He said that in his assessment there had been a significant and remarkable shift in the parents' understanding since the time of Z's birth. I accept that the parents were shocked and unprepared at the time she was born, having discovered only a week beforehand of her likely disabilities. Then in the early months of her life Z required very intensive care; she was diagnosed with transient leukaemia of Down's

syndrome for which she received chemotherapy, she had an unsafe swallow and could not ingest liquids by mouth because they would leak to her lungs so she had to take milk and water by naso-gastric tube. She was in and out of hospital and there were an overwhelming number of appointments to manage. All this would be a huge amount for any parent to cope with.

25. I am sure that the parents are absolutely sincere when they say that they have now come to accept that having a child with a disability is a great blessing and opportunity for them. They have undoubtedly made progress. However, Z's social worker told me that the process of reaching acceptance does not have a simple start and ending point and she doubted that it could be said the parents had in some way arrived at a final stage of acceptance and understanding of what will be required of them in order to continue to meet Z's high level of need. In my judgment MA had not fully understood either the level of Z's particular needs, what it was like for her to be in a situation where she was receiving significantly below the level of care she required, and the risk of very serious harm to her if that happened again.
26. Miss Hendry asked about the shortcomings in the parents' care of their daughter, in particular that they had not managed to keep to a basic feeding regime and which led to her hospital admission in November 2018 he replied, *'Well how long was she at home? She was alive. She was fed, she was looked after. If they managed to keep her alive and managed to meet her basic needs, if an issue arose it could be picked up.'* He urged the parents to be given a chance. He was reminded that the mother had been given notes about weaning in both Russian and Arabic but reported she had lost them. He was reminded that despite being asked the mother had repeatedly failed to keep a simple record of Z's feeding. He was reminded that, against advice, the mother had given Z bottles instead of solid food because the father did not know how to feed her and it was more convenient to leave a bottle when she went out and left Z in his care. He was reminded that the mother had admitted to sometimes giving snacks rather than meals to Z because she didn't have time. MA's response was to query why these issues needed to be gone over now, and to suggest that the parents must at that time have been at an early stage in coming to their acceptance and understanding at that time of what it meant to have a disabled child. In his assessment the mother has now understood what is needed and is willing to do everything necessary to ensure that her daughter's needs are met.
27. I am concerned that he has accepted the parents' assessment of Z's current level of need and on that basis, like them, has underestimated the level of skilled and attentive care that she requires on a daily basis. He accepted the mother's word that Z had undergone laryngeal surgery and this had led to an improvement in her condition and on this basis, suggested her needs would be somewhat easier to manage if she returned home. In fact, Z has not yet had this operation. She has had a gastrostomy. The improvements in her current situation are more attributable to the fact that she has been living with a carer who has provided her with attuned, attentive care, stimulation and affection, and has followed to the letter the feeding and medication plans. Having regard to all the evidence about Z, it cannot be right to assert, as MA and the parents do, that she was ill but is now 'better'. Her needs remain complex and she needs a high level of continued supervision and attention.
28. MA had discussed hypothetical situations and received assurances from the parents that they would keep Z safe and look after her well if only she were returned to them.

However, having been taken to a series of contact notes he was unable to explain why it was he thought that they would be able to manage so much better if in their own home, other than to say that contact centres are an artificial space and the parents evidently felt uncomfortable and under pressure there. While he urges the local authority to do more, he could not identify what measures of support the local authority could reasonably put in place in order to ensure that Z could be kept safe from harm if she returned home.

Social work evidence

29. The statements and final care plans have been prepared jointly by AW, the boys' social worker and NH, Z's social worker. No party sought to cross-examine AW as her evidence about the boys is not challenged. I heard oral evidence from NH.
30. Both these social workers have been involved with the family for over a year and have spent a great deal of time with them, attending contact sessions regularly. Their witness evidence is comprehensive, sets out clearly the evidence upon which they rely, and the analysis that has led them to their conclusions. They considered that it would be fairer to the parents for an Arabic speaker familiar with the parents' culture to carry out the parenting assessment and so MA was instructed.
31. NH has come to know the family well and although not a specialist in Downs' syndrome, as is her practice as a member of the disability team, she has informed herself by research and attending medical appointments with the parents of Z's particular needs.
32. She explains the reasons why she has been worried Z's needs have not been met, the exhaustive efforts that have been taken in order to support and assist the parents to improve their parenting, and her concerns that they have not managed to implement changes to anything like the level she thinks would be required in order to enable them to care safely for Z.
33. Her evidence and observations are consistent with AW's and with the overwhelming weight of the evidence, in particular from Z's treating clinicians and the large number of contact records which provide an insight into the family dynamics and the interactions between parents and children, and siblings with one another.
34. NH and AW had prepared a detailed response to MA's report because in particular they were concerned that he had accepted the parents' assertions without testing or challenging their ability to put them into practice, and they were concerned that he had not fully understood the extent of Z's needs. Their views are shared by the guardian. For the reasons given above, I agree with them. While there is much of value in MA's assessment and he has drawn out many positives, having regard to his evidence as a whole, I find his conclusions cannot be relied upon. They are not consistent with the weight of the evidence about the parents' capacity to parent.
35. MA said the social workers' description of the family home as sparse and unwelcoming is unfair. I do agree with him on this point. I have seen photographs and it is spotlessly clean, has comfortable sofas and chairs, a kitchen table for family meals, and the children's beds have bright bed covers and there are some books and toys to hand. I have seen another photograph showing one of the boys on a scooter in the yard outside. There have been times when concerns about home conditions have been raised. On a home visit

in January 2019 only two single beds were available to three boys because one had broken. At another home visit in March there were three single beds in one room as well as Z's cot but none of the beds had sheets on them and there was no mattress in Z's cot. There were no toys seen and the boys had drawn on the walls and the doors. Concern was raised that Z had been placed on the single bed to sleep, because she might roll off and because she would not be protected from her brothers who were known to be quite rough at times. The mother is reported to have said that she thought it was ok because Z was strong and would shout. I accept that there has been a substantial improvement in home conditions since then.

The mother

36. NH said that in her experience the mother had good communication skills, both in understanding English and speaking it. NH said that she had found the mother to be inconsistent. On some occasions she seemed fully understanding and fully accepting of professionals' concerns and would appear to be fully committed to following a plan or making a change as recommended. However, later it would turn out that she had not done so and would give different reasons for this, or else she would continue to query a particular approach, suggesting that in fact she had not accepted it.
37. I formed a similar impression of the mother. I thought that she was being truthful and giving her best recollection of events. However, where she accepted things in general, she did not always accept the particular. She said to me that she accepted that things had been difficult in the past and looking after all her children had been too much for her. By accepting the majority of the threshold document she has indicated the same. However, when she was asked to consider each of the different concerns the local authority had about her parenting skills, she did not agree that they were justified. For example, she was asked to think about whether being very quiet and still in contacts and not interacting with the children meant that they were not getting the stimulation they needed. She said that her quietness was her personality, she could not change it and in any event she did not regard it as a matter of concern that her children did not receive the attention from her that they needed and the local authority was blaming the wrong person. Her responses were similar when asked about the times she had left Z in the cot, or about why she had not been able to keep to Z's feeding regime.
38. She was asked about a time when Z was found in hospital tied with a blanket to the bars of a cot so that she could maintain a sitting up position. She told me very honestly that she accepted now that she shouldn't do this, but if she hadn't been told otherwise, she would still think it was ok, and that she was only doing as the specialist had suggested by helping Z to be in a seated position so as to feed more easily. So there was an acceptance at one level, that advice should be followed, but not at the level of accepting the reasons for it.
39. Although the task of caring for her three boys and a child with Z's level of need would be an enormous one for any parent, she was unable to identify any help or support she thought she might need and said that she thought Z could come home to her straight away.

The father

40. Like his wife, the father was a quiet, respectful person. But like her he was also defensive and also gave the impression that while he was prepared to comply with any rules the local authority or the Court would set for him, he did not necessarily accept the reasons such rules were in place. He was asked why he had not attended any hospital appointments in respect of Z. He said if he was told to go then he would but emphasised that this was not something he had been directed to do before and was dismayed that he was now being criticised for it.
41. He explained that in his culture it was the wife who did everything inside the home including caring for the children and he did everything outside the home. He reflected however that his sister had support from their mother when bringing up her children, whereas his wife did not have any extended family members to help her. He has now made significant changes to his working pattern so that he can help more. Previously he was working very long shifts six days a week, but now he is doing only four hours a day, still six days a week. However, other than saying that he had been on the course and now knew how to deal with the children, and that he sometimes sat with the boys when they had their meals, it was hard to get from him what was different in his parenting now compared to before.
42. He has accepted that at the time proceedings were issued the children had suffered or were at risk of significant harm as a result of the care they were receiving, but when taken through the particulars, he was somewhat resistant to the idea that things could have been done differently. Ultimately he did not have any concerns at all about the care the mother was giving to any of the children either before proceedings were issued or since.

The guardian

43. The guardian has been involved with the children for a year. In a detailed analysis document she sets out the evidence that she has reviewed, supplemented by her independent assessment, and weighs carefully and fairly the relevant factors in coming to her conclusions which she explains clearly, giving reasons in support. In her oral evidence she was clear and authoritative and I have paid close attention to what she says.

Disputed threshold matters

44. Paragraphs 7 and 8 of the threshold document are disputed. Paragraph 7 is concerned with two separate incidents. Firstly it is alleged that Z was tied to the bars of her cot in a sitting position, which is admitted, and secondly, which is not admitted, it is alleged that shortly afterwards her parents placed her in her high chair for her NG feed to be given, then left her unsupervised with her hands tied to the arms of the high chair.

7. *During a hospital stay, Z was observed to be inappropriately tied to a cot in a sitting position and later restrained by her hands whilst her NG tube feed was being administered.*

***MOTHER:** Accepted, except that Z's hands were not tied to a high chair. The Mother held Z's hands to prevent her hitting her NG tube during a feed. The Mother tied Z to a cot whilst attempting to follow medical advice that Z must remain upright, however she is aware of more appropriate methods for supporting Z during feeding. It is not*

accepted that Z was unsupervised, the Mother washed her hands in the same room whilst Z was being fed and was on hand to respond to any immediate need.

45. I have had regard to all the evidence and in particular the contemporaneous nursing note which starts with the description of Z being tied to the cot bars in a sitting position while mother was feeding her, notwithstanding that there was a high chair next to the cot. The note continues:

‘Parents left 20 minutes later and had left Z in the high chair by herself while her NG Feed was running. I went over to Z to play with her and found mum or dad has secured her hands to the high chair straps so he couldn’t move them. I undid the straps to release the hands.’

46. The mother has described using her hands to restrain Z so that she did not interfere with the feeding tube. Both she and the father also described leaving Z alone on the ward, although they said they would always check a nurse was there to look after her. The parents accept that the first part of the account of Z being tied to the cot in a sitting position, is reliable.

47. The nursing notes were prepared on the same day as this incident.

48. In the past there were a number of incidents when the NG tube came out while Z was in her parents care and they did not call for medical assistance as promptly as they could have done. They were aware of the potential difficulties caused by the tube coming out.

49. On a balance of probabilities I am satisfied that the contemporaneous account should be regarded as reliable and I find that paragraph 7 of the threshold document is proved, and that on this occasion Z was left unsupervised while feeding with the NG tube, with her hands restrained so that she would not interfere with the tube.

50. Paragraph 8 is pleaded as follows:

8. Z was left alone and unsupervised/unstimulated in her cot for lengthy periods of time.

MOTHER: Not accepted. The Mother leaves Z when she is sleeping, never when she is awake. Occasionally the Mother would leave Z asleep in the care of her father whilst she attended an English Speaking course.

FATHER: Not accepted. Z was only left unattended when she was asleep

51. There is a significant body of evidence, from witness statements and contemporary notes prepared by visiting social workers and health professionals, to suggest that before Z was removed from her parents’ care, she was left alone and unsupervised and unstimulated in her cot for lengthy periods of time.

52. A summary of the concerns is found in the letter of the safeguarding lead at the hospital, Dr [name redacted] dated 16th January 2019. A week earlier social workers had made an unannounced visit to the family home and found the father there with Z. He had handed her to the social workers and left the room. This was explained by his culture that he could not be in a room with women. The mother said that on that day she had taken the

children to school then gone to the shops to buy food for the boys' lunches, returned home, given Z breakfast, prepared the packed lunches then gone out again to take the lunches to school, have a blood test and visit a friend. In discussion the mother had said that her belief was a child of Z's age and stage of development did not need someone staying with her all of the time and that she had been told that she ought not leave Z for more than three hours.

53. In other records it is noted that the mother was leaving Z so that she could attend her English classes.
54. It is accepted, and again reflected in the contemporaneous notes, that at this time the father was not playing any part in Z's care, not changing her nappies or feeding her, so that when the mother was out, she was only very loosely supervised by him.
55. In her oral evidence the mother was asked about Z's need for stimulation, play and socialisation and she said she wasn't at that stage yet, *'they always insist when she was with me she can't even sit up. So what's the danger is staying in the cot when she can't even sit up. And I told you that was at a stage when she only eats and sleeps and I can leave her for a couple of hours when she's asleep. ... I gave birth to four babies and I know up to six months they will not fall out of the cot they will be just asleep. I wouldn't be worried about them up to that age when they are in the cot. With Z that took longer - that period was extended. She carried on longer on that age where I thought I shouldn't be worried about her in her cot longer than other children. Because she cannot sit up and she cannot jump.'*
56. I do not accept that Z was only left unattended when she was asleep. Having regard to all the evidence I have heard and read I am satisfied that the parents did leave her alone in her cot, when the mother was taking the boys to school but also for more lengthy periods of time, and that during this time they would not have known whether she was asleep or awake as they were not checking on her and her presentation at the time was such that she would not cry or make noises when awake.

Welfare checklist analysis

57. Z is too young to express her **wishes and feelings** but it is clear that some work is needed to support her in her relationship with her parents. There have been some moments where the parents have interacted well with Z but the contact sessions have been very difficult at other times. She is often confused and distressed around her parents and does not know how to seek comfort from them, nor do they instinctively or even with prompting know how to reassure and settle her. They have said they feel she has forgotten them or that they found it hard to comfort her in circumstances where she has been effectively handed to a new carer.
58. At a contact in November 2019 as soon as the parents came in Z started to cry loudly. Her mother was prompted to go to her but sat silently waiting and watching Z. NH wrote, *'I cannot adequately express in words how sad and distressed Z was she also appeared ANGRY.'* She describes the father as totally quiet and the mother as *'sad and frozen .. as though she were at a loss to know what to do.'* Reading on it is clear that this contact was incredibly distressing for all concerned, particularly the mother who watched Z sobbing uncontrollably and repeatedly turning away from her and towards her foster carer for

comfort, but also for Z who then and on other occasions is described as frantically trying to soothe herself and in the end only stopping crying through sheer exhaustion.

59. Providing these difficulties can be overcome it can be assumed that Z would wish to grow up in her own family, known and loved by her brothers and parents, if that were possible.
60. Because the boys are all separately being assessed for autism and other concerns about their development and interactions have been raised, I am cautious as to any conclusions I might form about their feelings in respect of Z based on observations in contact. They often ignore her or else their interactions can seem designed to grab the attention of the adults; they can be rough with her and play recklessly near her. Nonetheless, I think it could safely be assumed that all three boys would wish their sister to grow up with them as a part of their family.
61. Considering the children's **physical, emotional and educational needs**. All three boys are performing below their expected age at school. W is nine and does not find it easy to make friends. He has struggled at school with poor emotional regulation and aggressive behaviour. He can feel frustrated with his younger brothers. W is often very kind and affectionate to Z but can also handle her very roughly. At times he has been frustrated with contact visits and said negative things about Z but also glows with pride when praised for taking good care of her. All this is consistent with his social worker's view that he, like his brothers, craves attention. His social worker has also expressed some concern that he feels some responsibility for Z; he has a sense that her return depends on his good behaviour, and therefore if Z does not return home he may feel it was because he has not been good enough.
62. X aged seven is very inquisitive, and enjoys talking to adults. School was worried that he sometimes presented as sad and of low mood and a CAMHS referral was made but the conclusion was no underlying mental health issue. X has got a good friend in lunch club, is making progress in his learning and enjoys art and crafts. He can struggle with boundaries.
63. Y is five and described as a very excitable and active child. He copes better with boundaries but struggles when they are not there.
64. The boys continue to need a great deal of attention, supervision and consistent, attuned parenting. They need support with their education, making friends, managing school life and developing a sense of self and their own interests. Whatever the cause of their additional needs, they need parents who will advocate for them, enlisting help where necessary, so that they get the help and support they need.
65. Z's needs remain complex. At birth she was diagnosed with transient leukaemia of Down's Syndrome for which she received chemotherapy. No further treatment for this is anticipated but her carers must be alert to signs of its return. She is on medication for hypothyroidism. She has moderate hearing loss in both ears. She has an unsafe swallow and cannot take liquids by mouth so had the nasogastric tube fitted although this has now been replaced with the gastrostomy. She is due to have an operation to fix the laryngeal cleft that is thought to have caused the leaking of liquids to her lungs.

66. Developmentally she needs intensive support. In comparison to a healthy child of her age she is significantly delayed, and is still presenting as behind in all areas of her development in comparison to a child of the same age with Down's syndrome. She would in any event be likely to have support from the local authority and from any school that she attends but on a basic level, she needs her carers to be alert and attentive to her needs, to manage her feeding and drinking, to liaise with medical practitioners and ask for help when needed. When she came into foster care she was largely silent and expressionless and ambivalent as to who picked her up and cared for her. More recently she has been able to express herself and her needs, and has benefited from being read to, sung to, learning hand signs to communicate, playing with sensory toys and joining in play groups with other children.
67. **The likely effect on the children of any change in circumstances.** The effect on the boys, Z and their parents will be profound if Z continues to be separated from them. In her evidence her mother described her sadness at feeling that Z had forgotten her when there was a gap in contact. She said that if Z remained in care, every time she saw her she would always wish she was the one who could take care of her and there would be pain in her heart. The father and the boys and members of the extended family will also feel a deep loss. Both parents have said in evidence that they recognise now the blessing and opportunity for learning and enrichment that caring for a disabled child presents. The mother said to me that their family was complete, she and her husband were together and willing to care for all their children, so there was no need for Z to be taken away.
68. Were Z to return to her parents' care she is likely to struggle in the first instance to separate from her foster carer and to form a secure attachment to her parents. It is arguable that over time she and her parents could be supported with this. She would have the benefit of growing up within her birth family.
69. Having regard to **any additional relevant characteristics** of the children. If Z were to grow up outside her birth family she will lose the opportunity to grow up knowing and understanding her cultural and religious heritage. An alternative carer can try to encourage and support her in this but it is obviously not the same as growing up in a household where Arabic is spoken as a first language, and the family's religious and cultural life is of central importance. Z's parents would wish for her to be brought up in the Sunni Islamic religion, and to learn to read and speak Arabic so that she can read the Quran. While this is understandable, Z's social worker does raise a concern as to the extent that this would be achievable for Z and therefore how realistic Z's parents are about how far her religious education could progress wherever she were to be raised.
70. In respect of the **harm suffered or which the children are at risk of suffering**, I refer to the threshold document annexed to this judgment and which I have found to be proved as pleaded.
71. The boys and Z have suffered harm as a consequence of the parenting they have received.
72. The concerns for Z in her parents' care were long-standing and were present in addition to the underlying concerns presented by her condition; the leukaemia, issues with her unsafe swallow and feeding. At the time protective measures were taken, she had once again lost a significant amount of weight in her parents' care and was suffering because she was not receiving the level of care that one would expect a parent to give.

73. Having regard to **the capacity of the parents to meet their children's needs**. Having considered all the evidence I am satisfied that the parents do have capacity to continue to care for their three boys at home although they will continue to need to be supported in this by the local authority.
74. It is obvious that these parents love their daughter and have not now and have never had any intention to cause her any harm. They are kind, not cruel people. Although they do not always understand or agree with professionals they are respectful of them and they have done their best. They have shown their commitment by attending contacts twice a week for a year, they have attended parenting classes. They have developed a good relationship with Z's foster carer. Within the records of observations of contact, there are times when the parents have engaged sweetly with Z and the mother has taken steps to learn sign language to improve their communication.
75. In the children's early years the mother was solely responsible for all the childcare as is customary in the parents' culture. She did not have help from extended family. The pressure on her increased because the boys present with additional needs, and her personality is such that she has found it difficult to put boundaries around their behaviour. Z's needs are such that they would put an exceptional demand on any parent, let alone a parent who had three young boys to care for as well. It is understandable that she would have felt herself overwhelmed at times.
76. There have been some improvements, the parents have shown willingness to do whatever is required of them and the father has made changes to his working pattern so as to be more available. However, having considered all the evidence I am not persuaded that the situation would be so very different if Z were to return home. I agree with the guardian and Z's social workers that if Z were to return home, not only would she be at risk of significant harm, but her parents are likely to find caring for both Z and her brothers too great a task, and that this would also put the boys at risk harm.
77. In considering the question of the parents' capacity to care for their children I have had careful regard to the opinion of the independent social worker, and in particular I take note that any assessment of the parents must include consideration of the support that could be made available to them to enable them to parent their children.
78. However for the reasons given in this judgment and set out clearly by the children's social workers in their response document and the guardian in her final analysis, I have concluded that MA is too optimistic and his assessment is not consistent with the weight of the evidence.
79. Before proceedings were issued and since, the parents have had the benefit of extensive support from the local authority and health services. In contact sessions they have had two contact supervisors to assist in sessions where all children are there but even with prompting and guidance, and modelling parenting techniques for them, they have found it very difficult to manage the boys' behaviour and tend to Z's needs. There have been many positive interactions noted between the parents and Z in the contact notes – more so with mother than father – but these tend to be in the contacts when the boys are not there.

80. If Z were to be home the parents would need virtually round the clock assistance to ensure that Z was fed at the times she needed to be fed, that she received sufficient food for her needs, that she was fed safely. A carer would need to be with the mother to prompt her to respond to Z's cues, to talk with her, play with her, read and sing to her, take her outside and show her the world, to ensure that she was comforted when she cried, that she followed her physiotherapy exercises so that she became stronger, to help her build her sense of family identity by ensuring safe and secure relationships to her siblings – not just leaving them all to run around the house as they pleased, but to include them in her life and her in theirs – playing games together, going on the school run together, sharing meals as a family. The weight of the evidence is that when the parents have responsibility for the three boys and Z they are still unable to manage.

81. There are numerous examples of this within the contact notes but also from observations of other professionals. The guardian made a comparison of the situation at two different visits, the first in early 2019:

'On each occasion I have generally found [the mother] to be caring in her responses to her children and it is evident that she loves them very much. However, it is also apparent that she finds it challenging to manage the competing needs of W, X and Y on a day-to-day basis. During my first visit to the home ... she was observed to become quite overwhelmed as the boys' excitement and anxiety increased. X and Y in particular are very physical in their play and can become quite hyper-active running around and jumping off furniture. [The father] was present in the home but talking with another male who appeared to be visiting. [The mother] found it increasingly difficult to contain the boys and she offered no clear boundaries. At one point during the visit the mother began quietly crying after Y had hurt her in his attempt to jump off her knee, although it was not immediately obvious what had happened as she said very little.'

82. At a much more recent visit she found the atmosphere calmer, consistent with progress the parents have made, although X and Y continued to play roughly and climb on the furniture. The guardian said that the mother said she felt confident she could now meet Z's needs but the guardian, *'didn't get a sense of what she thinks may be different now.'* The parents say that they understand now that they would need to follow the rules but their expectation is that the local authority would still be there to set those rules, to observe them, prompt them, and tell them what to do. While I am in no doubt that they love Z very much, I am not persuaded that they understand that a very fundamental change would be required in their approach. It is not a question of the state setting them a set of arbitrary rules which they must follow in order to keep their children. Fundamentally there should be an understanding from them of the basic level of care that they need to provide to Z.

83. The maternal grandmother lives in Russia, the paternal grandmother is elderly and in need of substantial help from the father and his sister, whom she lives with for most of the time. In the circumstances the mother and father do not have a network of family support around them to help with childcare.

84. Having regard to **the range of orders**. In my judgment it is not safe to return Z to her parents' care and if she were to return, I agree with the guardian's and local authority social work professionals' assessment that the parents are likely to become overwhelmed

with the competing needs of the boys and Z and this would put in peril the stability and security of all the children.

85. There is no package of support that in my judgment would realistically be able to safeguard the children's welfare because such a package of support would still require the parents to meet Z's basic physical and emotional needs for most of the time. The package of support cannot realistically extend to providing basic parental care.
86. Z's current foster carer is committed to caring for her in the long-term. She has provided Z with consistent, sensitive and attuned care and Z has developed a strong attachment to her, and is making huge strides in her development. If Z cannot remain with her family there are obvious advantages for her if she could remain with this foster carer in the long-term but foster placement does not start with the same intention of permanence as adoption or special guardianship. Z is a very young age to be in foster care which does bring with it the risk of placement breakdown, unplanned and disruptive moves to new carers and a further very significant loss of a carer following on from separation from her family. If Z were to remain in foster care, she would be able to see her parents and brothers on a regular basis. In particular this would help her to understand and experience her cultural and religious heritage which is an essential part of her identity. An argument against foster care is the continuing involvement of the local authority in a child's life, but for Z, because of her disability she is likely to experience professional involvement in her life in any event, lasting into adulthood.
87. The local authority has considered the option of placement for adoption but rejected it. The potential benefits are permanence of placement and the chance for Z of becoming a member of a 'forever family' in place of the family unit she would have lost. It is arguable that her disability should not prevent her from having that opportunity in circumstances where foster care for other children her age would generally be regarded as an unacceptable option. However, Z already has a family who loves her dearly and who she could continue to see if she were to be in foster care. Were she to be placed for adoption she would face separation from both her family and from her foster carer, which on any view would be traumatic for her.

Conclusions

88. Having had regard to all the circumstances and the factors on the welfare checklist and considered each of the realistic options for Z, I have come to the conclusion that her welfare requires that she continues to be separated from her family, and remains in foster care. I hope very much that she may continue to be cared for by her current foster carer who has already had an extraordinarily positive contribution to her life and has built a good relationship with her birth family. I approve the local authority's care plan in respect of Z.
89. I acknowledge that the children's parents have been placed in a very challenging situation because of the particular needs of their children and that a child presenting with Z's level of disability and need for medical intervention would cause any parent to feel overwhelmed at times. The parents have in my judgment done their best and I do not wish to criticise them. However, the children's welfare is my paramount concern. Z's level of need is very high and sadly, I have come to the conclusion that her parents are not

able to meet her needs, despite their best intentions and their genuine love for her and their commitment to her and all their children.

90. I agree that the boys' welfare is best met by the making of supervision orders for a period of one year. Progress has been made and the parents can take credit for what they have achieved in the difficult circumstances of the ongoing care proceedings. However, the parents would benefit from further support around managing boundaries, directing the boys in their activities to a certain extent, engaging them in conversations, paying them attention, praising and encouraging them for good behaviour and supporting them in their education and making friends. The local authority can help them with all this and in ensuring that the relevant assessments of the boys' physical, educational and emotional needs are carried out and that the boys receive relevant support.
91. The mother has been described by the father and by professionals as withdrawn, who struggles to make eye contact, who often feels overwhelmed by the situation around her and in those circumstances shuts down. Although professionals have worked hard to explain to her the reasons that a particular plan needs to be followed in order to meet Z's needs, it has often appeared to be the case that she understands the plan, but has not taken on board the reasons for it, or has remained fixed in her original thinking. There are examples of times where she has not been able to empathise with, or to identify Z's emotions in a particular situation. In these respects she could arguably be described as possessing character traits similar to her sons, who are being assessed for autism. I note that none of the professionals - who have spent a great deal more time with the mother than me - have suggested that she should also be assessed. I also note that there are other times when the mother is engaging and warm with the children, that she has built up a friendly relationship with the foster carer and often interacts well with social workers and contact supervisors. In the circumstances, these thoughts have formed no part of my analysis or fed into my conclusions and I am not recommending any particular assessment is carried out. However, it remains the case that the professionals who have worked with the parents do not feel they have a full understanding of the reasons that they have found themselves unable to implement and sustain the changes recommended to them. For the family to receive the maximum benefit from the local authority under the supervision order I hope the local authority will continue to try to gain as full an understanding as possible of both parents and children.

Joanna Vincent

6th February 2020

HHJ Vincent
Family Court, Oxford

**THE FAMILY COURT SITTING AT OXFORD IN THE MATTER OF s31 CHILDREN
ACT 1989 AND IN THE MATTER OF W, X, Y & Z (MINORS)**

B E T W E E N :-

OXFORDSHIRE COUNTY COUNCIL

Applicant

-and-

A mother

1st Respondent

-and-

A father

2nd Respondent

-and-

W, X, Y & Z

(Acting through Children's Guardian,)

3rd – 6th Respondents

COMPOSITE FINAL THRESHOLD DOCUMENT

The Local Authority asserts that at the time protective measures were taken, namely on 21st January 2019, W, X, Y and Z were suffering and/or likely to suffer significant harm, the likelihood of harm being attributable to the care likely to be given to them, that care not being what it would be reasonable to expect a parent to give to them.

W, X and Y

1. The parents have not adequately or consistently met the boys' developmental needs. All three boys suffer from varying degrees of developmental delay and whilst referrals to CAMHS to test for autistic spectrum conditions have been made in the case of W and X, it is likely that the children's delay is explainable at least in part due to the parents' neglect of their needs for interaction, stimulation and play.

The parents accept that their ability to meet the boys' developmental needs has been compromised and say this is as a result of needing to focus on Z's significant additional needs.

2. The parents have not always been able to identify the causation of bruising and marks to the children and this is indicative of a lack of adequate supervision.

The mother has accepted that bruising has occurred whilst the boys have been fighting and playing whilst she is attending to household matters.

3. Mother has acknowledged that she has struggled to manage with four children and has admitted she has used physical chastisement in the past.
4. The children have been left unattended in the car whilst Mother has attended appointments. The mother accepts that on one occasion, for example, the Mother had to attend an appointment with the Health Visitor and the Father was not available. The children were not allowed into the appointment.

Z

5. Z was unable to maintain weight gain in the parents' care and was significantly underweight. The parents were vague and inconsistent when asked whether they were adhering to Z's diet plan, and the mother admitted on more than one occasion that she has not fed Z in accordance with the plan. There was no identified medical cause for Z's failure to thrive. The Mother maintains that she had sought to follow the diet plan but accepts that she had difficulties with the feeding tube. Mother accepts she has struggled to provide Z with water in the past, however she does so now. The Mother accepts that Z has struggled to thrive in her care, however the Mother denies that this was ~~not~~ due to her not following the diet plan.

The Father accepts that he relied too heavily on Mother but that both of them sought and attempted to follow advice. In hindsight, he realises he should have been more proactive, and also asked for help in understanding the regime that Z needed, and ensured that he understood with the help of an interpreter, rather than allowing professionals to feel that he did know what was expected, when he did not.

6. Mother has been observed handling Z roughly and inappropriately, including holding her by her wrist and ankle. On the 7th of December, the Health Visitor reported that Mother brought Z to the clinic dangling her under her arm. Observations of inappropriate handling have also been made intermittently in contact sessions during these proceedings. The mother accepts that on occasion she did not handle Z appropriately.
7. During a hospital stay, Z was observed to be inappropriately tied to a cot in a sitting position and later restrained by her hands whilst her NG tube feed was being administered.

MOTHER: Accepted, except that Z's hands were not tied to a high chair. The Mother held Z's hands to prevent her hitting her NG tube during a feed. The Mother tied Z to a cot whilst attempting to follow medical advice that Z must remain upright, however she is aware of more appropriate methods for supporting Z during feeding. It is not accepted that Z was unsupervised, the Mother washed her hands in the same room whilst Z was being fed and was on hand to respond to any immediate need.

8. Z was left alone and unsupervised/unstimulated in her cot for lengthy periods of time.

MOTHER: Not accepted. The Mother leaves Z when she is sleeping, never when she is awake. Occasionally the Mother would leave Z asleep in the care of her father whilst she attended an English Speaking course.

FATHER: Not accepted. Z was only left unattended when she was asleep

9. On the 16th January, whilst both parents went to court, Z was taken to [*place name redacted*] Hub without any suitable provisions or supplies. She had not been given her scheduled feed and presented as hungry. The mother accepts this but says she was notified 1 hour before the court hearing that Z had to be taken to [*place name redacted*] Hub and that the hub would have everything to feed her. Z was due to have a feed at 1pm, Mother was also due at court for 1pm