

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child[ren] and members of their [or his/her] family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Case No: SE20C01661

IN THE FAMILY COURT

IN THE MATTER OF THE CHILDREN ACT 1989 AND THE ADOPTION AND CHILDREN ACT 2002

AND IN THE MATTER OF J

Date: 25.2.21

Before :

HHJ Lynch

Between :

A Local Authority

Applicant

- and -

M (1)

F (2)

The Child

(through her Children's Guardian) (3)

Respondents

All parties were legal represented

Hearing dates: 25.2.21

JUDGMENT

Introduction

1. This court case is about J, a baby. Her mother is M, her father F. F's name is on J's birth certificate so he has parental responsibility for her. M has had one other child who has been adopted. J is in foster care and has been since birth. Her parents have had supervised contact with her during these proceedings.
2. The local authority began this court case last autumn after J was born, seeking a care order. It now seeks the making of both a care order and a placement order, so it may place J for adoption. Neither M nor F have engaged with these proceedings in any meaningful way and have not filed any final evidence. They have been served with the placement order application which was issued recently but have not come to court. Their solicitors are without instructions. I am satisfied though that it is appropriate to proceed in their absence, as when this hearing was listed it was recorded that final orders may be made today, including in the absence of any party.

The Issues and the Evidence

3. In preparing for this hearing I have read the documents filed by the parties in this case, including the local authority's final evidence and the guardian's report. There is no evidence from the parents to consider. I have heard in court today from each of the lawyers in the case but no one has given evidence as the parents have not come to court to challenge the local authority's plans.
4. The local authority, supported by the children's guardian, says that sadly the only option for J is adoption. There have been worries about the parents since before the court proceedings. An initial assessment of M and F identified concerns which included domestic abuse, the parents having poor mental health, misuse of substances, and their very limited engagement with professionals. Before she was born the local authority placed J under a child protection plan in the category of neglect and the process that happens before a court hearing was commenced. The parents failed to engage in any way with that other than M attending one meeting. They did not access support from the agencies identified that could help them and their cases were closed for non-engagement.
5. Within the court proceedings, again M and F have not engaged. There was to be hair strand testing and psychological assessment of the parents but that did not happen because they did not engage. They have not given their solicitors instructions during the proceedings and have not filed any evidence responding to the local authority's evidence, initial or final. J's parents did

attend the review meeting in early December when the guardian was also present. It was emphasised at that meeting how important it was for them to make contact with their solicitors but they have not done so apart from one call each around the time of the last hearing. They have also not responded to the guardian.

6. Such information as the local authority has been able to gather during the proceedings only demonstrates that the concerns evident at the beginning are still present. The parents continue to bicker during contact and F often puts M down. There have been reports of domestic abuse. They have not cooperated with hair strand testing, suggesting they are still misusing substances. Home conditions when seen have been extremely poor. One worker who made a home visit observed this in the middle of December and noted that the couple argued with each other constantly throughout the visit, resulting in M becoming tearful and leaving the session. Worries continue about criminal and antisocial behaviour, with F currently on bail [for serious offences, details edited to avoid identification of the family].
7. The local authority acknowledges that there have been positives seen in the times J has been with her parents, either virtual or direct. M has handled her appropriately and provided a good level of stimulation and her love is evident. F has found this harder, coping better with the direct contact. They have however stopped attending contact since the latter part of January, possibly an acknowledgement of the orders the court would ultimately make.
8. The local authority acknowledges that both of J's parents have had a poor experience of being parented during their own childhoods and that this has had a significant impact on the people they have become, as well as the kind of parents they are able to be. M's mother died when she was young and she had a problematic relationship with her father and his partner. Throughout her adolescence she became increasingly rebellious and challenging, moving between family members. She was regularly reported missing. She lived a very transient lifestyle, in the later stages with F, until they finally got a tenancy [date edited]. F had poor experiences of being parented himself, including his parents misusing alcohol. He was the subject of a child protection plan for much of his childhood. He is someone who has mixed with risky people and has taken M into those situations. As the guardian summarised in her report: "Difficulties within their own childhoods have informed a chaotic, transient, and risky lifestyle and have not given them a

positive experience of being parented themselves, from which to draw on to inform their own parenting of J.” M and F are still young people, the local authority and guardian would say ill-equipped to be parents.

9. Given the potential for J not be able to be placed with her parents, the local authority looked for a placement within her family. One couple did come forward but during the assessment process suffered a tragedy which impacted on their mental health. They could not say when they would be in a position to care for J so withdrew from assessment. No other potential family carers have come forward.
10. Because J cannot live with her parents or extended family, in the local authority’s eyes the only option is adoption. That plan is supported by the guardian. They both say that nothing else will do for J. The plan was for gradually reducing contact between J and her parents, although the parents are currently choosing not to attend. Ultimately, once J is placed for adoption, the plan is for contact only by the letterbox scheme due to the risk of her parents, being the people they are, doing something to destabilise that placement.
11. Sadly, I know nothing of what M or F would want to happen. As I have already said, they have not engaged in these court proceedings. When F’s solicitor last spoke to him, she felt he was accepting that J would not be with them and said he wanted to file a statement, not to contest matters but to express his feelings. M’s solicitor told me much the same. Sadly, though neither of them kept in touch with their solicitors and I have no evidence from them. I do not doubt that they love their daughter but have no knowledge of what they would want for her.

Threshold

12. For a court to make a public law order such as a care order, it needs to be established that something called the threshold criteria is established. It sets out how things were when the court proceedings began. Because these parents have taken no part in the court proceedings and make no concessions therefore, I have considered the evidence carefully to consider if the local authority can meet its responsibility to prove those facts to the civil burden of proof. Having looked carefully at the evidence, I am satisfied that it can, and the findings I made are set out at the end of this judgment.

Decision

13. I now turn to consider what orders if any are in the best interests of J. 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” and adoption “should only be contemplated as a last resort”.

14. It is not for the court to look for a better placement for a child; social engineering is not permitted. In YC v United Kingdom [2012] 55 EHRR 967 it was said : “Family ties may only be severed in very exceptional circumstances and....everything must be done to preserve personal relations and, where appropriate, to ‘rebuild’ the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing.”
15. I have looked again at the words of the 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 options for J, taking into account the assistance and support which the authorities or others would offer.
16. In reaching my decision I have taken into account that J’s welfare throughout her life is my paramount consideration and also the need to make the least interventionist order possible. I have to consider the Article 8 rights of the adults and J as any decision I make today will inevitably involve an interference with the right to respect to family life. I am very conscious that any orders I go on to make must be in accordance with law, necessary for the protection of J’s rights and be proportionate.
17. A placement order is sought by the local authority in respect of J. The court cannot make a placement order unless the parent has consented, or the court is satisfied that the parents’ consent should be dispensed with. A court cannot dispense with a parent’s consent unless either the parent cannot be found, or lacks capacity to give consent, or the welfare of the child “requires” consent to be dispensed with. In that context I am conscious that “requires” means what is demanded rather than what is merely optional.

18. I have to ask myself whether J could be safe in the care of either or both of her parents or whether she should be adopted. I have to balance the pros and cons of each of the options. McFarlane LJ in Re G [2013] EWCA Civ 965 said “What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options.” In addressing this task, I have considered all the points in the welfare checklists and I shall look at the evidence in the light of those factors.
19. Two key factors which are inextricably linked are any harm which J would be at risk of suffering and the ability of her parents to meet her needs. It goes without saying that J is a tiny baby who needs everything to be done for her by her carers. She needs to live in suitable home conditions and be fed and cared for. She needs to be loved. She needs to be protected and kept safe. The reality is, were she to be in the care of her parents she would I am sure suffer significant harm. I have made findings as to the harm she was at risk of when these proceedings began, findings which are set out at the end of this judgment. Very sadly it seems that M and F are still living the same lifestyle. They are of course people who have been affected greatly already by their life experiences during their childhoods and they are clearly still very vulnerable. They are also still young. I am satisfied that in their care J would suffer harm and that they would not be able to meet her needs. I do not criticise them for this; given what has happened to them so far in life it is maybe not surprising.
20. If I make a placement order J will remain where she is until an adoptive placement is identified. She will then have to move carers and that will have an effect on her. It will be done in a managed way though with support from the social workers.
21. I acknowledge that there is the potential for J to be harmed by being adopted. She will not be growing up in her birth family and will know that. She may question why that is not possible. I have heard today that it may be possible for her to be placed with her older brother which if it happens would be a wonderful outcome for them both, but that is just at the very early stages of being considered. Given that adoption will mean she will lose her relationship with her parents and the potential for any relationship with her wider birth family, it will be very special if she could live with her brother. I have taken

into account the loss of those relationships when considering the best outcome for J.

22. I have then to consider the options for J of her being adopted or living with her parents. The social worker in the last pages of her final statement goes through the pluses and minuses of each option and I can do no better than to adopt her detailed reasoning. It is evident to me that J would suffer harm in the care of her parents and that could not be a good setting for her to live. If she is adopted, she will be safe and all her needs will be met. Life story work can assist her to understand her start in life, and hopefully this judgment can be part of that.
23. In this case, having carried out the balancing exercise that I must, I am satisfied that there is no realistic prospect of J being placed safely to her parents' care, and that her needs for stability and permanence can only be met in an adoptive placement. I am satisfied that the local authority's final care plan for J is proportionate and (in the context of both s1(1) Children Act 1989 and s1(2) Adoption and Children Act 2002) in her best welfare interests and so **I make a care order**. I am also satisfied that J's welfare requires me to dispense with her parents' consent to placing her for adoption, the word "require" here again having the Strasbourg meaning of necessary, "the connotation of the imperative". **I therefore make a placement order authorising the local authority to place J for adoption.**
24. There is one further direction I wish to make. I think it is hugely important for children who are adopted that they have information available to them, through their adoptive parents, so they can make sense of their early life. This judgment, in setting out what I have read and heard in court, gives at least a summary of that start. Whilst it will be placed in an anonymised form in the public domain it is important that it is easily available to those who will be bringing J up. I propose therefore to make **a direction that this judgment must be released by the Local Authority to J's adopters so that it is available to her in future life; that release however is on the basis that it should not be disclosed beyond them or any medical or therapeutic staff working with the child or family**. It is very important therefore that the judgment is passed on to the Adoption Team to give to them. I have written this not for the benefit of the adults but for the children and wish to be sure it reaches them.

25. And I remind myself, judges are often told that a willingness by adoptive parents to talk about a child's birth history, and maybe if appropriate to have contact with birth relatives, can show children that their adoptive parents understand and accept them and their birth families as part of who they are. It can help children feel that their identity with their adoptive parents and their birth identity are not separate but part of a whole. Children, we are told, may need explicit reminders that their adoptive families accept and embrace their histories as part of who they are now. They need to know that they can ask questions and talk about their birth family as part of coming to terms with what they have experienced. Obviously ultimately that comes down to the adopters found for J; all I can do is pass on what I have been told.

THRESHOLD AS FOUND
BY THE COURT

At the time the Local Authority took protective measures in respect of the child, she was likely to suffer significant harm, and that harm and likelihood of harm was attributable to the care being given to her or likely to be given to her, if the order was not made, not being what it would be reasonable to expect a parent to give to her..

The Court finds J was likely to suffer harm by way of emotional harm, physical harm and neglect.

- a. The court found that threshold was met in relation to proceedings relating to the mother's eldest child when the judge found that the mother had relinquished the care of her child, was involved in a domestically violent relationship and had failed to engage in any assessments.
- b. The mother has prioritised her relationship with the father over J's needs thus causing J to suffer emotional harm.
- c. The mother has lived a transient lifestyle moving between different placements and houses. This would expose J to instability, emotional harm and neglect.
- d. The father has a history of drugs use including cannabis and cocaine. If the father was to care for J whilst under the influence of illegal

substances, it is likely that the consequences of his drug use will cause emotional harm and neglect to J.

- e. The father has a criminal history including for drink driving and witness intimidation which would impact upon the parenting provided to J.
- f. The father is unable to manage or control his emotional regulation; he has been described to be 'unpredictable' and reported to have damaged property when angry and been abusive towards both professionals as well as members of the public. This could place J at risk of emotional harm.
- g. The mother and father's relationship is marred by domestic violence, more specifically:
 - i. [date edited] there was a domestic violence incident between the parents during a shopping trip. The mother reported the father slapping and head-butting her as well as ramming his bike into her.
 - ii. [date edited] the mother disclosed that the father has previously strangled her.
 - iii. [date edited] the father informed the social worker during the assessment process that he has mentally and emotionally abused the mother, he would also cower over the mother knowing that it scared her.
 - iv. [dated edited] the father was reported to behaving aggressively towards the mother, shouting and swearing at her.
- h. There are concerns as to the mother and father's lifestyle choices including a transient lifestyle, not being able to maintain routine, difficulties with day to day living including budgeting and accommodation as well as reported drug dealing by the father.
 - i. Multiple home visits by Social Care professionals confirm that home conditions are poor. [Details edited] The extremely poor and unhygienic home conditions place J at risk of physical harm and neglect.
 - j. The mother and father have had very limited engagement with professionals including any support services [details of services edited]. The Mother and Father have also been not frank and open when they have engaged with professionals.

The mother and father are both very vulnerable, with unmet health needs. The mother and father suffer from poor mental health with both parents self reporting suffering from anxiety and depression and neither has been willing to engage with services. Should the parents fail to address their emotional and mental health difficulties; this will impact on their ability to consistently provide J with adequate, safe parenting and continue to expose her to the risk of physical/emotional harm and neglect.