

**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 and members of his] 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: SE20C01308

**IN THE FAMILY COURT**

**IN THE MATTER OF THE CHILDREN ACT 1989**

**AND IN THE MATTER OF J (A CHILD)**

Date: 9 September 2021

**Before :**

**HHJ Lynch**

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**Between :**

**A local authority**

**Applicant**

**- and -**

**M (1)**

**F (2)**

**J**

**(through his Children's Guardian) (3)**

**Respondents**

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**Adele Garlick for the Applicant**  
**Elaine Hissey for the 1<sup>st</sup> Respondent**  
**John Dimmock for the 2<sup>nd</sup> Respondent**  
**Elizabeth Rodgers for the 3<sup>rd</sup> Respondent**

Hearing date: 9.9.21  
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**APPROVED JUDGMENT**

## **What this case is about**

1. This case is about a little boy, J, who is coming up one year and two months old. His mother is M, his father J, and they both have parental responsibility for him. The other important people in this case are X and Y, J's maternal uncle and his partner. J has been living with them and their three children since May of this year, their home being a considerable distance from where this court case is happening. J has an older half sibling, K, who was removed from M's care a number of years ago and who lives with his paternal grandmother in this area under a special guardianship order.
2. J is living with his uncle at the moment under an interim care order which has been in place throughout this court case. Before that he was in foster care. During the time this court case has been going on his parents have had supervised time with him once a week, less than would be normal because of the health pandemic, together with video calls. Since he moved to his uncle's, there has not been any direct contact but there has been phone contact.
3. The local authority began these proceedings because of concerns which mirrored those from when K was removed from his mother's care, at a time when she was in a relationship with F. During those court proceedings there were worries about neglect of the child, M and F misusing substances and having poor mental health, poor home conditions and missed education, domestic abuse, and a lack of supervision of K. M's mood during those proceedings was described as unpredictable, changing quickly between being happy to crying and shouting at her child. There were recommendations as to what M had to do to make the necessary changes but she did not do that, indeed neither of them has done any of the recommended work in the years since that court case. M missed a lot of her antenatal appointments and there were worries about her poor mental health but she would not get help for this. She was not engaging with the social worker for the necessary assessment. The worries were so great that the local authority began these proceedings when J was born. An interim care order was made at the outset of the court proceedings and he was placed in foster care, where he lived until moving to live with his uncle and his partner.
4. These court proceedings have been lengthier than normal. Because M has a degree of learning difficulty, a specialist social worker was brought in to carry out a particular kind of assessment of her called a PAMS assessment. That assessment was delayed due to the Covid pandemic. The case was also

delayed while X and his partner were assessed and then to give some time to see how that placement worked out. Yet more delays were caused due to problems getting necessary checks and reports done in relation to J's carers.

### **The Issues and the Evidence**

5. In preparing for this hearing I have read all the key parts of the court papers provided to me in this matter. Today's hearing was listed to be a final review hearing with the potential that it could be used to make final orders if appropriate. J's parents have not been in touch with their solicitors for a long time and have not been playing a part in the proceedings including not preparing their final statements. I was satisfied it was right to go ahead and make final orders today in their absence.
6. The local authority supported by the guardian says that J could not safely live with his mother and father. The specialist assessment of them was not very informative. They did not engage with it so the independent social worker was not able to have the sessions she needed or carry out the assessment tests required. Her view was that due to their inability to show commitment to their son, she could not recommend J being placed in their care. Even given the background to this case, it might not have been felt that assessment was enough to base final decisions on, but things which happened since then also have to be taken into account. Early in the proceedings both parents tested positive for cannabis, codeine and ketamine. The plan was for updated testing of both parents early this year but F failed to attend his test appointment. M had hair strand testing which again showed use of both ketamine, a highly sedative drug, and cannabis. F's lack of cooperation concerned both professionals as it could well suggest he was using illegal drugs and did not want people to know. Neither parent has done any of the work that was previously identified to deal with the concerns from when M's first child was removed. All of that led the social worker and guardian to be satisfied that J could not be placed with his parents. Their ongoing lack of engagement only adds to the concerns of professionals.
7. Very fortunately for J, the assessment of X and Y is extremely positive and certainly for myself it made for lovely reading. There are a couple who are very invested in their own children and are committed to giving J a home long term. The assessment of them the professionals say can be relied upon to show that J's interests would best be met by him remaining in their care. All of the recent checks which we have waited for support that analysis.

8. The plan is that J will go on seeing his parents, supervised by someone in the family as appropriate. It is suggested that could happen six times a year in school holidays given the distances involved, either local to here or local to J's new home. I understand that the family come up to this area to visit other extended family members, including the grandmother and J's older siblings, so contact between J and his parents could happen then as well as if they were willing to travel to his new home. The professionals have thought more about this and, given the distance and given the parents' lack of commitment to indirect contact, in reality that contact is more likely to be maybe three times a year, with the parents travelling to J's home once a year and seeing him a couple of times a year when the family come to visit X's family. When in this area, J would also see K.
9. The social worker says there does not need to be a care order in the longer term or indeed any other order keeping the local authority involved. She is so confident in the care given by X and Y that she says the local authority does not need to share parental responsibility any more. Instead she recommends the making of a special guardianship order, which would give parental responsibility to the couple alongside J's parents but X and Y would have the final word if there was a disagreement amongst the adults, because of what is often described as their "enhanced parental responsibility". That plan is supported by the children's guardian who agrees there is no need for any more local authority involvement. The local authority has set out the support it will provide if a special guardianship order is made and the guardian is happy with that.
10. I do not know what J's parents want to happen as they have not played a part in this court case for a considerable time and have not filed any final evidence. They did not however oppose J going to live with his uncle and his partner. Contact between J and his parents has not been entirely successful. X pays for a sim card for M in the hope that then there can be indirect contact but I understand he has not always succeeded in being able to get in touch with her.

#### **Findings on matters in dispute**

11. I have thought very carefully about the evidence I have read regarding M and F to decide if I am satisfied that it would not be right for J to be in their care. I know that it is for the local authority to prove its case, to prove that the facts that lead one to that conclusion are true. The local authority has to show that those facts are more likely than not. In a case where a supervision order is

being sought, the local authority has to prove what is known as the threshold criteria. I have gone back to that document to consider what the situation was when his case began and where we are now.

12. I am satisfied the court papers that K was removed from M care following incidents of domestic violence including between her and F, parental substance misuse, poor mental health, poor home conditions and poor school attendance. F has previous convictions for violent offences and has not engaged with work to address these issues. Following the last proceedings, M has not done any work to address the problems she had then.
13. M has a mild learning disability, and she struggles to manage planning, organisation, literacy and finances. She failed to attend a significant number of medical appointments whilst pregnant with J. She also has suffered with anxiety, depression, anorexia and bulimia and her mood can be unpredictable. Again, she has not engaged with support to help with any of these difficulties.
14. At the beginning of this case there were a lot of worries about the poor home conditions M and F were living in. The social worker described home conditions as cluttered and unclean, the baby's room being full of boxes, and the social worker could not physically enter the room. The home was often full of cigarette smoke or smelt of cannabis. Beer cans, both full and empty, was seen in the kitchen and living room of the family home and there were no surfaces visible in the kitchen. Pots were seen that had been left unclean and which were growing mould. The parents' care of their pets was poor.
15. Drug testing showed that the parents were still using cannabis and ketamine last autumn and that was still the case for M early this year. I am satisfied that the reason F did not go to his test is because it would have shown the same for him. Neither parent has engaged with any drugs services. Ketamine is a particularly worrying drug as it is a tranquilizer. Using it would have a significant effect on anyone's ability to care for a child.
16. Having noted all the evidence on these matters, I am satisfied that the local authority has proved that those facts are true. It is those facts which are the basis for the decision I am going to make.

## **Decision**

17. I now turn to consider what orders if any are in the best interests of J. I start 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, admittedly talking about adoption which is not the case here. *Re B* reminds 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”. To my thinking, the same is true of a removal of a child from the care of his parents to the care of family members. As said in *Re B* (above), 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”.

18. In reaching my decision I have taken into account that J’s welfare 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 of J. My decision inevitably involves an interference with the right to respect to family life. Having given very careful consideration to the orders I am going on to make, I am satisfied that those orders are in accordance with law, necessary for the protection of J’s rights and are proportionate.
19. The question for me is whether J can be returned to the care of his parents, with or without court orders in place, or whether he should remain living with his uncle and his partner, balancing 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 checklist and propose to consider the evidence in the light of those factors.
20. The first thing for me to think about is any harm which J has suffered or is at risk of suffering. From all the evidence I have read and considered, I am satisfied that J, if in the care of his parents, would experience the same kind of harm that his older brother did. The evidence since those court proceedings confirms that neither M nor F have addressed the things they needed to. As a result their problems continue, both in terms of their lifestyle and their drug misuse, and those problems would be likely to cause harm to J, harm in the form of physical harm and emotional harm. I acknowledge there is the potential of emotional harm to J by him not growing up in the care of his

parents and that has to go into the balance. That harm however can be minimised by him having an informed understanding of why he cannot live with his parents and also having such relationship as he can with them by way of contact, be that face-to-face or using the various forms of technology which are available. He can also be assisted to have a proper understanding by way of later in life letters.

21. It is important to think about J's needs, physical, emotional and educational. I remind myself he is still a very young child and everything he needs must be done by those caring for him. He needs to be fed, cared for, loved and nurtured. He will need to go to nursery and then school in due course and to do that regularly and consistently. He will need his medical needs met. For many years to come all of that will have to be done for him by carers who are at all time alert to his needs and capable of meeting them.
22. There is then the question of how capable each of J's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs. Again, from all the evidence I have read I am satisfied that neither M nor F could meet J's needs. X and Y however can. I reach that conclusion on the basis of all the social work evidence filed in relation to J's parents, not just the negative independent social work assessment which I accept is not thorough given the lack of engagement by the parents, whether or not the social worker should have done more to try to complete the assessment.
23. The court is asked to consider the likely effect on a child of any change in circumstances. J is now well established within his uncle's family and I am sure that taking him away from them would be harmful to J. If it were the case that I were returning to the care of his parents that harm might nonetheless be justifiable.
24. The last factor in the welfare checklist is the wishes and feelings of the child concerned, looking at that in light of their age understanding. Obviously J is far too young to give a view on what he wants.
25. Going back there to the question I posed earlier of whether J will be better placed in the care of his parents or with his uncle and his partner, living with his parents would mean his needs would not be properly met and he would be at risk of harm. There would be the advantage to him of growing up in the most normal family setting possible and he would quite possibly have a

stronger relationship with his extended family in this area because he would be able to see more of them.

26. If J remains where he is however, I know that all his needs will be met by a couple who have clearly done a very good job of bringing up their own children. He would be growing up in his birth family in a situation not unlike many children these days. He will be part of an extended family network where he is, through Y's side of the family. He will still maintain a relationship with his parents and X's family and that I can be sure of that because they already travel up here to visit the extended family.
27. Considering those two alternatives therefore, it is obvious that the right thing for J is to him to stay where he is with his uncle and his partner. That is an interference in the family's right to private family life but it is a proportionate interference because of the need to keep J safe. I agree that the right order to make a special guardianship order as I see J's placement with X and Y as being a permanent home for him. The couple need to be able to make the necessary decisions for him while he grows up and I cannot be confident, given the lack of involvement in these proceedings, that M and F will not interfere in that placement. I am conscious no formal application has been made for a special guardianship order but it has been anticipated throughout these proceedings, such a report having been commissioned, and I am satisfied it is right to exercise my power to make such an order without an application.
28. **I therefore make a special guardianship order in respect of J in favour of X and Y** and I give them my thanks for the commitment they have shown to their nephew.
29. There is one further direction I wish to make. I think it is hugely important for children who do not grow up living with their parents that they have information available to them, through their carers, so they can make sense of their early life. This judgment, in setting out what has happened in these proceedings, 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 X and Y. I propose therefore to make a direction that **this judgment, along with today's order, must be released by the Local Authority to the couple so that it is available to J in due course; that release however is on the basis that it should not be disclosed beyond them or any medical or therapeutic staff working with J or the family.**