

Neutral Citation Number: [2024] EWFC 391 (B)

Case No: ZW23C50312

IN THE FAMILY COURT AT WEST LONDON

Gloucester House,
4 Dukes Green Avenue,
London
TW14 0LR

Date: 16 December 2024

Before :

HIS HONOUR JUDGE WILLANS

Between :

LONDON BOROUGH OF MERTON

Applicant

- and -

(1) E

Respondents

(2) J

(3) Z (by her Children's Guardian)

Neil Perot (instructed by SLLP) for the Applicant Local Authority
Jonathan Adler (instructed by Amphlett Lissimore Bagshaws) for the First Respondent Mother
Chris Barnes (instructed by Thompson & Co) for the Second Respondent Father
Gemma Neath (instructed by Lovell Chohan Solicitors) for the Third Respondent Child

Hearing dates: 26-28 November 2024

JUDGMENT

HHJ Willans:

Introductory Points

1. I provide this written judgment following a 3-day final hearing at which the Court was asked to consider whether the child, Z, should be placed into the care of her father, J or with her maternal grandmother, MGM.
2. The applicant local authority and the child's guardian supports placement with MGM in [country X] under a Special Guardianship Order ("SGO"). J argues Z should be placed with him and his partner (T) supported by a Supervision Order ("SO"). In the alternative he argues that if further assessment of him is required then the proceedings and transition to his care should take place under an interim care order. Finally, in the alternative to these two options he supports placement with MGM. Z's mother, E, has played no active part in this final hearing.
3. I heard evidence from (i) [] - the ISW who carried out a parenting assessment of J (and E although that did not continue through to completion); (ii) [] (allocated social worker); (iii) J; (iv) J's partner, T, and; (v) [] (Z's guardian). J and T' evidence was translated through a [] interpreter and J was assisted by the same throughout the hearing. No other participation directions were required. I have also considered the documents contained within the hearing bundle; the opening notes and closing submission of counsel for each party, and; a select number of additional documents provided in addition to the final hearing bundle. I bear all of this in mind whether or not I refer to a piece of evidence within this decision.
4. In this judgment I refer to the professionals by their respective roles (ISW, SW and CG) and to the family members by [initials]. No discourtesy is intended.

Background (in brief detail)

5. Z has a rich cultural heritage. E's background is in the [European Country A] although she moved with MGM to [European Country X] when she was young. MGM now lives in Northern [X] with her [Third Country Y] partner and their two children. J is [Non-European Country Z] as is T. I am told Z is conversant in and has a working understanding of the key languages associated with the parties.
6. E moved to this country in 2017 and met J in 2018 and they formed a relationship leading to Z's birth in September 2019 (she is now aged 5). The family became known to the applicant in October 2022 following a police report suggesting a level of domestic abuse from J towards E following a break down in their relationship. It was said they had separated in about March 2022 but had continued residing together until September 2022.
7. Z was placed on a child protection plan in January 2023. The applicant was concerned at this time as to limited engagement from both parents and considered a concerning picture was developing around the parents' relationship; E's misuse of drink and drugs, and; difficulties in obtaining a consistent and safe routine for Z. In June 2023 matters reached a point of crisis. The then social worker attended the

property and found E under the influence of drugs and gauged her unfit to collect Z from nursery and to care for her in such a state. There were also concerns as to a male being seen to leave the property at that point and E related injuries seen on J (who had recently returned Z to E's care). She reported J was fighting constantly with T. That day the police decided to take Z into police protection. Subsequently it was agreed Z would remain in foster care under a section 20 agreement.

8. J formed his new relationship with T in around June 2022. T has her own daughter [] a, who is also aged 5 and J and her together have a son [], who is aged 1 year.
9. The proceedings commenced on 26 July 2023 and should have concluded by the end of January 2024. Initial case management did provide for an IRH in January 2024 but section B of the bundle sets out how this planning was delayed on a series of occasions due to difficulties in completing assessments in both [X] and [Z] (the paternal grandmother who lives there was also positively assessed although no one proposes placement in [Z] Eventually the IRH was heard on 6 September 2024 when this final hearing was fixed before me. I have had no previous case management role in the case. The delay has permitted significant contact work to be undertaken with MGM and Z has met with her grandmother both in this country and for an extended visit to [X]. As a result, if I were to approve the placement with MGM, then no further transitioning work is proposed by any party as being required.

Legal Principles

10. The Court is engaged in answering four questions: (1) Has the section 31 threshold criteria been established? (2) What are the permanency provisions of the care plan? (3) What are the appropriate contact provisions? (4) Having regard to the welfare of the child as a paramount consideration, what is the appropriate outcome?
11. The section 31 criteria relates to the need to establish that at the relevant time (the commencement of proceedings) Z had suffered significant harm attributable to the care given to her by her carer and that such care was not what the Court would reasonably expect of a carer and/or that there was a likelihood of her suffering significant harm on the same basis were a public law order not made. On the evidence whilst aspects of the proposed threshold are not accepted it is agreed there is sufficient pleaded and established by the applicant with regard to E to cross the legal threshold.
12. To the extent there are remaining threshold disputes, and there are as far as concerns J, these need to be proven by the applicant with J having no responsibility to disprove the same. The applicant will prove any given allegation if it shows the same to be more likely than not. If this is shown to be the case the allegation will be treated as a fact, if not it will be entirely ignored. In considering any allegation the evidence of the parents will be of central importance. If a party is shown to have been less than honest in relation to aspects of the evidence then the Court must avoid discounting the balance of their evidence and must take care to evaluate the probative value of any lies by reference to settled case law guidance.

13. The crossing of the threshold is not by itself sufficient to justify the making of a public law order as sought by an applicant or alternatively an outcome oppositional to that of the parent against whom the finding(s) are made. The threshold is a necessary component to make an order but it is not sufficient without further justification. It merely opens the door to such an order but the features set out below govern the ultimate decision.
14. At the heart of any decision is the understanding that it is the welfare of the child which is the Court's paramount consideration. The Court approaches this question having regard to all the circumstances of the case and with particular regard to the welfare checklist found in s1(3) of the Children Act. The Court also has regard to the Article 8 rights of the family members. This is shorthand for the right they each have to respect for their private family life. It means that any interference with this right has to be justified as proportionate, necessary, reasonable, and lawful. If the Court can identify an interference set at a lower level, then it must take that option to avoid disproportionate action.
15. When a Court is confronted by alternative options it needs to first identify those which are realistic. It then reflects on the realistic options in a holistic manner setting the positives and negatives of each against the other. Whilst the Court will generally assume a child will benefit from a relationship with each of her parents there is no presumption in favour of placement with a parent over other options. The lodestar remains the welfare of the child.
16. In considering the timetable of proceedings it is important to keep in mind that within the Family Proceedings Rules one finds strict provision as to the time spans in which cases of this sort should be concluded. These are not recommendations or aspirations but law which needs to be followed. In this case the Court has failed to meet this timetable but that does not mean it is no longer a relevant consideration. The Court will only consider further delay, whether for assessment or otherwise, if this is necessary.

The Threshold

17. The threshold is largely related to E. It has not been challenged in her regard and I find threshold established to the extent it relates to E.
18. The key factual dispute arising on the evidence related to J and an incident which is said to have occurred on the weekend of 10-12 June 2023. The substantial issue is as to whether there was conflict between J and T that weekend and whether this is representative of a pattern of domestic abuse in relationships in which he is engaged and whether this poses a real and continuing issue as far as placement of Z into his care is concerned. It is important to note that the ISW whilst not relying exclusively on this factor does place significance upon it in reaching her conclusion that J has a history in which conflict and violence are normalised. She agreed if her understanding in this regard was deemed to be incorrect by the Court then her consequential analysis and conclusions based on the same would be invalidated.

19. The competing views as to that weekend can be summarised relatively easily. Both J and T report an uneventful weekend save that there was a discussion, with it appears at least some level of disagreement, between J and T' mother. This appears related to her wish to resume occupation of the caravan which had previously been her home but now housed J, T and the three children (when Z stayed). This wish to return would have impacted on J's continued occupation of the caravan. They then report J leaving with Z on the Monday morning to return her to E's care. J accepts that when he arrived at E's home she was out and he forced the front door to gain access prior to E's return. On her return she took photographs of apparent injuries to J which he claims related to a bicycle fall in the preceding days but which E later claimed to have been reported as injuries caused in fighting with T.
20. Evidence was not received from T' mother.
21. The applicant and guardian question this account based on reports taken from J and E. Under their understanding there was a heated and somewhat alcohol fuelled argument between J and T' mother which led to a physical altercation requiring T to intervene pulling J off her mother. In the course of this incident J suffered the injuries seen by T. These were caused out of T' intervention. It was said alcohol was involved in what took place. It is understood J then exited the caravan and took Z to her mother's home where he forced the door. T reports having returned and being told about the incident leading to her taking the photographs of J's injuries.
22. I have considered the written and oral evidence provided on behalf of J. I have considered it with care. I have balanced this against the written records taken by the applicant when speaking to both J and E relatively shortly after the incident. I note the records were not all completed at the same time and I have regard to whether this undermines the content of the reports. I also have regard to the potential for language confusion and misunderstanding whether deriving from language issues or for other reasons.
23. Having regard to all of this I find the essential allegation proven. I do so having regard to the following matters in particular:
 - i) I consider the written report taken contemporaneously to be compelling evidence in its own right. I accept it is a report taken from J directly and is in direct conflict with his case before me. Whilst it is possible that some error may have crept into the record due to language issues, I do not consider it likely that the whole substance of the report was taken in error. I fail to see how the report could have been constructed from speaking to J were he to have been giving the report he now maintains. It is simply implausible and inherently unlikely that a professional would have listened to J's current account and reduced to writing the report one finds. There is too much between the two accounts to make this likely.
 - ii) Further, there are elements of the overall account that fits with this understanding/report:

- a) The issue of J's mobile being damaged/not working. In the report J reported his phone being damaged in the incident. In his evidence he told me he could not call an Uber to come home as his phone was damaged.
 - b) A later account reported of Z saying T had scratched her father with a fork.
 - c) The response of E taking photographs of the injuries and J permitting her to do so, or not objecting. This fits much better with her acting to chronicle what she had been told (a fight) than taking photographs of injuries related to an innocuous incident (a bike fall). It begs the question as to why she would seek to take any pictures were this the case. J does not provide any meaningful account of a dialogue between him and E around her behaviour in this regard. The sense is that he acquiesced in the photos being taken.
 - d) The door being kicked in. This is behaviour that calls for some explanation. Of itself it suggests a level of mood dysregulation on the part of J which supports the account of the fight. But it also supports the alternative timeline suggested by the report of J leaving immediately on the day of the fight rather than leaving two days later. In his account to the social worker, he justified the action by reference to the fact that he had nowhere else to go and needed to put Z to bed. Whilst not justifying his action this makes sense. It is less easy to understand why he would be putting her to bed if he were returning her in the morning following an uneventful weekend. Furthermore, having 'nowhere to go' fits better with an account of leaving home after an argument than leaving home to return a child.
- iii) I also bear in mind J has shown similar behaviour in the past. There is evidence of loss of control in his relationship with E and an agreed event when he punched a wall. Furthermore, in more recent email correspondence with the social worker J has fallen into abusive and angry language for no good reason. This is suggestive of a tendency towards dysregulated behaviour. I accept this point alone would not establish the allegation but it is support for the allegation.
24. There is a far more modest dispute as to the circumstances under which J previously returned Z to her mother's care when her mother was unfit to care for her. That he did is not in dispute. In her evidence T accepts this was wrong (see below). J explains this by reference to his obligation to keep to a child arrangements plan set by the applicant. In essence he argues he informed the applicant as to the circumstances surrounding E but had to act on their direction to return Z.
25. I accept there is an element of truth in this debate. It is clear at some point J did report E's substance abuse to the applicant. It is also apparent their initial assessment was through the prism of J being a perpetrator of domestic violence. The

sense of the documents is that they were wary to an extent of relying on J's reports. However, I bear in mind the applicant had no statutory rights over Z at that time and had not set arrangements that had to be followed. Whilst I appreciate some of this distinction may be lost due to cultural differences it remains the case that J was Z's father and had freewill to refuse to return Z to E if she were not in a fit state to receive her daughter. Indeed, one can see how this played out when it in fact came to the attention of the relevant agencies in June 2023. In any event it seems clear (see evidence of T) that a degree of this was conscious decision making prior to the applicant's involvement with the couple seeking to give E a chance. In short I do not find J's rider to §L of the threshold to be an adequate explanation for his behaviour.

26. This completes my consideration of the threshold. There is no question the threshold has been crossed.

Evidence received

The ISW

27. There was a curious prelude to the cross examination of this witness. She was briefly examined in chief before we broke for lunch. Over the luncheon period and prior to her cross examination, on behalf of J, she discovered a knife in her bag and, as she later accepted jumped to the conclusion it had been placed there by J and further wondered whether this had been done to intimidate her. As a result, she did not return to Court that afternoon but travelled to a police station to report the events. It is partly due to this loss of time that this judgment has had to be reserved.
28. As a result of this CCTV checks were undertaken. The upshot of this was that it was highly improbable J had in fact deposited the knife into her bag let alone sought to intimidate her. The window of opportunity was in fact narrowed to the period when she was within the Court Room giving evidence yet no-one saw a knife being deposited although it would have been reasonably obvious if this had been done.
29. The ISW returned to give evidence remotely the next day. At the outset of her evidence, she accepted she may have over reacted in the stress of the moment and jumped to an unfair conclusion. She noted she had been close to a group of youths over the lunch break and they may have put the knife in her bag. In the light of these events I am asked to reflect on the weight I can apply to her evidence. J is concerned this turn of event may have led to her being unconsciously or otherwise biased against him.
30. I have considered this with care but do not accept this concern. Viewed with hindsight these events were unfortunate but I consider the ISW has retained a professional and unbiased outlook on the case. I bear in mind her position is not fundamentally shifted from her report which proceeded the events. I also found her evidence to be essentially fair and balanced. I can understand why she fell into error in the way she did but she showed an ability to reflect on this and I consider provided a genuine revision of her previous thinking.

31. Turning to her evidence the ISW was clear as to her negative assessment of J and gave both solid and cogent reasons for her conclusions. A summary of her evidence is as follows:
- i) She recognised there had been documented improvements in contact between Z and J. He was showing a greater ability to manage her behavioural issues in a sensitive manner. However, these improvements were in the context of managed contact for a limited period of time and one had to be wary about drawing too much from such a limited time frame.
 - ii) She was concerned as to the dynamic that would be in play were J to be caring for Z. The reality was that T would likely be the key carer and there was evidence of her struggling previously when caring for Z. Furthermore, whilst she expressed an approach to Z as if she were her own child, this appeared an idealised approach rather than one founded in reality. One could not understate her primary commitment being to her own two children. This was a caring relationship on a step parent basis in respect of which the ISW had specific expertise and she was concerned as to there being a need for real work to be undertaken before one could have confidence in passing significant caring responsibility to J and T. It concerned her that identified work in this regard had not been pursued in the time available. She had reported a year before the final hearing and was clear the work in question would have been available to be completed had it been pursued.
 - iii) The ISW carried out a sophisticated analysis of the respective personalities of J, T and Z. Referencing her specialism in attachment issues she expressed concerns as to Z's tendency to be controlling within relationships and the challenge this would pose particularly to T who likes to be in control herself. She was concerned this dynamic would lead to conflict and potential breakdown.
 - iv) She considered the work that had been done with Z around wishes and feelings. She noted the clear and consistent wish on the part of Z to remain with her foster carer. Yet this was not an option before the Court. She acknowledged Z did want to continue to spend time with J and accepted this would be impacted by the proposed care plan.
 - v) In the light of Z's attachment to the foster carer the ISW was concerned by J's attitude towards the foster carer in the evidence. She noted his opposition to a proposed holiday with the foster carer and a range of criticisms made of the care being provided to Z whilst with the foster carer. Elsewhere J appeared to speak negatively about the foster carer. In doing so he demonstrated a lack of insight and sensitivity to his daughter's feelings.
 - vi) Questioned as to Z's needs, she was of the view Z needed better than average parenting due to the trauma she had experienced. As a result, she required attuned care. This had been provided by the foster carer and progress had

been made but one should be cautious to assume this would be simply maintained were Z to transition to a carer without such characteristics. She felt Z would benefit from focused care, including on a 1-2-1 basis. She was concerned the dynamic with J of sharing attention with two other children including a baby would be problematic.

- vii) A chief concern expressed was as to the lack of progress made over the course of the proceedings. It was noted a period of around one year had passed since the ISW report. Notwithstanding this she felt there was little evidence of pursuit of or progress in regard to the recommendations she had made. As a result, when she came to consider the limited changes since her report, she felt there was only minimal basis to revise her views which she considered remained robust. Whilst she noted an improvement in contact the only change that had been made was as to improved accommodation (J moving from a 2-bed to 3-bed caravan). However, progress had not been made with respect to domestic violence work or step parenting work.
- viii) In relation to domestic violence work the ISW questioned J's motivation to change. It was clear he was not accepting of the concerns. Elsewhere J had shown motivation with respect to employment and she questioned why he had not been able to do the same in this regard. He had downplayed the issue of domestic abuse and whilst he indicated he would not go on a course this was not a strong foundation for change. The ISW confirmed she had not proceeded on E's allegations alone and that this was not a case of situational abuse. Instead, she had relied on the full history of behaviour which suggested entrenched behavioural patterns.
- ix) She made clear she would normally commence the assessment looking for evidence of a change in approach and thinking. From this one might look to see evidence of reflection. However, there was no evidence of the same here despite the available time.
- x) She was questioned as to the support plan produced by the applicant but again reflected on the progress made in the last year. In reality a supervision order would offer but not compel engagement. It would require a willingness to engage with support and to embrace the same. The difficulty is that J has not evidenced such a willingness. There is no evidence of him being able or willing to build a good relationship with the social workers and there is recent evidence of abusive communications. She did not have confidence in a supervision order successfully managing the situation. At its heart J is committed to Z and loves her but he does not accept the problems and believes he is entitled to have her back without any change or intervention. It is difficult to change this situation under a supervision order.
- xi) She accepted a better option to a simple return to J would be the continuation of an interim care order whilst work was done but continued to

reference the time to date and the lack of change. She considered any question of further work or assessment was not for her.

The Social Worker

32. I was impressed with the SW. She gave clear and reasoned evidence. She addressed all the questions put in a clear and professional manner. I note the following key aspects to her evidence:
- i) She had little confidence J could meet Z's needs. During the time she had worked with him he had been unable to prioritise her needs, e.g. the planned holiday. Furthermore, there had been numerous incidents when he had questioned Z about her appearance and cleanliness. He had been asked not to do this but continued to do so. This had made Z uncomfortable and had distressed her.
 - ii) She detailed the extensive efforts she had made to meet with J unsuccessfully in the initial period between November 2023 and May 2024. She had wanted to consider the parenting assessment with him as a launchpad to consider a plan of works. However, he was insistent everything was a lie and did not accept the conclusions of the report. Later he indicated a level of acceptance as to domestic abuse having spoken to his solicitor. Although there had been occasions when J had responded to contributions sought, at other points time had passed without any response from him. Recently he had been abusive when issues had been raised.
 - iii) She had limited insight as to what living with J would look like for Z. She had understood T had returned to work and J was also working. They had been using a baby sitter and the suggestion was that the same person would be available for Z.
 - iv) The social worker was concerned as to the suggestion of further assessment and consequential delay as Z knows a decision is being made and further uncertainty is damaging for her.
 - v) J had been criticised as to allowing Z to return to E's care when he was aware of her drug use. J had responded that he had acted in this way due to the steer given by the applicant. The social worker questioned the timeline set out by J and considered he had acted in the way prior to the applicant becoming involved.
 - vi) As to Z's wishes she confirmed her wish was to remain with the foster care. She made clear that whereas Z wants to continue to see her father she has been explicit in not wanting to live with him. She had spoken about incidents between J and E and between J and T which frightened her.

- vii) She was confident as to the placement planning in [X]. There had been significant positive relationship building and Z had enjoyed her time with her grandmother in [X]. Whilst Z would notice the change in contact with her father if she moved to [X] this would be more meaningful when it happened and would be quality over quantity. This will be a loss but it could be managed. There is a good relationship between J and MGM and she travels to this country regularly. She set out the revised contact proposals which would be based around contact every holiday.
- viii) She questioned whether Z would suffer any emotional harm in seeing the ability of her half siblings to live with her father in contrast to herself. It was noted this is the current reality yet Z has expressed no disquiet in this regard to date.
- ix) She repeated concerns as to J's unwillingness to engage with the conclusions of the parenting assessment. She felt it was fundamental that there be a meeting at which he expressed understanding of the concerns. A blank expressed willingness to change was one thing but it needed to have more focus. There was no evidence of J following up on the recommendations. For her, a positive would have been seeing J engage with the issues rather than saying he intends to do so.

T

33. I listened to T with care. I am in no doubt she was entirely genuine in her evidence and doing her best to support J. Yet I found her a young and somewhat immature individual and I was left with doubts as to the depth of her understanding and the assistance she could offer me. I was left with the sense she was willing to agree anything to achieve a positive outcome and had a superficial understanding of the challenge that would come on providing full time care to Z. Her key evidence was:
- i) She explained she was not planning to return to work until all her children were adults. She had a good relationship with Z and had never had problems with her. She was open to working with the applicant and would engage in any courses suggested. She would offer her the same care she offered her own children.
 - ii) She accepted there had been times when Z had been returned to her mother when J had concerns about her. She agreed this had been a mistake and she had been concerned for Z. They had wanted to give E a chance to change and had then contacted the social workers.
 - iii) She discussed the incident in June 2023 (see above).
 - iv) She was asked as to the applicant's concerns. She felt they were not concerned as they had not come to her house. She did not agree with the depiction of J given by the applicant.

- v) She did not agree Z required more than average care. She agreed she would be the main carer for Z. Z could move immediately. She could see no challenges on her moving into their care. She did not need additional support to care for Z although she accepted Z might need support.
- vi) She was asked about her support network. In her statement she had identified a limited network and confirmed this related to her family members (her mother, aunt, and cousin).

J

34. I am confident J cares for Z and is genuine in his motivations to have her in his care. He was open in his approach to placement with MGM and this showed a level of insight on his part and flexibility. I did find him somewhat defensive and as can be seen above I did not accept his evidence as to the June events. Overall, I approach his evidence with some care on the basis I found his answers to be motivated and shaped by the outcome he seeks. As a result, there is a danger his expressed intentions reflect this wish rather than his genuine willingness to make changes. The key elements of his live evidence was as follows:

- i) J was confident Z best option lay with placement into his care. Having seen the alternative support plan, he was sure this would help to meet the challenges of caring for Z. He set out his working arrangements with it appearing he had reduced from working a long day to being available to both drop and recover the children from school each day. He would work with any support offered and felt there had been a failure on the part of the applicant to provide the necessary support. He told me he recognised the importance of the foster carer but felt he had recently been ignored.
- ii) He disputed the suggestion he and shown a lack of motivation and was willing to attend a domestic abuse course. He was confident he could keep Z safe.
- iii) He was asked about Z being placed in [X] He considered this would be good as he had a good relationship with MGM and could make this work. If this were the decision of the Court, he would accept it and make it work.
- iv) He was examined about his behaviour and agreed he had punched the wall and sent the abusive text messages. He agreed he had previously had an anger issue but this was no longer the case as he no longer was stressed. He gave his account as to the June 2023 events as detailed above. As to the emails he told me he was tired of the lies being told. He felt there was fault on both sides.
- v) He accepted Z needed better than average care but felt she needed to return to her family. He understood his living circumstances could be an issue but pointed out he had been living in this situation with two children without any issues arising.

- vi) He was questioned as to attempts to engage him in the period prior to the proceedings being issues. It was put to him he either did not attend meetings or was not contactable. He disputed this.

CG

35. The CG remained unchanged as to his recommendations for Z. He struggled at times to engage in questioning raised on behalf of J and this gave the impression he lacked flexibility in his thinking on the subject. Having said this, he was clear in his assessment and provided a rationale for his conclusions. I would have preferred him to engage with the questioning in a more open manner but this did not fundamentally undermine his evidence. I note the following aspects of his evidence:

- i) He had recently met with Z and she was open to speaking to him. She continued to express a wish to remain with her foster carer and likes the way things are now being able to see her father and spend time in [X]. She has never said she wants to live with J.
- ii) He considered Z would cope if a SGO were made to MGM. The foster carer has been impressive in working with Z and a good relationship has been built with MGM. She has visited [X] and spent time with her grandmother in this jurisdiction. She is capable in conversing in [language X] and there is a good dialogue between the two.
- iii) He gave clear recommendations as to flexible contact were Z to live in [X]. There is a good relationship between J and MGM and both can travel to the other country to facilitate contact. The fundamental contact should be structured around holiday periods. He trusted MGM as concerned management of contact with E as she understood and accepted her daughter's difficulties.
- iv) He was clear in his view in opposing any further assessments. It was important a final decision was reached to give Z certainty as to her future living arrangements. J had been assessed and clear recommendations given. This was now a year ago but no real progress had been made and J was struggling to understand a number of the concerns.
- v) He told me previously J had appeared to accept placement in [X] as being the best outcome for Z. In any event he has been sensible as regards the plans for Z if this were to happen. His basic support for that placement is encouraging. He felt such a move would incur a loss for Z but it could be managed positively for her.
- vi) As regards a proposed transition to J he felt Z had specific needs having experienced domestic abuse in the home and neglectful parenting. He considered J and T would find it hard to grasp and manage Z needs.

- vii) He agreed the social worker had given J a number of opportunities to engage but he had not always been responsive. In short, he had received an appropriate opportunity. In the CG's view J could have been more proactive. But when he had met with J as recently as two weeks ago, he was still commenting that the ISW report was unfair. This was not a strong foundation for or motivation to change. J's expressed views appeared to be more about achieving an outcome than recognising the need for work to be completed successfully.
- viii) He disagreed it would be right to attempt to implement the applicant's support plan for J. This was not in fact the applicant's assessment of what was best and there had been an opportunity for J to be more proactive in the last 6 months. The CG felt the Court had reason to believe such a plan would not be safe for Z.
- ix) Whilst he accepted one could isolate each point in turn this case needed a holistic overview of the concerns in respect of placement with J and T. It was right there was no substance abuse and no recent reports of domestic abuse but on the other hand one needed to look at Z's specific needs in the light of her life experiences. J has shown difficulty in understanding her needs and placing Z with him would be a very significant change for her. He has also evidenced a lack of understanding of the need for the recommended work. The CG was not persuaded J would in fact follow through on the work once he had achieved the goal of Z's placement into his care.

Analysis

36. I start with an application of the welfare checklist.

Wishes and Feelings

37. An irony of this case is that no party is seeking a placement consistent with the child's expressed wishes and feelings. The professionals agree Z would seek a continuation of placement with her current foster carer given a choice. I make clear I approve the departure from these wishes. In the first place Z remains a young child and the Court has to have regard to her age and understanding which is bound to be limited to a material extent by her age. Secondly, long term foster care is not put forward as being a realistic option for Z and I do not have evidence to suggest this placement can be maintained without duration. Thirdly, I would struggle to find a justification for long term foster care with all the disadvantages of the same when a long-term family placement is available. It would amount to a disproportionate intervention in her private family life.
38. Z's feelings extend to contact. It is agreed she enjoys contact with both her father and grandmother and would like this to continue. It must be a matter of speculation as to whether she limits her wish to contact only to reinforce her desire for no change in her placement. Yet it is a matter of evidence that she has expressed a wish

not to live with her father. I have tried to make sense of this position which is unusual in that she is not oppositional to seeing her father and he is the only one of her parents who is currently maintaining a relationship with her. I have reached the conclusion she favours placement with her foster carer as a reflection of the stability and balanced care this has provided her. The evidence is that she has thrived in this placement and this is bound to reflect the quality of care she has received. Notwithstanding she is of a young age I consider it entirely possible she will have reached her position in the light of the quality of this care she has received and what this has meant to her in terms of her day-to-day feelings. I consider it likely also reflects to some degree a comparative (albeit child led) assessment of what living with her parents felt like to what it feels like now. To that extent her wish not to live with her father has some forensic value.

39. It seems likely her feelings with her regard to her grandmother to some extent include the degree of dislocation to her life that the same would require. It would be entirely natural for a child of any age to be worried about a move of this nature.

Her needs

40. I accept the professional evidence that Z is a child with particular needs arising out of the neglectful and unpredictable care she received prior to the removal from her mother's care. It is highly likely her mother's substance abuse will have led to her mother being emotionally unavailable to Z. I am mindful of the consensus that she requires better than average parenting and I reflect on the evidence of the positives deriving from the consistent care given by the foster carer.
41. In essence this section focuses on Z's emotional need for stability and consistency in her care. Without that she is likely to return to more challenging behaviour in an attempt to gain the care and attention she craves. I accept she would benefit from focused care whether or not this is on a 1-2-1 basis. I am concerned as to the likely impact on her needs being met of sharing the attention of a care giver with two other children, and a younger child in particular. I consider this will likely be increased by the understanding that she is different in not being the carer's own child. This dynamic has the potential to be destabilising for Z.
42. I am concerned that were the above to arise then the dynamic would become a challenging one within a relatively contained environment in which Z's primary carer giver had greater responsibility and duty towards the other children in her care. This would have the real tendency to create divisions and challenges in the family home both between the children and the adults, respectively. It concerns me that whereas J spoke of there being no issues as there is no current stressors in the home, this would be materially different were these concerns to materialise. These are not fanciful concerns but can be found within the professional evidence which is based on a sophisticated assessment of the characteristics of the various individuals who would be responsible for Z. There is also evidence of disharmony in that home on which I draw in making this observation.

43. I accept that there would also be likely emotional challenges for Z of relocation to [X]. As noted, this would be a fundamental change for her and would dislocate her from key relationships of value to her. I accept there is good evidence of a bond between MGM and Z and the recent visits have been positive with Z managing the visits without any real difficulty. There seems to be no doubt MGM is child focused and competent to meet Z's needs as they change.

Likely effect of any change in circumstances

44. It seems clear Z will experience a transition one way or another. This will either be to her father or grandmother. Either change would have an associated significant impact on Z. The question for the Court is as to which meets her welfare interests. I consider it is relevant to reflect on the prospects of success of each option. In my assessment it is of crucial importance that the next move for Z comes with a high level of confidence as to permanence. Z would suffer significant harm were she to rebound into care or were her placement to be unstable and subject to repeated fractures or challenges. If this were the case then Z would remain emotionally unsettled, would be unlikely to settle and would likely suffer significant negative consequences. A central purpose of this judgment is to ascertain the comparative stability and prospects of success of each placement. Having reviewed all the evidence (indeed this is agreed) it is clear a placement with MGM would likely benefit from stability and consistency. In contrast there is real uncertainty concerning placement with J. It is not at all helpful that in the considerable period during which the proceedings have endured J has not been able to engage to any meaningful level with the recommendations of the ISW. Whilst I have regard to his criticisms of the support he has received, it is striking how little progress has in fact been made. I agree J has shown a real drive as far as his employment is concerned. Yet he has not done the same with regard to the identified building blocks towards the return of his daughter. This is not due to a lack of love or commitment as he plainly loves Z very much. Rather, I judge it reflects his lack of acceptance of the points raised which necessitate work to be undertaken. I fear this is not a good foundation on which to build a successful future placement. I agree with the CG as to J not genuinely accepting change is needed as a result of which were Z to return it is less likely work would in fact be carried through to completion.

Z's characteristics

45. I have reflected on Z's age and sex and her background. I consider it is very important for her to maintain a good sense of her identity and the cultural richness of her varied background. I have little doubt these features will be maintained in the light of the good relationship between J and MGM and the appearance of a recognition by each of the importance to Z of maintaining a relationship with both.
46. I consider a significant matter to consider under this heading is the delay Z has experienced within these proceedings and the question of a determination now rather than later. This point must be understood in the context of what preceded the period of litigation. The previous period involved neglectful instability. I agree

with the evidence given as to the importance of Z having a decision made now. I have real issues with a period of further assessment given the period of time Z has been in proceedings. Whilst she is enjoying and benefitting from her current placement, I consider it is important for her to begin to put down roots in her permanent placement. I am concerned the longer this is left the greater a challenge it will be for her to successfully transition. I do not close my eyes to circumstances in which further placement might have benefit. However, I consider this would require a high level of confidence that the same would result in a permanent placement. On the evidence it is difficult to have this level of confidence as far as further assessment of J is concerned.

Risk of harm

47. I reference the threshold document. I accept the evidence of the professionals that J does need to engage with domestic abuse work given the pattern of behaviour demonstrated by him over a sustained period of time and within different relationships. I agree the evidence does not place this behaviour at the extremes of domestic abuse but it does undermine the confidence the Court can have of a settled home placement. On the evidence and without such work there is a real prospect of future disharmony and instability in the home with consequential impact on Z. It may be any future misconduct would be limited in extent but Z will, in my assessment, remain highly sensitive to the same given her experiences.
48. Whilst placement with MGM would come with emotional challenges this is a very different type of the risk to that associated with placement with J.

Capability of carer

49. MGM has been assessed positively for the purpose of a SGO. There is no challenge to this assessment. J agrees she should care in default of him caring for Z. I have no reason to reach a contrary conclusion as to her ability to provide good enough care for Z. I accept the conclusions set out in her assessment.
50. I am in no doubt J is genuinely motivated and wants the best for Z. I am persuaded he seeks to care for Z because he believes this will be best for her. He loves her and wants to be her day-to-day parent. These are all worthy motivations. I am persuaded T wishes to support J and would do her best to help care for Z. I consider her bond with Z is very different to the bond between Z and J. I am troubled as to the fragilities in the relationship and in the dynamic that would arise were such a placement to be approved. I consider there is still work to be done before one can have the confidence required to consider placement of Z into their care. It is unclear at this time as to whether the work required will in fact be pursued to a successful outcome. I am less concerned as to shorter periods of contact between J and Z. He has the capability to ensure these periods are safe and secure.

Range of Orders

51. I consider there is a clear need to identify and formalise the living arrangements for Z. It is important for the Court to determine what is best for Z. I am not persuaded there is a need to make contact orders in this case given the broad agreement and levels of goodwill in play. It is helpful for me to confirm my support for the plans placed before me.
52. I have considered the positives and negatives of each option. The proposed placement with MGM has much to commend it to the Court. To his credit J recognises it will meet Z's needs. It will offer a permanent family placement and support Z's mixed identity. It will permit an ongoing relationship with J (and at the right time E). There are no identified concerns relating to the placement other than the dislocation it will cause to Z's relationship with her father. This is important but I agree there is room to ensure the relationship is maintained. There is good evidence of available holiday contact with additional time when either MGM or J travel to the other country. There is a real potential for the contact to exceed the 6 times per year suggested by the professionals. In my assessment whilst this is not what a parent would want it is at a level which can successfully maintain the relationship.
53. Placement with J would act to maximise the benefit of time spent with one of Z's biological parents. It would also leave Z closer to her previous foster carer with the potential for that relationship to continue at some level if it can be supported by J. I also recognise it will promote the relationship between Z and her half sibling (and []) and with E when she is better placed to engage with contact. The worry or negative is the stability and sustainability of the placement over the longer term and the risk that Z will be left in a placement which is not meeting her welfare needs.

Conclusions

54. I am satisfied the best outcome and the right outcome for Z is to be placed with MGM under a SGO. I reference a number of points set out above which point clearly towards this outcome as being the option which will meet her needs. Whilst I respect the position taken by J, I am not satisfied sufficient confidence exists to place Z into his care at this time and I am unwilling to further delay a final determination for Z for the reasons already given. I consider further delay is wholly contrary to Z's welfare.
55. I was happy to hear the developing agreement as to contact provisions were this order to be made. I am sure such arrangements will make the outcome a better one for Z. I agree there is room to plan towards a minimum of contact set at 6 times per year and based around the holiday periods in particular. I agree there is room for further flexibility as can be agreed. I do not consider an order is required. In any event Z will become a child habitually resident in [X] shortly after the order is implemented. Whilst this judgment does not spend significant time considering E's contact I am hopeful this can develop over time. It will be important for Z to know her mother is well and I am sure she will benefit enormously if good and consistent contact can be established between the two of them.

56. I will hand this judgment down on 16 December 2024. Can I please have any corrections and requests for clarification by 4pm on 13 December 2024. I will address the question of publication and anonymity at the hearing.

HHJ Willans