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Case No. LS09C05566

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
LEEDS DISTRICT REGISTRY

Leeds Civil Hearing Centre
Coverdale House
13-15 East Parade
Leeds
LS1 2BH

Wednesday, 14th December 2011

Before:

THE HONOURABLE MR JUSTICE HEDLEY

In the matter of:

Re: K & ORS (Children)

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Counsel for the Mother: MR HAYDEN QC and MS MURDEN
Counsel for the Father: MS COVER and MR PRIESTLEY
Counsel for the Children: MR HAYES

JUDGMENT

1. HEDLEY J: These proceedings concern five children, namely Simon, who is now aged 17, Alec, who is aged 11, Susan, who is aged 7, Alice, who is aged 6, and Zac, who is aged 3. The mother of all these children is Mrs K, who is aged 36, and their father is Mr K, aged 40. The family have lived together in , which is in the area of the applicant Local Authority. Before the court there are proceedings under Part IV of the Children Act 1989 which were issued as long ago as 30th October 2009, and proceedings have been ongoing ever since. The case was transferred by Her Honour Judge Finnerty to the High Court in July of this year and came on before me for an Issue Resolutions Hearing in the last week of November, I think 29th November, and has been heard by me since 5th December. At no stage in this case, it appears, have any interim orders been made. Three of the children remain living at home and there are no restrictions on contact to the others.

2. It will be apparent even from that brief recital that this is a highly unusual case and one in which context is everything. First, for reasons that will become apparent, the Local Authority has been involved with the family over many years and they will continue to have a significant role into the indefinite future. Secondly, the parents are the key to the future welfare of all these five children, but in respect of three of them in a particularly special way. Thirdly, it is the fact that the parents and the Local Authority will have to work together not only during the rest of Zac's minority, which in itself has some 15 years to run, but in respect of Alec, Alice and Zac, into the indefinite future beyond that and, frankly, this is a case in which conflict, battles over control and legal status are luxuries that these children simply cannot afford.

3. It is always best to start with matters that are uncontroversial and pre-eminently that is to be found in the medical reports of Dr Peter Morrell, consultant paediatrician, in respect of all five children and Dr JD Mumford, a consultant psychiatrist dealing with the parents. I have found the evidence of both doctors balanced, informative and insightful and have no difficulty in accepting it in full.

4. Let me start with Dr Morrell's evidence in respect of each child individually. So far as Simon is concerned, there is nothing abnormal to report. He appears a normal and healthy young man. In respect of Alec, Dr Morrell describes him as follows at paragraph 11 of his report:

"Alec has clearly very significant and complex disabilities. These can be summarised and listed as: (1) global developmental delay; (2) generalised hypertonia; (3) visual impairment due to cortical blindness; (4) epilepsy. I think it reasonable to describe the motor disorder as cerebral palsy, although the further classification of this would be difficult. It is clear that despite very extensive investigations, the underlying cause of Alec's disabilities has not been found. Alec is clearly totally dependent for his needs."

5. So far as Susan is concerned, the medical evidence again suggests that, subject to some passing concerns about urinary tract infections, she is normal and healthy. Dr Morrell then goes on to deal with Alice, which he does in paragraph 17 of his report as follows:

"Alice has severe and complex disabilities. Alice has difficulties with motor skills and it would be appropriate to term this cerebral palsy. Alice also has microcephaly and she has shown evidence of learning difficulties. Alice has a past medical history of epilepsy, although this is currently well controlled. Alice has a degree of visual impairment, although this is not severe."

6. Then Dr Morrell turns to his summary in relation to Zac at paragraph 20, where he says this:

"Zac has severe and complex disabilities. It is reasonable to describe his motor disability as cerebral palsy. It may be reasonable to describe this as dyskinetic cerebral palsy. Zac has severe global developmental delay. He has visual impairment. He shows plagiocephaly."

7. Then Dr Morrell draws attention to a number of factors that apply to all the children, and they are set out in paragraph 21 of his report and really from subsections 15 to 20; it seems to me that it is proper for a complete understanding of this case that this section of his report should be read into this judgment in full:

"Alec, Alice and Zac have severe and complex neuro-disabilities. Although there are differences in their presentation, they are essentially similar and presented in a very similar fashion. It seems very likely therefore that the causation of these three children's disabilities are the same. It is very likely indeed, given the fact that the three children are from the same parents, that the underlying cause is genetic. However, despite very intensive and extensive investigation, this cause has not been uncovered. However, it is quite likely that at some stage the underlying genetic cause will be uncovered and it is very important that the children continue to see a consultant paediatric neurologist and also clinical geneticist who can make sure that the underlying diagnosis is considered at intervals. I cannot find any evidence that any of the children's difficulties are related to any past history of abuse or neglect."

8. He is then asked to provide a prognosis and assessment of risk "if the difficulties you identify are not addressed", and he continues:

"I assume this applies to Alec, Alice and Zac K. Clearly without a definite diagnosis of the underlying causation, it would be very difficult indeed to give a prognosis for these children. However, at present it is possible to say that none of the children appear to have life threatening disorders. It is known that children who have cerebral palsy, even relatively severe cerebral palsy, may not have a significantly shortened life-span. This is dependent upon various factors which include any evidence of recurrent chest infections which may become more severe and eventually can become life threatening. So far there is no evidence of this occurring in any of the three children. This may also be dependent upon severe epilepsy which itself can, again, be life threatening. Again, there is no evidence of this in any of the three children. It is important to recognise that whatever the similarities between these three children are, all five children are distinct and different human beings and may each have different potentials and different needs and therefore, in relation to three of them, different care needs."

9. One then turns to the evidence of Dr Mumford in respect of the parents, and, again, for the proper understanding of this case, it is important to set some of this material out in the judgment. At paragraphs 3 to 5 of his report, the psychiatrist says this in relation to Mrs K:

"Like Dr Morrell, the reporting consultant paediatrician, I do think the burden and practical effects of caring for her disabled children in her particular social and family situation have clearly been cumulative and it is noticeable that it is only over recent years as that burden of care has increased with Alice and then Zac's arrival in the family, that she has developed increasing symptoms of both mental and physical ill health. I see her increasing symptoms of depression and anxiety over recent years as being largely secondary to her situation, and I see her physical symptoms of widespread pain and reduced mobility, fibromyalgia, as being psychosomatic in aetiology and another way in which the level of her stress has been presented. It is relatively common for individuals from their background cultures to present with psychological symptoms of stress, depression and distress through physical symptoms of pain and disability that are not fully medically explained, such as fibromyalgia."

10. Then he goes on to say this at paragraph 9:

"I consider she is a woman who through various factors, including her estrangement from her locally living siblings, the increasing burden since 2000 of caring for her three disabled children as they have been born, and her relatively poor command of English, has become socially isolated and progressively overwhelmed with the responsibilities of caring for her three seriously disabled children without respite. That progressive overwhelming of her coping abilities has become evident over recent years with her developing symptoms of depression, anxiety and panic, alongside increasing physical symptoms of chronic pain and reduced mobility that are psychosomatically mediated. I see her combination of psychological and physical symptoms as being secondary to her situation."

11. Dr Mumford then turns to a consideration of Mr K. At paragraph 2 he says this:

"I see the psychological mechanisms and aetiology of his physical symptoms of fibromyalgia and irritable bowel syndrome as being similar to his wife as these are psychosomatic or somatoform conditions which I consider as secondary to the increasing stress and burdens of care that he and his wife have been subject to over recent years."

12. He adds this at paragraph 26:

"There is likely to be a significant improvement in his condition if it is possible to engage with him and his wife to address the issues that concern them."

13. I have to say that in the light of Dr Morrell's views, there is nothing very surprising in the observations of Dr Mumford and it appears to me that the lessons that are to be drawn from this are: first, that these parents remain key to the future of their children; secondly, that they need to be sustained in that role as their abilities to do so are in peril and, thirdly, that there is a real risk of Simon and Susan getting lost in the overwhelming demands of the other three.

14. Where these children should live and, subject to one exception, where they should be educated is no longer in dispute. How Alec got to his present residential care home (H) and what other plans were considered for Alice and whether Zac should go to H are controversial. However, the first two concern the past and their resolution by the court may be neither necessary nor helpful. I need to say, however, that the Local Authority's exploration of other options was reasonable and one simply cannot ignore the funding implications of cases such as this in today's climate and it was reasonable to explore the possibility of Alice being fostered, just as it was reasonable to abandon that idea and accept her placement at H. The reason that both were perfectly proper approaches is because the care of the seriously disabled often involves endless compromises between the individual needs of the individual child to fulfil individual potential on the one hand, and the benefits to the child of maintaining their place in the family unit on the other. Those two often pull in different directions and render compromise inevitable.

15. The third issue concerns the future. The court cannot decide it. It must be decided as and when it arises. Zac is doing well at home, is correctly placed at home, and there is every reason to believe that that placement will remain correct for him into the indefinite future. His future will depend both on his developing needs and on the ability of the parents to meet them at home, an issue in itself connected with their health, as both Dr Morrell and Dr Mumford have observed.

16. Because all this seemed to me both unusual and difficult, I have gone about its resolution in an unusual manner, albeit with the consent throughout of the parties. The fundamental purpose has been to see if a way forward can be found in partnership, which, as I have said, must happen indefinitely into the future, without the need for a damaging trial over the question of whether the threshold criteria have been satisfied. I regarded this approach as all the more urgent in this case because of the deeply conflictual tone of almost all the statements, not just of the parties towards each other, but of the Local Authority towards some experts and, of course, a letter from Simon suggesting, unsurprisingly no doubt, that he has been drawn up to his ears into this dispute. It is the fact that some two years have passed since a Local Authority social worker was admitted to the house and it is the fact that, until this hearing began, the parents had not spoken to the current social work team. It was a matter of relief that on one matter all parties were agreed. This could not go on and change had to occur. It is also worthy of note that, as a matter of fact, the combined work of the parents and the professionals to date has in fact succeeded in promoting and safeguarding the welfare of the children in very substantial part. Despite the ongoing conflict with the family, the Local Authority social workers have managed to negotiate substantial investment in the family, including procuring the two places at H, and there is no reason to doubt that the parents have secured the children's emotional welfare throughout.

17. I have pursued this aim by making my provisional views about the case and my suggested possible route to solution much more readily available than would necessarily be right were I hearing an arm's length trial. I have allowed considerable amounts of court time over the last seven days to be used outside the court room. From those discussions have emerged four agreements: one between the Local Authority and the parents, one between H and the parents, and a tri-partite agreement between them all, and a further agreement between the Local Authority, the parents and the proposed coordinator or case manager in this case. There are two issues of disagreement remaining and all agree that they can be considered in this judgment and then acted on by the parties.

18. Moreover, on the second day of the hearing we adjourned to H, who kindly made their boardroom available to us. During the course of discussions, the parents met constructively with the social work team under the aegis of the guardian, though of course this must only be the start of what needs to be a regular pattern of meetings. I had a chance to see the premises and speak informally with the general manager and the chief executive. I also had the chance to see the family together, of which more in a moment. At the request of the parties, I also went to the special school (F) attended by Alec, Alice and now Zac, and spoke informally with the headteacher and a member of the medical staff. I wish to record my gratitude both to H and F for their tolerant hospitality, and I have written personally to the general manager and the headteacher to express that. In a case in which, as I have said, context is everything, I found this second day particularly valuable. In short, this case, being unique, has received unique treatment.

19. At Simon's request, I met with him in the company of the guardian. He is a bright, intelligent young man with a burning ambition to practice medicine. He clearly has a powerful sense of responsibility to and for his family and a deep commitment to his brothers and sisters and he shares his parents' sense of hurt at how things have turned out. Whilst his sense of responsibility is both proper and commendable, he needs also to be able to live his own life. Our conversation suggested that he is aware of that issue and is determined to achieve that to which he aspires. I shall be surprised if in time he does not do so.

20. When meeting the family, my concerns about Susan being overlooked in the satisfying of all the demands of the others was in significant measure allayed not only because her parents and Simon are well aware of that danger but also because she seemed to me a young lady who would not readily allow herself to be ignored. She certainly made sure the judge did not do so. I allowed the parents to speak freely during this meeting. I was shown with great and justifiable pride photographic records of the children. I fear I did my credibility no good in mistaking a much younger Simon for his sister, Susan. Mr K mentioned his anxiety about Alec attending F, principally based on a concern about their ability to handle his gastrostomy. I am glad he did so because I was able to take this up with the medical staff at F as well as the headteacher. To my surprise I learned that over 20 percent of the children attending the school have a gastrostomy and I was given a demonstration of how gastrostomies were cared for and aspirated.

21. There remains an issue in respect of Alec's education. The parents would like him to leave F and have his educational provision met at H. The reasons for that view are broadly these: the care of his physical health and gastrostomy; if he has a deterioration in the day there can be delays in getting him back to H, whereas if he is there, he is able to benefit from the frequent visits of the consultant paediatrician; the burden of travel is considerable on Alec and he may benefit from continuity of care at H, and of course his disability is the greater and thus he may be less able to benefit from F. It is also the view of the H team, expressed through the chief executive, that Alec's educational needs would be fully and satisfactorily met at H.

22. The Local Authority view is that F meets his needs. He is well established there and greatly valued there and, in any event, this is the appropriate state provision for Alec's education. The guardian broadly supports the Local Authority's welfare assessment on this question. I have thought carefully about this as clearly it is of importance. My initial reaction, given that this was the state provision and that his special educational needs statement would be reviewed every year, was to decline to adjudicate on this but to leave it to the next review to be dealt with on the ground, as it should be, and indeed it will be reviewed each July as the statement falls due. However, since I had in fact formed a clear view on this issue, I think it only right that I should express it. I recognise the force of the parents' concerns, but I have to say that I am satisfied that the benefits of F at present very considerably outweigh those concerns. It is a place he knows well; it is a place that Alice attends and Zac has begun to do so. More importantly, it is a place where Alec is well known and, as a staff member put it to us, is loved. I think the change of scene is in his interests and serves to broaden both his experience and his social network. It seems to me important that he should, if possible, have experiences outside that of H. I am well satisfied that F can satisfactorily manage his medical needs. In short, not only do I not think there is a case for change, I am satisfied that the present arrangements constitute the best option for Alec, although of course that may change, and that is why these matters need to be reviewed, as they will be, on an annual basis.

23. All that said, it is necessary to consider the legal framework in which we are working. These are care proceedings under Part IV of the Children Act 1989. The welfare jurisdiction of the court is predicated on the basis that the threshold test in section 31(2) is satisfied. That provides as follows:

"A court may only make a care order or supervision order if it is satisfied (a) that the child concerned is suffering or is likely to suffer significant harm and (b) that the harm or likelihood of harm is attributable to (1) the care given to the child or likely to be given to him if the order were not made not being what it would be reasonable to expect a parent to give to him, or (2) the child's being beyond parental control."

24. Those provisions do not of course sit very easily with a case like the present. Significant harm is a real daily risk for Alec, Alice and Zac, but the incidence of such harm may not, and usually will not, have any connection with the quality of care which is being given to them. It is incidental to their inherent conditions. By way of illustration, the headteacher at F told me that over the last five years ten children in his school have died simply from natural causes. Moreover, the fact of the matter is that the needs of three of these children are, in truth, beyond the capacity of any parents to meet on their own. In my judgment, this is not a case in which the court ought to resort to the additional ground of being beyond parental control, for that was clearly not intended for this type of case. Nevertheless, it is important that there is some model of reasonable or good enough parenting in respect of children who face significant harm by reason of their condition and whose needs are beyond the capacity of any parent to meet them on their own. It seems to me that the court must attempt some kind of definition.

25. A reasonable parent must of course demonstrate a commitment to the child and to the meeting of his or her needs. Such a parent must acknowledge the proper role of professionals both in medicine, education and social care, and be willing to hear and receive both advice and services. Of course that does not always mean always to accept the advice, for parental intuition and reflection may from time to time be better than professional judgment, and examples could be found in this case both ways. Moreover, unduly compliant parents may indeed lack the necessary commitment to the child. On the other hand, a refusal to engage or a rejection of widespread advice likely to lead to significant harm or a usurpation of a professional role, eg a decision about medication, with a similar likely consequence, may well expose the parents to the serious risk that the threshold is found to have been satisfied. Those matters are controversial in this case but they shed little light on what is to happen in the future. They are really matters which, although very important to the parties in the case, as the length and intensity of the witness statements demonstrate, are really relevant only to determining whether the court can exercise a welfare jurisdiction. This will often be the case with seriously disabled children, absent evidence of gross neglect or inflicted injury. The cooperative spirit in which all parties have in fact sought to deal with the issues before me, and the sustained commitment to negotiations, suggest that they do indeed wish the court to exercise a welfare jurisdiction despite, or in spite of, whether or not the threshold is made out.

26. The minds of those who practised in this area of the law before 1989 inevitably turn at such times to thoughts of wardship. Of course the court is constrained by section 100 of the Children Act and the court cannot use wardship to compel parents to relinquish parental responsibility to a Local Authority. Here, however, there is agreement as to where the children reside. The Local Authority seek to withdraw proceedings in respect of Simon and seek no order in respect of Susan and Zac. Their stance at the opening of the trial was to seek care orders in respect of Alec and Alice without seeking either to change their present placements or significantly to regulate contact. It was clear to me that they would willingly change their position on that were they to receive cooperation from the parents and be able to develop a working relationship with them. Their meeting at H during this hearing was a clear and positive, if first, move in the right direction. It seemed to me that what was needed here was not necessarily orders under Part IV of the Children Act 1989 but a legal framework which kept all parties on equal terms and did not undermine the morale of the parents, as I am sure a care order would have done, but nevertheless made both parents and the Local Authority accountable to the court for the maintenance of a proper working relationship. Again, a unique solution for a unique case.

27. The Local Authority rightly recognise the commitment of the parents to these children and the enormous strains that are inevitably imposed on them. The parents need to recognise that the Local Authority has its duties under statute to these children and, in particular, that their views as to what is right for the children may not always be the same as the views of the parents and also that resources are inevitably finite and have to be shared. Two comments, if I may, in furtherance of that. First, it will not always be the same party who is right over welfare and each must seriously consider the views of the other and, secondly, resources do have to be shared. The headteacher told me that the K's are just one of three families in his school with three multiply-disabled children.

28. All this often comes down to hard choices about limited resources. As I mentioned in argument, I have never met the parent of a seriously disabled child who believed that his or her local authority, however good individual relations in fact were, was meeting all the child's needs. It simply cannot be done. In this case, the placements of Alec and Alice will cost this Local Authority in 2012 £246,000, a sum which will increase annually by £1,600 thereafter. Now, they are obviously necessary charges but they are also very substantial charges on a local authority budget in an era of diminishing resources and difficult judgments all too often will have to be made. This is well illustrated in this case by the adaptations that will need to be made to the family home for Zac to be able to live there. The Local Authority need to consider adaptations for Zac. The parents, perfectly reasonably, would like Alec and Alice to be able to visit overnight. There is no statutory right to adaptations on that basis. However, all accept that it will be sensible for the assessment to take into account Alec and Alice visiting but the parents have to recognise that the Local Authority has no duty in that respect. The assessments are for information. They are not, and cannot be, a promise of implementation.

29. One approach that has been agreed by the parties in this case is the appointment of an independent case manager. This appointment in family proceedings is and must be seen as unique to this case. Ordinarily, such skills as are required can be found either in the local authority or the agency actually delivering the care service. However, given the unique combination of multiple disability and fraught history, it is agreed that this case needs exceptional treatment, and hence the appointment. The role and purpose of the case manager is clear but the cost is not. The proposed appointee has been of great assistance in the negotiations in this case and has produced an agreed timetable and costings for the early stages. However, she cannot report on long-term costs until January 2012, by when she will have sufficiently familiarised herself with the case properly to estimate the time commitment and thus the cost that will be required. For good reason, the Local Authority cannot effectively sign a blank cheque and, whilst making it clear that they wish to follow this route, must reserve their position until the actual cost is known. All other parties accept that position. This issue can, if necessary, be restored to the court. In the meantime, her role is agreed and encapsulated in the fourth agreement.

30. Cases of severely disabled children do not, as I have indicated, sit easily or conveniently within the scope of Part IV of the Children Act 1989. In this case proceedings were issued primarily to address the breaking of a deadlock between Local Authority and parents. The proceedings may well have achieved that aim, though not before they had first further embittered and embattled that key relationship between the parents and the Local Authority. It seems to me that legal proceedings will often, at best, have a very limited contribution to make in cases like this. Whatever its deficits may be perceived to be, the family unit, if functional, is of central importance to the permanently disabled for it is the one fixed point in the constantly moving waters of state care provision. The welfare of such children over a lifetime is closely bound up with the ability of the family to remain a functioning and effective unit. By the same token, it must be emphasised that resort to litigation to advance one family's interests at the inevitable expense of others is to be deeply deprecated. As a general rule, as I have said, litigation rarely contributes to the resolution of these issues.

31. This case is, of course, unique. I can understand why proceedings were instituted, and the plain fact is that real progress has been made in the course of them, but it has come at a price, both material and emotional, and at a price which will rarely be justifiable. Certainly the parties will find the court reluctant to assume a long-term role in this case and even more reluctant to become involved in issues which other families and local authorities have to resolve on the ground between themselves. The court will not allow itself to be used to provide a way out of the responsible resolution of issues on the ground as they arise.

32. A good example of this is the ongoing discussions – and this is the second contentious issue in the case – over care and respite for Zac. Time was when he received 32 hours per week in term time and 56 hours in holiday time, all funded by direct payment. This has now been re-assessed at 21 hours. However, it has been proposed that a three-month assessment of Zac's needs for night care on the basis of eight hours per day three times per week is undertaken. In addition, two nights per calendar month respite at H is proposed. The parents would rather the night time were delivered by their directly employed carers, a reasonable view if it becomes a long-term arrangement; whereas the Local Authority want it done as an assessment via specialist workers, a reasonable view on that specific basis. It does not seem to me that this is a proper area in which the court should intervene. This must be negotiated on the ground with the assistance, if necessary, of the case manager.

33. Again, one of the agreed consequences of the case is that Alec and Alice will no longer be temporary but will become permanent residents at H. That change is reflected in the agreement between the parents and H. If no care orders are made, then of course, although the children are permanent residents at H, only the parents hold parental responsibility for them. Generally, of course, that is not an issue as not only would H involve the parents in all decision making but the parents are practically daily visitors to H. Nevertheless, I think there are two points worth making. Emergencies may arise or, despite best endeavours, parents cannot be contacted. The agreement deals with this and it seems to me that the court ought to draw attention also to the provisions of Section 3(5) of the Children Act, which is in these terms:

"A person who (a) does not have parental responsibility for a particular child but (b) has care of the child may, subject to the provisions of this Act, do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare."

That is, as it were, the statutory foundation of the agreement that has been made in this case.

34. Secondly, there will be occasions where the parents and H do not agree. An example can be found in this case in respect of whether Alec is well enough to attend school. The parents have shown themselves more cautious than the H staff, but I would urge the parents to give the closest attention to the views of the staff, particularly those who know Alec well. Those views are likely in themselves to be cautious and they are subject to confirmation by the medical team at F who would send back any child not well enough to be at school. It is an understandable tendency to closely protect these children but their best interests will more often than not be served by resisting that tendency. Nevertheless, this is not an area requiring any determination by the court.

35. Likewise, there remains the issue of Alec and Alice's general practitioner. At present they share the same general practitioner as the rest of the family. H have an, as it were, in-house general practitioner who knows H well and they would like him to be these children's general practitioner now that they have become permanent residents. This, everyone has agreed, should be the matter of ongoing consideration and is reflected in paragraph 7 of the tripartite agreement.

36. In the light of the developments in this case, both in terms of agreement over placement and in the new phase of working between the family and the Local Authority, the Local Authority wish to withdraw care proceedings. That can arise in one of two ways: either through failure to prove threshold, in which case withdrawal is inevitable as the only other possible outcome in the case is dismissal; or, on proof of threshold, a welfare decision is required. The parties, for very good reason here, do not want a contested trial on threshold but the Local Authority asserts that that case could have been made, an assertion denied by the parents. How is the court to deal with this? In my judgment, the court should approach the issue as follows. First, it should consider whether a trial on threshold should be required. Secondly, if not, it should consider whether, on summary examination, it appears unlikely that the Local Authority could prove threshold. Thirdly, if so satisfied, it should allow withdrawal without more. Fourthly, however, if not so satisfied, it should consider whether withdrawal is consistent with the interests of the children assessed both individually and as a family.

37. I am satisfied, for reasons that should be apparent from this judgment, that it would be wrong to require a trial on threshold issues in this case. I have considered the evidence on threshold. I can, of course, make no findings on disputed issues. However, I am certainly not prepared to say on a summary basis that threshold could not have been made out in this case. Accordingly, I propose to consider the Local Authority's application on a welfare basis.

38. Proceedings serve no purpose in relation to Simon and serve no need in relation to Susan. Having regard to the present levels of agreement in relation to Alec, Alice and Zac, I do not think that withdrawal would be in any way inconsistent with their interests, which have been fully considered in those four negotiated agreements. Viewed as a family, I am confident that withdrawal of proceedings will positively promote the welfare of these children in that context. For those reasons, and in the context of all the matters appearing in this judgment, I propose to give the Local Authority leave to withdraw proceedings under Part IV of the Children Act 1989 in respect of all five children.

39. That said, given the conflicted history of the case, I think it desirable that some legal structure should remain in place. It is for that reason and with the consent of all parties that I propose to make Alec, Alice and Zac wards of court until further order.

40. In my view, with the parents as plaintiffs, that preserves equality between the parties. It reminds all that they remain accountable to the court for making the necessary arrangements for the care, education and nurturing of these three children and it confirms the court's powers over the control and delegation of parental responsibility. It provides a reference point for dispute, although not one that will be easily engaged. It is right that the four agreements should be scheduled to any order of the court. The accountability process will be further worked out by the court requiring a short progress report in June and December next year, with a court review in the last working week of 2012.

41. Any disputes in the interim, which are greatly to be discouraged, but, if they exist, will be managed by (a) reserving the case to me or, in an emergency, to Her Honour Judge Finnerty, who knows the case well, and (b) by directing that any application made in 2012 shall be listed without notice to any other party before me for directions and I will not permit service unless satisfied that there is an issue requiring judicial investigation. That condition will not apply, however, to any issue concerning the continuance of an appointment of a case manager.

42. At the review, the court will consider whether wardship is likely to perform a continuing useful function. Certainly it is my view that it is in everyone's interests to remove this case from the court arena as soon as is reasonably practicable. As I have said, this case is unique and merited a unique approach and outcome. I have allowed what some may think to be extravagant periods of time for reflection, enquiry and negotiation. I have done so, however, because, once again, context is everything. The fact is that there was a family in crisis. Given the circumstances, there was a real risk that the family would not survive the crisis. Working relationships had entirely broken down, hence the proceedings. On the other hand, three of these children will have major or total lifelong dependency on others for care. The key component in that, as all recognise, is the family. However, the family will not survive as a unit without professional support and services. This, too, will be a lifelong feature. Thus the importance of getting it right now cannot be over-emphasised and hence my willingness to create the procedure, time and space in which that could happen.

43. I greatly appreciate the effort of all – family, professionals, Local Authority, H, guardian, as well as the legal teams who have given clear advice and have been willing to adopt both an unconventional and a non-confrontational approach, all of which have served to secure this end. I want only finally to say this. Whatever the disputes of the past, this remains an intact family in which the best interests of the children are paramount. I hope this case has given the parents the confidence to continue the task that compels the admiration of all. I hope, too, that in that renewed confidence they will feel less anxious, will feel that they do not always need to be right on everything or in control of every issue, but will learn to trust others and to respect and consider contrary views; in short, that all will come to recognise that that which will unite this family, and H and the Local Authority in the future, is not the written agreements, important though they are, but their shared commitment to promoting the welfare of these children, especially Alec, Alice and Zac, who of course have nowhere else to turn.