



Neutral Citation Number: [2019] EWHC 1101 (Fam)

Case No: BS16C01250

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/05/2019

Before :

MR JUSTICE WILLIAMS

Between :

Gloucester County Council	<u>Claimant</u>
- and -	
JD	<u>1st Respondent</u>
- and -	
AC	<u>2nd Respondent</u>
- and -	
The Children	<u>3rd - 4th</u>
(Represented by their Guardian Liz Cowan)	<u>Respondent</u>

Child Arrangements

Claire Wills Goldingham QC and Herc Ashworth for the Applicant
Benjamin Jenkins (instructed by **Langley Wellington Solicitors**) for the **1st Respondent**
Fiona Farquhar (instructed by **WSP Solicitors**) for the **2nd Respondent**
Paul Gammon (instructed by **Cafcass**) for the **3rd and 4th Respondent**

Hearing dates: 1st May 2019

Approved Judgment

I direct that pursuant to FPR 27.9 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE WILLIAMS

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 children and members of their 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.

Mr Justice Williams :

1. I am concerned with two children P (born on 17 June 2015) who is nearly 4, and B (born on 10 May 2016) who is nearly 3.
2. The application I am considering is that of Gloucestershire County Council. They originally commenced care proceedings in relation to the children. The first respondent is the mother of the children JD. The second respondent is AC. He is registered as the father of P on the Portuguese birth certificate but is not in fact his biological father. He is the biological father of B. The children are represented by their Guardian.
3. The application concerning the children has a long history which I shall not repeat at length here. Suffice to say that on 27 June 2018 Mrs Justice Roberts made findings that the first respondent mother had caused various injuries to B, mainly bruising, by the application of excessive force and that she had failed to seek medical care for B after having inflicted those injuries. She also concluded that P will have suffered emotional harm by witnessing the mother cause injury to B or B's distress in the aftermath. At a hearing in December 2018 I also made findings in relation to injuries that B had suffered. Those injuries were sustained when B was a small baby and were very serious including fractures of her ribs, brain trauma, a laceration to her liver and spleen, and various soft tissue injuries. I was unable to determine who had caused those injuries save to the extent that they were caused either by the mother or by the landlady with whom the parents and children were sharing a house at the time, namely JL. These findings were made subsequent to those made by Mrs Justice Roberts in June 2018 because the original findings of fact made in respect of these very serious injuries was reopened and thus the findings in relation to the more serious but earlier injuries occurred after the findings in relation to the later and less serious injuries.
4. It will be immediately apparent that the father was exonerated of any responsibility for the injuries that B had sustained, but the mother was identified as the perpetrator of the bruising injuries and a possible perpetrator of the very serious brain and other internal injuries and the fractures.
5. Following on from those findings I gave directions for assessments to be conducted of the mother and the father. The mother was to be subject to a psychological assessment which would have informed an assessment of any risk that the mother might continue to pose to the children. The father and his new partner were to be subject to social

work assessments in order to determine whether they would be able to care for P and B.

6. However, the mother did not attend the appointment with the psychologist and thus no psychological assessment in relation to the mother is available.
7. Assessments were undertaken of the father and his new partner, Ms DC. This was undertaken by the LA social worker over a seven-day period in Portugal and looked at not only the ability of the father and his partner to care for B and P, but also the other children in their home along with their general home conditions. The assessment was a detailed one including some 28 hours of observation of the father and his partner and the children. This included overnight stays for P and B with them. The social worker also liaised with a Portuguese social worker Dr Figuerido. The conclusion of the report was positive noting that both the father and his partner were kind and fair to both children and treated them equally and that they were able to meet both of their needs.
8. A social work assessment of the children was undertaken which concluded that P and B should remain together and that there were no factors which would support separating them given the trauma they had already experienced.
9. As a result of these positive assessments and the failed assessment in respect of the mother, the local authority's approach to the future care of the children has been to focus on the option of the children being cared for by the father and his partner. The care plans provide that they no longer seek care or supervision orders save to the extent that an interim care order is required to facilitate the travel of the children to Portugal and they being placed in the care of the father and his partner. At that point, the order, the local authority say, will best promote the children's welfare is a child arrangements order specifying that both children are to live with the father and his partner. In tandem with that order the local authority seek orders under section 8 of the Children Act 1989 which have the effect of limiting the mother's ability to exercise parental responsibility in respect of B or P. Given the risks she poses to the children, which remain un-assessed as a result of her nonengagement with the psychological assessment, the local authority's position is that all contact with the mother should be supervised and so alongside prohibited steps orders, the local authority invite me to make a 'time with' (otherwise known as a contact) order which provides that any contact that the mother has will be supervised either by a person nominated by the father or by social services in Portugal. The local authority invite me to issue an Annex II certificate pursuant to Article 39 of Council Regulation 2201/2003 which will be registered with the relevant Portuguese court. Thus the plan is for the children to be acclimatised to separation from their foster carer and the move to Portugal by a short period of time with the foster carers in England in which the children will have the opportunity to say their goodbyes to their community in England, following which they will travel with their foster father to Portugal. The children were to have 2 final contacts with the mother before departing, the mother missed the 23 April 2019 session but she has confirmed she will attend that on 7 May. Photo books will be prepared for them to look back on as part of their life story. The current foster father and the social worker to travel with P and B to Portugal in the latter part of May 2019 and will stay for 3 or 4 days in order to support the transition of P and B into the care of the father and his partner. Although the father and his partner did not require support or advice during the time the children spent with them

in the assessment period it will be available at this crucial juncture. The father's partner will be taking one month off work in order to support the children through the transition. In addition financial support will be provided by the local authority to assist the father and his partner in making the transition to the permanent care of P and B. The Portuguese social worker, who the applicant has been liaising with, has indicated that they will monitor the placement of the children provided that is dealt with in a court order.

10. The father is in agreement with this plan and has confirmed that he will facilitate indirect contact between the children and the mother by way of cards, letters, and social media. He has agreed that there should be supervised direct contact 3 times per year; and he will nominate someone who knows the children well to supervise that contact if the Portuguese have not provided a supervisor.
11. The mother is also in agreement with the plan and the proposed order. The Mother has been updated as to developments today and has given her instructions via an interpreter to Mr Jenkins. I am told that she is pleased that the children will grow up with the father and his partner.
12. The Guardian filed a final analysis on 9 April 2019. The Guardian supported the placement of B and P with the father and his partner although expressed concerns over whether it should take place on an interim basis given the significance of the move and the need for continued support of the family. She recommended that the mechanism was put in place which would enable social work visits by the Portuguese social worker over the period of 2 months after the children move to the father and his partner. As a result of further discussions, the Guardian was satisfied as to the plans for the transition and the support that would be provided both financially and in social work terms thereafter. Those are now recorded in the draft order.

Assessment of welfare

13. The welfare of P and B is the paramount consideration for me. I also bear in mind their right to a relationship with each of their parents provided that does not pose a risk to them. I take account of the welfare checklist and the no order principle.
14. It is clear from the evidence that the father and his partner are able to offer a good home to P and B. They are capable of meeting their needs and pose little or no risk to the children and application of the welfare checklist in detail is superfluous having regard to the totality of the evidence in this case which unerringly points to it being in the children's welfare to live with the father and his partner.
15. No other realistic option has been presented.
16. The risks posed by the mother and her lack of capability rule her out as a potential carer for the children. The risks that she poses to these children are such that at the present time and on the current state of the evidence it is not in the children's welfare to have anything other than supervised contact with her.
17. I am therefore satisfied on the evidence I have read that it is in P and B's welfare that they should live with the father and his partner under the arrangement proposed and that I should make the orders proposed.

18. The effect of the live with order will also be to confer parental responsibility on the father's partner, by operation of section 12(2) of the Children Act 1989, who would acquire parental responsibility for both children. The father has parental responsibility for B and it appears under Portuguese law he also has parental responsibility for P because he is named on his birth certificate. However, for the avoidance of doubt, I confirm that in accordance with section 12 of the Children Act 1989 that the father has parental responsibility for P as a consequence of the 'live with' order. Such orders in respect of parental responsibility have effect in Portugal pursuant to article 16(3) of the 1996 Hague Convention on jurisdiction, applicable law recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children.
19. The effect of registration will be that not only is the order automatically recognisable pursuant to Article 21 of BIIa but that it will also be immediately enforceable pursuant to Article 28. The local authority will fund the application and the parents have agreed to provide such documents indicating their consent in order to ensure the registration process occurs smoothly. The mother has agreed that she will not appeal against the registration.
20. The effect of the allied section 8 Children Act orders is intended to limit the mother's ability to exercise parental responsibility in respect of each of the children. It appears probable that she has parental responsibility under Portuguese law and will retain that. Her parental responsibility cannot be terminated under English law however it is clear that her ability to exercise her parental responsibility should be curtailed and strictly limited. It is the father and his partner who will be the sole carers of P and B and it is they who have responsibility both in fact but also in law for making decisions in relation to all day to day matters relating to the children. The draft order identifies those aspects of parental responsibility (i.e. the usual day-to-day matters involved in the care of a child) on which they will be able to take unilateral decisions. Other matters of importance such as name changes or permanent relocation will be subject to agreement or application to the Portuguese court. The order will also make clear that the father and his partner have the ability to exercise parental responsibility together or independently of each other. Where the father is unavailable or incapacitated for some reason, his partner will have the ability to exercise parental responsibility in preference to the mother.
21. Furthermore, the contact order is required in order to protect the children from the risk of harm that the mother poses to them. Any contact with her should be supervised by someone who is in a position to ensure the children come to no harm, physical or emotional, when they see her. I am satisfied that it is in their welfare to maintain a relationship with her and this is supported by section 1(2A) Children Act 1989 and Article 9 of the United Nations Convention on the rights of the child. However, there are limits to this arising out of the risk of harm that the mother poses. Therefore, the contact order is in the children's welfare interests provided that the contact is supervised. This order is intended to be enforceable in Portugal and the importance of supervision should not be overlooked. Of course, as the children grow older, they will be in a better position to protect themselves. Equally the mother may be demonstrated by evidence to pose less of a risk. Complacency should be guarded against though. It will be a condition of contact that the supervisors are made aware that the need for supervision arises out of the risk of physical injury being inflicted upon the children

by the mother. In relation to the supervision of contact for the first 2 years the first choice for supervision should be a social worker or similar appointed by Portuguese social services with the father's ability to nominate being a default in the event that supervision via social services is not possible. I very much hope the Portuguese authorities will make good the offer of supervision whilst these children remain very young.

22. In relation to the social worker monitoring and support following the transition of the children to Portugal the local authority submit that a family assistance order should not be made in favour of the local authority because there is no such legal creature in Portugal. The issue of the transferability of obligations upon local authorities from one member state to another has not, so far as I am aware, been the subject of detailed consideration in this court and this judgment is not the time and place to undertake such an analysis. It is clear from the evidence that the local authority in England through the social worker and Dr Figuerido have worked co-operatively with each other and I am prepared to accept that the indications are that a request within an order of this court is likely to be acted upon by Dr Figuerido and her colleagues in Portugal. Thus I am satisfied that a request that the Portuguese social services monitor and support the placement for not less than 2 months is likely to be acted upon on Portuguese soil.
23. I will therefore approve the plan for P and B and make the orders proposed.
24. Last, but not least, I would like to add that the work that the local authority and in particular their social worker have put into this case is testament to the dedication and the commitment of social work professionals to the welfare of the children they have responsibility for. In an era when social workers are working under huge pressure as a result of funding issues (see the recent report of the Housing, Communities and Local Government committee of the House of Commons) this case is a shining example of how, despite those pressures, the social workers at the coalface work tirelessly on behalf of vulnerable children and families to improve their lives. On behalf of the father, Ms Farquhar proffered her thanks to the social worker which was echoed by the Guardian. I also would endorse those thanks and express this court's gratitude for the work that has been done on this case.
25. That is my judgment.