



Neutral Citation Number: [2024] EWHC 1191 (Fam)

Case No: WV21C00104

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/05/2024

Before :

MRS JUSTICE LIEVEN

Between :

THE MOTHER
THE FATHER

Applicants

and

SHROPSHIRE COUNCIL

First Respondent

and

H
(a child, acting by her Children’s Guardian)

Second Respondent

and

F

Intervener

Miss Hannah Lowe (instructed by **Clarkes Law**) and **Miss Lizzie Hughes** (instructed by **W M Law**) for the **Applicants**

Ms Elizabeth McGrath KC (instructed by **Shropshire Council**) for the **First Respondent**

Ms Kirsty Gallacher (instructed by **Talbots**) for the **Second Respondent**

Mr Andrew Duncan (instructed by **W M B Law**) for the **Intervener**

Hearing date: **7 May 2024**

Approved Judgment

This judgment was handed down remotely at 10.30am on 17 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE LIEVEN

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.

Mrs Justice Lieven DBE :

1. This is yet another judgment concerning H, a girl now aged 3. H was the subject child in the Court of Appeal judgment *Re H (Parents with Learning Difficulties: Risk of Harm)* [2023] EWCA Civ 59. The Local Authority (“LA”) issued proceedings in respect of H at birth, but H has remained in the care of her parents since birth.
2. The issue which now comes before me is whether H should be allowed to go abroad with her parents for a holiday in June. I held a short oral hearing on 7 May 2024 and allowed short further written evidence. In order to understand why this is so contentious it is necessary to understand the history of this matter.
3. The Mother has a learning disability and the Father has learning difficulties. This has significant implications for their care of the children, and for the evidence that they gave. H has four older siblings, D a male aged 25, E a male aged 20, F a male aged 17 and G a girl aged 14. For the purposes of the case before me, E and G are largely out of the picture. By the time H was born D, E and G were all in placements away from the family home, and care orders had been made in respect of E and G. F was made the subject of a care order on 11 February 2021 but has lived away from home since 7 November 2023 when allegations were made to the police about an incident between him and H. Those allegations were the subject of my judgment in *Re H (Continued risk of harm)* [2024] EWHC 344 (Fam).
4. On 8 September 2022, having heard evidence over 11 days in June/July, HHJ Lopez made care and placement orders in respect of H. He granted a temporary stay pending an appeal by the parents which was heard on 6 December 2022.
5. The Court of Appeal, in a judgment handed down on 2 February 2023, set aside the care and placement orders and remitted the case for re-hearing: a key finding was that HHJ Lopez had failed to carry out a sufficiently rigorous scrutiny of what package of support for the parents could be put in place, considering their cognitive difficulties, and in the Mother’s case a diagnosed learning disability.
6. On 24 July 2023 this court made H the subject of a care order at home under placement with parent regulations. This order was made with the agreement of all the parties, and there was no substantive hearing of any of the issues that had been considered by HHJ Lopez. A Safety Plan was drawn up, by which the parents agreed that one of them would be present when F and H were together, and that F’s interactions with H would be carefully monitored. A list of rules identified other adults deemed to pose a risk of harm to H, and placed limitations on their contact with H. These included D, E, and maternal uncles ND and SD.
7. The LA committed to a package of support, encompassing work with the Lucy Faithfull Foundation and with Tracey Carboni from Resolutions. The package of support was as recommended and approved by Dr Roger Hutchinson, whom the LA again instructed to participate, this time in an advisory capacity.
8. On 6 November 2023 MC (girlfriend of maternal uncle SD) telephoned Children’s Services and spoke to Ms S of the Children’s Disability Team. Over the course of 3 conversations with Miss S, MC claimed to have seen F inappropriately touching H. She also relayed a conversation she claimed to have had with the maternal

grandmother (“MGM”) in which the MGM had told her that she had also witnessed F inappropriately touching H. F was arrested on 6 November and agreed not to return to the family home.

9. On 9 November 2023 the LA gave notice to the parents of their intention to remove H. The parents then sought injunctive relief to prevent removal and discharge of the care order.
10. There was a hearing before me on 6 December and the court made interim orders to preserve the status quo for H until the January 2024 hearing. A Schedule of Agreement between the parents and the LA set out the arrangements for H, including a prohibition on contact between H and F. Visits, announced and unannounced, were carried out daily from 6 December. There is no doubt that this has placed a very heavy burden on the LA.
11. I held a four day fact finding hearing on 30 January – 2 February 2024 and gave judgment in *Re H (Continued risk of harm)* [2024] EWHC 344 (Fam).
12. In summary, I found an incident had occurred when the Mother left the room for a short period, but I did not think F had sexually assaulted H.
13. Most importantly for present purposes, I found that it was in H’s best interests to remain living with her parents until further work was completed with Tracey Carboni, and she could write a report on the degree to which the parents were capable of protecting H. I was somewhat critical of the Guardian and the LA for not balancing the harm to H of removing her from her parents, and in all probability leading to a situation whereby she was in long term foster care for the rest of her childhood. I acknowledged the difficult task this gives the LA, both because of the history of the parents failing to protect their children from risk of sexual harm, but also because the parents have found it very difficult to work openly and honestly with the LA. However, the Court’s focus must be on H’s best interests. Critically all the evidence was and remains that H is doing very well in her parents’ care, and that save for the incident in issue the Mother is both loving and very protective of H, and they have a very close bond.

The issue

14. The current issue is that the parents have booked, and paid for, a holiday in Spain with H in June and the LA and Guardian are strongly opposed to her being allowed to go. They assert that the parents have been dishonest in respect of the obtaining of H’s passport and the holiday, and that increases their concern about H being taken out of the jurisdiction. The parents deny being dishonest. It is therefore necessary to consider, albeit without oral evidence, the factually contentious issues. However, in my view, what lies at the heart of this issue is actually a focus on what is the risk if H goes on holiday in Spain with her parents.
15. The Mother and Father’s position is that H’s previous social worker, Mr Stockdale, told them in 2023 that the LA would apply for a passport for H. The parents say they spoke to the social worker about being able to go abroad with H and he told them this should not be a problem. They say this conversation took place before the November incident, but they cannot give a clear date.

16. The Father booked the holiday on 13 May 2023 with Hays Travel, for a week in Spain from 8 June 2024. The holiday was booked for the Mother, Father, H and F. I note the LA and Guardian seem concerned that it was booked to include F. But at the date of the booking F was living at home with his parents and H, in the full knowledge and agreement of the LA. So at that date it would have been wholly natural to have included F in the holiday. The safety plan at that date was that F was not to be left alone with H, but that would be no more easy or difficult on holiday as it was at home.
17. The parents say they have not taken F off the booking because if they are not allowed to go at all then it would incur extra expense if they cancelled F now, and then had to cancel the whole booking later. If they are allowed to go then they will take F off the booking and send the LA the paperwork confirming that. Again, this makes perfectly good sense. The holiday has been paid for in monthly instalments since June 2023.
18. In respect of the passport, the parents say that Mr Stockdale agreed to sort this out before he left in September 2023. Mr Ferris then took over. He emailed the Mother on 26 October 2023 saying that he could not find the relevant paperwork and could she send him two more photos of H for the passport application. The Mother says she did this in October or November.
19. The Mother understandably says the parents did not understand why it was taking the LA so long to obtain the passport. She says that she or the Father told Mr Ferris that they were going to apply for a passport for H themselves. Mr Ferris says he has no recollection of such a conversation.
20. On 5 April Mr Ferris, and Mr Keeling, F's social worker, went to see the parents. The parents say that the Father at that point told the social workers that the parents would apply for a passport for H themselves. The Mother says she remembers this conversation and Mr Ferris did not say that they should not do so, or that they could not go on holiday.
21. The parents applied for H's passport on 7 April 2024 and I have seen the email confirming this. The Father filled in the form. One of the LA's major issues is that the parents did not disclose on the form that H was subject to a care order. There is a box on the application form which states that the application needs to send "any court order relating to the child "for example that describe parental responsibility or residency arrangements". The Father filled in the form online and says he did not realise that he needed to send the care order. The form was witnessed by the parents' neighbour, who has known H since birth and is a retired teacher.
22. The parents say that they told the LA Family Support Worker, Ms Ayling, on or about 10 April that they had applied for the passport. The passport was approved on 15 April and arrived on 17 April.
23. There was a care planning meeting on 24 April. The parents say that by that date they had definitely told Ms Ayling that they had applied for the passport. The Mother thinks that by the time of the meeting the LA knew the parents had applied for the passport. The Mother believes that the LA knew the passport had arrived. The Mother's advocate took a note of the meeting and this confirms that it was clear at

that meeting that the passport had arrived. However, the LA contest the accuracy of that note.

24. The parents state that they are the only people going on holiday and there is no intention to meet any other family members or friends, they are content to submit to any level of checking through the hotel or the travel agency that what they say is true. The parents make the point that they have taken H on holiday in the UK on a number of occasions during her lifetime with the knowledge of the LA. At these dates either an interim care order or final care order for H have been in place with no issue raised by the LA.
25. The LA rely on two witness statements from Mr Ferris. He asserts that the parents have organised the holiday without any consultation with the LA. He accepts, albeit somewhat obliquely, that although Mr Stockdale said that he was making the passport application, in fact no such application was made by the LA. Mr Ferris realised this at some point and then started the process by asking for H's photographs, but again very little seems to have been done. No explanation is given as to why, if Mr Stockdale left in September, there was still no passport application by the LA in early April. I am also very unclear as to why the LA thought a passport was needed if they didn't know about the holiday. Mr Ferris says that LAs apply for passports so that children in care don't miss out on opportunities with foster carers or going abroad with school. Given that neither of these applied in H's case I think it is highly likely that Mr Stockdale did know about the planned holiday. Otherwise the desire/need for a passport in September 2023 seems difficult to understand.
26. Mr Ferris says that passport was "in process" at the time of the incident in November 2023, but then goes on to refer to April 2024. I can only assume that the LA forgot about the passport and did no more about it until they were reminded in April.
27. Mr Ferris says that:

"7. The Local Authority have now been made aware that parents have applied for [H's] Passport themselves. [The Father] informed Ms Sharon Ayling on 10th April 2024 that they had done this. Neither parent informed me directly. Mr John Keeling (F's SW) and I visited [the Mother and Father] on the morning of the 5th April. This was to discuss and talk through an updated Working Agreement and to sign this. Parents were informed at this meeting that the Local Authority did not agree to [H] going on holiday to Spain. [The Father] spoke about the need for there to be an application for a passport. He discussed applying for this himself. He was advised that the LA were doing this anyway. We were not aware that this had been done until 10th April."
28. There was a meeting on 5 April with Mr Ferris, Mr Keeling (F's social worker) and the parents. Mr Ferris says that the issue of the passport was raised. Mr Ferris says that he made clear the holiday was not approved, and that the Father raised applying for the passport himself and was told not to do so. It can be seen from the above, that the parents have a different recollection of this discussion.
29. On 24 April there was a care planning meeting at which Mr Ferris says the Mother did not tell him that they had received the passport. He considers this is another example

of the parents not being “open and honest” with the LA. However, he accepts that on the same day Ms Ayling did tell him that the Mother had told her they had received the passport.

30. In my view this is a good example of the LA’s level of hostility and suspicion towards the parents impacting on their ability to work with them. Mr Ferris accepts that the Mother had told Ms Ayling that the passport had arrived. Ms Ayling works for the LA. Therefore the Mother was not hiding the fact from the LA. This cannot be part of some devious plot to hide the fact of the passport and leave the jurisdiction unbeknownst to the LA, because it is accepted that she told Ms Ayling. The Mother has learning difficulties, and undoubtedly feels extremely nervous around communications with the LA. The level of hostility to her will undoubtedly impact on her ability to be forthcoming, but she did tell Ms Ayling, who I assume she feels more confident with.
31. Overall I do not think that the parents have sought to mislead the LA about the passport or the holiday. It is highly likely that the parents did tell Mr Stockdale about the holiday. I do not accept that the Father sought to mislead in the passport application, not least because I can see no reason why he would have done so given that the parents told Ms Ayling they had applied for the passport. I do not think the parents actively sought to hide that they had received the passport, it is far more likely that there was a failure of communication over the issue.
32. At the heart of the issue I have to decide lies the question of whether there is any material risk to H of being allowed to travel to Spain for a holiday. I start with the proposition that it is important that children in care, including those subject to care orders at home, can live as normal a life as possible and have the same childhood experiences as other children unless allowing them to do so poses an unmanageable risk. H needs the protection of the State, but if the State is going to prevent her from having those experiences then the interference needs to be properly justified.
33. I have no doubt that the parents and H will enjoy the holiday, and it will be a break from the very considerable stress they have been under for at least the last year.
34. To determine whether the interference in the normal family life is proportionate it is necessary to focus on what is the precise risk(s) that the LA is seeking to guard against. The background of this case shows that the parents have failed to protect their older children from sexual risk/harm. The concern in respect of H has been, certainly up to this point, about the risk that is posed from H’s older siblings, in particular F and perhaps E. Historically there has also been a concern that the parents have not been alive to the risks posed by other risky adults within their familial or social circle.
35. In my view neither the LA nor the Guardian have thought sufficiently carefully about what the specific risk is that they are trying to protect H from by preventing her going to Spain.
36. There is no doubt that if F or E were going on the holiday that would raise a valid concern. However, F is in LA care and there is no suggestion that E is going. If the LA are concerned about E, they can doubtless carry out an appropriate check.

37. The LA say they are worried because they cannot check on H in Spain in the way they could in the UK, and they would have no difficulty in the family going on holiday to Wales, as they have done in the past. In my view this exposes the inconsistency and lack of analytical focus in the LA's case. The family have been on holiday whilst H has been subject to an interim care order and a care order at home. In reality, it is more likely that other potentially risky family members or friends might meet up with them on holiday in the UK than in Spain. In practice, the LA have allowed such holidays. Although in theory it is easier to check on a child on holiday in Wales rather than in Spain, in practice this is a somewhat illusory level of protection. There is no evidence that the LA have in practice sought to check on the family when they have gone on holiday in the UK.
38. The Guardian says that he didn't know about family holidays in the UK and would not have supported them. However, it needs to be remembered that an interim care order/care order at home is not some form of imprisonment with constant watching of the parents. It was apparent from the papers at earlier hearings that the family had been on holiday on at least one occasion.
39. Importantly, in June 2023 both the LA and the Guardian supported the making of a care order at home and further work with the family. The history of the family, the Mother's learning disability and the history of lack of openness with the LA were well known. Care orders at home are now only to be made in exceptional circumstances, see *Re JW (Child at Home under Care Order)* [2023] EWCA Civ 944. All parties agreed these tests were met on the facts of the current case, in the full knowledge of the risks inherent in H continuing to live with her parents. It may now be that the LA and the Guardian regret having agreed to that order. But if they wish to separate H from her parents they will have to satisfy the Court that separation is justified, and they have not done so. Given that H is living with her parents, and the Court considers it in her best interests to do so, there has to be some additional risk from allowing her to travel to Spain.
40. The suggestion that the parents would allow H to be placed at risk by an unknown third party just does not seem realistic on the facts. The evidence suggests that the Mother is extremely protective of H in the community. There is undoubtedly more work to be done with her in terms of identifying risky individuals. But on a week's holiday in a hotel this again seems a very very remote risk.
41. The LA have also floated the at least implicit risk of the parents' absconding with H and not returning to the UK. I view this risk as minimal. The parents have no links with any other country, all their links are in the UK, and in particular in Shropshire. If they tried to stay in Spain, which seems extremely unlikely, then it would not be particularly difficult to get H back through the mechanisms of International Law and the Hague Conventions.
42. The LA have referred to a WhatsApp Group which was found on F's phone where an unknown Pakistani man was present. The suggestion that these parents would take H to Pakistan in order to evade the LA is in my view far-fetched.
43. Underlying the LA and the Guardian's concern is undoubtedly their view, to a degree endorsed by my February judgment, that the parents have failed to work openly and

honestly with the LA. The LA and the Guardian now feel that they cannot trust the parents and therefore wish to keep them under a very high level of surveillance.

44. I accept that there are points in the history of this case where the parents have not been open and honest with the LA, most strikingly around the November 2023 incident. I also appreciate that the LA and the Guardian strongly advocated at the hearing in February 2024 that H should be removed from her parents and placed in LA care.
45. However, firstly, the LA need to take the parents as they find them, to coin a phrase from civil law. The Mother has a learning disability and the Father has learning difficulties. This inevitably leads to challenges with communication and the risk of misunderstandings. Secondly, like many parents caught up in the children's care system, the parents find it very hard to work openly with and trust the LA. This is unfortunate and there is no doubt they would be much better off being more open. But given the family history, the fact they struggle to trust the LA is no more surprising than the fact the LA struggle to trust them. Thirdly, there is some particular excuse around the parents' actions on this particular issue given that the LA seems to accept that they would make a passport application at some point in mid-2023 and then failed to do so. It is perhaps not surprising that that the parents took matters into their own hands. Fourthly, I do not accept that the parents, and in particular the Father, acted dishonestly in not disclosing to the Passport Office that there was a care order in place. The form is not particularly clear on this point and it was a reasonable mistake in my view.
46. Overall, I think that the additional risk of H being with her parents in Spain as opposed to the UK does not justify preventing the family going on holiday. Any perception of risk could be mitigated by the parents speaking either to the LA or perhaps the Family Support Worker each day, just to check that there were no problems.