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IN THE FAMILY COURT
(Sitting at Ipswich)

No. CM17C05513

Ipswich County Court
8 Arcade Street
Ipswich
IP1 1EJ

Friday, 27 July 2018

Before:

HER HONOUR JUDGE LYNN ROBERTS

(In Private)

B E T W E E N :

X COUNCIL

Applicant

- and -

(1) MD

(2) FD

(3) A CHILD

(4) GR

Respondents

J U D G M E N T

APPEARANCES

MS K. ROSS appeared on behalf of the Applicant.

MS A. UNDERHILL (instructed by Willett & Co Solicitors) appeared on behalf of the First Respondent.

MS J. BENNINGTON (instructed by Adams Harrison Solicitors) appeared on behalf of the Second Respondent.

MS H. BARNES appeared on behalf of the Third Respondent.

MS A. SMALL appeared on behalf of the Fourth Respondent.

(Transcript prepared without the aid of documentation)

JUDGE LYNN ROBERTS:

- 1 This has been the hearing of the applications of X Council for a care order and a placement order of a little boy whom I will call William D, who is just over one year old. This is not his real name but I wish to keep his details confidential. The people I will refer to in this judgment are:

William, the subject child

MD and FD, William's parents; MD is the second (now adult) daughter of MR.

MR and HR, MD's mother and stepfather who were caring for William and are currently caring for Thomas.

S: S is MR's oldest (now adult) child

Thomas: Thomas is S's child who lives with MR and HR. Again, this is not the child's real name.

N: T is MR's third (now adult) child

Y: the father of MD, S and T

SR: HR's father

- 2 The parties are X Council, represented by Ms Ross. William's mother, MD, is represented by Ms Underhill, his father, FD, is represented by Ms Bennington and his grandmother, GR, is represented by Ms Small. GR's husband, HR, is not a party but GR and R present as a unit and ask that any order that I make in their favour names them both. William is represented by Ms Barnes, who takes her instructions from William's children's guardian, Rosalind Lau
- 3 I have read a large number of papers which have been prepared for this hearing, the most important of which are the statements of the social workers and the parents, the statement of GR and HR, the special guardianship report on GR and GR prepared by the local authority and an independent report prepared on them by the independent social worker Maria Marrinan and the guardian's report. I have heard evidence from the children's social worker Martina Whelan, from Ms Marrinan, the independent social worker, from GR and GR and from the guardian.
- 4 The background. William is MD's first child. Her husband has adult children by an earlier relationship. MD is 30 and has moderate learning difficulties. Her husband is 55 and has some physical and mental health difficulties. The relationship between the parents has been volatile. MD accepted by early November last year that she could not manage William's care and FD has been ambivalent, changing his mind as to whether he wishes to care for William or not, but he has now accepted that he cannot do so. I am well aware that both MD and FD love William very much and the decision they have made has been what they consider to be best for William. They wish for William to be placed with GR and GR.
- 5 Since early November until April this year, William's primary care has been given to him by GR and GR on their own, though, as William lived in their home from birth, they were involved in his care throughout his life. They were caring for him under an interim care order. There were no concerns about the care they were providing, but it became clear that the placement was not a lawful one as the Rs could not be approved as foster carers, for various reasons which I will deal with later. Therefore, the local authority applied for permission to remove William into foster care, which was granted, and he has been in foster care since, where he is doing all right.

- 6 GR and GR also care for William's cousin Thomas and they have a residence order made in their favour from 2008. He is the son of GR's eldest child S.
- 7 The local authority have carried out careful assessments and have come to the conclusion that William cannot be raised within his birth family. The parents are not able to care for him and the real issue in the case arises from the local authority's assessment that the Rs cannot care for him.
- 8 The issues raised about the Rs are several. They point to a history of GR and GR not being able to manage MD and her siblings when they became teenagers. There have been risks from sexual abuse in the family, which they say may not be being managed now. There are various concerns about GR's health and, worryingly, the suggestion that she has formed the view that she has had a diagnosis of terminal cancer, which is not the case. The local authority have raised issues about their ability to provide good emotional care.
- 9 The local authority case is that the Rs may care for William well whilst he is very young, but that it is unlikely that they will be able to do so when he grows older. DJ Hallett allowed an independent social worker to be appointed to provide an independent view and she came to the same conclusion.
- 10 The local authority say that decisions have to be made now for William and that his needs are to be placed outside his family for adoption. The position of the parents is that they continue to support placement of William with GR and HR. GR has remained a party to the proceedings and she opposes the local authority plans and wishes for William to be placed in the care of herself and her husband. The guardian has conducted her own investigation and agrees with the local authority and supports the making of a care order and a placement order for William. She agrees with the local authority that the evidence suggests that William would not be well cared for as he got older if he remained in the care of GR and HR.
- 11 I turn now to look at the law. First I have to deal with threshold. There is an agreed threshold document, which I approve, pursuant to s.31 of the Children Act 1989. I am not going to go through what is in that document, but it only relates to the parents and not to GR and HR. Having found threshold, I must go on to determine what the best outcome is for William. To do that I must apply s.1 of the Children Act and it is William's welfare which is my paramount consideration.
- 12 There is also an application for a placement order. In considering that application I need to consider the provisions of the Adoption and Children Act, specifically s.21, which says that the court may not make a placement order unless the court is satisfied in this case that the parents' consent should be dispensed with. Section 52 says that the court cannot dispense with the consent of a parent unless the court is satisfied that the welfare of the child requires the consent to be dispensed with. All of this has to be considered in the context of s.1 of the Adoption and Children Act, which is slightly different from s.1 of the Children Act, in that it says that it is William's welfare throughout his life which is my paramount concern. I need to consider the welfare checklists in both s.1 of the Children Act and s.1 of the Adoption and Children Act when determining what order, if any, would best meet William's needs going forward.
- 13 The Human Rights Act also applies to these proceedings. In Art.8 there is a right to family life. Each individual family in this case has that right, including, in my judgment, GR and HR, who have provided William's primary care until recently. A child should normally be with his parents or one of them and, if not, within the wider family, but those rights have to

be balanced. The local authority may have to act to protect children within its area. In a democratic society any intervention into family life must be necessary and proportionate.

14 I have also been referred to a series of cases: *Re L*, *Re B*, *Re A*, which I have considered and thought about carefully. I would remind counsel of the latest practice direction and what is said in it about how precedent cases should be used.

15 Turning now to the witnesses and the evidence, in her special guardianship assessment of GR and HR, the social worker Ms Whelan wrote that the relationship between GR and HR appears strong. She said:

“They have a secure relationship with William in which William feels loved and where all his physical needs are met. William appears to have a strong and secure attachment to both GR and HR. His physical and emotional needs are met to a good standard.”

She says:

“William has always been in the care of GR and HR since birth. Initially they supported his mother in caring for him and since November 2017 they have cared for him independently. In doing so, they have built a secure relationship in which William feels loved and where all his physical needs are met. William appears to have a strong and secure attachment to both GR and HR and shows anxiety when GR leaves the room, as you would expect from another child of a similar age. William can be soothed and comforted by GR and HR, suggesting that he is having his emotional needs met by them. There is no doubt that William shares a special relationship with his grandparents as his main carers, whilst his physical and emotional needs are met to a good standard.”

Elsewhere in the report, she says:

“In terms of GR and HR’s ability to relate to children, I have observed them to interact well with William on the occasions that I have been to the home to carry out my assessment. Both GR and HR clearly have a loving and secure relationship with their grandson and are able to provide for his physical and emotional needs. Also there have been no concerns identified in relation to the couple’s ability to provide physical care to their other grandson Thomas.”

16 Ms Whelan sets out the significant health concerns around GR. These are physical ones which affect her mobility and psychiatric ones as GR has been sectioned in the past, but Ms Whelan confirms that her mental health appears to be more stable now. Ms Whelan’s concerns about GR’s health are compounded by GR believing that she has had a diagnosis of terminal cancer for over ten years, when it appears that she has not had a diagnosis of cancer at all.

17 Ms Whelan points out that the Rs were unable to provide any references for the purposes of the special guardianship report and their only support which they could tell Ms Whelan about was from their church and that was only within the past two years. Ms Whelan worries about their ability, therefore, to relate to adults. She queries their honesty as they both said they had given up smoking, but on the first visit Ms Whelan was very aware of the smell of tobacco in the home, but she noted that the smell later reduced.

18 As I have said, Ms Whelan noted that the Rs are able to provide for Thomas’s physical needs; however, she raises a number of concerns about the couple’s relationship with GR’s

children, now adults. These are that GR left her children in the care of her ex-husband, Y, knowing that not only she but they were suffering abuse at his hands. She reports that GR had told her that at the time the local authority did not consider her fit to care because of concerns about her mental health.

19 Secondly, Ms Whelan raises concerns about Thomas. She says there are records about him which show that in 2008, when Thomas was living in the family home with his mother S, the relationship between GR and S was so bad that GR's GP at the time stated that if S continued to live within the home then this would in fact contribute towards GR's death due to her health at the time and the stress the relationship was causing her. S left the home without Thomas, whom GR and HR have cared for since.

20 Further, the records show that in 2004 GR and HR approached social care asking for MD, who was then 16, to be accommodated as they felt unable to keep her safe and did not want to have her home. MD did not live at home thereafter. MD has made various allegations, including that GR had introduced her to a 44-year old man and encouraged a relationship against her will, allegations which I understand MD now retracts.

21 The local authority's concerns in this regard are summed up by Ms Whelan as follows.

“It appears that GR has significant issues in the relationships with both of her daughters, significant to the extent that they were not able to continue to living together. It is a concern that GR and HR appear able to manage the care of a baby and young child and meet most of their needs. However, when the child reaches adolescence they appear to struggle to put in place boundaries, ensure safety and provide initial stability to a child.”

22 The report goes on to look at what is known about the earlier lives of GR's children and it is fair to say that very few primary documents have been produced. GR reported that she tried to regain care of the children but secured their custody in three different stages, one child at a time, having had to move 38 times because Y sought her out and she was sectioned twice. She says that she regained custody of S when S was about 11. About a year later she got MD, who was eight or nine, and finally she got N, who was about ten.

23 The local authority records go back to 2008 and record that all three children were on the child protection register with concerns about GR and HR's ability to protect them and inappropriate knowledge the children had in regard to sexual abuse within the family. Then both of the girls made allegations of inappropriate touching and kissing by HR's father SR. N alleged that he had been encouraged to touch women's breasts when he was living with his father Y and I have already referred to MD's allegation, now retracted. Ms Whelan records that since Thomas has been living with GR and HR there have been historical concerns in relation to GR and HR protecting Thomas from potential offenders of sexual abuse within the family.

24 More recent concerns have been that Thomas has been given inappropriate information about GR's incorrect diagnosis of terminal cancer and emotional impact on him. A social worker assessment of Thomas was completed in August 2017 and a further one undergone recently as a result of these proceedings concerning William.

25 Ms Whelan sets out in the section headed “Their ability and suitability to bring up the child until the child reaches the age of 18” the reasons why the local authority does not support the application for a special guardianship order. It is a lengthy passage so I will summarise it. It says GR has experienced a long history of sexual and physical abuse and she is still adversely affected. Ms Whelan considered it has affected her ability to care for her own

children and keep them safe. HR also has experienced a neglectful childhood. There have been concerns about their ability to keep Thomas safe and providing him with inappropriate information which impacted on his emotional wellbeing, GR's health and the possible impact on her ability to care in the long term, and if HR has to be the main carer he has little support.

- 26 Ms Whelan's report contains a summary of the medical report from Dr Khan, who is the medical adviser to X's adoption agency. There are no current concerns about HR. The doctor sets out GR's need for a catheter because of urinary problems, her respiratory difficulties and that she has been referred to the pain clinic. He refers to past mental illnesses but that she has not been under the mental health services since 2005 and she was referred to the wellbeing service and Survivors in Transition in 2016. He refers to the mistaken belief that GR has been under that she has cancer and that she has had mobility problems. Dr Khan says:

"The GP has reported that the couple seem to care appropriately for the grandchildren when they are brought to the surgery. However, it may become increasingly challenging for them to supervise William when he requires mobility and especially if he becomes a challenging toddler."

Dr Khan represents against the placement.

- 27 In her oral evidence Ms Whelan was challenged on several points by Ms Small. It was put to her:

"You are recommending such a serious order on the basis of risks which were known and have been managed as far as Thomas is concerned."

Ms Whelan said:

"I don't know what was said at the time of the assessment of Thomas, but this is the long term for William. Thomas has had several social work involvements, the concerns about him are too high. We are looking at a need for a significant amount of support, which is not fair on William or his family. He has the right to a private family life."

Ms Small then put to her:

"William would be in a very different environment from that which was there for GR's children. GR's children were caught up in the relationship with Y, which was violent and abusive, which is not a feature of this marriage."

Ms Whelan agreed. Ms Whelan agreed that GR had had counselling. She agreed that there was a positive report about Thomas's progress from last month. She agreed that there were no concerns about his attendance at school, unlike the now adult children. She agreed that he showed no signs of being sexually abused and she said, "Not yet." It was put to her that, "All the indicators are positive about Thomas," and she said, "Yes, but this is William, who's very different."

- 28 Ms Whelan accepted that Thomas was made the subject of a residence order on 17th July 2008, but said that she had not read any assessment. It was pointed out to her that GR's evidence is that the local authority had told the Rs to apply for a residence order for Thomas to prevent the local authority applying for a care order. She accepted that evidence.

- 29 Ms Whelan had heard from another social worker that Thomas had gone out unsupervised with SR , although the Rs were well aware of the allegations against SR. She accepted that GR said that Thomas had not gone out with SR at all and that he has always been supervised around SR. She agreed that there could be work done with the Rs about the risk of sexual abuse.
- 30 I also heard the evidence of Maria Marrinan, the independent social worker, whose report resulted from GR wishing to challenge the report prepared by Ms Whelan. Ms Marrinan did not meet William and she explained to me that she took it as read that the relationship between William and the Rs was fine, that basic care was fine and she did not think that it was necessary to look at those issues as they were not matters of concern. In her report Ms Marrinan goes through GR's current health difficulties and notes the improvements in her respiratory problems and her mobility. The cancer issue was dealt with and GR repeated that she had been told by a nurse that she had cancer several years ago and that she has not had an explanation since. Ms Marrinan queries whether this relates to any psychological difficulties such as anxiety or lack of comprehension and says:
- “This raises some concerns about her understanding of the needs of Thomas or William should they have to attend medical appointments with her and have health needs.”
- 31 Ms Marrinan refers to the support which the couple received from the church, whom I have now been told, incidentally, are funding the Rs' representation and she says that they “appear to have rallied around the couple.” Ms Marrinan thought that GR did not always understand what was said. She had seen the Rs with Thomas and said:
- “It is clear that they have an affectionate and close relationship with him and there were no concerns about their interactions with him.”
- 32 Ms Marrinan discussed the allegations of sexual abuse made by GR's children and noted the difference in evidence between the Rs saying they reported the allegations against SR to the local authority and did not allow unsupervised contact and what she understands the local authority's view to be, that the social worker told the Rs not to allow unsupervised contact. She appears to have thought that the local authority account was correct, although she saw no primary evidence.
- 33 Ms Marrinan went through the difficulties with the two girls in their teens and I note there appear to have been no problems with N, none that I have been told of. She notes that the Rs consider they continue to have a good relationship with all three of their children now they are adults.
- 34 Ms Marrinan went through how the Rs have parented Thomas and noted that he has had some difficulties with his bowels and has been taken to medical appointments and treatment appears to be followed. She notes that he is involved in various activities after school, with the church, Scouts and is learning musical instruments. She saw his school report and reported his attendance is good and he has a collection of certificates for good behaviour. There is mention of his confidence growing.
- 35 Ms Marrinan notes that there was referral to the local authority last August in relation to the emotional impact on him of being advised that GR had terminal cancer, although I note the Rs say they have never told him this. She discussed with them their care of William and GR said that he had been going to nurseries and swimming and had lots of toys to support his learning. She agreed that his basic care was fine, as was the R's ability to meet all his emotional needs, boundaries and so on as a young child.

- 36 Ms Marrinan did not notice sign of cigarettes, which had been a concern of Ms Whelan. She was able to see references which the Rs now had from people from the church, all of which were positive.
- 37 Ms Marrinan in conclusion noted the positives but agreed with Ms Whelan and identified the same negatives. In her oral evidence she was challenged in the same way, as was Ms Whelan, and stuck to her position. It is of note that she identified as an issue the Rs' ability to recognise and address the issues of sexual abuse but did not recommend any work that could be done in this area, although it was pointed out after she had completed her evidence that she says in her CV that she is trained to provide such work.
- 38 Ms Marrinan was of the firm view that despite the positives, the history of their difficulties with GR's children in their teens was an indicator that they would not manage William in his teens and she did not accept Ms Small's point that the situation now is very different.
- 39 I will deal briefly with the evidence of the parents, I am sure they will not mind. They have filed evidence but there was no need for them to give oral evidence. I do not think that MD can be relied on to give accurate information now about things which happened more than a few months ago. Her most recent written evidence about what the social workers have said and did, for example, has no credibility. I am not, therefore, going to look to her written evidence to assist me. This is not a criticism of her, she has learning difficulties which will have affected the quality of her evidence. But what is clear to me, as I have said, is that she loves William very much, is committed to him and has made the decision she thinks is best for him.
- 40 FD's written evidence does not assist me with the issues I have to decide concerning GR and HR and I have said that he also loves his son and considers the best place for him is with his parents-in-law.
- 41 The evidence of GR and HR. This evidence is their witness statements and some exhibits, as well as their oral evidence. In GR's main statement she sets out how well William has been doing in their care, how well Thomas is doing, how the boys relate to each other like brothers. She says her health is much improved, she says they have applied for a housing transfer as they recognise that the boys will need a room each in time. She says she has not told Thomas that she had cancer. She sets out some of her history and how she tried to get her children into her care, but that their father was supported by the local authority at the time and the document she has produced seems to support that.
- 42 GR says that they do not have contact with SR, which was contradicted by both of them in their oral evidence. Any contact, she said in her oral evidence, with SR is supervised as far as the children are concerned.
- 43 HR's first statement sets out how he does all he can to make the family work and how he regards the children as his own and the grandchildren as his own. He agrees that SR should not have any unsupervised contact with either boy. Both GR and HR point out that the concerns of the local authority about what happened with S and MD in their teens now relate to events ten to 15 years ago and that things are now different.
- 44 There is a useful medical report exhibited, which is a letter from the GP with a list of GR's medication and these documents confirm that GR's health is improving.
- 45 GR exhibits a very recent assessment of Thomas, which appears to have arisen because of the local authority's involvement with William. It reports that the school teacher has noted that Thomas is currently looking "sad" and this seems to relate to his worries about William.

The assessment concludes:

“Whilst it is important to acknowledge the worries and risks raised historically and in respect of William, it is equally as important to consider Thomas’s sense of stability and identity. Thomas clearly has a good relationship with his primary carers GR and HR. I have not only observed good interactions between them, but Thomas spoke positively about them too. Given the current situation regarding William, him being removed from the care of the Rs and being placed into foster care and the current unknown outcome of William’s care proceedings, it is understandable that Thomas could find it difficult to open up about his feelings to a social worker. Thomas has always presented as polite and respectful when I have met with him. My plan is to complete sessions with Thomas and his feelings and to promote a sense of trust with professionals. To complete further work with Thomas focused around his wishes and feelings, I feel that a period of Child In Need planning and support (inaudible) this, particularly as the family are also in care proceedings regarding William.”

- 46 There has been reference in the proceedings to a file being open for Thomas in August 2017 arising from worries that Thomas had about the cancer diagnosis, but as far as I am aware I have not seen the actual referral.
- 47 In the Rs’ oral evidence HR explained that he was well able to manage everything in the home and to look after GR, Thomas and William. He was proud of and protective of his family. He repeated several times that he did not understand why this was all happening and did not agree with it. Some of the particular concerns were put to him and his oral evidence was in some ways rather extraordinary. He professed complete ignorance about the cancer diagnosis which GR had told him she had. He denied making some of the statements contained in the papers which suggested that he had some more knowledge. He did accept he had referred to her as having non-Hodgkin’s lymphoma, but said he had worked that out from the Internet and not from anything she had told him. He told me he drove her to hospital appointments but did not go into them with her, although he also told me he had spoken to the professor at Z Hospital about her respiratory condition. It seemed that he attends appointments about chest matters but not about anything gynaecological. HR does not work, and to my mind he could have been available to attend appointments; Thomas would have been at school. He does not appear to have pressed GR about the supposed cancer diagnosis.
- 48 HR is GR’s official carer and this relates to her respiratory condition. He told me that he and GR had told Thomas that GR was ill but that was in relation to her respiratory condition and they had not mentioned to Thomas that she has terminal cancer.
- 49 As far as the sexual abuse risks are concerned, HR told me that Thomas has had no unsupervised contact with his father SR, but he also told me he does not believe the allegations which have been made against his father. His evidence was somewhat muddled. He thought it was a false allegation against his father and does not believe he is a risk to children. He said both that he believed his children but that he also did not believe them and said he believed what they say but as it has never been proven, he also did not believe them.
- 50 My impression of GR is that she may have some learning difficulties. She told me about the way she got hold of the idea that she had cancer. I shall return to this later, but it seemed to me that this confusion arose from anxiety on her part and lack of comprehension. I did not form the view it was about attention-seeking or in relation to benefits. She acknowledged

that Thomas had anxieties about her health, which is how the local authority got involved last year. She told me about the improvements in her health. She has some further treatment in relation to her catheter to come. Her mobility now seems fine, as I saw for myself, although she finds coming down the stairs somewhat difficult. Her respiratory problems are now well-controlled and she has hardly had to use her nebuliser machine in the last year.

- 51 GR told me she did not know if SR has sexually abused anyone, but that she had not allowed him to have unsupervised contact for years. She denied that Thomas has been in the park with SR at any time unsupervised, as Ms Whelan has gathered from a previous social worker. She told me that because of her own experiences she was very wary of men generally and was, if anything, overprotective.
- 52 Finally I heard from Ms Lau, the guardian. In her discussion of the issues regarding the Rs, she questions what GR did regarding what her own children were going through and suggests that if she had reported it is likely that safeguarding would have taken place. I have to say that the meagre evidence which we have suggests that GR did report at least some of what was going on and made court applications but safeguarding did not happen, although the evidence suggests GR may not have reported the children's sexualised behaviour in a timely fashion.
- 53 Ms Lau questions the ability of the Rs to understand the risk of sexual abuse as a result of what she understands the history to be. She considers the medical issues to be of significant concern. Perhaps she wrote her report without an awareness of the great improvements in GR's health. She questions what was said to Thomas about GR's health and the impact on him. She worries about GR's misunderstanding of the cancer issue and the possible effects on how William's medical needs are dealt with.
- 54 In her oral evidence Ms Lau told me that her concerns had heightened because of the evidence that would show that GR and GR did not communicate about GR's supposed cancer diagnosis and, in effect, that GR did not tell him about any health issue of a gynaecological nature. She was doubtful about their ability to identify risk. She thought that there was work which could be done to help them in this point, but that it was outside William's timescale.

MY ANALYSIS

- 55 I now turn to my analysis of the evidence. The history of GR and her three children has not been satisfactorily resolved. What we do know is that GR left her husband, Y, and the children and there had been domestic violence in her relationship with Y and, it appears, sexual violence. She appears to have applied for a residence order on at least two occasions and the court initially found that the children should stay with Y. She made a further application and we are not told quite what happened at that point, but it appears that S made her own way back to GR and that Y took MD to GR at another point and N arrived later. From the one-page extract we have seen from the chronology, it appears that W social care supported the children staying with Y.
- 56 I do not feel I can safely reach conclusions about this period of time. Everyone seems to agree that GR was the victim of very serious abuse, and I accept that, and that over time she regained care of her three children. The three children, now adults, obviously, seem to have remained in the care of their very abusive father for several years. By the time each of them came into the care of GR and HR, each of them seemed to have experienced living in what HR termed "a war zone" between their parents and they may well have been physically

and/or sexually abused.

- 57 During the following years GR and HR managed the care of the children until S and MD reached their mid-teens. They asked for MD to be accommodated and said they could not keep her safe. The local authority appear to have assessed S and have assessed MD as having various difficulties which mean that neither are considered able to parent their children. MD has moderate learning difficulties. I do not know about S's functioning, but certainly all the information I have suggests that neither would have been at all easy to care for in their teens.
- 58 One of the main points of the local authority case is that the Rs are unlikely to be able to keep William safe when he reaches that age, mid-teens, because they have failed before. As I said, the evidence is that GR and HR could not manage the two girls when they reached adolescence. I am not aware of any evidence that they had difficulties with N, the only boy.
- 59 The strong point made by and on behalf of GR and HR is that the difficulties they had in managing MD and S in their teens arose because of the unfortunate history of those young people prior to that. They say that Thomas and, for today's purposes, William, will have had a normal, straightforward, calm, happy upbringing and therefore will not present with such difficulties. In such circumstances, they will be able to manage whatever comes up as a result of normal adolescent behaviour. I have not heard or read anything to counter this argument. I do not think on the evidence I have that the difficulties which the two girls had in their teens can be attributed to the care given to them before that by the Rs. I also do not think it is fair to draw a conclusion that these difficulties will be repeated because the situation with William and, indeed, Thomas will be so completely different. It may well be that the Res were not equipped to cope with the behaviour of MD and S, but that does not, in my judgment, mean either that it is likely they will be faced with similar challenges, nor that it is likely that they would not be able to cope with any that do present themselves.
- 60 GR and HR have considerably changed from those days as well. They have had years of stable and happy lives and mental ill-health is generally in the past. They do not have the pressures of dealing with GR's husband or his family or, indeed, her own abusive family. Moreover, the children they will be dealing with will have been brought up in a very different way and are unlikely to present similar challenges to MD and S. William may prove to be a challenging adolescent, no one knows, but by then GR and HR will be very experienced parents who will have cared for William his whole life, save for these recent months, will therefore know him extremely well and the evidence is not there to support a contention that they will not be able to cope.
- 61 We do know that GR and HR's care of Thomas, who has lived with them for at least ten of his 11 years, is good enough. He is now assessed as a child in need but my reading of the recent assessment is that that arises for two reasons. One, because of the dichotomy of the local authority position: they are arguing that one child is safe in that home and one child is not and therefore the local authority needs to be seen to be doing something. Secondly, Thomas is emotionally upset at this time because of his worries about William. There appear to be no other concerns about Thomas at this time.
- 62 The local authority case, as articulated by Ms Whelan, is that William is a very different child from Thomas, which was said more than once to explain why it appears the local authority wanted to place Thomas with GR and HR in 2008 when he was a baby but do not want to place William with them in 2018 when William is a baby. I do not know how thorough an assessment was made of GR and HR in 2008 but it certainly appears the local authority were involved in some way. It appears that the information which is currently

being relied on to say that William should not be placed with GR and HR was available to the local authority in 2008.

- 63 I do not agree that William and Thomas are “very different children”. Obviously each child is different and they are of very different ages, but it seems to me their circumstances when placed with GR and HR are very similar. Both were babies, neither could be cared for by their mother, who is GR’s child, both mothers want to be involved and have accepted that their child should be cared for by GR and HR. Neither William nor Thomas have any identified special or particular needs. The only issues that have arisen in respect of Thomas relate to the risk of sexual abuse, which I will return to, and possibly emotional harm from concern about GR’s health, which I shall also return to. In all other ways he is doing well. He is not yet a teenager but I cannot see that the local authority have shown that it is more likely than not that the Rs will struggle with him as an adolescent. William is likely to be brought up in much the same way as Thomas and it seems to me much more likely that he will fare as Thomas is doing, rather than as his mother and his aunt did. William will not be at the centre of battles between adults, he will not be exposed to domestic violence. He will not be physically abused, he will not be sexually abused.
- 64 HR also made the point that whereas he was himself in his late teens when he got together with GR, he is now a man of 41. He has matured and learned a lot. He is now an experienced parent. GR has had all sorts of difficulties but she has also experienced for the past over 20 years a different sort of home life, a happy, supportive and calm one.
- 65 I find that the inability of the Rs to manage the care of the three children of GR is more likely to have arisen because of the experiences those children had had and the effect of them than because of intrinsic failings on behalf of GR and HR. On balance I find it is unlikely that the Rs will be unable to manage William’s care when he becomes a teenager. I think it is likely they will manage his care because they have developed the parental skills and will have cared for him all his life without him being subjected to any ill-treatment which might make him behave in a particularly challenging way.
- 66 I turn now to GR’s health. The concerns about GR’s health are set out in Dr Khan’s summary, which probably meant that a special guardianship order was not possible at that time. There has not been a full medical carried out, which there should have been. Dr Khan did not see GR but only saw her notes. He was not aware how much she has improved in recent months. The GP’s letter gives an up-to-date and more balanced view of her health. Interestingly, he makes a possible link between GR’s improvement in her breathing difficulties with the family’s move to the village where they live. Her mobility is better, as I have already noted. It may be that GR’s mental health has been poor in the past but the GP notes she is now not on any medication for depression and that she has always sought assistance for her mental health appropriately in the past.
- 67 The more I know about GR, it may be that she will at times need some support by way of telephone counselling, for example, because of her life experiences, but there is no suggestion that her mental health is an issue which will impact on her caring role. Indeed, at this time there is no suggestion that any of her conditions will have such an impact. Even if GR’s respiratory problems get worse again or there is deterioration in any other of her conditions, HR is a fit and, from the way I see it, a young man and he does not work. He may not continue to be termed GR’s carer. That is not something I can take a view on, but I note that the role relates to the risks presented to her by her chronic chest condition. The likelihood is that he will continue to be around all day, every day and he seems to me capable of stepping in in all areas of childcare and home care when GR cannot.

- 68 There has been a lot heard about the supposed cancer diagnosis. Of course, from the point of view of the professionals and the lawyers, this seems absurd. GR should never have gone away from hospital thinking she had a cancer diagnosis because of something she thinks she heard the nurse say about her, which suggests that GR has real difficulties with comprehension and with her ability to see her way through a problem. I think everyone else in this room would have dealt with this very differently. There is no evidence, however, that it amounts to anything else. I do not see evidence of it about getting attention and it certainly cannot be about benefits as the benefits are all in place, as high as they are available to be, as far as I can see, in relation to the chest condition.
- 69 HR's way of dealing with this issue is also extremely odd in my view, as he has failed to question or push for clarity. However, I take into account that GR, I presume because of her history of sexual abuse, is unusually private about anything which could be related to gynaecological matters and HR appears to have respected that. Bizarre though it may appear to outsiders, this couple did not discuss the possible cancer diagnosis and they have lived their lives under a cloud which did not exist.
- 70 I have to ask myself, however, how this relates to the way William would be brought up. The guardian worries about the lack of communication between GR and HR. That certainly exists in relation to this one issue, but there is nothing to suggest it exists in relation to anything else and the evidence is full of examples of decisions they have jointly reached in relation, for example, to Thomas, to William, to making this application, to going for a housing transfer. I cannot find that William would be affected by such a problem. I have already said that I do not think there is evidence to suggest that it relates to any psychological problems on GR's part, save, perhaps, for cognitive ones, and as for cognitive ones, the evidence I have is that both Thomas and William's medical needs are and were well-addressed in GR and HR's care. Thomas is receiving the appropriate help for his bowel problems and William's Red Book was up-to-date in all respects, I am told, when he left their care. I cannot relate this problem to how they would raise William.
- 71 It is rightly suggested that GR may struggle to understand relevant medical information about William. However, HR can and should be thoroughly involved in any such matters and there is no reason he should be kept out of medical information about William in the same way as GR's gynaecological difficulties have been kept from him.
- 72 I cannot unravel what Thomas has been told and what he has not been told about GR having cancer. The Rs say they only told him she was ill because of the chest issues. I do not know if the local authority, under the impression that GR had cancer, assumed that Thomas had been told about cancer and that that is what he was worried about. There is no primary evidence, other than what the Rs say, and I can only conclude that Thomas has been worried because he knows that GR has been unwell. He has been able to see that for himself. She has been using a nebuliser and she has been in a wheelchair in recent years, though not recently. It is not surprising, therefore, that he has been worried. He was rightly referred to the local young carers group, not because he was a carer but because he lived in a home where his effective father is caring for his effective mother, who was at that time very unwell.
- 73 There is insufficient evidence for me to make a finding that the Rs have caused Thomas any emotional harm or are likely to in this regard or in any other regard. It therefore seems to me that there is no evidence for me to make a finding that the Rs are likely to cause William any emotional harm. The whole cancer issue is most unlikely to reoccur and I think that HR, who seems to be a man of real intelligence and is committed to doing the best for all his family, will ensure that nothing like this happens again.

- 74 I turn to the issue of risk of sexual abuse. There have been allegations made by each of GR's children, although N's allegations relate only to the paternal, the Y side of the family, as do some of MD's. I cannot make any findings as to whether sexual abuse has taken place or not as I do not have the evidence. The only issue of concern now is the allegations against HR's father SR. Again, I cannot say if SR is an abuser or not. However, there have been three separate allegations by three separate people, as far as I know. It seems unlikely that anyone will be able to determine now whether such incidents happened or not. However, it is right that those caring for children with whom SR comes into contact treat him as a risk because that is the child-focused thing to do in such a situation. The local authority say that the Rs have not done so and have allowed SR to have unsupervised contact with Thomas. The Rs say they have not. The only primary evidence I have on this is what the Rs say and I cannot make a finding that they have allowed such unsupervised contact.
- 75 HR does not believe the allegations. GR is unsure but probably does not believe them. I can understand why they are uncertain, bearing in mind that MD for one makes many allegations which she does not always stick to and she has her learning difficulties. Their own experience of MD leads them to think that her allegations may not be true. I do not think I need to go further into that. What they believe is to my mind less important than what they do and I accept their evidence that they do not allow Thomas unsupervised contact with SR and that they will not allow William unsupervised contact with SR. We know that they have been very careful always to supervise Thomas's contact with his mother and I see no reason to disbelieve that they will apply the same policy going forward with SR.
- 76 I accept GR's evidence that because of the past she is very wary of what some men can do and she will protect the children. I cannot make conclusions that in the past she did not protect her own children as the evidence is not there. I do note, however, that the evidence suggests that when her own very young children showed sexualised behaviour she dealt with the behaviour and not the cause and that does raise all sorts of concerns.
- 77 It has been put on behalf of GR and HR and the parents that the local authority could have done and could in the future do a piece of work with GR and HR to increase their awareness of the risk of sexual abuse, how to recognise it, how to protect against it. The local authority do not suggest any such work in their report and, surprisingly, Ms Marrinan told me she did not know of any such course, although it appears she could have said she had had that training herself and could do that work. The guardian told me that such work could be done but that it was outside William's timescales. I just do not understand that answer at all. It will be some time before William is likely to be going anywhere without one of GR and HR with him and they do not appear to leave him with other people. He is a baby. There is plenty of time for such work to be done, it is wholly within William's timescales.
- 78 I do not agree with the local authority that there are reasons to feel that the Rs have not kept Thomas safe from sexual abuse, they have kept him safe. I do not think there is sufficient evidence for me to conclude that they would not keep William safe. They should have some work done to increase their ability to understand the issue and that should ensure that William will be kept safe.
- 79 I now turn to the future. Ms Small has referred me to the case of *Re A*, the important 2015 decision of the President, and I feel it is necessary for me to read out a few pertinent paragraphs. So for the sake of the lay people here, what I will read out does not apply directly to your case, it is what the top judge wrote about other cases:

“It is vital always to bear in mind in these cases, and too often they are overlooked, the wise and powerful words of Hedley J in *Re L* . . . :

‘Society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done.’

15. That approach was endorsed by the Supreme Court in *Re B*. There are two passages in the judgments of the Justices which develop the point and to which I need to draw particular attention. The first is in the judgment of Lord Wilson . . . where he said . . . :

‘[Counsel] seeks to develop Hedley J’s point. He submits that:

‘Many parents are hypochondriacs, many parents are criminals or benefit cheats, many parents discriminate against ethnic or sexual minorities, many parents support vile political parties or belong to unusual or militant religions. All of these follies are visited upon their children, who may well adopt or ‘model’ them in their own lives but those children could not be removed for those reasons.’

I agree with [counsel]’s submission.’

The other is the observation of Baroness Hale . . . :

‘We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children. But the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities, or who espouse antisocial political or religious beliefs’.”

The President said:

“16. I respectfully agree with all of that. It follows that I also agree with what His Honour Judge Jack said . . . :

‘I deplore any form of domestic violence and I deplore parents who care for children when they are significantly under the influence of drink. But so far as GR and GRs C are concerned there is no evidence that I am aware of that any domestic violence between them or any drinking has had an adverse effect on any children who were in their care at the time when it took place. The reality is that in this country there must be tens of thousands of children who are cared for in homes where there is a degree of domestic violence . . . and where parents on occasion drink more than they should, I am not condoning that for a moment, but the courts are not in the business of social engineering. The courts are not in the business of providing children with perfect homes. If we took into care and placed for adoption every child whose parents had had a

domestic spat and every child whose parents on occasion had drunk too much then the care system would be overwhelmed and there would not be enough adoptive parents. So we have to have a degree of realism about prospective carers who come before the courts.”

The President concluded:

“17. There is a powerful message in these judgments which needs always to be borne in mind by local authorities, by social workers, by children’s guardians and by family judges.”

- 80 I am bearing the message in those judgments in mind. I am going to return William to the care of GR and HR under a supervision order for one year. I am well aware that in doing so I am going against all the professional advice, including that of the children’s guardian, and I therefore must explain further why I am doing so. It is my judgment that all the professionals have fallen into the trap identified by the President. They may consider that William would have a better life if placed with adopters, but that is not the test. A child should be with his family if that is possible and in this case he cannot be with his parents but I consider that he can be with his grandparents. They do have their difficulties. GR’s health is not robust. Neither GR nor HR work and money might be tight. Currently they live in a home which will soon be too small. They have both had poor parenting themselves and until about 15 years ago life was very challenging in terms of dealing with GR’s former husband and trying to secure the return of her children to their care.
- 81 GR strikes me as possibly having some learning difficulties and there have been some mental health concerns in the past. On the other hand, they are providing a loving home to their other grandchild, whom the local authority asked them to care for ten years ago when he was William’s age. That child, Thomas, is thriving in their care. William was doing very well in their care until his removal.
- 82 GR has the limitations I have referred to. HR appears not to have such limitations and, as he told me, he sees himself as husband, carer, father and grandfather. He told me he did not feel under pressure.
- 83 I am satisfied that as a couple GR and HR can provide a good enough upbringing to William. I do not think any of the professionals, including the guardian, have explained satisfactorily why support cannot be put in to ameliorate any deficits in the Rs’ parenting, or why nothing else will do other than placement for adoption.
- 84 I can see why it has not been possible for special guardianship assessments to be positive because of medical evidence as it was understood to be. However, that should not necessarily mean that GR and HR should have been ruled out as carers for William. I do not criticise the local authority because it is perhaps a difficult concept, but the fact that the Rs could not be approved as special guardians is not the same as saying that the only alternative for William is being placed outside the family.
- 85 The local authority and the guardian have not succeeded in satisfying me that William’s welfare, in his childhood or throughout his life, requires him to be brought up in an alternative family. When this case started, reading the unanimous positions of the professionals, I expected that the local authority would prove their case but this has not happened. I have thought throughout the hearing: how can it be said that William’s welfare requires his parents’ consent to placement orders to be dispensed with? How can it be said that nothing else will do? I have come to the conclusion that something else will do and that William’s welfare requires him to stay within his family, albeit that they can be criticised on

various fronts, and that the local authority have failed to satisfy me that a care order or a placement order are justified.

- 86 Looking at the welfare checklist and the Children Act, the ascertainable wishes and feelings of William considered in the light of his age and understanding, William appears to me to be showing in his reaction to contact how he wishes to be with the Rs. His experience of their care is only positive and I think it is fair to assume he would wish to stay in his family and to be cared for by his grandparents and to continue to have a relationship with his parents. As for his needs, they are those of any other child. It is possible he may have learning difficulties, that is not yet apparent. He needs to have secure and stable care throughout his childhood and I find that the Res are likely to be able to provide that.
- 87 Any harm William is at risk of suffering: I have identified the harm which he is at risk of suffering, the risk of his care breaking down in his teens (and I do not think it is likely), the risk from GR's health deteriorating and I am satisfied that HR can make up for any loss.
- 88 The risk of sexual harm: I think that any risk can be alleviated by the Rs being provided with some training on this.
- 89 The capability of the Rs to meet his needs: I have found that the Rs are likely to be able to continue to provide the good care they have so far provided to William throughout his childhood and adolescence. They are people who will seek advice and who will follow it, as evidenced in the papers. They are now mature people who are experienced parents who have successfully raised Thomas for the last ten years and I find they are likely to be able to parent William.
- 90 Looking at William's welfare, therefore, throughout his life, it seems to me that it is possible for this child to spend all his life within his birth family and that that is likely to be better for him than to have those relationships severed when it is not necessary to do so.
- 91 Looking at s.1 of the Adoption and Children Act, I am satisfied that the Rs will go on being William's family when he is grown up, as is the case with GR's older three children. I find it is likely to be better for him to remain in the care of the Rs, which will enable him to know both his parents and have the lifelong companionship of Thomas, whom he will regard as his sibling.
- 92 In conclusion, therefore, I cannot make a special guardianship order to GR and HR. I have no DBS checks, I have no support package, I have no medical reports. It would have been better if an application had been made by the Rs; they should have been required and directed to obtain proper medical reports apart from anything else. However, I do not see any particular disadvantage to GR and HR of there being a child arrangements order, which is what we now call a residence order, as opposed to a special guardianship order. Such an order has worked well enough for Thomas and there appear to be no issues about GR and HR being challenged in their care by GR and HR. I shall therefore make a child arrangements order to GR and HR as I consider that that is the order which will meet William's welfare needs now and throughout his life.
- 93 I shall make a supervision order for one year, during which I expect the local authority to provide GR and HR with training about the risks of sexual abuse. I expect GR and HR to do that work, always to supervise William when he is with SR and I would ask HR, if at all possible, to attend all medical appointments for William so there can be no lack of comprehension or communication as to what the doctors are saying.
- 94 I dismiss the application for a placement order. I remind parties that any appeal must be

lodged within 21 days and I want to thank counsel and I would particularly like to thank Ms Small, who I think has made a very big difference in this case.

CERTIFICATE

Opus 2 International Ltd. hereby certifies that the above is an accurate and complete record of the judgment or part thereof.

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This transcript has been approved by the Judge

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