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IN THE NEWCASTLE FAMILY COURT  
(Sitting at North Shields)

No. NE17C00798  
King's Court  
Earl Grey Way  
Royal Quays  
North Shields

Wednesday, 22 August 2018

Before:

HIS HONOUR JUDGE WOOD

**(In Private)**

B E T W E E N :

A LOCAL AUTHORITY

Applicant

- and -

(1) M

(2) F

(3) The Child, G by her Guardian

Respondents

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MR C. McKEE (instructed by The Legal Department of the local authority) appeared on behalf of the Applicant.

MS K. DODDS (instructed by Hewitts Solicitors) appeared on behalf of the First Respondent.

MR P. GOODINGS (instructed by Smith & Graham Solicitors) appeared on behalf of the Second Respondent.

MS D. PLACE (Solicitor of Richard Reed) appeared on behalf of the Guardian.

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**J U D G M E N T**

JUDGE WOOD:

- 1 The court is concerned with the welfare of G, a girl, born on [a date in] 2017. She is nine months old. The local authority issued, on the day of G's birth, proceedings seeking a care order, and now they present to the court a plan of permanence outside the family to be achieved by the making of a care order and a placement order. That plan is supported by G's guardian, Laura Bywater. The position of the parents has been to oppose it outright until today, but today G's mother, M, whilst not consenting, does not actively oppose the making of an order. So far as G's father, F, is concerned, he too does not actively oppose and as I will come to he has just briefly asked me in effect for a final chance to demonstrate the ability of them as a couple (because they present as such) to care for G.
  
- 2 Why does the local authority say that G, who has been in foster care since she was discharged from hospital at birth, was likely to suffer significant harm, and that the harm or its likelihood was attributable to her not receiving the care that would reasonably be expected of a parent? The background is that the mother was born in 1991 and the father in 1984. The local authority became aware of this family on a notification on 19 June 2017 that the mother was 20 weeks pregnant and was believed to be vulnerable by reason of her epilepsy and learning disability, both long-standing issues which are a sad fact of her difficult background. She had recently stopped taking her anti-epileptic medication against medical advice, despite a relatively recent seizure in March. She appeared additionally to have limited support, F aside. Arrangements were made for a pre-birth assessment to be carried out, but that was not completed because of the very limited engagement of both parents who were reported either not being present when sessions were arranged, or asking the social worker to leave before any meaningful work was done. Enough was achieved, however, to suggest to the local authority that there was very limited insight into the needs of a baby or the roles and responsibilities of the parents of a baby. A child protection plan was made in September and whilst home standards were consistently good, concerns arose regarding the father's use of alcohol and he was said to have been alcohol-dependent in 2007, together with evidence of significant quantities of alcohol being seen in the house, and drinking being observed at what might be regarded by most people as surprising times of the day, and that drinking being normalised and not recognised as any kind of issue. The mother had another fit in October 2017 in the home, and the assessment such as it was suggested that the parents have been unable to demonstrate their ability to care safely for a baby. The threshold at issue, therefore, reflected the likely risk of G being neglected, attributable to the parents' own limitations, the mother's medical condition, the father's drinking and his drinking associates, and a failure to accept professional advice and guidance.
  
- 3 When the proceedings were issued and came before the court, it directed cognitive assessments of both parents, as well as hair-strand testing of the father in relation to drink, he having asserted that he had brought his own drinking under control without any external assistance. Both parents were found to have litigation capacity. In the mother's case, she was found to have mild learning disability and was in the borderline learning disability ranges, functioning at the upper end of the mild range. Although that was sufficient to enable her to participate in this litigation, Dr Hill noted that she was "defensive and difficult to engage, particularly with personal matters or anything to which she is sensitive". This made it difficult, Dr Hill found, to obtain detailed accounts of potentially relevant issues with a reliance on the mother's own poor memory being prayed in aid to avoid such topics. It was Dr Hill's conclusion, therefore, that her limitations were more related to her emotional reactions and feelings than any cognitive deficits. She gave advice as to how professionals should work with her in the future. In the father's case, his full scale IQ fell in the

borderline range, but he had strengths in terms of verbal communications and working memory, and Dr Hill's view was that he not only had litigation capacity, but the ability to engage without significant adjustment.

- 4 In the parenting assessment work that followed, despite a number of positives identified. The headlines there really were the engagement from that time onwards with professionals and the absolute commitment to G via contact. The other concerns that resulted in the proceedings at issue persisted with, in particular, the local authority says, an inability to demonstrate the capacity to provide adequate care consistently and their struggle to retain information around such basic matters as, for example, safety. The issue of the father's drinking persisted, despite a negative hair strand test in December. Further testing in February and May produced results suggestive of chronic excessive alcohol consumption. Having denied that his drinking would expose G to the risk of any harm, in his response to the revised threshold, in which all the threshold allegations were then denied as recently as 8 July, a serious incident is now known to have occurred just four days later on 11 July whilst drunk, the police would say, in which he assaulted the mother in the family home and was, on 8 August, convicted on his own plea, of that assault.
- 5 There are a number of concerning factors which flow directly from that incident which it is not necessary to describe in any greater detail:
  - (i) first of all, the fact of the assault itself which not only resulted in injuries to the mother, but seemingly provoked a fit;
  - (ii) secondly, the fact that drinking was directly implicated in what occurred;
  - (iii) thirdly, the fact that this only came to police attention because the father was observed fighting with somebody else outside the home, which was reported to them by a concerned member of the public - the assault on the mother being a wholly incidental discovery; and,
  - (iv) fourthly, having been offered help to separate and to go to a place of safety, the mother not only asked the police to withdraw any complaint by her, that was refused and the case was prosecuted as a victimless crime, but she has reconciled with the father. She told the social worker in terms that had the police not attended that night, she would not have reported the incident.

It has to be said this is all against the background that the father has described himself as the mother's carer and is described, for example, by the guardian in her May analysis as "a vital part" of the mother's medical routine around her epilepsy. The local authority says, and this is really adopted by the Guardian, that each of the factors I have identified on their own, and especially together, encapsulates risks that the local authority assessment of the parents has identified and would expose G to the gravest risk of neglect, emotional abuse and potential physical abuse being caught up in the crossfire of what happened that night.

- 6 In denying the local authority concerns, certainly before that incident, the parents maintained their position through lengthy witness statements that the threshold concerns were not met. There are in fact no welfare reasons why they cannot safely care for G. Thus, in opposing orders, they sought for G to be rehabilitated to their care. That position, as I will come to, has been substantially modified today and an agreed threshold has emerged whereby it is accepted that there was non-engagement with the local authority before proceedings were issued and therefore they deprived themselves of advice which may have assisted them in caring for G. The mother accepts that her epilepsy gives rise to significant

difficulty and issues around her ability to care for G safely, certainly on her own. It is recognised by the father that alcohol was indeed a significant problem at the date of the issue of proceedings. There is no specific finding sought in relation to the incident in July which of course was not at the moment when protective measures were taken, but it is plainly directly related to that. That feeds into the fourth finding in which he accepts that he assaulted the mother, that excess alcohol played a part and that, had she been present, G would have been exposed to the risk of harm. In recognising that, the mother also accepts that the father was drunk. The final finding which the mother perhaps understandably feels unable to agree is that her learning disability impacts on her capacity both to action basic care matters without considerable assistance, as well as keeping a young child safe in her care.

- 7 Having identified a number of alternative carers at an early stage, particularly the paternal grandmother, paternal uncle and a family friend, Mr X, as well as the maternal step-grandmother, all were negatively assessed or, in the step-grandmother's case, withdrew. None has sought to challenge those assessments. It is accepted by all that there are no alternative carers for G and therefore the parents' position was obviously one of very particular significance, given that the realistic options for nine-month old G, in *Re B-S* terms, were, starkly, a return to the parents or adoption.
- 8 There is a great deal of written evidence and the court has, in the circumstances in which this final hearing has developed, not been asked to hear any oral evidence. No-one sought to challenge any of it. It is not, in the circumstances, necessary to recite it in great detail, but I do need to summarise some of it. In her final analysis originally prepared back in April, the key social worker, SW, concluded that were G to be placed in the care of her parents she would suffer significant harm by way of neglect and that there were no services that could be provided to mitigate against those risks, certainly within a timescale suitable for G. I have mentioned, as does she, the fact that there were no alternative family members available and the parenting assessment, whilst it highlighted that progress had been made in relation to addressing some of the issues associated with lifestyle, they remained a feature and it was her concern that were G to be placed in the care of her parents, minimisation of risk as well as a history of placing their own needs above those of the children was likely to cause destabilisation or the risk of subjecting G to significant harm. That would in turn likely lead to childhood trauma and harm her emotional wellbeing in the future. The vulnerability of each remained a concern. The parenting assessment had been negative, largely due to the parents' inability to anticipate and respond to G's needs in a timely manner to ensure the promotion of her development and to ensure that she thrived within their care. The hair strand testing remained a significant concern in relation to F.
- 9 SW completed a further statement much more recently following the incident in July which came to the local authority in a rather roundabout way. It is perhaps important just to set it out briefly to illustrate the concern that it gives rise to. On 12 July the mother attended contact, but alone. She did not look particularly well and washed out. She said that she had had a fit, having not had one since May, and that F was at the doctor. The following day the local authority was contacted by the mother's epilepsy specialist nurse who described the assault which had occurred following the England football match in the semi-finals the day before. The mother had reported that one of the alternative carers put forward, the paternal uncle, had been present throughout, despite having been advised not to let him into their property following the negative assessment of him. Yet he had made no attempt to come to the mother's rescue. Subsequent to the police being called, the mother had left the address and was living with her step-mother where she said she felt safe. But she also reported that when she had the fit, one of the other persons negatively assessed, the family friend, had attended the home and found her unconscious. She said that she reported that the social

worker was aware of the incident, but that was not the case. It had in fact come from the epilepsy nurse, and when the mother was spoken to by SW about what had happened and it was pointed out that the nurse had been spoken to, she said, "you're not allowed to do that" before terminating the call. It may be thought to be an echo of one of the concerns that Dr Hill had identified.

- 10 On 13 July the mother attended contact alone. She was tearful and upset and she was more forthcoming about the fact that F had drunk during the football match and got carried away and got drunk. She did not want the police to charge him with assault. She was unsure what to do, although showed some insight saying she was worried about the risk to G from him. When the social worker spoke to her later that day, she provided some further information about the nature of her relationship with F, for example, some of the things that he had said and a statement that he is "a really violent person" when he drinks, albeit she would not elaborate on it any further. When F was spoken to following the incident when he was traced, he said that when the incident had occurred, the mother had got him so angry that he grabbed hold of her. She had been winding him up about England losing the game. He told her to go to bed, but she would not, and then threw a kebab wrap at him. That perhaps, in the words of each of the parents as reported by the social worker, tells us a little more about the seriousness of that incident. Neither of the parents have filed statements since that occurred, albeit they have filed statements which have in many ways been largely overtaken by events. As I indicated, neither wishes to challenge any evidence nor to give evidence on their own behalf.
- 11 On behalf of the mother, the court was told that she has been able to reflect in recent days, particularly over recent events, but has elected to continue her relationship with the father, and has accepted advice that there are difficulties in that relationship and that drink is an issue that remains unaddressed by professionals. Whilst she feels that she has the capacity to protect G, she recognises that the court may well consider it to be an unacceptable risk. At the end of the day - and this is hugely to her credit - she simply wants G to have the best life possible.
- 12 F had asked to address the court himself directly and, very briefly and respectfully, he asked the court to consider G being placed with the couple for a few weeks to give them an opportunity to try to care for her and demonstrate to professionals and the court that they could do so. He said in his words, "If I mess it up, so be it." There was an exchange between Mr Goodings on his behalf and myself shortly afterwards, Mr Goodings having suggested that F would agree to a placement under a care order. There are technical reasons, principally around the Placement of Children with Parents Regulations, which would stand in the way of that, quite apart from any other objections that the local authority would be likely to raise. Notwithstanding that, his position is understood and very clear: the best place for G would be with her parents, who undoubtedly love her very much indeed.
- 13 The guardian produced an analysis in May in which she pointed to certain deficits in the evidence. She has more recently completed an addendum final analysis in which she addresses the recent incident in the family home. She points out that this is not a single issue case. Given F was referred to throughout as a carer for the mother by reason of her various difficulties, and that the issue of alcohol had been a question throughout, she noted that a new risk had arisen because not only was alcohol confirmed as an ongoing risk, but it had provoked a domestically abusive incident which would have posed considerable risk to G had she been in the family home. Furthermore, mother had demonstrated her inability to safeguard herself or G from further incidents by reference to what happened that night and the prosecution itself, as well as her view that F had minimised the incident notwithstanding his guilty plea. She commended the parents for their engagement with professionals and the

work that they had done to promote knowledge and skills around parenting as well as the support and guidance that has been followed within contact. However, at the end of the day, she accepted the outcome of assessment that notwithstanding that work, the parents were not able to meet G's current and future needs. G is a child who has, through all this, happily been kept safe. She has developed a positive relationship with her foster carers which will bode well for the transfer of her primary attachment to other carers in due course. The guardian commends the local authority plan to the court noting the imperative that the plan is put in place as soon as possible.

- 14 There is no dispute as to the legal principles that the court has to apply. It is for the local authority to prove on the balance of probabilities the facts upon which it seeks to rely. It is for the local authority, since it is seeking to have G adopted, to establish that nothing else will do. Following the cases of *Re B (A Child)* [2013] UKSC 33 and *Re B-S (Children)* [2013] EWCA Civ 1146. As Hale LJ said in *Re B*:

"... the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do."

- 15 That was no more or less than an echo of what the Strasbourg court had said in *Y v United Kingdom* (2012) 55 EHRR 33, [2012] 2 FLR 332.

- 16 In considering the local authority's application for a care order, the court must have regard to the welfare checklist in section 1 of the Children Act 1989, and since the plan is for adoption, also the welfare checklist in section 1 of the Adoption and Children Act 2002. The court must treat as its paramount consideration, in accordance with section 1 of the 2002 Act, G's welfare throughout her life and, in deciding whether or not to dispense with the parents' consent, the court must also apply section 52 of the 2002 Act as explained in *Re P*. The President, in *Re B-S*, emphasized that wherever the court is being asked to approve a plan such as that before it today, two essential things have to be met. First of all, proper evidence both from the local authority and from the guardian addressing all the options which are realistically possible and containing an analysis of the arguments for and against each option; secondly, the need for an adequately reasoned judgment - and he cited with approval what Macfarlane LJ (as he then was) said in *Re G* of the need to undertake a global holistic evaluation of each of the options before deciding which best meets the duty to afford paramount consideration to the child's welfare.

- 17 As the court indicated earlier in this judgment, when this hearing began, there were but two realistic options before it. First of all, a return to the parents; secondly, the local authority plan. The issue of a return to the parents of course brings with it advantages as well as disadvantages. The court will always strive, wherever it is safe to do so, to ensure that children are brought up within their natural families. It is the place where children ought to be if it is safe for them to be there. Were that possible, G would be able to be cared for by her parents, she would maintain direct links with her family and be provided with a positive sense of identity as part of it. There is no question that each of the parents have demonstrated love and affection, and the mother, and until recently the father, have attended contact consistently and reliably. Set against that, unfortunately there are a number of concerns that are reflected by the threshold and perhaps encapsulated by the recent incident which would, in the court's assessment, indicate that for a combination of those reasons, they would not be able safely to meet and respond to G's needs and consistently keep her safe from the risk of harm arising from neglect from the difficulties in the relationship that were identified by the recent incident in drink.

- 18 The only other realistic alternative is adoption. Nobody suggests that a child as young as G should remain in foster care. There are, as with placement with the family, advantages and disadvantages. The positives in favour of a placement order and subsequent adoption are that in all probability G's emotional and physical needs would be fully met by a carer or carers comprehensively assessed as having the capacity not only to look after a child but specifically matched as suitable and able to meet G's specific needs. There is no likelihood that G would suffer significant harm. She would be safe and secure and not exposed to the degree of risk of harm that has been identified in relation to the parents. As a result of that, she would have an opportunity to lead a normal life and a good chance of developing into a balanced and emotionally stable person. At the age of nine months, she will be able to manage the transition from foster care to adoption without suffering undue emotional harm.
- 19 Set against all of that, of course, G loses the direct relationship with her parents who, as I have said, plainly love her. She would lose the potential of relationships with extended family members, which can be valuable to a child, even if they cannot care for her. She would lose her sense of identity as a member of the birth family - a sense of identity being an important aspect of development. The guardian has reminded the court that adoption should only be considered where absolutely necessary, and in the child's best interests. Notwithstanding that, both the local authority and guardian maintain that that is the only plan that can safely meet G's needs.
- 20 In the court's judgment the evidence in this case does fully comply with the requirements identified by *Re B-S*. The realistic options have been identified and the advantages and disadvantages of each carefully considered. The only positive case put against the plan is by F himself by his proposing that there be a trial placement for a time-limited period to see whether they, as parents, can do that which would be required of them. I am afraid I cannot accede to that request. It seems to the court that the recent incident in particular, but the background more generally, all would suggest that there would be a significant risk to G were she to be placed in their care at the present time, and that until work is done to address those issues going forwards (and none is planned and there are therefore no timescales that the court could apply in relation to that) it is simply not a realistic option.
- 21 Having recognised, as I do, that adoption is the last resort, and emphasized as I have done that wherever possible children should be brought up by their natural parents, and finally that adoption is not a complete panacea - that there are advantages and disadvantages - having conducted the balancing exercise, I unhesitatingly conclude that sadly there is no realistic prospect of G being returned safely to her parents' care and that her need for stability, permanence and safety can only be met in an adoptive placement. I therefore make a care order, and having concluded that G's welfare necessitates dispensing with the parents' consent to placing her for adoption, I make a placement order authorising the local authority to place G for adoption.
- 22 I approve the plan for contact following the making of a placement order. I listened with interest to the remarks of Miss Dodds as to the mother's particular concerns arising from adoption, and they are, I hope, all matters that have been taken on board by the local authority for consideration in the plan as it goes forwards. I do not think it is necessary for me to say anything more about the mother's anxieties, which I hope I have been able to allay, about G coming to the risk of harm in an adoptive placement. No doubt G's name is something that will be discussed with any prospective adopters, but the mother's anxiety that it should not be changed is something that is properly passed on. The one area where I would urge the local authority to provide the mother with some active assistance, which she has sought, relates to help over the preparation of letterbox contact in the future. That type of indirect contact in any context is, for a parent who is not seeing a child, a very difficult

thing to undertake and it can be frustrating and unrewarding as well. Nevertheless, it is an important matter for G's sake and I would urge the local authority to provide the mother, probably in the context of the life story work which remains to be completed, with some positive help and guidance as to how she can best achieve that in a way that is meaningful for G as she grows up. It is to the mother's credit that in addition to the other matters I have referred to today, she is extremely anxious to take part in the outstanding life story work to ensure that G will have as much information as possible as she grows up about the family from which she came.

- 23 There are very few words of consolation that can be offered to parents in the circumstances that I have just outlined, save possibly this: the opportunity that G has now to be claimed by adoptive parents who will keep her safe, perhaps present her with the best opportunity she could have had to develop whatever potential she has as she grows up. It may be a long time before it is known what that is, but if she can achieve her potential and be kept safe, I very much hope that that will, in the long term, offer some consolation to the parents at this time.

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**CERTIFICATE**

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