IN THE CROYDON FAMILY COURT

Case No: ZE17C00933

Courtroom No. 12

2-3 Altyre Road
Croydon
CR0 5LA

Friday, 23rd November 2018

Before:
DISTRICT JUDGE KEATING

B E T W E E N:

LONDON BOROUGH OF CROYDON

and

M

MISS MOORE (Counsel)appeared on behalf of the Applicant
MR CLARK (Counsel) appeared on behalf of the Respondent Mother
MISS SHENTON (Counsel) appeared on behalf of the Respondent Father
MISS THORPE (Solicitor) appeared on behalf of the Child through the Guardian

JUDGMENT
(Approved)

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.

DJ KEATING:

1. The London Borough of Croydon has applied for a care and a placement order in respect of C, a girl born on [a date in] 2017. The care application was made on 4 December and so is now in week 50. The matter is listed for four days, commencing 12 November. In the event, I had to adjourn part-heard until 22 and 23 November. I gave permission to the paternal grandparents and a representative of the language of Country Q Embassy to attend on the last two days.

The Parties

2. The London Borough of Croydon is represented by Miss Moore of counsel. She invites me to dismiss the placement order application and to make a special guardianship order in favour of the mother's friend, S, who has never met C. It also invites me to make a six-month supervision order in favour of the local authority in the area S lives. I have seen an email from that local authority consenting to the making of that order.
3. C's mother is M also known as M. She was born on [a date in] 1980, therefore she is 38 years old. She is represented by Mr Clark. Counsel who had been representing M was taken ill over night before the trial began and was not able to attend. In the event, the first day of the trial was effectively lost to enable alternative counsel to be found and afforded time to get to grips with the case and to take such instructions as might be needed. Mr Clark stepped into the breach. There were significant delays on the second day of the trial because the video link booked for a witness to give evidence from Country Q, an EU state did not, in the event, work. There were further delays on the third day before the link finally worked. M wishes C to be returned to her care. If that is not possible, she supports the local authority.
4. C's father, confirmed by DNA testing, is F. He is represented by Miss Shenton of counsel. He was joined as a party to the proceedings but does not share parental responsibility for C. He is serving a prison sentence for assault on M and for other offences. I am told that he has been served with two notices of intention to deport him at the conclusion of his sentence. M told me, in her evidence, that F was gate arrested on his release from prison and re-detained. A production order was made but he has chosen not to attend Court. He has filed a statement. He argues that C should be placed with his parents, PGF and PGM, who live in Country Q, an EU state. They have been assessed during these proceedings. Firstly, a viability assessment conducted by telephone and secondly, via ICACU.
5. Miss Shenton put her client's position with care because she identified a conflict between her client and his parents, so she could not act for them. The father's solicitors might have produced evidence from them on the basis that they were witnesses who were, after all, in support of the outcome that the father sought. That did not happen. The father's case was that the assessments of his parents fall short of the required standard, that they do not agree with the local authority care plan, and that I should adjourn for further assessment of them. PGM had written a clear and eloquent letter setting out her views, which merited affording her and her husband the opportunity to attend Court, if they wished. In the event, I adjourned for a week to enable them to travel to the UK and give evidence. The local authority funded their transport and accommodation and also a session of advice with a local, experienced childcare solicitor, Miss Claxton. That trip meant that they were able to meet C for the first time. Miss Claxton achieved a great deal, in the short time that she had, and provided a position statement setting out what F and PGM wanted me to do: join them as parties to the proceedings and adjourn for a further week to enable them to formulate assessment proposals. No formal applications were made..

6. The Guardian for C is the CG. She supports the local authority. C is represented by Miss Thorpe, solicitor.

Introduction

7. C is the third child born to M and the second born to F. M's older children, D, who is 11, and E, nearly 10, live with their paternal grandmother, H. M was married to the children's father, J. D and E are the subject of special guardianship orders made at the conclusion of care proceedings in favour of H and her husband, G, who I was told has since died.
8. F has an older child, K, who lives with her maternal grandparents in Country Q, an EU state. F has never met C.
9. On the day that she gave birth to C, M was assessed by a perinatal psychiatric nurse who formed the view that M had a working diagnosis of emotionally unstable personality disorder. C was the subject of an application for a care order before she was fit for discharge from hospital.
10. M has a long history of substance misuse. She now accepts that her use of alcohol was seriously problematic at the time of the 2013 proceedings concerning D and E. In July 2017 she was found unresponsive and with facial injuries in a park. The local authority say that she was recorded as having consumed a significant amount of alcohol and a large quantity of epileptic medication that had been prescribed for J. M acknowledges that this was a determined suicide attempt. At that time, M had been homeless for two or three weeks and she was pregnant with C. In addition, there were concerns that her relationship with F was characterised by domestic violence. Domestic violence had been an issue in M's relationship with J too.
11. Perhaps not surprisingly, pre-birth steps were taken to ensure C's safety when she was born. M was treated as potentially having an ongoing substance misuse problem. Save for the occasion of the suicide attempt, she denies that she has consumed alcohol since 2014 or illicit drugs since June or July 2017. Toxicology tests on C, when she was born, proved negative for illicit drugs but she was recorded as being a little jittery and somewhat hypertonic in muscle tone in the few days after birth. An interim care order was made, C and M moved to U assessment unit, a residential assessment unit, for a 12-week assessment. The local authority was not able to contact F throughout this period although it did attempt to serve him with notice of the proceedings.
12. In December 2017, U assessment unit formed the view that M was, at times, intoxicated. She denied this and suggested that she was very tired and suffering from a reaction from mood stabilising medication that she had been prescribed.
13. In January 2018, M left U assessment unit, with permission, to go to her home. There she met F to provide him with a copy of C's birth certificate. She did not disclose that she had met F. In the event, U assessment unit gave notice to terminate the assessment of M. This was, in large part, because the staff at U assessment unit had formed a view that M was, at times, intoxicated. Hair strand testing was ordered and undertaken and M was also assessed by a psychiatrist. The possibility that her medication was causing her to appear intoxicated was excluded. There were further incidents at which U assessment unit concluded that M appeared intoxicated and at the end of February 2018 they searched her room, with her consent, and found two snap bags containing a brown residue in her tobacco pouch. U assessment unit gave notice to terminate the assessment of her. The Court endorsed the change of care plan on 2 March 2018 and the local authority duly formulated a care plan for C to be adopted. It applied for a placement order authorising a local authority to place a child for adoption.
14. A final hearing was due to take place on 30 April 2018. On 22 March 2018, M gave F'sphone number to the local authority for the first time. When the social worker spoke to

him, he suggested that his parents be considered as potential carers for C. The local authority's attempts to contact them proved fruitless. On 17 April 2018, the local authority met F for the first time. He was, by consent, joined as a party to the proceedings on 27 April. The parents then sought adjournment at the final hearing. No party, in the event, opposed that and directions were given for a viability assessment of F and PGM.

15. The final hearing was delayed until 4 June 2018. On 18 May 2018, the local authority informed the language of Country Q Embassy of these proceedings, as it appeared that C was a the language of Country Q citizen. On 23 May, there was a hearing in response to a request from the local authority because the viability assessment had been positive. DNA testing was ordered which, in due course, confirmed paternity. Detailed directions were given for the commissioning of an assessment of the suitability of the paternal grandparents to care for C, via ICACU. On 30 May 2018 the local authority made the referral, via ICACU, for a full assessment of the paternal grandparents. That referral included the template report for a special guardianship order and the Coram BAAF Form C, and a financial support form, both translated into the language of Country Q. That meant that there was also time to approve the further assessment of a friend of M, S. She had been positively assessed as a potential special guardian for the child of another woman known to M and introductions had begun. In the event, the Court in the other proceedings had reached a conclusion other than placement with S. She had previously been proposed as a potential carer for C; however she had concluded that she would not put herself for C, believing that the other child would be placed with her. Once that did not happen, she was again put forward as a potential carer for C. She was assessed as suitable to be a carer for C, with some reservations, and subject to DBS checks. The final hearing was delayed until 10 September.

16. On 24 July, ICACU estimated that it would take six to eight weeks to receive a response from the language of Country Q authorities therefore the matter was again restored to Court on 2 August. The Court was told that the language of Country Q Embassy had indicated its willingness to assist in ensuring that the assessments requested via ICACU would be expedited and of the requisite quality. The Embassy requested and it was granted permission to see some of the key documents in the proceedings. The Court was told that the results would not be available before 24 September at the earliest. Directions were given for the finding of evidence, once the assessments were available; it was necessary to delay the final hearing again to 12 November.

17. In the event, there were two reports from Country Q, an EU state prepared by P. They are dated 21 August and 15 October. On 9 October, the local authority had sent a list of additional questions, translated into the language of Country Q, arising from the first report. A pre-trial review was listed on 18 October. I directed that by 24 October, the local authority must serve on the paternal grandparents a copy of the assessment of them and any updated assessment received from ICACU and a letter informing them of the local authority's final care plan for C, the process by which they were able to challenge this care plan, in the event that they seek to do, and the requirement for them to issue any application in respect of C, if they wished to, within ten days of receipt of the letter. In addition, a copy of the social worker's final statement dated 15 October, redacted to include only the social worker's comments about the paternal grandparents. Those documents were all translated.

18. The local authority sent a letter later that day but did not fully comply with my order. The grandparents were simply invited to write to the local authority's solicitor, if they wished to challenge the local authority's decision, and PGM sent an articulate response to the local authority on 2 November. That response was not then disclosed to the Court, or the parties, until after the matter had been adjourned on the first day of the trial to enable counsel to be

located for M. In the meantime, the local authority concluded that the best option for C was adoption; a conclusion endorsed by its agency decision maker. M then filed evidence from S. That was not referred back to the agency decision maker who, a few days earlier, had decided that adoption was in C's best interests. Neither was the letter of 2 November from PGM. The local authority though, reflected and concluded that its final care plan would change to a special guardianship placement with S, supported by a supervision order for six months. S has never met C. She flew to London to give evidence and chose not to meet C as part of the trip.

19. Miss Shenton applied to adjourn the case for further assessment of F and PGM. As will be apparent from the chronology of events that I have described, further delay in determining C's future is likely to be detrimental to her welfare. She has already waited far too long for a decision to be made about her future. The final hearing has already been delayed by more than seven months, which is time she can ill afford. She deserves and needs to be placed with whoever is going to be her primary carer through her childhood.

20. I indicated that I hoped the local authority would take the steps to arrange for F and PGM to attend the hearing so that they could seek legal advice and say to the Court whatever they wanted to say. The local authority promptly agreed to fund their transport, accommodation and legal advice. Arrangements were also made for them to meet C.

21. M's position has always been that C should be cared for by her. She says that she can be supported by J and his mother, which whom she now has a good relationship. M has in the past variously described H as the 'mother-in-law from hell' and her main support. After the start of the hearing M provided written documents of support, signed by H and J - these contain no statement of truth. She also provided a statement from another woman who had been overlapping residence at U assessment unit with her. No party objected to the late admission of these documents. No party wished any of the authors of them to be tendered for cross-examination.

22. I do not consider F to be a realistic option to care for C. I was told on 22 November that he has been served with a deportation notice and that he is in custody pending deportation. The Home Office awaits the outcome of these proceedings. I was also told that an extradition warrant has been issued but not yet served on him. Once served, he will be extradited to Country Q, an EU state to serve a three-and-a-half-year sentence for assorted crimes he has committed there.

23. There are, therefore, three possible realistic options for C: to return to the care of M, to be placed with S or to be placed with her grandparents in Country Q, an EU state. All parties agree that the current assessments of the paternal grandparents fall far short of the standard that would enable the Court to make a special guardianship order in their favour however a child arrangements order could be made, if necessary, and the matter adjourned for any reporting gaps to be filled. I shall return to the quality of the assessments below.

24. If it were my task to judge whether M loves C enough, it would be a simple one. M loves C without reservation. She adores C and will do anything to maintain her relationship with C. She described how she could be manipulated by the mere suggestion that she might lose C to adoption and that was a heart-breaking part of her evidence to me. Equally, if my task were to consider, in the event that I concluded that M could not adequately care for C, whether her paternal family would love her enough, my task would be simple. It was plain, hearing the evidence of F and PGM, that they offer unconditional love for their granddaughter.

25. Sadly, those are not my tasks. My task is to determine disputed facts and decide whether the local authority could show that the Court has the power to make a public law order. If not, I must dismiss the applications. If so, it is to assess what order is in C's best interests,

with her welfare being my paramount consideration. I also need to consider whether F and PGM should be joined as parties to these proceedings and/or whether it is necessary for the just determination of the proceedings for them to be further adjourned.

26. There are a number of issues arising from the threshold document, as finally put by the local authority. In addition, I shall have to determine whether M consumed cocaine in November or December 2017. And, did she consume any other intoxicating drug after June 2017, when she said that she had last used a drug that was not prescribed for her - apart from the incident in July? In particular, did she use any intoxicating drugs whilst at U assessment unit? I am also asked to consider whether M administered Calpol to C either before C was old enough or in too greater quantity thereafter.

27. I have to consider Section 31 and 1 of the Children Act 1989. Firstly, Section 31(2):

> 'A court may only make a care order or supervision order if it is satisfied—
> (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
> (b) that the harm, or likelihood of harm, is attributable to—
> (i) the care given to the child, or likely to be given to [her] if the order were not made, not being what it would be reasonable to expect a parent to give to [her]'.

The category of the child being beyond parental control does not apply in this case.

28. Those provisions are commonly called the threshold criteria. In brief, it means that a child must have suffered, or be likely to suffer, significant harm because of poor parenting. If I am satisfied that the threshold criteria I read out, I then go on to consider section 1 of the Act and the Welfare Checklist. At the second stage the welfare of C is my paramount consideration.

29. In general, it is for those who assert an allegation to prove it. In making my decisions, I must act on the evidence which I find reliable, on the balance of probabilities. In the event that I conclude a witness has lied to me about something, I remind myself that a person may lie for many reasons and therefore that not everything that a person may say is necessarily untrue. I have in mind a direction often given to juries in criminal proceedings, called a Lucas direction.

30. The Human Rights Act applies to these proceedings. In Article 8 there is a right to a family life. Each individual family member in this case has that right. A child should normally be with its parents, or one of them, and if not, then with the wider family. But these rights must be balanced. In Article 3, there is a right that no-one should be subjected to inhuman or degrading treatment, so a local authority may therefore have to act to protect children in its area. In a democratic society, such as ours, any intervention into family life must be necessary and proportionate. There must be a strong reason to justify removing a child from its parent, or parents. However, if such a reason exists, then it is the child's welfare that must be the paramount consideration. Where the maintenance of family ties would harm a child's health or development, a parent is not entitled under Article 8 to insist that ties be maintained.

31. I have considered *Re B (A Child)* [2013] UKSC 33, *Re B-S (Children)* [2013] EWCA Civ 1146, *Re DAM (Children)* [2018] EWCA Civ 386 in which the Court of Appeal confirms the questions that I need to ask: What are the facts? Has the threshold been crossed? What order is in the child's best interest? Is the outcome necessary and proportionate having regard to Section 1(3)? In addition, *P-S (Children), Re* [2018] EWCA Civ 1407 (18 June 2018).

Evidence

32. I heard evidence from a number of witnesses via interpreter. There is a loss of immediacy for the witness, for the advocates and for the Court while questions and answers are translated. For Miss Conesar, who gave evidence via video link, that was exacerbated by delays on the line between the UK and Country Q, an EU state. There is also a loss of subtlety of meaning and in phraseology and I bear all that in mind when assessing the evidence of witnesses.

33. I heard oral evidence from the following: B at U assessment unit. She gave clear evidence and struck me as a calm, professional witness. I can see no reason why she should have exaggerated her description or recordings of the times at which she said that M had appeared intoxicated. The signs observed included the slurring of words, staggering and difficulty standing unsupported. In cross-examination it was put to her that, when she accompanied M to C's adoption medical, she had said to M that she regarded mental health issues, drug issues and abusive relationships as 'three big no-nos' when it came to parents caring for children. That was not set out in M's written evidence. When M came to give evidence, it was clear that the words 'three big no-nos' might have been used by B in a context that was less firm than had been put to B. B denied having told M that she thought it would be difficult for her to get her children back. She acknowledged that M was understandably anxious on the journey to the adoption medical and said that, 'I don't recall having these conversations that day or using the terminology "three big no-nos"'.

34. I heard from S, the prospective special guardian for C. S was an impressive witness. She was clear and supportive that C should retain a relationship with both sides of her birth family. She has seen M at times when she is sober and well, however, she has also seen her at times when she has been under the influences of substances and not functioning well. She was clear and firm about her ability to put C first, should there be a need to do so.

35. P, via video link and interpreter. She was a senior specialist probation officer. She had been commissioned to undertake the enquiries requested by ICACU. She repeated to me that she regarded her role as simply to ask the questions that had been posed and to record the answers. She confirmed that in her view the condition of the paternal grandparents' flat did not give rise to any concerns. She confirmed that she had not said that there were cigarette butts on the table and worktops but a single packet of cigarettes. During the course of Miss Conesar's evidence it became apparent that there was another person present, but not in shot to whom Miss Conesar was sometimes speaking. I asked who this was and Z came into shot. I was told that she was the Judge who had asked Miss Conesar to prepare the report. Judge Z did not give formal evidence but spoke briefly. At the conclusion of Miss Conesar's evidence, Judge Z came back into shot and told me that she had checked and that F had been placed in detention in a residential establishment as a child. This was consistent with the content of Miss Conesar's first report. Miss Conesar told me very clearly that, 'I did not write any opinions or conclusions', that she was not qualified to do so and that she was being burdened with too much responsibility. She suggested that a psychologist would be needed to comment on whether the paternal grandparents could adequately meet C's needs. I found very limited assistance from Miss Conesar's evidence. There were large swathes of the questions that had been asked that were unanswered. No police or health checks had been undertaken. No references had been taken. There was precious little analysis of the very significant difficulties that the paternal grandparents had had in raising their son. I still do not have a consistent account of his upbringing. There is agreement between Miss Conesar and the grandparents that during his early teenage years, F began truanting from school. The grandparents told me that they had been fined for this but Miss Conesar had not mentioned that in either of her reports, focusing instead on the paternal grandparents' perception that they had been waiting for

action to be taken by the school authorities.

36. At some point there was a real difference in date between the grandparents. The Court authorised F's detention in a residential educational institution. F thought that F had been there for two or three years until he was 18, although he could not quite remember. He told me that F had not been granted leave to return home for any breaks whilst detained, which he presumed was because F's conduct had not been good enough to warrant it. He told me that he had been to visit F only once during his placement at the school. PGM told me that he had been placed for about nine months until June 2013. Miss Conesar's report mentioned none of this detail. It is obviously relevant when one considers the questions that she was asked to consider.

37. SW[?], social worker. SW's evidence was clear, well-reasoned, thoughtful and compassionate. I thought her a persuasive and powerful witness. She congratulated M for having achieved a period of abstinence, however had no confidence that M would be able to maintain this. She pointed out that S had described how her experience of M had been that she had been able to maintain sobriety for periods, but always relapsed. When asked about the paternal grandparents she commented upon their commitment to their family but worried that they did not appear able to stand in C's shoes. She worried about the extent to which they were able to empathise with a child. She worried that, on Miss Conesar's account, the paternal grandparents' response to a serious truancy problem had been to wait for many months for the school authorities to take action. She pointed out that the agency decision-maker had felt able to conclude, on the basis of Miss Conesar's report and despite the obvious gaps in these reports, that the paternal grandparents could properly have been excluded as a realistic option for C so that a plan for her to be adopted was maintained. SW shared, and remained of the view, that the paternal grandparents could not be considered a realistic option for C. She remained clear and firm in her view that there was no realistic package of support to enable M to care safely for C. C had, in her view, at times been unsafe even in the highly supportive and regimented setting of U assessment unit, especially when M was, or appeared, intoxicated. A supervision order, for example, would provide 'nowhere near the level of support to provide an assurance that C would be free from the risk of harm in M's care'.

38. M. M's love for C shone through. She was understandably emotional at times but determined to do all that she could to care for C and failing that, to maximise her relationship with C. She denied that she had consumed alcohol since 2014, although she accepted that she had done so on the occasion in July 2017, when she took an overdose of J's medication. She denied that she had taken drugs since June 2017 however admitted, and accepted, that she was using cocaine until then. In short, she admits what the drug testing shows and denies all other usage apart from that she denies using anything in November or December 2017. She has in the past told both the social worker and the key manager that she has used spice, a synthetic stimulant. She told the Children's Guardian that she had used spice at U assessment unit. She now challenges precisely what was said. She says that she lied to U assessment unit when she told them that she was using spice. Therefore, on any view, I had to conclude that M was lying to someone about her substance misuse. She also told the Guardian that the night before the hearing on 2 March, she bought morphine from a homeless man and used it and wrote a suicide note, such was her despair. She accepts that she said this however said that she was just attention seeking and had not actually done those things. She also told the Guardian that she went on a binge in the aftermath of her departure from U assessment unit. She accepts that she said this too but now says that it was very snowy and she could not easily get home so she stayed at a party with friends all night at which she consumed no intoxicants. This is what she says she

means by a binge.

39. The Guardian takes the view that M's account has changed solely because subsequent hair strand testing did not confirm the substance misuse that M had disclosed to her and to the social worker. M's evidence about her substance use is seriously problematic. As far as November and December 2017 is concerned, M's hair has twice been tested. On 16 January a hair sample was taken and analysed by Ms A from Lextox who concluded that from the periods from end of October 2017 to the end of November 2017, and from the end of November 2017 to December 2017, M tested above cut-off for benzoylecgonine, a cocaine metabolite. Ms John concluded that this was 'more likely than not, due to the use of cocaine'. M did not accept that result and Ms John was asked to reconsider in light of M's view. Ms John confirmed, 'whilst the use of cocaine cannot be confirmed, when considering all the information, in my opinion and on a balance of probabilities, the most likely explanation would be from M using cocaine'. M argues that as C was born on [a date in] 2017, and she was then on ward and then in the supervised setting of U assessment unit, she had no opportunity to use cocaine undetected at the time, so the tests must be wrong. However, the later sample covers in part, a period before C was born. In addition, U assessment unit were raising concern that M was presenting as intoxicated in December 2017.

40. A second sample was taken on 30 May 2018 by Anglia DNA. It tested M's hair for substances including synthetic drugs. The oldest segment tested covered a period from the end of November 2017 to the end of December 2017. It was over the cut-off for cocaine for that period. Therefore, the metabolite that Lextox had identified, there was a reading, but it was below the reporting cut-off. Mr L from Anglia DNA concluded that 'M consumed a significant quantity of cocaine on repeated occasions during December 2017, after which she discontinued using the drug. However, it is possible she stopped using it a month or two earlier than this. All other tests were negative'.

41. I prefer the evidence of the drug testing experts and find that M consumed cocaine in the period shortly before C was born. It is more likely than not that that use continued beyond the end of November 2017. Accordingly, I reject as a lie her evidence that she has not used drugs since June 2017 and I approach the remainder of M's evidence about her substance misuse with particular caution.

42. M began her oral evidence by disavowing the following words in her second statement which she had signed as true on 23 April, 'I agree that it was incredibly stupid to allow myself to become intoxicated and not to look after C at U assessment unit'. She blamed her solicitor for advising her to say this. She changed her solicitor in consequence. Interestingly, in her third statement, prepared by her new solicitor, she simply adopted the first two statements without other comment. M has given a convoluted tale as to how she came to inadvertently swap tobacco pouches, having met an acquaintance by chance. She knew that he had been to prison and that spice was widely used there. She was inconsistent as to whether she smoked what she found in the pouch later. In her written evidence accepting that she had done so, however, denying this in her oral evidence. I thought her account wholly improbable and implausible and find that whilst at U assessment unit M smoked an intoxicating substance, knowing or believing before she smoked it that it was an intoxicating substance, and that she has lied subsequently about that.

43. I simply do not accept her description of a binge and find that she consumed further intoxicants having left U assessment unit albeit either at a level too low to be detected by Anglia DNA or more probably substances that were not detected by the tests that Anglia DNA offer.

44. M relies on the evidence of swab tests and a blood test that she obtained from Turning

Point, which were clear. Those tests were only carried out on dates selected by M, at her request, at a time when she was seeking to prove that she was not using. They were therefore self-serving and I decline to place weight on them beyond what they show on their face value; that at the time of each test, the specific substances tested for were not present in her blood or urine as appropriate.

45. When M was assessed by a perinatal nurse on 1 December 2017, she told the nurse, Nurse N that when she was about 16, she had been kidnapped and held captive for about a year, before being released because her mother had made payment to her captors. M described to the nurse that she was repeatedly raped during her ordeal. I noted that M had not shared this experience with either Dr 1, who assessed her in 2015, or to Dr 2 who saw her twice in January 2018. She had discussed her childhood with both psychiatrists. I was curious why she had not shared what was obviously an extraordinarily traumatic experience with them. She told me that her captivity had been for about six months and that she felt dirty, unclean, and worthless as a result and she did not want to be defined by that experience. She feared that she would be. She was naturally very distressed in speaking of this subject. The issue, though, merits mention because it chimes with the carefully phrased report of Dr Mustas.

46. M described in a way that I thought compelling of the coercion and control that F was able to exercise over her. She said that he had threatened to stab her children. She told me that he raped her in early to mid-April 2018. She told me that she had not been frank with the social worker about the communication that she had with F because, 'I didn't feel for one second that I could trust the social worker'. That latter statement gives me significant concern about the prospect that M would work openly or honestly with professionals charged with keeping C safe, were there to be a need for such work.

47. F, the paternal grandfather. He gave his evidence via interpreter, with great dignity and at length. He was questioned extensively and challenged at times. His commitment to C was evident. His delight at having met her was palpable. He described the extended paternal family within easy reach of his home. When asked about his marriage, he showed a kind and relaxed humour. He told me that he had once had his driving licence sanctioned, about eight years earlier, for having been over the limit for alcohol. He had been hungover at the time. He was prohibited from driving vehicles up to 3.5 tonnes for a time but permitted to drive larger vehicles.

48. He was somewhat unclear about dates and his wife subsequently disagreed with him about some of those. He thought K was six. PGM confirmed K's date of birth. She is five. He described how K's mother was underage. She was 17 when K was born and that K was now cared for by her maternal grandparents. For a time, they brought K to see them and they cared for K, to help out. That stopped, apparently without explanation, and no effective steps have been taken to maintain or resume that relationship. That chimes with the almost fatalistic wait-and-see approach that they took when it came to F's schooling and their rather passive approach in these proceedings. They could have chased SW but apparently did not do so. I have already touched on F's detention and the dates of that. When asked to reflect on what he would do differently, F said, 'What could I have done? In my opinion I was doing everything correctly'.

49. He also suggested that C would probably call them Mum and Dad but when she was 12 or 14, they would tell her the truth. He saw no concern about this, or who C would be told M was, in the event that contact ever took place. I was left with an uneasy feeling that contact between M and C might prove very difficult to maintain. I was concerned about the extent to which C's sense of self could be promoted. F has a plan to buy the attic space next to his apartment and extend into it but has not made enquiries that mean he knows for sure this will be possible, nor how much it would cost to acquire the space, or do the works. For

now, the couple live in a two-room apartment of 19.5 square metres.

50. PGM, paternal grandmother. She endorsed, apart from a few dates, her husband's evidence. She confirmed that she had met Miss Conesar twice. The first was not by appointment but fortunately her neighbour spotted Miss Conesar and was able to tell her where to find PGM. The meeting lasted about an hour. The second meeting was arranged the day before and lasted a little less. F attended neither meeting. PGM said, 'It is difficult for me to understand why our assessment was conducted carelessly or not thoroughly'. Quite so. I was glad that a representative from the language of Country Q Embassy was present to hear the distress that had been caused to the grandparents by the way in which the request for assistance was progressed. The language of Country Q Embassy has been absolutely clear that it would not have been acceptable for an independent social work assessment to have been commissioned. Any assessment had to be requested as it was, via ICACU. That the assessor had not even met one of those being assessed seems to me inexcusable. That she was unable, and not qualified, to express any kind of opinion as to the suitability or otherwise of the grandparents to care for C was a serious failing. That was, in essence, the question asked of the language of Country Q authorities.

51. the CG, the Children's Guardian, was clear, calm and unshakeable in her views. I was drawn to this observation she made of M, 'She struggles to take responsibility for her poor decision making and tends to provide quite convoluted explanations for the situations she has found herself in'. I agree. The CG was clear in her view that M could not safely care for C. She acknowledged the poor quality of the work done in Country Q, an EU state. It was clear, in her view, the benefits that the placement with S would bring to C, as this will maintain the important relationship with her mother and half-brothers whilst allowing the relationship with her paternal family to develop. No option seemed likely to result in any kind of meaningful relationship with her half-sister, K.

52. In addition, I have the careful report of Dr Mustas to mention. He noted that M was slurring her words at the start of the interview. He mentions twice an important caveat. M appeared to be approaching him as a test she had to pass, rather than simply help to understand herself better. He identified a number of significant obstacles to reliable psychiatric assessment and noted a definite risk of a false negative. It was with that proviso in mind that I had asked M about her kidnap and associated experiences because that was not touched upon in her account with Dr Mustas. It seems to me that Dr Mustas's note of caution had particular resonance. Dr Mustas concluded that M was not suffering from mental illness but had traits of an emotionally unstable personality disorder that fell short of a diagnosable condition. In addition, he said, 'I am more concerned about the meaning and interpretation of M's hair strand testing and I think the possibility of unacknowledged substance misuse is the biggest potential hazard to her parenting capacity. The instances of neglect which led to her older children being taken into police protection and to [M] accepting a caution for child neglect had drugs and alcohol as significant contributing factors. So, if she has been using drugs in recent months and is not willing to acknowledge this, then I would be concerned about the potential risks of sub-optimal parenting in the context of ongoing substance misuse'. I accept his unchallenged opinion.

Findings of Fact – Has the threshold been crossed?

53. I have already made some findings on fact. I decline to find that Calpol was administered to C too soon or in too greater a quantity. Given M's account that some was spilled I cannot conclude that local authority has established the point.

54. Turning to threshold, all parties accept that it is established as put by the local authority, save to the extent that M contests some elements. I find that the local authority has established threshold on credible and reliable evidence as put, save as described below. I do

not accept that M failed to access antenatal care regularly. She had fractured care, as the responsibility was transferred as she moved and she accepts that she missed one appointment. I do not accept that amounts to a finding that justifies a conclusion that C was likely to or did suffer significant harm in consequence. I agree with Mr Clark for the reasons that he has given, that the medical evidence before mesimply does not permit me to conclude that it is more likely than not that C showed symptoms of drugs withdrawal. That is simply not what the medical evidence says. I find that M left the ward on one occasion without letting the ward staff know where she was going. At G1, the evidence does not record that the second occasion was without explanation. Given all the circumstances, that did place C at risk of significant harm albeit that she was on a maternity ward.

55. As to items 9 and 10 atA43 of the bundle, there is ample evidence that the relationship between M and both J and F has at times been characterised by violence and abuse. M was not candid about her ongoing contact with F which continued even after she had given evidence against him and the Court had granted a restraining order against him. Accordingly, I find the threshold criteria established as asserted.

56. As to 13, I agree that this is the conclusion to draw from Dr Mustas's unchallenged report.

57. Should there be further adjournment for further assessment of the paternal grandparents? Should they be joined as parties? The paternal grandparents consulted Miss Claxton, a solicitor, on 21 November 2018, funded by the local authority. In a remarkably short time she prepared a very helpful position statement. She worked long after normal office hours to do so and I doubt that the fee she was paid covered all of her time. I am very grateful to Miss Claxton for the work that she has done on behalf of her clients.

58. Sir Ernest Ryder said in *P-S (Children), Re* [2018] EWCA Civ 1407 (18 June 2018), with the then President of the Family Division agreeing,

" 52. The statutory scheme that applies to special guardianship orders has previously been considered by this court in ***Re H (A Child) (Analysis of realistic options and SGOs)*** **[2015] EWCA Civ 406**, [2016] 1 FLR 286 CA. Given that the judge cited that authority it was clearly in his contemplation. The paternal grandparents were able to make applications for special guardianship orders because sections 14A(3) and 14(5)(c) when read together with section 10(5)(c)(ii) of the 1989 Act provide that they are entitled to do so if they have the consent of the local authority where the child is in the care of that local authority. That would have been so in this case had anyone directed their minds to the situation.

53. In the absence of the local authority's consent, the grandparents would have been able to apply for leave to make an application under section 10(9) of the 1989 Act where the factors to be considered by the court are specified. In a case where the local authority does not consent the leave application is an important protection for the child and the child's parents. It is not a rubber stamp. Where leave is granted, an appropriate balance is struck between the applicants, the child, the child's parents and the local authority. It is relatively common to find that local authorities who give consent to an application being made, that is who support the application on the merits, will help fund the applicant by providing representation. That happened in this case when the matter came on appeal and after a case management indication to that effect was given by this court. It ought to have happened earlier.

54. The residual power in the court to consider making a special guardianship order of its own motion in section 14A(6)(b) of the Act should not be the normal or default process because it avoids the protections that I have just referred to. That is not to say that

circumstances will not arise where that residual process is in the interests of the child and the court is able to have regard to the protections in sections 14 and 10 in its decision making, but it should not be the normal process. Not only does it tend to avoid the protections in the statutory scheme but it tends to avoid good planning by the local authority and the court which will include identifying the status of the prospective special guardians, how they will achieve effective access to justice and such case management directions as will provide fairness to all parties by notice of the proceedings, the disclosure of evidence and the ability to take advice. In so far as the judge indicates that the Central Family Court and local authorities appearing in it had yet to come to terms with the need to follow this court's guidance in Re H, that time has now arrived.

55. It is difficult to understand why steps were not taken [at the IRH] to consider effective access to justice for the grandparents. It was clear from the recordings in the order made that the key issues in the case included whether each of the children should *"reside in a family placement under an SGO".* It may be that the apparent consensus between the local authority, the children's guardian and the grandparents on the ultimate order they all sought obscured the immediate procedural issue before the court. Given the procedural unfairness that undoubtedly was the consequence, I have no hesitation in coming to the conclusion that it was wrong not to have made appropriate provision for the grandparents to obtain effective access to justice at the final hearing. To leave them on the sidelines without party status, without documents and without advice and without any mechanism being identified for the parents of S to cross examine them on their proposals was unfair in more than one respect. From the children's perspective, it meant that part of their case was assumed to be incomplete when it could have been tested.

56. The solution would have been either to direct that an application for an SGO be made so that case management directions on that application relating to party status, disclosure and time for advice could be made or for case management directions to be made that otherwise secured the same procedural protections."

59. The facts of this case have a number of similarities with Re *P-S (Children)*, which was not drawn to the Court's attention at any stage until Miss Shenton's position statement was sent to the Court shortly before the trial began. The order of 18 October attempted to address the issues so as to enable the paternal grandparents to obtain effective access to justice if they were not content with the local authority's decision. In the event, I have enabled the paternal grandparents to participate by attending this hearing and giving evidence. I now have enough evidence to determine this case.

60. The Court has enabled a process that may not have been optimal but which was fair. It is not enough to say that further delays to the resolution of C's case would be contrary to her best interests by reference to either Section 1 or Section 32 of the Act. Justice must be done. However, for both statutory reasons, any further delay in resolving C's future would require a clear justification and must be kept to an absolute minimum. Regardless of any statutory imperative, C desperately needs her future to be determined. She is almost a year old. Whatever the outcome, she will need to be moved from the care of the foster carers with whom she has now lived since the end of February, which is more than eight months. She needs a firm decision to be made as to whom she is going to grow up with. She needs to move to live with that person or persons very quickly, subject to a transition plan if it is not her mother.

61. I agree with Ms Snow:, I now have the information that I need to enable me to make a decision. That is due to the very hard work of the local authority, their assistance in

arranging the trip but more particularly to the commitment and the willingness to travel at short notice to London, of the paternal grandparents, to whom I am very grateful.

62. I decline to join the grandparents as parties to the proceedings. That would require the translation of hundreds of pages of material. F could have called witness evidence from them, as M called evidence from S. There is no justifiable reason to join them as parties at this point.

63. I also decline to adjourn these proceedings. There is no formal application before me. However, Miss Claxton suggests a week to enable proposals to be formulated. I am told that, if I thought it necessary, arrangements could be made for the paternal grandparents to travel to London for a week in January for a report to be prepared by a the language of Country Q speaking independent social worker. I do not think that necessary to be able to properly and fairly determine C's case and nor is it necessary to ensure that justice is done as far as every party, or the grandparents are concerned. I wholly agree with Miss Shenton's submission that justice cannot be sacrificed on the altar of speed but no sacrifice is required in this case.

64. What order is in C's best interests? I have to consider the factors set out in section 1(3),of the Act. Firstly, C's ascertainable wishes and feelings considered in the light of her age and understanding. She is too young to express a view. She has now met her grandparents twice. The second contact took place whilst I drafted my judgment. She has a significant relationship with her mother, which I am sure she would not want to lose. As to her physical, emotional and educational needs, she has all the usual needs of a nearly one-year-old girl. She needs to be placed now with whoever will be her primary carer throughout her childhood. She needs to maintain a sense of her heritage and if possible, her relationship with her mother and her half-brothers. She will benefit from developing a relationship with her paternal grandparents and her wider paternal family.

65. The likely effect of a change in her circumstances: there will be a move from her current carers and this will be distressing for C. I am satisfied that the plan for her to transition to care of S, if that were my conclusion, is sensible. Were she to move to the care of her mother, I believe she would be delighted. The issue for me is whether M would adequately be able to care for her and keep her safe from harm. C will just be learning words but she speaks no the language of Country Q. To move her to carers who speak no English would be confusing for her and would be harmful to her language development in the short term. However, that would resolve in a relatively short period and I do not think that that is a factor that need weigh heavily in the balance. My greater concerns arise that a move to Country Q, an EU state will be the maintenance of a relationship with M which I believe would prove very difficult and would be a significant loss to C, and her brothers similarly. There are also my doubts about C's prospects as a teenager, given F's childhood experiences.

66. As to C's age, sex, background and other characteristics, I have addressed those. As to the harm which she has suffered, I dealt with that under the threshold. As to the capability of each of C's parents and any other person in relation to whom the Court considers the question of it. I have already dealt with F.

67. It is with a heavy heart that I conclude that M is not able adequately to care for C. This is absolutely not because she does not love C enough. It is absolutely not because she would deliberately allow any harm to befall C. She would not. But her problems are many, they are deep and they are challenging. She was unable to maintain sobriety from intoxication even in the supervised and regulated setting of U assessment unit. I have seen nothing in the assessments of the experts to cause me to believe that sooner or later M would not be overwhelmed by some issue or another and that C's needs would be lost. The risk to C is simply too high. She is still entirely dependent on her adult caregivers.

68. I have no doubt about F's and PGM's ability to meet the basic day-to-day needs of C. I retain significant doubts about their ability to meet C's emotional needs adequately. Their view that she would call them Mum and Dad until she is 12 or 14 is troubling. It suggests that there will be real problems in maintaining a meaningful relationship with M and her half-brothers. I am not satisfied that F and PGM have been able to demonstrate that they would be able adequately to meet C's needs were she to prove rebellious, especially as a

teenager.

69. Moreover, I agree with the social worker and the Guardian that S, who has successfully raised a daughter through those troubled teenage years, offers a unique possibility which enables C to maintain a meaningful relationship with her mother and brothers; those sibling relationships can, and do, prove significant to children throughout their lives and are to be cherished. I was struck by the willingness of S to promote her relationship with F and PGM. I know that they will find my conclusion hard to understand, and may always do so; however, it is formulated on what I consider to be in C's best interests. I hope that whatever their reservations about my decision may be, F and PGM will grasp with both hands the opportunity to build that relationship with C, that S offers.

70. As to the range of powers available, I agree that the transition will be tough. S has not met C so both of them will find the process challenging. That alone justifies the making of a supervision order to support whatever order I think best secures C's placement. I am clear that the balance lies very clearly in favour of an order that C lives with S. A special guardianship order has very significant benefits above a child arrangements order: financial and other support and a clear delineation in parental responsibility which may well prove necessary given the fierceness of the love M will always have for C. There is no proportionate need for the State to share parental responsibility for C, therefore a care order cannot be justified. A supervision order is also justified to allow contact between C and M to settle into this new long-term pattern. I accept the professional advice that six months is the suitable duration of the order.

71. One steps back and reflects on the very strong point that F and PGM make. How can it be right that if a child cannot be cared for by her parents, she is placed with a stranger in preference to her grandparents? The answer comes from a recognition that the strength of the blood relationship is very powerful; however, it is not definitive. The Court has to give clear reasons for disagreeing with the advice of expert witnesses - here, the social workers and the Children's Guardian. I can see none. I have based my conclusion on an holistic analysis for the benefits of all of the realistic options. M offers unconditional love and a powerful relationship but cannot be regarded as sufficiently safe. S is able to meet C's needs but has no blood relationship with C. She does, though, allow the means for the existing relationships with the mother and maternal family and the development of the relationships with C's paternal family. F and PGM offer unconditional love, a paternal family upbringing; however that likely loss of, or at least significantly reduced, relationship with her mother. That, to my mind, is the magnetic fact to which I am drawn. I have reached the clear view that C's needs are best met by a special guardianship order in favour of S.

72. Is that outcome necessarily proportionate to the problem? Yes, for the reasons given above. All parties agree that the application for a placement order must be dismissed. I also agree and so I dismiss it. For the reasons given above, I do not consider that the further assessment of the grandparents is needed. I do not believe that further assessment will assist me to determine the application. The grandparents have been able to make an application for a child arrangement or special guardianship order and seek the leave of the Court do so, had they wished. They have not done so. They had the opportunity to give evidence to the Court and be cross-examined about their proposal for C to be placed in their care, in Country Q, an EU state.

73. In my view the balance is clear. C's interests are best served by her moving to live with S subject to a special guardianship order in her favour and a supervision order for six months in favour of X LA County Council to assist S as C settles in and to manage the transition to the new long-term pattern of contact with her mother.

74. I decline to include a recital as to contact. None is, in my view, justified. The Court has entrusted the care of C to S and that includes the trust to make decisions as she sees fit about contact. She was not invited to agree the precise form of words of any recital.

75. I will arrange for this judgment to be published, in anonymous form, so that ICACU and the language of Country Q authorities can reflect upon the process of assessment in this case, the adequacy of the response to the request for assessment, and whether the experience of F and PGM, as the language of Country Q citizens, has been appropriate. I

give permission for this judgment to be disclosed to X LA County Council, to F, and PGM and to S. All are reminded of its confidential nature. That is the conclusion that I have reached.

End of Judgment

This transcript has been approved by the judge.

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