

IN THE FAMILY COURT AT LIVERPOOL

35 Vernon Street,
Liverpool, L2 2BX
25 June 2019

B e f o r e :

HIS HONOUR JUDGE GREENSMITH

Between:

**Z Borough Council
- and -**

Applicant

**M (1)
N (2)**

A child (3)

A child through her Children's Guardian

Respondents

**Mr Chukweumeka appeared for the Applicant
Miss Mallon appeared for the First Respondent
Mr Khan appeared for the Second Respondent
Miss Squires appeared for the Third Respondent**

HTML VERSION OF JUDGMENT

HIS HONOUR JUDGE GREENSMITH :

1. The court is concerned with the welfare of a girl ["the Child"] who is 7 months old at the date of the final hearing. Both the child's parents are parties; they present as a couple.
2. In this case, both the local authority and the guardian have relied on what are clearly proforma platforms to convey their attempts to conduct and relay their analyses. Unfortunately, the approach in this case has left the court wholly ill-equipped to conduct its own holistic and multi-faceted analysis of the options for the child. The analyses presented to the court lack essential ingredients; they are presented in a formulaic manner that undermine the process.
3. The applications before the court are for a care order and a placement order. In the event the parents refuse to consent to placement there is an application for their consent to be dispensed with. This case has been listed before me for final hearing; I have had no previous involvement in the case management of these applications.
4. The application for a care order was issued on the day of the child's birth. An interim care order was granted on 27 November 2018 and the child was discharged from hospital into foster care. A placement order was applied for on 18 April 2019.
5. The parents position is that they acknowledge a history of chaotic lifestyle, drug abuse/alcohol abuse and domestic violence and that threshold for making a care order is crossed. The parents strenuously defend the making of a placement order.
6. The child's guardian supports the applications.
7. The background to this case is that in 2016 the parents had two children removed from their care; these children reside with their paternal grandmother under Special Guardianship orders. The parents have not maintained regular contact with them. The reasons for the children's removal were similar in nature to the reasons why these proceedings were brought. In short, the parents have in the past demonstrated a life impregnated by drug abuse, domestic violence and poor mental health: the "toxic trio". The parents have been together for 11 years; they married in 2013. The relationship between the parents is of co-dependent nature.
8. The parents do not dispute the threshold for the making of a care order and it is adopted by the court as found.
9. The parents admit that they have spent periods being homeless, some of the time rough sleeping at an allotment. Both parents have a documented and admitted history of drug use including cocaine, cannabis and opiates. The level of domestic violence between the parents has been substantial. Even while pregnant the mother suffered at the hands of the father to the extent that she requested hostel accommodation, only to

retract her allegations. The mother has suffered from significant mental health issues causing her to attempt suicide twice, once jumping from a bridge, causing extensive injury.

10. It is to the credit of both parents that they have each made significant moves towards improving their situation.
11. On the second day of the hearing, the father produced drug test results which indicated use of cannabis, heroin and codeine from the start of March to the middle of May 2019. It was the father's oral evidence that he had not used heroin and that the tests could be explained by use of over the counter opiate based pain relief medication. The father's evidence is tainted by the fact that the test results differentiate between heroin and codeine. Looking at this evidence in the context of the visible improvements in the father's life generally and especially improvements made together with the mother (without any significant support from the local authority,) it is reasonable to find that the father's drug use is improving although further testing would be required to demonstrate sustainable change.
12. Recent drug tests of the mother demonstrate a reduction in use. The mother gave evidence asserting that she has not used crack cocaine or heroin since November 2018. Although the tests provided are evidence of more recent use they do not indicate usage beyond the middle of April 2019. Considering the mothers stated position and the tests available, the court would need to be satisfied with more recent evidence of the mother's failure to abstain to find that the mother is not now drug free, as she says she is.
13. Having been homeless from November 2018 to March 2019, the parents have managed to secure private rented accommodation. The accommodation is secure and would be suitable for them to live in while caring for a young child. The father has secured a job.
14. Whilst there are positive signs of improvement in the position of the parents, these must be seen in the context of police involvement as a result of domestic violence incidents between the parents which occurred on 24 April 2019 and 25 May 2019. Each of these occasions were altercations between the parent caused by excessive alcohol intake.
15. In order to assess the significance of the improvements the parents have made, the court has to ask, if the change has gone so far that on the balance of probabilities it is sustainable so that it will last into the child's childhood through to adulthood? In answering this question the court is entitled to consider options available to the local authority to support the parents to ensure a satisfactory outcome within an appropriate timetable for the child.

The legal framework

16. In considering an application for a care order the court must have the welfare of the child as its paramount consideration and in doing so consider the factors set out in s1(3) Children Act 1989; the child's welfare is extended to the whole of its life when going onto consider a placement order and for this purpose the court must consider

the welfare checklist in s1(4) Children and Adoption Act 2002. For the purpose of this case it should be emphasized that the duty to consider the child's welfare is informed by the court carrying out a global, holistic and multi-faceted evaluation of each of the realistic options available for the child's future upbringing before deciding which of the options best meets the court's duty to serve the child's welfare for the whole of its life. Only when the court has carried out its analysis can it make a placement order when it is satisfied that, "nothing else will do". Re B-S (Children) [2013] EWCA Civ 1146.

17. McFarlane LJ (as he then was) provided further clarification as to the 'nothing else will do' test in Re W (A Child) (Adoption: Approach to Long-Term Welfare) [2016] EWCA Civ 793 by reference to the question of whether the court should make an SGO or adoption order:

"The phrase is meaningless, and potentially dangerous, if it is applied as a freestanding shortcut test divorced from, or even in place of, an overall evaluation of the child's welfare. Used properly, as Baroness Hale explained, the phrase 'nothing else will do' is no more, nor no less, than a useful distillation of the proportionality and necessity test as embodied in the ECHR and reflected in the need to afford paramount consideration to the welfare of the child throughout her lifetime (s.1 Adoption and Children Act 2002). The phrase 'nothing else will do' is not some sort of hyperlink providing a direct route to the outcome of a case so as to bypass the need to undertake a full, comprehensive welfare evaluation of all the relevant pros and cons (see Re B-S [2013] EWCA Civ 1146, Re R [2014] EWCA Civ 715 and other cases.)"

18. When evaluating the benefits of long term fostering against adoption, The Court recognised the risks associated with foster care in Re LRP [2013] 2 FLR 399 per Pauffley J:

"Long-term foster care is an extraordinary precarious legal framework for any child, particularly one as young as LRP. Foster placements, long- or short-term do not provide legal security. They can and often do come to an end. Children in long-term care may find themselves moved from one home to another, sometimes for seemingly inexplicable reasons. Long-term foster parents are not expected to be fully committed to a child in the same way as adoptive parents. Most importantly of all, in the current context a long-term foster child does not have the same and enduring sense of belonging within a family as does a child who has been adopted. There is no way in which a long-term foster child can count on the permanency, predictability, and enduring quality of his placement as can a child who has been adopted."

19. For the purpose of evaluating the efficacy and sustainability of change, counsel for the Guardian has referred me to the guidance of Sir James Munby P (as he then was) in Re S [2014] EWFC B44 and the tripartite test he set out in the context of evaluating the capacity of demonstrating change in the Families Drug and Alcohol Court (FDAC):

1st Is there some solid evidence based reason to believe that the parent is committed to making the necessary change;

2nd Is there some solid evidence based reason to believe the parent will be able to maintain commitment;

3rd is there some solid evidence based reason to believe that the parent will be able to make the necessary changes within the child's timetable?

Evidence

Helen Roberts: psychologist

20. Ms Roberts confirmed her report dated 22 February 2019 prepared for the purpose of these proceedings, and that her position has not changed. The conclusions of the psychologist's report are that the relationship between the parents is based on an unhealthy attachment. Regarding the mother, she is of the opinion that:

"In my view, [the mother] requires therapy but that this is unlikely to assist her whilst she remains in an intense and ambivalent relationship with her partner. Although [the mother] tells me that she would be prepared to separate from her husband, she has not done so to date and I have little evidence to suggest that she would be able to maintain such an arrangement. In my view, the couple have an entrenched and mutually dependent relationship and they are each invested in maintaining the status quo.

"If [the mother] were to engage in therapy, I would recommend relationship-based treatment (such as Cognitive Analytic or Psychodynamic Psychotherapy). Such treatments are difficult to access in the health service and may not be available at all. If a service can be identified, [the mother] is likely to face a considerable waiting list and meaningful change can only be anticipated after several months, outside of [the child's] timescales."

21. In oral evidence, Ms Roberts confirmed that to achieve sustained change will require therapy. The course of therapy will itself take six months, if all goes well. In order to assess whether change has occurred and is sustainable, there must be a further passage of time of twelve months or so. This means that the best-case scenario is that by the time the sustainability of change for the mother can properly be assessed, the child will be 18 months older and therefore approximately two years of age. Of course, there is no guarantee it will work like this. Having regard to the mother's history, her co-dependency on the father and her willingness to put the interests of herself and the father over her children, there has to be a recognition that it may not. This uncertainty, however, must be seen in the context of green shoots of change, especially on the part of the mother.
22. Ms Roberts confirmed that by the time a child is two, provided she has had safe and nurturing care, she will have learned the ability to form primary attachments.
23. Children are often successfully adopted at two years and, of course older. One of the features of this case is that the child has been in foster care since birth and has not been exposed to the parents' behaviour save for when she was in vitro and there is no evidence of lasting damage from such exposure.

24. Regarding the father, Ms Roberts is less optimistic that he is capable of sustainable change as she says:

"221. I do not believe that [the father] would engage in treatment or therapy. It is not something that he is interested in and psychometric testing suggests that he is satisfied with himself as he is. [the father] should engage with services for individuals who have substance misuse problems and should complete a course for men who are involved in domestically abusive relationships.

25. It is of significant note that the opinion of Ms Roberts was given back in February when she reported that:

"228. There has been little evidence of change and [The father and the mother] demonstrate a lack of progress, either during the pregnancy or since [the child's] birth."

26. Ms Roberts acknowledged that there were some recent positive steps in the lives of the parents but she said that these did not change her opinion. She emphasised that the parents have worked to address problems from the past but the issues are the problems they have now.

27. The doctor relied on there being recent police callouts to demonstrate current alcohol use. In this respect she assumed that police involvement was the direct result of excessive alcohol use; a conclusion I am not sure she was entitled to reach.

28. In response to the father's claim to have attended courses she said that the attendance on the courses the father says he has attended would not be sufficient to make any difference or reap a benefit as such courses depend on regular attendance over a sustained period.

29. Ms Roberts concludes her report by saying:

"230. I have made therapy recommendations above. In the first instance, each parent should engage with substance misuse services and engage with work around domestic violence and abuse. It is very unfortunate that [the father and the mother] have not taken the opportunity to engage with such services over the past few months.

"231. I have given my opinion that change is unlikely to occur within [the child's] timescales."

30. It is an essential element of the opinion of Ms Roberts that when she gave her recommendations in February 2019 she was of the view that change would not occur within the timescales for the child, she does not say, and neither was she asked to say, what those timescales are. A child's timetable is not limited to specific life events. Neither is it limited to the length of the proceedings before the court. It is for the court to identify a particular child's timetable. In my judgment it would serve this child's welfare if the parents could be identified as being capable of giving good enough care to the child within a time when adoption would remain achievable, in the such could not be established.

31. During cross-examination Ms Roberts was referred to the mother's most recent drug test results and acknowledged that the mother's position has improved over the last four months since she prepared her report in February. It is acknowledged that when the report was prepared the parents were sleeping rough whereas they have now secured accommodation. It is regrettable that up to date information has not been supplied to Ms Roberts prior to the hearing. The psychologist was expected to form a view based on reports she had just received and without the benefit of a follow up meeting with either parent. I understand Ms Roberts was trying to be helpful, but I do have sympathy with the parents who are putting forward a case of being pre-judged by professionals. A follow up report should have been requested in the light of the parents' changes in circumstances so the psychologist could form her views from first hand assessments. The fact that the psychologist gave her opinion based on such limited information and without a further meeting with either parent somewhat undermined the value of the psychologist's expressed opinion, in my view.

Social Worker

32. The social worker has been the key social worker throughout these proceedings; she has filed four pieces of work including the parental assessment of both parents dated 1 April 2019. The social worker's last piece of work is her Final Statement dated 17 April 2019. The social worker's written conclusion is that only an adoption order will meet the child's needs and she has filed a care-plan to that effect.
33. The social worker updated the court on the question of contact by saying after the contact being initially being of good quality, it deteriorated and has then improved over the past few weeks.
34. The social worker was questioned on the amount of time she has with the parents before finalising her report dated 1 April 2019. She confirmed she would normally have 6 – 8 sessions with the parents to prepare an assessment, but for the purpose of this report that she only saw the parents together once. She had not visited the parents' home despite their having lived there in excess of three months prior to the hearing. The social worker was unable to give a cogent account of the local authority's plans for contact during the placement period. She accepted that such plans did not form part of the care plan and stumbled to find reference to them in her notes. Her final account left me of the view that she was formulating a contact plan in the witness box. This gave the appearance of unprofessionalism and I am sure did not inspire confidence in the parents that their contact with their child following the making of a placement order had not been considered by the local authority.
35. Mr Khan on behalf of the father suggested that the social worker had failed to conduct a serious analysis of the options open to the child by, quite properly, highlighting gaps in the options referred to, such as contact following adoption. Miss Mallon for the mother highlighted that sibling contact had been omitted from the analysis altogether. Miss Mallon went on to point out an error in the final statement which suggested that elements had been copied and pasted from documents relating to a male child. Whilst I cannot adjudicate on whether this was the case or not, the overall appearance of the statement is that it simply goes through the motions in a formulaic manner, failing to provide an appropriate analysis. For example, the social worker's reference to the merits of fostering as a long-term option, lacked any reference to the fact that

this would enable sibling contact to take place. There is no reference to the fact that fostering could be deployed to give the parents the chance to continue to improve their position while the child is in a safe and nurturing environment. I find the social workers statement, "[The child] is very young and therefore should not languish on a care order", highly reductive of most foster placements which give nurturing physical and emotional support to young people who have been failed by inadequate parenting and society generally. I also consider that the social worker's submission that, "There is no guarantee that a long term foster placement would see [the child] through to adulthood," fails to recognise that foster placements can often be used to support a child during a period of change and development of their parents. It also fails to acknowledge that adoptive placements, unfortunately can break down and thereby fail to "see a child through to adulthood."

36. Having listened carefully to the social worker I have formed the view that Miss Mallon's submission that the local authority has conducted these proceedings on the basis that adoption is the only likely outcome, has significant credence. Supporting my fear in this respect, I have to wonder why, when both parents were engaged in an altercation in December 2018, the local authority, without applying to court, suspended all contact. I could have understood restricting contact to the parents seeing the child separately. To stop all contact over the Christmas period, however, seems to me to be such a disproportionate response that it must send the message to the parents that the local authority had made up its mind over the future of their daughter. In her evidence the mother expressed her understandable devastation at being unable to see her daughter on her first Christmas Day.
37. The social worker was asked if a package of support for the parents could be put in place. She said a package of pre-birth support was offered. She was clear that because the parents cannot see the risk they pose to the child, no level of support could be offered that would mitigate that risk. I find the omission of an exploration of this from the final analysis contained in the statement to be concerning and further evidence of pre-judging the outcome.
38. The most concerning aspect of this case, and the one which is, in my judgment most telling of how the case has been run by the local authority is the wholly premature application under s34 to give the local authority the option not to promote contact, this application was made in early 2019. The timing is significant as this was when the parents were most vulnerable; they were homeless and had just had their contact suspended unlawfully over their child's first Christmas. I note that the application was not pursued and was later withdrawn, but I do question why it was ever issued at all unless the local authority was trying to build a case for adoption above all other options.
39. My concern regarding the way the local authority has approached this case is compounded by the social worker's statement that the mother's drug results, "Indicate maintained *high use* of substances, cocaine, amphetamines and cannabis" (my emphasis). When the statement was written, this assertion simply was not true; under cross-examination, the social worker admitted this. At best this is a careless misrepresentation of a significant fact. Being generous to the social worker, rather than forming the view that she has deliberately attempted to misrepresent, I would rather believe that it is an example of *confirmation bias* on the social worker's part. In

other words, when considering the evidence, she has *seen* only information that confirms her currently held belief and *discounted* evidence that does not.

Mother

40. The parenting assessment prepared by the social worker dated 1 April 2019 focusses on the parents' minimisation of the issues of the case. The social worker says:

"However, whilst some positive areas of the couples parenting capacity have been highlighted, the areas of concern are significant and critical for [the child]. The most significant areas of concern centre on parents' abilities to manage appropriately Ensuring Safety, Basic Care, Stability and Emotional & Behavioural Development.

This assessment raises significant concerns in respect of parents continued minimisation of issues pertaining to domestic abuse, drug use and chaotic transient lifestyles. Parents continued refusal to acknowledge these concerns and lack of insight into the needs of their daughter, impact their ability to prioritise [The Child's] needs over their own and as such fail to fully demonstrate and evidence their capacity to sustain change in the long-term."

41. Overall, I find the assessment to be of limited value as it fails to address how the parenting ability could be improved. I repeat that rather than the normal six meetings to compile such an assessment, the parents were only seen once to inform its compilation. The assessment is really no more than uninformed and uninformative padding it being prepared without significant input and the fact that it is hopelessly out of date. As an example of this, the assessment was prepared after the parents moved into their new accommodation, but makes no reference to this. Learning, as I have that the assessment was finalised after a plan of adoption had been decided upon only serves to increase my lack of trust in its efficacy.
42. During her evidence the mother confirmed that she would be enthusiastic to engage in any therapy offered to her, and confirmed this had neither been signposted or offered by the local authority, even though the local authority had had the benefit of the psychological report recommending this since February (over four months).
43. To the mother's credit she told me that she had enrolled on a parenting course signposted to her by a nursery but that does not start until September. This is not referred to in the parenting assessment.

44. The Father

The father came across as a committed father. He is rightly proud that he has managed to save the deposit for a rented house which he enthusiastically informed me is lovely. I think he is naive to think he can recover from alcohol and drug abuse without professional help but I believe that with appropriate signposting, support and a lot of hard work on his part he could be capable of this. I understand that Miss Roberts belief is that the father would not engage in therapy, but this opinion was given in February. The father has made significant changes since then; it is my view that even though the psychologist says these are insufficient signs for her to change her mind, I think the apparent ease with which Ms Roberts formed this view in court left me with

the impression that she had not given enough thought to the possibility for the father to change, especially in the face of his progress regarding accommodation and obtaining employment.

45. The Guardian

The guardian has grave concerns that the promises that are made today are those that have been made in the past. The guardian was realistic with regards to timetable for establishing and authenticating change. The guardian rightly highlighted the key issues in the case, especially the lack of insight of the parents. I can fully understand the guardian's concerns.

Whilst the court is always grateful for the input of the guardian I must note that the majority of the guardian's assimilation of evidence and preparation of her report was achieved over five days. Whilst this might have been sufficient time to carry out a detailed analysis, I think it is obvious from the contents of her report that the guardian has relied heavily on information from the local authority. In light of my view of the local authority's handing of this case, this gives cause for concern as to the weight that can be placed on the guardian's judgment.

The guardians combined analysis, the only document she has filed in the case, is 13 pages long. It contains a substantial recitation of commonly known background information and culminates in a table taking half of two pages which purports to be an holistic analysis of options but it is, in reality, no more than a list.

A particular concern of the guardian's evidence was that she says,

"I have given full consideration to Re B-S (2013)."

On questioning by Miss Mallon I am satisfied that the guardian does not have a proper understanding of what is required by a Re BS analysis. This is wholly borne out by the failure of the guardian to appreciate the local authority had formed its conclusion that adoption was necessary prior to completing its assessment of the parents.

Conclusion

46. Unusually time is on the side of this child. There is, in my view, just enough time to demonstrate that change is possible and sustainable within the timetable for the child. We have not reached a position where nothing else but adoption will do.
47. Both parents accept that a care order could be made in this case; it is implicit that the threshold for making such an order is made out. Having regard to the child's welfare as my paramount consideration and having regard to the welfare checklist in s1(3) of the Children Act 1989 I am entirely satisfied that it would serve the child's welfare to make a care order. Before doing so, where I disagree with the local authority's plan following the making of an order, I must ask the local authority to prepare a revised care plan reflecting the court's assessment of risk

48. Regarding placement, the test is different. Firstly, I must be satisfied that placement would serve the child's welfare for the whole of her life. In assessing this, I must have the information available to carry out an holistic analysis of all realistic options having regard to the welfare checklist in s.1(4) of the Adoption and Children Act 2002. In this case the, the *nothing else will do* test has not been established by the local authority. My conclusion arises from the following key features:

a. There is no reference in the final statement of possible support that could be offered to the parents to help them to achieve and sustain improvement and reference a timetable for that support.

b. There is no recognition and thereby no analysis of the progress the parents have made regarding improvement of their own circumstances and how sustainable these improvements are.

c. The parenting assessment was apparently compiled after the local authority had firmly decided on a plan of adoption.

d. The analysis of options available for the child fails to mention key elements of several of the options which have not been considered; these are mentioned above.

e. There is no analysis by either the local authority or the guardian of ongoing contact; parental or sibling.

f. There are reasonable grounds to believe that the Re S (2014) test is met in that the parents are committed to change (ref their change of lifestyle); there is emerging solid evidence they will be able to maintain the change (ref the father gaining employment and the parents accommodation); the change can be made within the timetable for the child (before the child reaches two years of age, or thereabouts)

49. Without these key features, in my judgment the local authority's analysis is fundamentally flawed and I am unable on the case presented to find that adoption is the only option which will serve the child's welfare for the whole of her life and it follows from this that I am unable to make a placement order. This means that the only option I have is to make a care order, as I am satisfied that the case for this is made out and that such serves the welfare of the child.

50. In my judgment, the only conclusion I can reach is that the child's welfare would be best served with a cohesive care plan which will support future rehabilitation, if that is possible. I am going to adjourn this application for six weeks on the basis that I invite the local authority to devise a new care plan based on the child remaining in foster care, while a prolonged plan of supported rehabilitation is devised and if possible, implemented. Any plan should be specific as to how the parents will receive the assistance they need. My expectation is that the child will remain in foster care for a further 12 to 15 months while work with the parents is undertaken. I expect the local authority to pay for support where that is not available from the NHS within a period that it has the chance to work and its efficacy assessed within a timetable for this child. I think this is reasonable as the local authority has done nothing to further the recommendations of Ms Roberts since receiving her report in February. I have considered whether to adjourn the proceedings for a longer period to keep the matter in the court arena. As far as I can see the benefit would be prolonged court monitoring

and the continuation of legal aid for the parents. To do this though would require an extension well beyond that which is permissible by legislation and current authorities. In any event, the local authority can renew its application for placement at any time and the parents can apply for the care order to be discharged, at any time, provided they have a reasonable belief the correct test is met.

51. The matter will be adjourned part heard to a future date for the court to consider a revised care plan of foster care with a plan for rehabilitation is a proportionate length of time. The interim care order will continue until these proceedings are concluded.

END