

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for an anonymised 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.

Case No: XX19C00459

IN THE FAMILY COURT SITTING IN [REMOVED]

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF J AND K

Date: 20.2.20

Before :

HHJ Lynch

Between :

**A Local Authority
- and -**

Applicant

**M
F**

Y and Z

The Children (through their Children's Guardian)

Respondents

**Emma Grayson-Bollon for the Applicant
Gemma Meredith-Davies for the 1st Respondent
Joanne Brown for the 2nd Respondent
The 3rd and 4th Respondents attended in person
Sam Jackson for the Child**

Hearing date: 20 February 2020

JUDGMENT

Introduction

1. These proceedings are about J and K, two children aged five and a half and three. Their mother is M and K's father is F. M says that J's father was a man called X, who she says lived in abroad and who has died, although the local authority has not been able to get confirmation of that. The children have an older sister who lives abroad with her maternal grandparents. The other important people in this case are Y and Z. Y is the children's aunt, their mother's sister, and the children have been living with her and Z throughout these court proceedings.
2. The court case began because the children were taken away from their mother after the police went to the family home. The children had been left with someone unsuitable overnight, a woman who was a vulnerable adult, and it was felt she was not able to look after the children properly. The police removed the children from her care and they went to live with their aunt and uncle. This was the third time the police had removed the children because of the way M was looking after them. The local authority applied for a care order and the case first came to court on 8 July 2019 when an interim care order was made in respect of each of the children which has been in place ever since. During the court proceedings the children have had time with their mother supervised by the local authority and recently K has had a first meeting with his father.

The Issues and the Evidence

3. The local authority says the children cannot live safely with their mother. The children have been removed from her care three times by the police and from November 2018 until this case began there had been six investigations by the local authority into the care of the children.
4. The first time the children were removed by the police was on 1 January 2019. The police said that when they went to the house the home conditions were a risk to the children as they were unclean and unsafe and it was unclear how long the home had been in that condition. The children had been left with an adult male who could potentially cause a risk to them, and had been investigated for a number of offences against children, and the neighbour who called the police said the children had been on their own with him overnight. Information from the police was that M was present when they arrived but was in a state which suggested she had been "out partying". M denied the children had been left alone. The home conditions were extremely poor, describing

dirty nappies around and no food available, evidence of substance misuse and K having scratches to his chest.

5. The local authority began working with the family under a Child Protection Plan in February due to the neglect of the children. Little work however was completed in respect of M's parenting, capacity to protect and understanding her own experience of being parented. Under the Child Protection Plan, M and the children were provided intensive support from the Family Intervention Team. Unfortunately throughout this period professionals involved could not get to the bottom of why M's behaved as she did and so did not feel they could find a way to manage the risk of the children being neglected.
6. It was the view of the social worker that M did not work openly and honestly with professionals and often reported trips away to avoid meetings or visits. Following the first removal of the children by the police, the home conditions improved but were maintained for only a short period of time. The food available to the children declined, with appropriate food not seen consistently in the property, and no routines around mealtimes were evident.
7. J and K were again removed by the police on 26 March 2019 due to concerns they were at risk of significant harm by having contact with an adult who potentially posed a risk to children. When a police officer went to the house M would not open the door and the officer was concerned the children may have been left alone. When the police officer was let into the house by M, J mentioned a man was hiding in the loft. The man turned out to be somebody who had committed offences against children when he himself was a child, although as I understand it it is not said that M knew this. After this incident M was given bail conditions stipulating that she needed to engage with the Child Protection Plan and be available for home visits. An agreement was put in place with M which said she had to share the details of adults who had contact with the children in order for the relevant checks to be undertaken.
8. The local authority completed an investigation on 14 June 2019 due to the children's uncle having been arrested at M's house after assaulting a man she had invited to the house. The significance of this event to the local authority was that M had allowed several people into her home and, because she felt they were not a sexual risk to the children, took the view that meant the children would be safe. The officer that attended said in his report: "My concerns from here are that [M] has failed to stick to the plan in the past and will continue to do so in the future. She has a chaotic lifestyle and sat on her

mobile phone the entire time we were there, not appearing to take our visit seriously nor interact properly with her children. She cannot see anything wrong with her home or lifestyle.”

9. Then just a few weeks later these proceedings began after a local authority worker went to the house and found the children had been left with a vulnerable adult in a situation where the children were clearly not being looked after properly, as I have said earlier in this judgment.
10. Each time the children were removed from the care of their mother they went to live with Y and Z. During these proceedings the couple were asked to consider if they felt they could offer the children a home long term. They have their own large blended family but are clearly very committed to J and K. They have recently issued an application for special guardianship orders to be made, naming them as the children’s guardians.
11. During this court case the local authority has assessed M, F, and Y along with Z. M’s parenting assessment was not particularly productive as she only went to one of the six sessions arranged. She has also not consistently gone to see the children when this has been set up, at one point missing four weeks of contact according to the local authority. The social workers say that M still does not understand her responsibility for keeping the children safe or see when there is risk. There are also worries about her ability to provide the basics for the children such as food or stimulation. The local authority has therefore ruled out M as a possible carer for the children in the future.
12. The social worker also assessed F. He had not been involved with K before this case began, although he says he had wondered if K was his son. After DNA testing showed he was indeed K’s father he did say he wanted to care for him, although he had never cared for a child before. F however only went half of the sessions of the parenting assessment. To his credit he realised that it would not be right to separate the children and for him to care just for K. He therefore told the local authority that all he wanted was to have contact with K as he thought K should stay living with J in their aunt’s care. Sadly F has not been able to commit to attending contact regularly and in fact he and K have only met once so far.
13. The assessment of Y and Z was positive and the local authority’s plan is that the children should remain living with them. Given their strong relationship already with the children, it is felt right that the local authority could step back from this family and that special guardianship orders should be made. This

would give an enhanced parental responsibility to the couple and would confirm their role as long-term carers for the children. The local authority says that the couple will be able to meet all the children's needs including organising and supervising contact for the children with their parents.

14. The local authority's plans for the time the children should spend with their mother were not at all clear in their final documents. My understanding is that the social workers felt arrangements should not be prescriptive but instead this should be organised between the family carers and the parents. M had thought that it would continue at a level of weekly contact. The social workers having spoken Y and Z said that it should be monthly after a gradual reduction, a level also supported by the guardian. In respect of K's contact with his father, the local authority say it too should be monthly. The local authority also says the parents need to confirm in advance they are coming so the children are not disappointed.
15. The children clearly have a very close relationship with each other. The guardian saw them just prior to preparing her final report, at Y and Z's home. The guardian could see their love for each other, J coming home from school while the guardian was there and hugging K, telling the guardian he loves her and she loves him too. J seems to have tried to look after K when they were living with their mother but has now relinquished that role to her aunt. The guardian talks in her report of how content the children seem in the family's home and that, whilst they are too young to be asked what they want to happen, "their physical presentation suggests to me two children who are settled and who have adjusted well to having routines, guidance and boundaries in place and their needs met consistently in a warm and loving environment." The significant progress that the children have made since living with their aunt and her partner shows the guardian that it would be in their best interests in terms of their welfare for them to remain living there. The guardian also agrees that the right orders to secure that placement would be special guardianship orders as recommended by the local authority.
16. The guardian was worried about contact being set at too high a level and the potential for that impacting on how settled the children are with their aunt and uncle. She was also worried about the inconsistency of the parents in attending contact to date. It was her view that the practical aspects also had to be considered. This is a busy family home and Y and Z will be meeting the needs of a number of children (edited). The guardian in her report proposed that

there should be monthly contact between the children on their mother for three hours on a Sunday, with her confirming by 9 o'clock that morning that she was going to come. In respect of K's contact with his father she recommends to that that should happen monthly, with him confirming twenty four hours in advance that he is going to come.

17. Neither parent filed any final evidence for me to know what their views were. At court today M did attend and told her barrister that she did not oppose the making special guardianship orders. She was unhappy though about the plans for contact. She wants contact to go on being once a week and cannot see why it needs to change. She does not accept she has missed contact very often and she says the children are used to the routine of weekly time together. M feels the children enjoy that time and that it is a positive experience for them and she wants to go on having a natural relationship with them. She asked the court therefore to make an order saying the contact should happen no less than once a week.
18. F did not come to court so I do not know what he wants to happen other than that his most recent instructions to his solicitor were that he agreed with the children staying where they are. He has applied to be given parental responsibility for K and for there to be a declaration of parentage, meaning that his name can be put on K's birth certificate. Those applications were not opposed by any of the parties to this case.
19. Y and Z have made an application for special guardianship orders in relation to the children. They are committed to offering them a long-term home. They are happy to organise contact for the children with their parents and take responsibility for this. They were not legally represented today but Mr Jackson on behalf of the children was able to tell me what they felt about contact. They are very sure that it is important for the children to spend time with their parents and they are committed to making sure that happens. They say though theirs is an extremely busy household and they have an awful lot on with all the children who are part of this large family. They say that having one of the parents having contact every week would be simply too much for them and their family. If the children see each of the parents once a month that means on two weekends of the month those arrangements have to be made alongside the arrangements for all the other children. They are happy to commit to once a month for each parent and indeed were the ones who suggested that contact should be for longer period of time for the children's mother in particular to

make it quality time. There is a positive relationship between the sisters and Y is absolutely clear she will not exclude the children's mother from their lives and will be inviting her to events on special occasions in addition to the regular time each month.

My Decision

20. In preparing for this hearing, given nobody was arguing about what I should do, I read just the key parts of the written evidence, and I know this case well because I have been responsible for it all the way through. Nobody has given evidence in court, but I have heard from the lawyers about what people want to happen, particularly in relation to contact which was the only thing which was not agreed.
21. I have to think about what orders if any are needed for J and K. Wherever possible, children should be brought up by their parents and if not by other members of their family. Thinking of the relevant law, I know that these children, their parents and their aunt and uncle have a right to a private family life. And when I make my decision I must remember that the welfare of each of the children throughout their lives comes first in my thinking. In my head though I have gone through all the possible outcomes for J and K and balanced up the pluses and minuses of each. When doing that, I have thought particularly about the list of factors in what is called 'the welfare checklist' which can be read in s1 of the Children Act 1989.
22. The only option being suggested by anyone for J and K is that they live with their aunt and uncle under special guardianship orders. It is right to say that I have considered whether their placement should be secured by a care order or whether a child arrangements order would be more appropriate but I agree with the social worker and guardian that this is a case where special guardianship orders should be made now.
23. The social worker at the end of her final report has done an extremely comprehensive analysis of the options for J and K. On reading it, it is clear that she has had in mind all the factors in the welfare checklist and I am more than happy to adopt her analysis for my own in this particular case. As she says when considering the option of special guardianship, it will keep the children in their birth family, giving them a strong sense of identity and this may lead to them having fewer feelings of rejection at not living with a parent as they grow up. The placement keeps the children together and means they can see their parents and extended family. It is also evident that Y and Z can

meet all of the children's needs and they have a good understanding of the risks posed by M. The making of special guardianship orders means they would be able to exercise their parental responsibility over and above that of M, meaning they will ultimately be responsible for decisions for the children, including around contact. The couple are committed to the children long-term and so this is a placement which can be permanent. All of those reasons show why this option is the right outcome for J and K. I would want to add my thanks to those of the other professionals to Y and Z for the commitment they have made to the children, the disruption they and their own children have accepted in their lives. This is 'family' at its best.

24. I also need to consider the arrangements for the children to go on seeing their mother and father. Much as I know M loves the children and wants to see them as often as possible, the reality is they are now living with Y and Z and have to fit into that busy family's life. I have every confidence in the couple making sure that both parents continue to have a good relationship with the children and no order is needed to make that happen. I agree that the plan for the children to see each of their parents once a month is the right thing, together with any other contact which Y and Z feel should happen. I am not going to make an order regarding that but it can be written out at the beginning of today's order so everyone knows what the plan is.
25. So, looking at the options for J and K, I do agree that the right thing for them is that they remain living with their aunt and uncle under special guardianship order and that there is no need for any orders around the children seeing their mother and K seeing F. I am satisfied that the local authority's final care plan for them is the best plan for the children and is proportionate. I therefore make the necessary directions, giving permission to Y and Z to apply for special guardianship orders and consolidating that case with the care proceedings. I then make a special guardianship order in relation to both children in favour of Y and Z.
26. I have also considered the application by F for parental responsibility and a declaration of parentage. None of the people involved in this case disagree with me making those orders and so I do.
27. I also make the usual order about court costs in this matter.