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Case No: NG18C00247

**IN THE FAMILY COURT AT NOTTINGHAM**

Date: Friday, 9<sup>th</sup> October 2020

**Before:**

**HIS HONOUR JUDGE MARK ROGERS**

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**Between:**

**NOTTINGHAMSHIRE COUNTY COUNCIL**

**Applicant**

- and -

(1) L

(2) **THE CHILD**

(Through Her Children's Guardian)

**Respondents**

- and -

**THE INTERVENOR**

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**MR JAMES CLEARY** (instructed by **Notts County Council**) for the **Applicant**  
**MISS MARIA MULRENNAN** (instructed by **Phillips, Solicitors**) for the **First Respondent**  
**MISS ANNE BUTTLER** (of **Jackson Quinn, Solicitors**) for the **Guardian**  
**MR STEVEN VEITCH** (instructed by **Hopkins, Solicitors**) for the **Intervenor**

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**JUDGMENT**  
**(Approved)**

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**HIS HONOUR JUDGE ROGERS:**

1. This case is listed today for a final order to be made in this very, very troubling and complicated situation. A long time ago now I delivered a lengthy and quite complex judgment in relation to the underlying factual position covering those factual findings to be made and matters of threshold. That judgment speaks for itself. Profound findings were made against the mother in terms of her conduct and, albeit of a different sort, equally important findings against the grandmother, particularly, very sadly, as she then accepted, that she ought to have known what the situation was and that, by her own omission rather than commission, was at fault. I put it no more generally than that at the moment. The questions are still the subject of criminal investigation and, as things stand, they both will stand their trial on indictment in the New Year.
2. That criminal jurisdictional problem has delayed this case and, of course, for reasons that I need not state because they are so obvious, they may have implications for the smooth implementation of the care plan. Much depends upon what happens and, if convictions occur, what sentence or other orders are imposed. That is entirely outside of my sphere of influence and I would not want to say anything that would be indicative of an intention to influence events. But the underlying reality is as I state it to be.
3. The question for me is welfare based and, of course, the question I have to answer is what are the realistic options in this case and, of those, having looked at the internal pros and cons, what is the holistic view of the case determining the best interests and welfare centred outcome for this child?

4. As it happens, in the run up to the hearing and substantially during the hearing, the issues have narrowed very substantially and I am quite sure that the enormous contribution of the guardian in terms of her document has helped concentrate the minds, both in terms of reality for the lay parties and for planning in terms of the local authority. So that, at this moment in time, the only conceivable order that could be made would be a care order and, indeed, that is the only realistic option put before me.
5. There are, of course, different interpretations of what may happen or what should happen for the future. But they are not so imminent that they have to be catered for in this order. That will depend upon the position on the ground at the time.
6. What, therefore, has happened was that, no doubt, a number of concessions were made informally and then the legal advisers and guardian have spent the majority of this week seeking to narrow the issues and compile a complete care plan upon which the court could give its seal of approval.
7. It is axiomatic, even if the only potential outcome realistically is a care order, that the court should not sign off the case and endorse the care plan unless it is satisfied it would be wrong to refuse to make the care order at this moment. That, frankly, would not be sensible in this case. There is the alternative of adjourning the case. That is wholly unsatisfactory. Or there is the option which I adopted, effectively of allowing the parties time to negotiate and then, if necessary, to comment broadly upon the agreed position or the position with its elements of disagreement.

8. This is a very unusual case in that there is an agreed way forward and there is a care plan to which everyone can sign up. What remains controversial is whether the additional matters set out in some depth in the guardian's position statement, together with the refinements mentioned by Mr Veitch and Miss Mulrennan, should be reduced into writing and, by agreement, included in that very care plan. It is said that they are integral to the future planning of this case.
9. It is also said, and I do not think Mr Cleary significantly dissents from this, if at all, that the majority of the matters are not controversial. They are simply, he would submit, the statement of obvious good social work practice which will be undertaken in any event.
10. I have, of course, read what is set out in the guardian's position statement and, supported by the submissions of Mr Veitch and Miss Mulrennan, I bear in mind the additional factors. None of those seems to me to be in any way potentially controversial or inviting the degree of potential dispute that some matters in care plans do. The question is simply that posed by Mr Cleary. It is two-fold. What is the precise legal position and, quite apart from that, does this descend into a level of detail that is in fact in a sense a micro-management, or prescriptive formula, far beyond what is required in a care plan, which has to be a dynamic and flexible document because it essentially deals with matters in the future, many of which are predictable but not certain?
11. Mr Cleary in his document sets out the legal position and reminds me, as is undoubtedly correct, no one suggests otherwise, that the Court of Appeal has made clear over and over again the demarcation between the role of the court

and that of a local authority implementing a care order and care plan. Those of my generation will remember the skirmishing when the Children Act first came in about courts trying to supervise and rewrite care plans and that was quickly reversed and disapproved. The law is absolutely clear, that once the order is made the duty passes to the local authority, with all its statutory duties, its checks and balances, to implement it and the court has no continuing role save upon an application to discharge or for contact.

12. What Miss Buttler and the others say is, whilst that is the strict legal position and no one doubts it, they are not simply suggestions of a micro-management type but are very important matters which normally it would be expected a local authority would include. She submits this is such an unusual and complicated case that it is disappointing that the local authority would not concede upon this point and write these matters into its care plan. I have enormous sympathy with that proposition, supported, as it is, by Mr Veitch and Miss Mulrennan. But I have no doubt in fact on balance that Mr Cleary is right, both in law and, in fact, in practise. It would be dangerous, in my judgment, for this level of detail to be included in a care plan. It could become a straitjacket rather than a tool for efficient social work. None of the material in it is likely to be controversial and it is important that the social workers keep the matter very much under review, do not allow this case to go on the back burner pending the criminal proceedings, or reduce its element of priority because it is now not the subject of live court proceedings. I also accept that it is important that those matters that can be done before the criminal process takes its course in terms of training, guidance and so on, for the grandmother in particular, should be undertaken. The elements which do not require her

participation in terms of admission or explanation of her behaviour that are of a more general nature should occur.

13. Similarly, issues of contact in the existing position, as it is on the ground, not any one particular point, is more important than trying to be prescriptive months in advance. The local authority will have to react to the situation, whatever the outcome and penalty imposed in the criminal proceedings and that may have a short-term or a long-term or a profound impact on contact. It may have no impact. That is to be decided as and when it arises and were I to be persuaded that there should be included some form of rubric that the local authority should keep this matter under active review, really that would add nothing to what is normal good practice.
14. I am quite clear that I have no power to impose these additional matters upon the care plan. I do not think anyone suggests that I have. Equally, while I express my gratitude to the guardian and recognise the enormous good sense in what is therein set out, I do not myself see it as my job to apply pressure, direct or subtle, on the local authority, and I am certainly not proposing to adjourn the matter, put the matter back or refuse to make the order.
15. What I would say is that this is a very unusual case. What I have never known through my relatively long acquaintance with public law at the Bar and on the Bench is precisely what happens when the court steps back. We spend enormous amounts of time on the detail of recitals and care plans. I do not know how much they influence day to day social work, whether it is a document prominent on every file or whether, sadly, it soon becomes buried.

In this case it seems to me that it is important that it remains a prominent document.

16. Therefore, I propose the following, and I think that I can order this without in any way imposing an illegal duty upon the local authority, that the material in the lengthy paragraph in the position statement of the guardian, together with the two additional comments made by Mr Veitch and Miss Mulrennan, should be appended to the care plan signed off by the court and to the care order. The order, however, must reflect in absolutely clear terms that the order was not conditional upon those matters, but they are included by way of information as to the views and representations made at the final hearing. They are, in a sense, simply a more prominent way of conducting the exercise of recitals.
17. I would also direct that a copy of the order, the care plan, together with the attachments, be sent to the head of service so that there can be an internal directive as to how the documentation should be placed upon the care files post final order. It is not in any way my intention to direct how the social workers do their jobs, but simply that the document remains prominent. Finally, I will direct that those same documents be made available to the Independent Reviewing Officer so that he or she similarly can understand the way that this case was signed off.
18. The final point is as to the CPS. I think Mr Veitch is right, looking back at the last hearing. Miss Knight on behalf of the Crown did make, it seems to me, inevitable but helpful concessions as to the limited role of the CPS. I would simply invite the local authority to inform the CPS that, in the light of the decision taken that there was no immediate question of placement of the child

with the grandmother, nor would there be active engagement with therapy that, in the court's view, would interfere with the criminal process. This is provided by way of information. Of course, if they have any legitimate application to make, either to the criminal court or the family court, then they are free to make it, but it is essentially a provision of relevant information.

19. Taking all those factors into account, the threshold is passed. The only realistic option is one of long-term foster care and, whilst the future does not rule out a family placement, that is a matter for consideration over time in the light of how things develop. I am satisfied with the contact arrangements and I am satisfied by the care plan as tabled, but I bear in mind, for the reasons I have just given, that there are other pieces of helpful information that may well inform and guide the social workers as they progress with this case.
20. In those circumstances, the welfare-based order that is required in this case, having laid out all of the advantages, noting there are relatively few disadvantages and there is a broad level of agreement, is that I make a care order in favour of the local authority. I will grant public funding detailed assessment for all the relevant parties.
21. I want to express my enormous gratitude to the legal and social work teams in this case over the last year or two for what is one of the most challenging and worrying cases that I have ever had to deal with. This child has a lot of hurdles ahead of her, but I think, the court process having been resolved and as soon as the criminal process similarly is out of the way, her future should be a very much brighter one than hitherto.

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