

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2021] EWHC 2521 (Fam)

Case No. ZE21C00171

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 27th April 2021

Before:
THE HONOURABLE MR JUSTICE HOLMAN
(sitting in public)

B E T W E E N:

LONDON BOROUGH OF CROYDON

and

S

MS K ROUND appeared on behalf of the applicant local authority
MR B LIMBREY appeared on behalf of the respondent mother
NO APPEARANCE by, or on behalf of, the respondent father
MR T HUSSEIN appeared on behalf of the child through the guardian

JUDGMENT
(As approved by the judge)

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MR JUSTICE HOLMAN:

Introduction

1. I am concerned with one child, X, who was born on 13 April 2021. He is just two weeks of age. His mother is 26 years of age.
2. The mother and the father have five older children. They range in age from six years to 20 months. Those five children were the subject of public law proceedings brought by the London Borough of Croydon in 2019. There was a fact-finding hearing in relation to injuries sustained by E, the second eldest child. At the conclusion of the fact-finding hearing, HHJ Atkins gave a judgment on 19 October 2019.
3. In that fact-finding judgment the judge found that all of the injuries identified on E were inflicted, non-accidental injuries, which had been inflicted either by the mother, or by the father, but he was unable to determine by which of them. The injuries included fractures and bruising to the head and much of the body. The mother does not accept those findings. She has in various ways, as I will describe later in this judgment, maintained her assertion that they were all accidental injuries.
4. HHJ Atkins heard the welfare hearing in March of last year, at the conclusion of which he made all five children the subject of care orders in favour of the London Borough of Croydon on 13 March 2020. All five children were made the subject of placement for adoption orders on 19 March 2020.
5. At the present hearing, the local authority apply for the court to make X the subject of an interim care order on a plan of his continued separation from his mother, in the light of the risks of harm to X presented by the mother and the wider family. Because those risks are so grave, as I will explain in a moment, the local authority also seek an order pursuant to section 34(4) of the Children Act 1989, giving the local authority permission to refuse all direct contact between X and his mother, save for remote virtual contact.
6. The mother opposes those orders and invites me to return X to her care, if need be at a mother and baby unit, or at least to allow direct contact to take place.
7. The child's guardian supports the orders sought by the local authority.

The law

8. I must apply section 1(1) of the Children Act 1989 and make the court's paramount consideration the welfare and best interests of X. I must also take into account the provisions of the welfare checklist in section 1(3) of the 1989 Act insofar as they are relevant.
9. I have regard to the provisions of section 34 and of section 38 of the 1989 Act.
10. I take account of the Article 6 and Article 8 rights of the mother and of X, but I bear in mind that where there is a conflict between the Article 8 rights of a child on the one hand and of a

parent on the other, the rights of a child prevail: *Yousef v The Netherlands* [2003] 1 FLR 210.

11. I accept that the forced separation of a newborn baby from its mother is one of the most draconian steps that a court can endorse and orders that a court can make. It is only to be made where it is necessary and proportionate to the risks identified to the child. The bar is set very high before any court should countenance the forced separation of a newborn baby.
12. I have had regard to the series of authorities on this issue, helpfully brought to my attention by Ms Round, counsel for the local authority. I have regard in particular to the most recent decision of the Court of Appeal in the case of *Re C (A child) (Interim separation)* [2019] EWCA Civ 1998. At paragraph 2 of the judgment of the Court of Appeal, Jackson LJ said as follows:

“The ability to make interim care orders under section 38 of the Children Act 1989 is one of the Family Court’s most significant powers and it is not surprising that it has been considered by this court on many occasions.

A consistent series of propositions can be found in these decisions:

- (1) An interim order is inevitably made at a stage when the evidence is incomplete. It should therefore only be made in order to regulate matters that cannot await the final hearing and it is not intended to place any party to the proceedings at an advantage or a disadvantage.
- (2) The removal of a child from a parent is an interference with their right to respect for family life under Article 8. Removal at an interim stage is a particularly sharp interference, which is compounded in the case of a baby, when removal will affect the formation and development of the parent-child bond.
- (3) Accordingly, in all cases an order for separation made under an interim care order will only be justified where it is both necessary and proportionate. The lower (“reasonable grounds”) threshold for an interim care order is not an invitation to make an order that does not satisfy these exacting criteria.
- (4) A plan for immediate separation is therefore only to be sanctioned by the court where the child’s physical safety or psychological or emotional welfare demands it and when the length and likely consequences of the separation are a proportionate response to the risks that would arise if it did not occur.
- (5) The high standard of justification that must be shown by a local authority seeking an order for separation requires it to inform the court of all available resources that might remove the need for separation.”

Background

13. Both the mother and the father originate from Afghanistan.
14. The mother, as Mr Limbrey, her counsel, tells me, arrived in Britain when she was 20 years of age. She had not received any formal education when in Afghanistan, and I accept his description of the generality of life in Afghanistan as there being no real civil society, and there being, amongst the Afghan population, a real distrust of those in authority, and, therefore, the need to act accordingly to protect oneself and one's family, rather than trusting those in authority.
15. That said and accepted, the need to afford protection to a child is very high, and a failure to afford that protection cannot be condoned, notwithstanding mitigating or extenuating circumstances.
16. In 2019 E was found to have sustained a number of serious injuries to many parts of his body. No appropriate immediate medical attention was sought.
17. As I have said, the local authority, the London Borough of Croydon, issued public law proceedings in respect of all five of the mother and father's then children.
18. The mother and the father, during the course of the fact-finding hearing and subsequently, maintained explanations that E injuries had been accidentally sustained.
19. None of those explanations were accepted by the medical experts instructed in the case, nor ultimately, after having heard and considered all of the evidence, were those explanations accepted by HHJ Atkins.
20. Accordingly, as I have indicated, in his judgment on 19 October 2019 he made findings that E's injuries resulted from inflicted, non-accidental injury, and that they had been inflicted by either the mother or the father.
21. The mother did not accept those findings. She persisted in accounts that they had been accidentally caused.
22. Having considered all of the welfare evidence in the light of his findings of fact, HHJ Atkins concluded on 13 March 2020 that the only appropriate orders were to make care orders in favour of the local authority in respect of all five children, approving care plans of adoption, and on 19 March 2020 making placement orders in respect of all five children.
23. A very significant and serious event occurred on 20 August 2020.
24. Sometime prior thereto, the two then-youngest children were placed with their prospective adopters. The three eldest were still in the care of a local authority foster carer.
25. On 20 August, the father arrived at the foster carer's home, wielded a knife, tied up the foster carer, and abducted the three children.

26. Despite the most extensive investigations and enquiries, the whereabouts of the father and, most importantly, of the three children remain unknown. It is suspected that the father has returned to his native Afghanistan with the three children. Accordingly, the father has played no part in these proceedings, nor has he attended this hearing.
27. The mother was pregnant with X. On 22 March of this year, she attended an appointment with a midwife. She made no mention of her plans for later that day.
28. In the early evening of 22 March 2021, the mother arrived at Heathrow Airport and boarded an Emirates Airline plane to Kabul in Afghanistan. She was by then some 37 weeks pregnant.
29. The mother was asked if she was pregnant. She confirmed that she was. It has been reported by the airline staff that the mother told them that she was only 17 weeks pregnant. The mother denies saying so. In any event, the mother was removed from the plane.
30. The mother said then, and says now, that she was flying to Kabul because her father, who suffers from a heart condition, had suffered two heart attacks and was seriously ill.
31. The mother asserted in her evidence that she intended to return to this country a few days later, but I note that a one-way ticket had been purchased for her on 19 March.
32. X was born in hospital on 13 April 2021. On 14 April the mother's brother attended the hospital. His wife had been the mother's birth partner.
33. He demanded to see the mother and/or his wife. It is not entirely clear which. The hospital staff report that he became angry and offensive. He was refused entry in accordance with the hospital's Covid pandemic policies. He had been accompanied to the hospital by a group of people.
34. Some time later that day, a Facebook message was posted calling upon the local Afghani community to come to the hospital. That was responded to, and a substantial number of people were observed to be outside the hospital with the mother's brother, and/or driving around the hospital grounds, as late as 10.00pm.
35. The hospital clinicians and the police became increasingly concerned about the safety of X and, ultimately, a decision was made under police protection powers to remove X from the hospital and to place him with foster carers, where he remains.

The evidence

36. At the beginning of this hearing Mr Limbrey told me that no issue was, or could be, taken with the evidence set out in the social worker statement, or in the analysis of the child's guardian, and, accordingly, neither were required to give evidence before me.
37. I heard evidence from the mother. In considering her evidence, I take account of her background, coming from Afghanistan when she was 20 years of age, and I also take into account that she has given birth to X only two weeks ago. Nevertheless, I regret to conclude that the mother was a wholly unsatisfactory and wholly untrustworthy witness. As her evidence progressed, it became increasingly unclear what was true and what was not true.
38. The mother asserted that, prior to the events of 20 August 2020, she had separated from her husband. When that was probed in cross-examination, it became very difficult to understand whether she had separated a very short time prior to the abduction, or whether she had separated very shortly after the conclusion of the welfare hearing in March of 2020.
39. The mother had told the guardian that there had been no separation at all. Her account of when she separated and when she resumed co-habitation with the father was extremely unclear, but leads me to conclude that there was no separation of the mother and father at all prior to the father abducting the three older children.
40. I accept that the mother may be untrusting of those in authority, but I cannot begin to understand why, if the flight that the mother was proposing to take to Kabul was entirely innocent, she did not mention it at all, in particular to the midwife whom she saw on 22 March. One might have thought that, as a concerned and loving mother-to-be, she might have sought reassurance that it was safe for her and the unborn baby to fly at such an advanced stage of pregnancy.
41. When the mother was asked, she insisted that although she only had a one-way ticket, she had intended to visit her father who was gravely ill, but to return to this country in time for a court hearing set for 29 March of this year. It was her brother who purchased the ticket for her on 19 March, and the mother asserted that he did not have enough money to buy a return ticket, but that somehow, which was entirely unexplained, it was hoped that he might be able to raise sufficient funds to buy her a return ticket in time for her return to England on or before the 29th.
42. In all of the circumstances of this case, I am entirely satisfied that it was the mother's intention to flee this country to avoid her giving birth to X in this country, whom she strongly suspected would be at risk of removal by the local authority, and that she intended to stay in Afghanistan and to give birth to X there.

43. I am satisfied that she had no intention whatsoever of returning to this country.
44. As to the events of 14 April, the mother's account was similarly confusing and, frankly, incredible. She asserted that the Facebook posting was not calling for members of the community to attend the hospital, but for members of her wider family to attend the hospital to act as character witnesses for her in the court hearing that had taken place that day.
45. That explanation is complete and utter nonsense. The court hearing took place at 3.00pm. The Facebook posting was posted well after that time, and there were people seen congregating in significant numbers outside the hospital at 10.00pm.
46. The family and friends gathered outside the hospital, I am satisfied, to threaten the hospital staff; and I am satisfied that it is most likely that it was the intention of the brother to remove X from the hospital and to abduct him, as the father had done in relation to the older three children. I can see no other plausible or credible explanation for the actions of the brother and the mother that day.
47. The mother asserts that she had no knowledge of the presence of family and/or the community outside the hospital, and yet she was almost constantly on one of her two telephones throughout this period.
48. The mother asserted that she had been badly represented by her former solicitors in the fact-finding hearing and the welfare hearing. In terms, she suggested that they had told her to lie in court statements. I have considered whether I should pursue that matter further and/or whether I should refer the matter to the Director of Public Prosecutions, and I have concluded that I am not going to take either course, taking into account that the mother was giving evidence when she had just given birth 13 days before and when she was in a very emotional and vulnerable state.
49. The mother, it appears, lies and repeatedly lies, to the court with alacrity. In a statement dated 24 October 2019, at paragraph 3, the mother said this:
- “having gone through the judgment, I accept the findings of the judge and on deeper reflection I realise that I had not been completely honest with professionals and the court with regards to the injuries sustained by E.”
50. The mother said that that was not true, that she had not been dishonest, and that the only reason why that was in her statement was because she had been advised by her solicitors that that was the best way for her to proceed in the court proceedings.
51. The conclusion of that statement contains the following:

“I, [full name], confirm that the content of this statement is true and accurate to the best of my knowledge having been interpreted to me in Pashtu language.”

52. Additionally, it is signed by her and she accepts that it is signed by her, and she accepted, as she had to, that she had signed a statement which she knew to be false.
53. Whether or not she had been advised by the solicitor is, in my judgment, neither here nor there. She had been willing to lie to the court and not, unfortunately, for the last and only time.

Analysis

54. As I have clearly stated, separating a newborn baby from his mother is a very, very serious step. In essence, it should only occur when, to use a well-worn phrase, “nothing else will do” in the welfare best interests of the child.
55. I have to undertake a balance of harm. I have on the one hand to consider the emotional and psychological damage that will be caused to X by being separated from his mother, not being able to be breastfed, not being able to have the close, warm, physical contact with his mother, and not being able to develop the warm and loving bond, that a newborn baby normally would.
56. However, against that, I have to assess the risks to X were he to be reunited with his mother, whether in her home or in a mother and baby unit; and the risks, if neither of those happen, attendant upon face-to-face contact taking place between X and his mother.
57. In the face of overwhelming evidence, the mother does not accept the findings of HHJ Atkins that either she or the father inflicted E’s injuries. Although she asserted that she had no knowledge of the father’s plan to abduct the older three children, she told me that he had been treated unfairly, which, in turn, explained his conduct. The mother did not condemn, or even criticise, the extreme and violent actions of the father in abducting the three older children.
58. She herself is a flight risk. In the light of the events at the hospital on 14 April, I have not the slightest doubt that if X were returned to her care her brother, and perhaps other members of the family, would do all they could to assist her to remove X from access to the local authority, and most likely, to remove him from the country.
59. I note that it was her brother who purchased the flight ticket for the flight on 22 March.
60. I note that the mother said not a word to any health professional with whom she had been in contact, nor did she notify the social worker of her plans to leave the jurisdiction. Why not?

Because she did not want anybody to know of her plan to leave, because, as I have found, she had no intention of returning.

61. Therefore, there is overwhelming evidence that this mother poses a risk of removing this child from this country, or of concealing him from the authorities, and unfortunately it is plain that she cannot be trusted by this court, or by this local authority, or indeed by any professional, to be open and honest in her dealings with them.
62. During the course of her evidence, the mother asserted that the airline staff were mistaken in their recollection of events, the social worker was in error in her recollection of events, and the guardian was in error in her recollection of events, and so it goes on.
63. Standing back and considering all matters together, I regret that I have reached the firm conclusion that it is necessary and proportionate, given the very high risk presented by this mother and by this family to X, that he remains separated from the mother, subject to an interim care order, and that he remains in his current foster placement.
64. In the light of the separation, it would be hugely important for X to have frequent face-to-face contact with his mother, so that he could smell her and feel her touch and her warmth. Sadly, the risks that I have outlined are so great that at this current, early interim stage, and pending further investigation and further assessment, I am satisfied that the risk posed by the mother and by her brother and the wider family to X are so grave, that it is not possible to conceive how direct contact could be organised or achieved in which X would be safe.
65. Accordingly, I approve the local authority's plan for the present, and I emphasise for the present, that contact will have to take place remotely.
66. It may be that the mother will reflect on what has happened at this hearing and reflect on what she needs to do to satisfy the local authority, the guardian, and most importantly the court, that she can be a trusted and safe parent to X and that it would be in his welfare best interests to return to her care.
67. However, that is not the circumstances that pertain at the present.
68. Accordingly, I will make an interim care order, approve the plan of continued separation of X from his mother, and make an order pursuant to section 34(4) of the Children Act 1989, authorising the local authority to refuse direct contact between X and his mother, but approving the use of virtual or remote contact.

End of Judgment.

Transcript of a recording by Ubiquis
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com

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