



Neutral Citation Number: [2019] EWCA Civ 2265

Case No: B4/2019/1724

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
THE CENTRAL FAMILY COURT
HIS HONOUR JUDGE OLIVER
SC18C00266

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/12/2019

Before:

LORD JUSTICE UNDERHILL
(Vice-President of the Court of Appeal (Civil Division))
LORD JUSTICE MOYLAN
and
LORD JUSTICE DINGEMANS

Re: B (Children)

Mr P Pavlou (instructed by **Hackney Legal Services**) for the **London Borough of Hackney**
Miss M Jones (instructed by **SA Carr & Co**) for the **Respondent Mother**
Miss C Ellis (instructed by **Miles & Partners**) for the **Guardian**

Hearing date: 29th October 2019

Approved Judgment

Lord Justice Moylan:

Introduction:

1. The London Borough of Hackney appeals from a supervision order made at the conclusion of care proceedings by His Honour Judge Oliver on 1st July 2019. The case concerns two children, M now aged 7 and W now aged 3.
2. At this hearing the Local Authority was represented by Mr Pavlou; the mother by Ms M. Jones; and the Guardian by Ms Ellis. The mother opposed the appeal as did the Guardian who made submissions strongly supporting the judge's decision which had been in accordance with the Guardian's evidence and recommendations. The children's respective fathers have taken no part in the proceedings.
3. The thrust of the Local Authority's case before the judge was that the mother was not able to meet the care needs of the children, in particular the elder child because of his specific needs arising from his having autistic spectrum disorder and a reactive attachment disorder. The latter disorder, and aspects of his behaviour, were said to be due to neglect and trauma arising from the care he had received. The final care plans proposed that M should be placed in long-term foster care and that W should be placed for adoption. No application for a placement order had been made and the judge refused to short-circuit the process applicable to such applications.
4. In the Local Authority's Skeleton Argument, this appeal was said to be "essentially a challenge to the learned judge's welfare analysis and the disproportionate weight given to the child M's recent improved presentation over the weight of the expert evidence and the underlying unmet emotional needs of the children". However, during the course of the hearing of this appeal, it became clear that the Local Authority's case significantly comprised a challenge to the adequacy of the reasons given by the judge for his decision.
5. At the conclusion of the hearing we informed the parties of our decision, namely that the appeal would be dismissed. These are my reasons for agreeing with that decision.

Background

6. I only propose to set out a very brief summary of the background to provide some context for the care proceedings and the judge's decision.
7. The Local Authority first became involved with the family in 2011 following a serious incident of domestic abuse by the mother's then partner, the father of M. There were continuing incidents of abuse and a child protection plan was put in place for M. The mother's relationship with M's father ended, it would appear, in late 2013. In early 2016 the mother began a relationship with W's father which was also abusive. Both children were made subject to child protection plans.

8. The judge summarised the reasons for the Local Authority's involvement as follows: the mother's "poor emotional health; her engagement with professionals and support services; some domestic violence; her capacity to care for M who has a diagnosis both of autism and reactive attachment disorder; her parenting capacity; and her misuse of drugs". Both of the fathers were "high risk perpetrators of domestic violence" and the children had been "exposed to serious incidents of domestic violence and they have had to leave home at short notice".
9. The mother and professionals had been raising concerns about M's behaviour from late 2013. M was referred for a specialist Child and Adolescent Mental Health Service assessment in December 2017. The consequent report by a Consultant Child and Adolescent Psychiatrist and a Clinical Psychologist, dated 7th March 2018, concluded that it was "very difficult to agree on a definitive diagnosis [because] early adverse experiences; domestic violence and unsettled childhood co-exist with neurodevelopmental difficulties". M was "a very sweet 6 year old child, whose early negative experiences had impacted hugely on his ability to self-regulate his emotions". Despite the difficulties in making a diagnosis, the authors of the report concluded that a diagnosis of "autism spectrum disorder and reactive attachment disorder" was justified. This meant that M "has significant additional needs that need to be adequately provided for both at home and elsewhere". A number of recommendations were made including additional support for M at school and for the mother.
10. I would also note that an EHCP plan was provided for M in October 2018. This made a number of recommendations and led to M being provided with full-time support at school.

Care Proceedings

11. Care proceedings were instituted in April 2018. HHJ Oliver was the allocated judge throughout. Their resolution was very significantly delayed largely because, as explained by the judge, of "an attempt to get some therapeutic work".
12. The Local Authority sought care orders in respect of both children. As referred to above, the final care plans proposed long-term foster care for M and placement for adoption for W.
13. The principal factual issues addressed in the proceedings were: the mother's emotional and mental health; the mother's engagement with professionals and support services; the impact of the mother's parenting on the children; the children's parenting needs especially M's because of his diagnosis of autism and reactive attachment disorder; the mother's ability to meet the children's emotional needs, in particular M's additional needs; the mother's capacity to effect changes in her parenting with therapeutic treatment; and the potential consequences for each of the children if they remained in the mother's care and if they were removed and placed as sought by the Local Authority.

14. At the start of the proceedings the Local Authority applied for interim orders under which M would be placed with foster carers under a care order and W would remain with the mother under an interim supervision order.
15. The Guardian provided her first report on 24th April 2018. It is a thorough and thoughtful report. Its conclusions were based on a careful analysis of the Local Authority's evidence and of the Guardian's own enquiries. She had seen the mother and the children at their home and had spoken to M's deputy head teacher and safeguarding lead. The teacher noted that "now they had an official diagnosis" for M, there was "so much they could be doing". It was the teacher's opinion that separating M from his mother would "cause him more harm than good"; she did not think "he would cope" in a "new environment".
16. The Guardian did not agree with the Local Authority's plan to remove M from his mother's care. She expressed concern that, "given M's ASD and attachment disorder, ... interim separation would cause him harm and he may find any transition very difficult to adjust to". She recognised that the children were "at times ... likely to have been exposed to inadequate parenting". However, it was her opinion that "the emotional harm to M would be greater if he was removed from his mother's care at this stage". In her view "this is a case that is categorised by ongoing cumulative harm" and not one in which the evidence demonstrated that M was "at risk of imminent significant harm from his mother".
17. On 14th May 2018, HHJ Oliver determined the application for interim orders. He rejected the Local Authority's application in respect of M and made interim supervision orders in respect of both children.
18. The Anna Freud Centre provided an assessment report in August 2018. It is a detailed report. The mother was determined to have personality difficulties, "though these do not reach [the] criteria for a diagnosis of personality disorder". It was also observed that she had "experienced extremely poor parenting from a very young age". She had had "periods of time in the care system and multiple moves of care placement". It was recommended that the mother "needed to engage with treatment to address the impact of her psychological difficulties ... on her ability to parent her children safely".
19. The report concluded that M's "overall functioning was seriously impaired" and that his difficulties "could not be wholly explained by a diagnosis of Autism Spectrum Disorder". He needed "well-above average parenting" and it was "the view" of the "assessment team" that the mother was unable to provide this parenting. This led to a recommendation that M should be placed outside the family.
20. The report noted that the mother "appeared to be able to parent W in a warmer, more engaging manner" but that there "were concerning signs that W demonstrated avoidant behaviour in relation to her mother". Recommendations were made "to address the concerns about W's presentation". These included that the mother have "long-term, intensive treatment" at the EYPU (the Early Years Parenting Unit at the Anna Freud

Centre) “to address the impact of her psychological difficulties on her capacity to provide W with safe, predictable, emotionally responsive care”.

21. The report’s conclusions in respect of M led the Local Authority again to propose that M should be removed from the mother and placed with foster carers. It would appear that, following a hearing at which the Local Authority sought the listing of an interim care order hearing, they did not pursue this application.
22. The parties then agreed, and the judge ordered, that the EYPU should be instructed to assess the mother’s capacity to change. The assessment began in January 2019.
23. A psychological assessment of M was obtained for the proceedings from a clinical psychologist, Dr McDowell. She provided a written report in November 2018. She recorded the deputy head teacher’s view that there had been “a considerable (positive) contrast in M’s behaviours on a consistent basis”. The report concluded that M had “complex social, emotional and behavioural needs” due to a “multitude of predisposing factors [including] early development experiences, congenital predispositions and environmental factors”. Later in the report it was said that M’s “behaviours are related to both a neurodevelopmental deficit and a disordered relationship with” the mother stemming from “inconsistent parenting”. As a result M would “require a range of support ... to address his needs” including “therapeutic intervention”.
24. On the question of future placement, Dr McDowell was of the opinion that the mother “would currently be unable to meet all of M’s needs”. M needed carers who “have a full comprehensive understanding of his complex needs and who can provide consistent support for both ASD and RAD”. Any foster carer would need support and training, including therapeutic support. In the psychologist’s opinion the mother “will require ongoing counselling and support to address the trauma she has experienced from her own experience of an inconsistent parent and being a victim of domestic violence”. In order to be able “consistently to meet M’s needs, (the mother) would need to consistently engage in therapeutic support over time ... this would be a long-term process”.
25. When asked to comment on the impact on the children if they were removed from the mother’s care, Dr McDowell said that this would “of course have an emotional impact”. It was likely that M would “feel a sense of abandonment and loss and initially ‘act out’”. It would require “a well-planned transition programme”.
26. A report was also provided by a psychotherapist, Mr Bolton, to whom the mother had been referred by a therapist as “requiring a secondary care psychological intervention”. Mr Bolton did not consider that any decision could be made about future treatment until the assessment by the EYPU had concluded. If the mother was not going to receive treatment at the Anna Freud Centre, then treatment could be offered “here, within the Specialist Psychotherapy Service”. The “first intervention would be an 8 week psycho-educational group focussing on mentalisation”. There would then be “a wait of a couple of months for a treatment place to become available”.

27. The EYPU provided its “Assessment of Capacity to Change” report on 11th March 2019. This formally only addressed the mother’s capacity to effect change “within W’s timescales” although M had also attended one or two of the sessions and a later report referred to the benefits of the mother being able to use treatment at the EYPU “to address her parenting difficulties in respect of” M. The report concluded that the mother had shown “the capacity to effect changes in her parenting by engaging in long-term, intensive treatment” and recommended that the family “proceed to the EYPU 18-month treatment programme”. This included the proposal that M should, again, attend some sessions. This commenced at the beginning of March 2019.
28. The subsequent report from the EYPU is dated 7th May 2019. This set out that the planned programme of treatment had not progressed because the mother attended only some of the planned sessions. A meeting “to try and find a way to help (the mother) re-engage with treatment at the EYPU” was not successful with the mother focussing on what she said had been the Local Authority’s failure to provide promised financial support to enable her to attend the programme. The mother then decided not to continue with the treatment. The authors of the report were of the view that there was “virtually no prospect of [the mother] engaging with therapeutic help of any kind” although, if “it were decided that she should re-engage in treatment at the EYPU, we would be willing to work with [the mother] under the clear condition that she undertake to work openly, honestly and collaboratively with staff, other parents and the Local Authority”. If she did not, the children “would continue to be at serious risk in her care”.
29. Dr McDowell provided a further report in May 2019 which addressed the placement of both children including whether they should be placed together or separately.
30. In her opinion, M’s complex needs meant that he required “a high level of multi-agency support”. He “has an adverse reaction to change; it is extremely anxiety provoking and stressful for him”. The “emotional effects [and the associated behaviours] of being separated from his mother” meant that it was “likely that his behaviour will initially deteriorate” and it was “essential” that he be placed with foster carers “who are very experienced with caring for children with significant complex difficulties”. They should be provided with “appropriate support”. Dr McDowell was also concerned that “being separated from W, if she is matched with an adoptive family, would be a considerable emotional distress for M”.
31. She did not consider that W had any specific needs. There would be “loss and grief associated with being removed from her mother [and possibly brother] and there is likely to be an impact on her psychological and emotional well-being”.
32. The report identified the “many benefits to the children [of] being placed together” including maintaining the sibling bond they have. Separating them would “have a significant impact on their well-being” although “close and regular contact may reduce” this. However, if they were placed together and then W was moved to an adoptive placement, as proposed, they “would both experience the feelings of loss again in a very

short space of time”. This would be likely to be particularly detrimental to M’s development.

33. The ultimate conclusion of the report was that the children should be placed separately. This would provide them with the best opportunity to have their individual needs met although Dr McDowell commented that the “medium to long-term impact of the transition into foster care is difficult to predict and is going to be heavily dependent upon the quality of support they both receive”.
34. The Guardian’s final report is dated 20th May 2019. This contains a detailed assessment of the case which was based on the Guardian’s own extensive enquiries, which included a number of visits to the family home, as well as the other evidence. I propose to deal with this at some length given, what I consider to be, the impressive quality of the Guardian’s analysis, which the judge clearly accepted.
35. The Guardian set out a summary of her observations from her home visits. The home was “welcoming and warm”. The mother and the children had “always engaged with me and it has been a pleasure to work with the family”. M and W were “friendly, smart and articulate children with senses of humour”. She had seen “close relationships between [the mother] and the children” with “emotional affection towards both children, boundary setting and positive interactions”. The children were “very close as siblings” and had “a lovely relationship”.
36. M told the Guardian that “I only want to live with my mummy and” W and that if “they take me away I will be angry and I will run away”. The Guardian expressed concern that no specific therapeutic provision had been put in place for M; in her view it was “crucial that something is put in place for M at the end of these proceedings”.
37. W was “an advanced little girl with good language skills and likes to assert her independence”. She “loves [two named toys] and playing games with” W. M’s nursery did “not have any concerns with respect to W and she is achieving in all areas”.
38. The Guardian summarised the risks which had reduced during the course of the proceedings. In her opinion, the mother had gained insight into her mental health needs and “now accepts the need for her to undertake some intensive therapeutic work for herself and to improve her parenting”. The mother had also “made significant efforts to address the concerns with respect to her parenting”. The Guardian noted that M’s “presentation and worrying behaviours have reduced”; these changes were likely to be due “to a change in how the school is working with M but also because [the mother] has made attempts to change her parenting”. The children were “now consistently cared for by” the mother.
39. The Guardian also set out a number of continuing risks. These included: that the children’s emotional needs would not be “understood and subsequently not met by” the mother; that the mother might “follow previous patterns of completely disengaging with all services once the pressure of these proceedings has disappeared”; and that the

children's attachment difficulties would increase "and the window to support them missed". The mother needed to be able "to fully commit to a therapeutic programme and to work with the Local Authority in the best interests of the children". The mother was a "capable woman who can be a capable parent": the "issue is her ability to consistently apply herself to [being a capable parent], accept support and sustain positive change".

40. In conclusion, the Guardian described the case as "complex" and as being "finely balanced"; "all options put forward for M and W are not without risk to their overall emotional welfare". Looking at the options, if M were to remain with his mother there was "a real risk that he would not receive the reparative parenting that he requires". If he was removed from his mother and placed in foster care, the "inevitable" emotional impact would be "more significant given his existing emotional and complex needs". The Guardian was "very concerned about the potential for future placement breakdowns as it is likely that M's behaviour and presentation would decline if removed from his mother's care". She also took into account the positive relationship between the children and considered that the "prospect of separating the siblings is not something to be underestimated". Additionally, the Guardian was "worried that M would feel responsible for being removed and that future placement instability would further compound his RAD and ultimately place him at more risk of significant emotional harm". She also observed that children like M "do not fare well in Local Authority care and the prospect of him experiencing significant instability in the care system needs to be balanced against his current circumstances". She wanted to know more details about his proposed placement and "the transition plan".
41. The Guardian also addressed each of the potential placement options for W: remaining with the mother; long-term fostering; and adoption. She did not support adoption because, in her opinion, the concerns "are not so significant for W that such permanent interference with family life is necessary". M's "early years were significantly more traumatic than W's and EYPU point out that the concerns with respect to W are far less than M". The Guardian recognised that there were risks for W from each of the other options. She considered the "likely emotional impact on W if she is removed from" the mother's care; and the "possible emotional impact" if she remained with the mother and the mother did not fully engage with the proposed therapeutic treatment and "make the required changes". Based on her assessment of the potential consequences of each course, the Guardian concluded that it was in W's best interests for her to remain with the mother "with the right support in place". .
42. At the final hearing the judge heard evidence from 11 witnesses including the co-authors of the reports from the Anna Freud Centre, Dr McDowell, the mother and the Guardian. He also had a significant amount of written evidence including the reports referred to above.

Judgment

43. The judgment sets out the parties' respective positions. At the start of the hearing, the Guardian proposed that W should remain at home with a supervision order "but was

uncertain as to what recommendation [to make] in respect of M and wanted to hear the evidence”. At the conclusion of the hearing, the Guardian’s recommendation in respect of W remained the same. In respect of M, she now recommended that it was in his best interests for him to remain at home “with a package of support” and a supervision order.

44. After dealing with the background history and the progress of the care proceedings, the judge dealt with the evidence at some length. I propose to refer only to some aspects of this.
45. The judge heard from three witnesses from the Anna Freud Centre. The effect of their evidence was that M needed “better than average parenting” because of his specific difficulties. In respect of W, there was concern that if she remained in the mother’s care “her development would be similar to” M’s.
46. The mother’s ability to provide emotionally responsive parenting was considered to be limited as demonstrated, for example, by her not reading “cues”. Further, she was assessed as being unable to provide the better than average parenting required by M because of the “very significant difficulties in her own life and background”. She “needs a long-term intensive therapeutic programme to address her difficulties and she needs to address her own feelings”. Although one of these witnesses also said that these difficulties “will not be able to be addressed by therapy”, the judge questioned this evidence because, as he put it, “this is what the Anna Freud Centre were actually expecting to do with her in the course of its work”. It was also said that it would be difficult for the mother to engage in this type of therapy which had been shown to be “threatening for” her.
47. This evidence also addressed the issue of separating the children. It “was a balance” with each option having “pros and cons”. The children had a close relationship with each other and “it was beneficial for them to remain in that close relationship”. However, there was concern that M’s difficulties might prevent W “bonding with adults” and “there were concerns about them being together in a foster placement and then having to be separated”.
48. Dr McDowell “accepted” that the mother probably needed 18 months of therapy. She expressed concern about the mother’s ability to engage with the proposed therapeutic treatment and to be consistent in her parenting; “a lack of engagement and a lack of consistency would impact on M’s development”. She “acknowledged there was considerable improvement in the care of the children”, apparently adding, “but” this was due to the structured school environment and the fact that the mother had been attending the Anna Freud Centre. The judge questioned the use of the word “but”; in his view the improvement was *because* “of what was being done now”, including by the mother.
49. Dr McDowell said that children “will regress if moved from their parents and that would cause a challenge for the foster placement and would mean the foster carer needed considerable support”. She was particularly concerned about the impact on M of removing him from the mother. It would cause a “dramatic regression” and she “could

not say whether [this] would be short, medium or long-term”. Separation from W would also “be a problem for M”. “It would be very difficult for the foster carers to deal with”. She was “critical” of the proposed foster placement because it was with a single, inexperienced foster carer. M would need a lot of support and should remain at the same school. In addition she said that “inter sibling contact was going to be very important”. She was also concerned about the prospect of “multiple changes in placement which sometimes happen”.

50. It was Dr McDowell’s opinion that M should be placed in foster care but that, because of his need for routine and structure, there should be a four month transition to a foster placement. This was not what the Local Authority proposed (which was relatively immediate removal) and the judge expressed considerable doubts about its practicality and concern as to the likely effect on M. Indeed, in his view, such a prolonged transition period would be “disruptive” and “unsettling” for M and would cause him immediately to regress.
51. The principal social worker had seen “improvements” in the mother. She acknowledged “the positives and that the mother had worked incredibly hard to get there”. She also acknowledged the improvement in M’s “presentation”. However, this was not the first time she had seen the mother make improvements before she “stops engaging” and “the children then suffer”. Separating the children from the mother would cause the children distress and there would be “some regression in M’s behaviours and difficulties”. But, in the social worker’s opinion, this would be better for the children because of the “long-term concerns” if they remained in the mother’s care.
52. The social worker also expressed concern about the mother being able to meet the children’s needs in their timescales. This led the judge to refer to the fact that the therapeutic treatment proposed by the Anna Freud Centre and that proposed by Mr Bolton were of a similar duration.
53. Another social worker spoke about the “very strong bond between” the children and also gave evidence of positives and concerns. There were “a lot of positives in the mother’s engagement and the children’s presentation”. There were concerns such as with the mother’s relationship with the recovery service.
54. A witness from M’s school said that they had a good relationship with the mother, they were working together and the mother was accepting advice. There had been “significant improvement in M’s presentation, behaviour, enthusiasm for learning and engagements”.
55. The judge did not gain much assistance from the “together and apart assessment” because it had been a paper exercise. However, he noted the difficulty with the recommendation that the children should “maintain a relationship through their childhoods” if, as proposed by the Local Authority, they were separated and W was adopted. The judge commented that, if there was no contact, this would compound the negative impact on M because he would not only be separated from his sister but would also not have a relationship with her.

56. The judge sets out the mother's evidence at some length. The judge clearly formed a balanced assessment of the mother. He was concerned that she sometimes forgot that she had said something or denied that she had. This concerned him because there were a "lot of things she is going to have to accept and acknowledge which, at the moment, she might be denying". However, the mother was "on a course" and could not be expected "at this stage" to accept all her difficulties. He considered it important that the mother acknowledged that she needed therapy; that she needed support with parenting and "in attachment with M"; and also that M needed therapy.
57. The Guardian's assessment remained that this was "a very finely balanced case" in respect of M. She recognised that M had "very significant needs" and also that there were "risks" for both children if they remained with the mother. There was the risk that the mother might not pursue the therapy offered by Mr Bolton; that she might "not acknowledge what she had learned over the past few months"; and that there would continue to be a poor relationship with the Local Authority.
58. It was, however, positive that "the mother engaged well [and] her general parenting was good to meet daily care needs". In her opinion, the mother "can be a very capable parent" and the "shifts that she had observed in the mother were significant". She pointed to the fact that her observations had been in the home environment while the EYPU's assessment had been in their environment. The Guardian agreed that the mother needed therapy and although that offered by the EYPU "was better ... there are other options".
59. In addition, she considered that the mother and the children "were not in the same place they were in August 2018". This was for a variety of reasons including "the strategies that CAMHS had introduced". The "improvement" in M was due to what the school had been doing *and* "the work that the mother has been doing".
60. The Guardian was clearly very concerned about the impact on M if he were removed from his mother: "it would completely disrupt his current good progress" and any "disruption and regression could be irreversible". She also pointed to the "risk of breakdowns in the placement" and the "knock-on effect of how he was doing at school". The Guardian was also "very concerned" about the placement proposed by the Local Authority. The foster carer had very limited experience and did not have experience of a child with M's needs; she "had never had to commit to a long-term placement".
61. The Guardian did not consider that adoption was justified for W. She also considered that separating M and W "was a huge issue because they were very close ... and it would be very difficult for them". "Adoption and sibling contact would be very difficult; a very hard placement to find if there was going to be sibling contact". There would also be "the upset of W seeing that M was at home or seeing the mother".
62. I now turn to the judge's conclusions.

63. One of the main issues the judge had to address was whether the mother would be able to build on the progress she had made and engage with the proposed therapeutic treatment. The witnesses from the Anna Freud Centre and Dr McDowell questioned whether the mother would be able to engage with the treatment and be consistent.
64. The judge found that the mother “has the capacity to change over time” and that “things have started to change”. What “struck (the judge) as very important” was that the mother had engaged “well in the capacity to change assessment” and that she “now understands the need for change and the need for therapy”. This included the mother “accepting and then having insight into something that hitherto she had not”, namely that “she was the cause of his reactive attachment disorder”. The judge considered this important in part because, in his experience of care cases, it was unusual for a parent to be assessed, as the mother had been by the EYPU, to have shown “insight and willingness to address the issues”.
65. Taking into account the mother’s capacity to change and the changes which had been made, the issue was, as the judge described it, whether the mother would genuinely engage in the treatment process. He also addressed the “concerns about consistency” and, given the mother’s withdrawal from the EYPU, whether she would “work with anyone”.
66. The judge considered there were sufficient “positives” to conclude that the mother was, “with support, capable of meeting” the children’s needs. At one point in his judgment he said that the mother would “be able to achieve” the required changes. He also noted that the mother had been assessed as suitable to go on Mr Bolton’s programme. It was inevitably going to “take time” because the changes required were not going to happen “overnight”. Further, it was to be expected that there would be “times ... when it goes off the rails” because the process was “not going to be one ... continually improving pathway”.
67. The judge also recognised that “it was not going to be easy for the mother to deal with” the issues which needed to be addressed. She had to “be consistent in her approach to (the) children”. She “also needs to be able to ask for help”. He accepted the Guardian’s evidence that while she would have preferred the EYPU to undertake this work, “Mr Bolton does the same type of work”. They were addressing the same issues and the latter would be “as challenging” as the former. He also addressed three “problems” identified by the Anna Freud Centre with the treatment proposed by Mr Bolton. One of these was the duration of the therapy and its relationship with the “children’s timescales”. The judge did not accept this because it seemed to him that the timescales for the therapy, whether that proposed by the EYPU or that with Mr Bolton, were “the same or similar”. Another was the more limited nature of the treatment provided by Mr Bolton. The judge did not consider that the treatment offered by the EYPU was “the only way of doing it”. There would need to be a different “package” with the social worker “ensuring that everything is working together”.

68. In order to emphasise the importance of the mother having the proposed long-term therapeutic treatment he made it clear to her that, if she did not properly participate, she would be “back in front of me”.
69. The judge also considered other changes which had taken place since the proceedings had started. He found that “things have started to change”. The mother “has improved her situation in respect of her ability to look after the children and progress is being made”. This was “far better” than had been “thought might be the outcome at the start of the case”. There had been dramatic improvement in M’s “presentation at school” and significant progress in his education. M’s behaviour “had improved considerably”. This was due “not only [to] what has been done within the school environment to impose the structures and routines that M needed but also [to] the fact that the mother has been able to continue that structured programme when he is at home”.
70. Additionally, the fact that there was “no evidence of deterioration” was an “important point”. This meant that the progress which had been made had been maintained although the mother was not currently having therapeutic treatment and there was no parenting support in place. There was “still a lot to do” but, again in contrast to his experience in many other cases, there was a lot which was “capable of being done”.
71. The judge agreed that the mother needed to have a good working relationship and to cooperate with the Local Authority which “at times” she had not. The judge directly addressed the mother and again made clear that she had to work with, “to engage with”, the “social work team”. He considered that this would be assisted if there was a new team.
72. The judge analysed the potential consequences for the children of them remaining with the mother and of their being placed in foster care. It is plain that he recognised the risk that both M and W’s emotional needs would not be met and, indeed, might be harmed if they remained in the care of the mother. He concluded, based on the progress which had been made and his assessment of the prospect of further progress being made, that the harm which, in particular M had suffered, could be “ameliorated and reduced”. As referred to above, he decided that the mother was capable of making the required changes and that she was, “with support, capable of meeting” the children’s needs.
73. When analysing the alternative as proposed by the Local Authority, the judge noted that it “was accepted by all professional witnesses that if M was removed from his mother’s care, it would be distressing for him, that he would regress, that he would return to and show the behaviours that he had in the past”. He was particularly concerned by the prospect of a “dramatic regression” especially because it was not known “whether the regression was going to be short, medium or long-term”. This evidence clearly, and understandably, concerned the judge greatly as he questioned, in stark terms, “the point of putting a child through that kind of regression if there is an alternative that can be put in place to help him”. This also led him to question whether the evidence supported the conclusion that M’s attachment difficulties would improve if he was placed in foster care. His conclusion was that “I do not see the evidence base for that comment”. He

pointed to the agreed need for M to have therapy, which had been recommended for some time and which the judge considered “should start as soon as possible”.

74. In respect of W, the judge clearly accepted the Guardian’s evidence that removal from her mother’s care was not justified. He recognised the risk that, if W remained in the care of the mother, she would develop emotional problems in the same way that M had. However, he pointed to the changes the mother had already made and referred to the “aim” being to “make sure that the mother’s development is such that” she can provide W with appropriate parenting.
75. Another issue was the “very strong bond” between the children and the detrimental emotional impact for them of this being fractured. The judge referred to what one of the EYPU witnesses had said, namely “you cannot underestimate the impact on both children of being separated from one another, let alone from their mother”.
76. The judge went through the welfare checklist in summary at the end of his judgment. It was in summary because he had already addressed many of the relevant factors at some length during the course of his judgment. The points he identified were as follows: that the children would be distressed if they were removed from the mother and if they were separated; that the mother had the capacity to change, through therapeutic work; that there was “concern about the foster placement for M”; that if M was removed from the mother there would be “dramatic regression” which the expert could “not say whether it would be short, medium or long-term” with the Guardian saying there was a risk that “the regression would be irreversible”; that M had “particularly” suffered harm while W had been less affected; that the harm can be “ameliorated and reduced”; and that the mother had made progress and, with support, was capable of meeting the children’s needs.
77. The judge considered the orders which he could make and concluded that he should make supervision orders in respect of both children.

Submissions

78. I am grateful to counsel for their submissions.
79. I have referred above (paragraph 4) to the way in which the Local Authority’s argument in support of this appeal was phrased in the written submissions, namely “essentially a challenge to the learned judge’s welfare analysis and the disproportionate weight given to the child M’s recent improved presentation over the weight of the expert evidence and the underlying unmet emotional needs of the children”.
80. At the start of his submissions, Mr Pavlou helpfully summarised the main points he relied upon as being: (a) the lack of a sound evidential basis supporting the judge’s conclusion that the mother had the capacity to change and would be consistent in making changes; (b) the lack of reasoning supporting the judge’s rejection of the expert evidence relied on by the Local Authority; (c) a lack of reasoning, combined with the judge possibly misunderstanding the timescales involved, as to the time it would take for the mother to

be able to provide the attuned parenting the children needed; and (d) the lack of any or any sufficient separate analysis in respect of W.

81. In respect of (a), Mr Pavlou did not challenge the judge's findings that the mother has the capacity to change or that there had been changes. However, he submitted that there was insufficient evidence to support the conclusion that the mother would or could be consistent in making the required changes including in respect of her parenting. In his submission, the judge appeared to have ignored the fact that the mother had withdrawn from the EYPU programme and the other evidence which also supported the conclusion that the mother would not be consistent. He further submitted that the judge did not deal with the fact that, although there had been improvements, the children's "underlying difficulties" remained to be addressed.
82. As to (b), Mr Pavlou accepted, of course, that the judge was entitled to "depart from the experts' opinion" but, he submitted, this had to be and was not sufficiently explained. He did not explain why he considered their evidence, that the mother could not provide the children with the parenting they need, was "wrong". During his submissions, in response to an observation from the court, Mr Pavlou acknowledged that the judge was entitled to accept the Guardian's evidence as to the mother's parenting abilities but submitted that the judge had not said that he was accepting this evidence.
83. As to (c), Mr Pavlou suggested that there was a material difference in the timescales of the proposed therapies. The treatment with Mr Bolton would involve a "substantial delay" before the therapy would start.
84. As to (d), Mr Pavlou submitted that the judge did not analyse W's position and explain why the order he made was in her best interests.
85. As Mr Pavlou developed his case, it became clear that his submissions were significantly based on a challenge to the adequacy of the judge's reasoning. For example, he submitted that the judge had failed to explain which evidence he had accepted and which he had rejected and why; that the judge had failed to state that he was weighing the risks to the children from remaining in the mother's care against the risks from removal; and that the judge had not referred to the law.
86. Ms Jones on behalf of the mother and Ms Ellis on behalf of the Guardian both submitted that the appeal should be dismissed.
87. Ms Jones submitted that the judge had clearly conducted a "welfare analysis" based on all the evidence in the case. In her submission, the judge reached a decision which was proportionate and which he was entitled to make. In particular, he was entitled to take into account the improvements which the mother had made and the improvements in the children's situation. The judge had "reflected very carefully on the care the children were receiving at the time of the final hearing and would be likely to be receiving in the period whilst the mother has therapy".

88. Ms Ellis submitted that the judge's decision was supported by his assessment of the evidence and the reasons given in his judgment. In her submission, most of the grounds of appeal sought to argue that the judge had placed too much weight on certain factors and given insufficient weight or consideration to other factors. The Local Authority "makes complaint that the trial judge favoured the evidence that was against its case and did not favour the evidence that was in support of its case". Ms Ellis submitted that, "in a case such as this, where the future welfare needs of the children are complicated and there was a plethora of evidence that all pointed in different directions", this court should be "very slow" to interfere with the judge's decision.
89. She also submitted that none of the experts relied on by the Local Authority nor the social work team had given sufficient consideration to the likely harm to each of the children if the care plans were endorsed. This had been addressed by the Guardian who had concluded that all the available care options for the children were "not without risk to their overall emotional welfare". This was a difficult, "finely balanced", case and, in her submission, the judgment contains a sufficient analysis explaining why the judge "preferred the evidence in support of the children's welfare being best provided for by remaining with the mother over the evidence in support of the children being removed from her and each other".

Determination

90. The challenge in this case is to the judge's welfare determination. Although one of the grounds of appeal contended that the judge failed to deal with the law, there can be no doubt that the judge was well aware of the welfare nature of the decision he was making.
91. The argument that the judge, when undertaking the welfare analysis, gave disproportionate weight to M's recent improved presentation over the weight of the expert evidence and the underlying unmet emotional needs of the children, addresses the "the evaluation and balancing" exercises which are "a matter for the trial judge": Baroness Hale of Richmond, at [12], *In re J (A Child) (Custody Rights: Jurisdiction)* [2006] 1 AC 80. Having regard to the various factors involved in this case, as outlined above, it is, in my view, clear that there is no basis on which this court could conclude that the judge's determination was wrong because he gave too much weight or insufficient weight to the matters referred to by the Local Authority. The judge clearly took the expert evidence relied on by the Local Authority into account and also considered the emotional needs of each child and whether the mother would be able to meet them. His judgment makes clear that he balanced these factors when undertaking the welfare analysis and determining that the children should remain living with the mother.
92. I next turn to the submission that the evidence did not support "the judge's conclusion that the mother had the capacity to change and would be consistent in making changes". As referred to above, in the course of his oral submissions, Mr Pavlou accepted, rightly, that there was evidence supporting the judge's conclusion that the mother has the capacity to change the way in which she parents the children.

93. As to the latter part of this submission, I do not consider that the judge determined that the mother “would” be consistent in making changes. The Local Authority can point to the judge saying, after referring to the need for the mother to undertake long-term therapy, to make consistent changes in her parenting of the children and to work with the Local Authority, that he is “satisfied” that the mother is “going to be able to achieve those”. However, it is clear from other parts of the judgment that the judge’s analysis is not that straightforward. For example, the judge said that there were “positives about [the mother’s] ability to change”; that change was “*capable of being done*” (my emphasis); and that although some progress had been made, there “is still a lot to do”.
94. The judge plainly took into account the concerns expressed as to the mother’s ability to make changes in a consistent manner. This can be seen, for example, by his referring to the prospect, again to use his words, that matters might go “downhill” or “off the rails”. Indeed, he made clear that he regarded this as the mother’s “last chance”. To emphasise the point for the mother, the judge warned her that if, for example, she stopped engaging with the proposed treatment or the Local Authority the children’s needs might well mean that they could no longer remain in her care.
95. It is clear to me that the judge reached a conclusion which was based on the evidence, not that the mother *would* make the required changes, but that there was a good prospect of her doing so, or certainly a sufficient prospect which supported the conclusion that the children should remain in her care.
96. The matters referred to in (b), (c) and (d) above are part of the broader submission that the judgment is insufficiently reasoned. Mr Pavlou relied on what Thorpe LJ said in *Re B (Appeal; Lack of Reasons)* [2003] 2 FLR 1035, at [11]: “the essential test is: does the judgment sufficiently explain what the judge has found and what he has concluded as well as the process of reasoning by which he arrived at his findings and then his conclusions”. Another formulation is that provided by Peter Jackson LJ said in *Re DAM (Children: Care Proceedings)* [2018] 2 FLR 676, at [7], namely does the “judgment enable the reader, and above all the family itself, to know that the judge asked and answered the right questions”.
97. I start with the general observation that, because the judgment in this case could be described as somewhat discursive in style, it is particularly important to read it as a whole. This is necessary because, for example, some of the judge’s conclusions on the evidence and some of the reasons for his ultimate determination are dispersed throughout the judgment.
98. In my view, it is not difficult to see from the judgment what findings the judge made and why he decided that it was in the children’s best interests to remain in the care of their mother. It was, clearly, a finely balanced case with the judge having to balance the potential welfare risks to the children of remaining with the mother and of being removed with the potential benefits of each course.

99. Despite Mr Pavlou’s submission, it is clear to me that, in undertaking his welfare analysis, the judge accepted the Guardian’s evidence. This evidence was based on direct observations of the family which were, in my experience, more extensive and detailed than in many if not most other care cases. Her evidence was also supported by a thorough and careful welfare analysis.
100. As referred to above, the judge also clearly took into account the evidence from the EYPU and the social workers but, as submitted by Ms Ellis, he was entitled to conclude, as he clearly did, that they had given insufficient consideration to the likely harm to each of the children if they were removed from the mother and the proposed care plans were endorsed. It is in my view also clear that the judge did not misunderstand the timescales involved. He was aware of the duration of the proposed therapy and, as referred to above, based his determination on the progress which had been made and his assessment of the progress which could be made.
101. In conclusion, I do not consider that the judge’s welfare analysis was deficient or that the reasons for his decision are insufficiently expressed in the judgment. There were welfare risks with each proposed option and a critical part of the judge’s analysis was to decide which option presented the least risk. The judge considered the position in respect of each of the children. He clearly decided, in particular in respect of M, that remaining with the mother presented the lesser risk of harm. He considered that there were sufficient “positives” including that, with support, the mother was capable of meeting each of the children’s needs. In summary, I concluded that the appeal should be dismissed because the judge reached a decision which was open to him on the evidence and which was sufficiently reasoned.

Lord Justice Dingemans:

102. I agree.

Lord Justice Underhill:

103. I also agree.