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IN THE FAMILY COURT
(Sitting at Middlesbrough)

No. MB22C50198

Neutral citation Number: [2023] EWFC 260
Teesside Combined Court Centre
Russell Street
Middlesbrough
TS1 2AS

Monday, 18 September 2023

Before:

HIS HONOUR JUDGE MURRAY

(In Private)

B E T W E E N :

STOCKTON BOROUGH COUNCIL

Applicant

- and -

(1) M

(2) F

(3) THE CHILD "C"

(through their Children's Guardian)

Respondents

J U D G M E N T

APPEARANCES

MISS S BENSON (instructed by Legal Services, Stockton Borough Council) appeared on behalf of the Applicant.

MISS J McKIE (instructed by Cygnet Law) appeared on behalf of the First Respondent.

MISS J SEMPLE (instructed by Appleby Hope & Matthews Solicitors) appeared on behalf of the Second Respondent.

MISS J BARROWMAN (instructed by Tilly Bailey & Irvine LLP, Hartlepool) appeared on behalf of the Third Respondent through their Children's Guardian (Miss Wood).

JUDGE MURRAY:

- 1 I am concerned with the welfare of C who is one year and four months old. He is represented within these proceedings by his Children's Guardian, Michele Wood, who is in attendance and represented by Miss Barrowman.
- 2 C's mother is M, represented by Miss McKie. C's father is F, represented by Miss Semple; and the applicant local authority in this case is Stockton on Tees Borough Council, represented by Miss Benson.
- 3 This is a case with a considerable amount of history, not only in respect of these proceedings which have been previously extended beyond the 26 weeks, but also in respect of the history of previous proceedings involving another child of the mother.
- 4 This case came before me on 29 November 2022 for final hearing. At that time the concerns which have led to the local authority issuing proceedings on 17 May 2022, were set out in a threshold document prepared by Miss Benson, dated 26 October 2022. I do not intend on reading out the contents of that document verbatim for the purposes of this *ex tempore* judgment. Suffice it to say that those concerns were focused around previous proceedings where M had been found by the court to have caused injuries to C's older half sibling in November 2019, leading to the removal of that child from the mother's care and permanent placement outside of her care at the end of the proceedings.
- 5 There were additional findings in those previous proceedings which included risk of emotional harm and risk of neglect, were the older sibling to remain in M's care.

- 6 At the point of C being born, the local authority's position was that there had been little change in M's circumstances since the previous proceedings, and that the father in this case had complex mental health needs. In particular in respect of the previous proceedings, the local authority was concerned that M had not accepted any responsibility for the physical harm that the court had found that she had caused to the older sibling and, as such, the risks around that physical harm associated with C simply could not be managed.
- 7 By the time of the final hearing on 29 November 2022, the local authority had filed their final evidence. They had undertaken assessments which had concluded that it would not be safe for C to remain in the long-term care of this mother and this father; and so then at that stage the plan, which was supported by the Children's Guardian, was one of placement outside of the family by way of adoption.
- 8 The final hearing commenced and I heard evidence from the social worker. It is right to say that during the social worker's evidence the social worker confirmed that there were in fact many good things to say – not just about this mother but also about this father. I focus on the mother, because it became clear during the social worker's evidence that many of the issues that surrounded the mother within the previous proceedings, revolving around previous relationship, had now changed for the better. It seemed that her circumstances had improved since the last set of proceedings. However, the focus of the local authority had remained during the currency of these proceedings on the physical risk that the mother posed and how that risk could be managed if the mother did not accept the previous findings made by the court.
- 9 Having heard the social work evidence I determined that there was a gap in the evidence before me. There had been, so far as I could see, no assessment as to how risks associated in particular with the mother could be managed, especially in light of the change of

circumstances since the previous proceedings, even if the mother continued to not accept the findings made by the court.

10 I stood the matter down and the local authority reflected on its position. It agreed that further assessment was required. As a result, the final hearing was suspended and I made a number of case management directions, including a direction that there be an independent social work assessment undertaken by Debbie Gaskin. That independent social worker assessment unfortunately, for reasons which I do not need to delve into as part of this *ex tempore* judgment, took far longer than expected.

11 That assessment also raised a recommendation that an organisation, Children Northeast, ought to be engaged to look at what work ought to be undertaken with the parents to look at what safety plan might be put in place; to observe the relationship between the parents and the child and the parents' reaction to the care given which was required; and consider what could be put in place to manage the identifiable risks in this case.

12 As a result of that, I have had not only reports and addendums from Debbie Gaskin, the Independent Social Worker, but also two reports from CN who is the Project Co-ordinator at Children Northeast. Within a court report which is dated 14 June 2023 this is said:

“There have been no concerns during the extended family time. Parents both take on active parenting roles, sharing C’s care. Observations have been positive, with responsive nurturing care demonstrated. Parents are able to read C’s cues and respond appropriately. Their care of C is observed at this point and the intervention has been more than good enough”.

13 Later on in that report there is consideration of the concerns and the positives, and I read out some of those:

“Concerns

- 1 F’s mental health would be of concern should he stop taking his medication, which has been an issue in the past. M is now taking on the task of ensuring F takes his medication each morning.
- 2 The delay in M receiving mental health support, especially during the current stress of these proceedings. We have identified a service that would provide support around sexual abuse.
- 3 If both parents were having a bad day this would impact on their ability to care for C”.

14 There are then a number of positives, and I select some of those:

- 1 “Both parents have engaged well with professionals.
- 2 F has embraced all the support provided around his mental health.
- 3 Both parents actively retain relationships with their older children, travelling down to the midlands to spend quality family time.
- 4 The couple have the support of M’s step-mum”.

15 I pause there to say that with the agreement of the parties the stepmother referred to is in court and listening to this *ex tempore* judgment. She lives a few doors down on the same street, and she provides both emotional support and advice to the couple.

- 5 “M has had abusive relationships. She took all the necessary precautions when entering a relationship with F, exercising her right to use M’s Law to find out if he had past perpetrating behaviours, and this demonstrates that she has made the decision to make positive changes in her life; and
- 6 Finally, M and F appear to have a supportive, loving relationship”.

16 That report was updated by way of a written statement authored by CN, the Project Co-ordinator at Children Northeast, on 28 July 2023. I read into this judgment the paragraph found under “Recommendations”. It is a full statement and I do not minimise the contents of that document, however the paragraph reflects the overall flavour of that statement:

“Children Northeast have no concerns should the decision be made that C is placed into the care of his parents. We recommend his reunification based on the evidence noted in this report, and our observations of the parents’ care of C over the ten weeks of this intervention that has shown parenting to be more than good enough”.

17 It was then on that basis that the local authority filed its final evidence on 7 August 2023.

From the final social work statement I draw the following points:

- 1 The key issues in this case relate to the mother and the father’s lifestyle. There was a history of drug misuse, child neglect, parental mental health and domestic abuse within previous relationships and how those factors impacted upon their ability to meet C’s needs whilst ensuring his safety remains paramount.
- 2 The mother successfully completed domestic abuse work facilitated by Harbour on 14 October 2022. There are no reports of domestic abuse within the relationship of this mother and this father.
- 3 The last hair strand test was completed on 12 July 2022 during which no concerns were raised in respect of the mother or the father’s drug misuse. Since the worker has held case responsibility there have been no concerns to warrant further drug screening.
- 4 M and F completed additional parenting work facilitated by Stockton Family Hub during care proceedings.
- 5 C’s family time with his parents, mother and father, has significantly progressed in line with the 10 week intensive parenting assessment facilitated by Children Northeast.

6 The father continues to access support in respect of his mental health from his CPN and attends weekly DBT sessions. The father has engaged positively with Dr Green, who is a Consultant Forensic Psychiatrist.

18 I pause there to say that the court has had the benefit of considering a report prepared by Dr Green completed within these proceedings.

19 The local authority proposes that C should be made subject to care order and gradually rehabilitated to the care of the mother and the father. It is proposed this rehabilitation takes place over an 11-week period, and there is further detail of that contained within the social work statement.

20 Following that statement from the local authority, the Independent Social Worker was asked about her views, she being the original assessor which had produced a report following on from the aborted final hearing in November of last year. She says this, within her final responses:

“I am of the view that the recommendations made by CN, Children Northeast, the local authority and a range of other professionals forms the basis of a robust safety plan. This includes the sharing of parental responsibility with the local authority and the oversight that this allows through child and care reviews.

The importance of continued engagement with mental health services is enormously important. F has significant support and has made promising progress, as identified by Dr Green. It is important that this engagement and oversight is maintained. The availability of mainstream services also acts to safeguard. Mum and Dad have been introduced to community facilities, stay in place, etcetera, and will continue to provide these play opportunities.

The suggestion of nursery provision is also an important safeguarding mechanism which allows further support to C in relation to stimulation and development. Continued health visitor oversight adds

to the safety plan as well as the local authority continued monitoring and support”.

- 21 I pause there to reflect that in my exchanges with the advocates this morning, the issue of nursery provision was raised as something which certainly this social worker feels would benefit this family. The funding for nursery will be going to Local Authority funding panel, and I have already indicated to the parties, especially in light of those conclusions reached by the independent social worker, just how important I believe that the nursery provision will be. It is important not only to assist the parents, but also to provide yet another safeguarding layer in respect of C in the care of his parents.
- 22 There has been a safety plan which has been produced. It is dated 14 September 2023. In my judgment it is detailed, it is comprehensive, and it has been updated and amended to the almost perfected version sent through to me today. I understand from my exchanges with Ms Benson that there will be a few more amendments. She has detailed what those amendments will be, and I approve those amendments as suggested.
- 23 The local authority position then is set out within the final care plan which is dated 7 August 2023, and has been updated and amended on 14 September 2023. The plan is one of rehabilitation to the parents’ care within an 11-week period. The local authority seek to secure the rehabilitation plan and the longer term placement of C with his parents, under a final care order.
- 24 The mother has filed her final evidence, it is dated 16 August 2023. She agrees with the local authority plan and has indicated that she is happy with the recommendations. She had originally argued that the 11-week rehabilitation plan was too long and sought a reduced time frame, but no longer seeks to persuade me so.

- 25 The father's position echoes that of the mother. The mother and father are in a relationship. He indicates to me that he also is satisfied with the local authority plan. He welcomes the continued support and assistance of the local authority.
- 26 The Children's Guardian has filed a final analysis. It is dated 6 September 2023. She supports the making of a final care order and rehabilitation to the parents' care. Within that document she suggested that there were some amendments to stage 3 of the transition plan so as to reduce the amount of disruption for C.
- 27 In respect of the placement being underpinned by a care order rather than some other lesser order, the Guardian says this at para.28:

"I agree that C's identity and emotional needs are more likely to be met in the long term through placement with parents, and it is his right to live with his parents where it is safe to do so. As highlighted within my report this placement is not without risk, and due to the full time placement being untested it is not possible to comment on the safe management of risk alongside C's care needs. However, I agree that C should be placed in the care of his parents with a high level of support and oversight from the local authority. Miss Gaskin recommended that work is undertaken in relation to the stresses of parenting and appropriate strategies. I believe this has been covered in the work of Children Northeast.

I would like to see from the local authority a robust safety plan specifically addressing the identified risks, how these will be managed and how the parents and C will be supported moving forward".

- 28 The Guardian has played a role within the drafting of the up-to-date safety plan, and she is satisfied with the contents of that document. I continue, para.29:

"It is my view that a care order is a necessary and proportionate outcome for C due to the identified risks and the need for continuous oversight, particularly in the early days. The local authority need to share parental responsibility for C to ensure that his needs are consistently met, and he is safeguarded from harm. C will also be allocated an independent reviewing officer from the local authority who will oversee his care plan".

- 29 It was on that basis then, with those positions, that the case came before me on 11 September 2023 for an issues resolution hearing. At that stage I reduced the final hearing from three days down to half a day; however, given the President's guidance in *Re JW* [2023] EWCA Civ 944, I directed skeleton arguments to be prepared on the local authority's plan for a final care order. I have received and read skeleton arguments then from all of the parties.
- 30 In respect of the local authority and the Children's Guardian, both of those skeleton arguments support making a final care order to underpin the placement with the mother and the father. Skeleton arguments produced on behalf of the mother and the father take a neutral stance in respect of the type of order to underpin C's placement in their care, albeit both accept that they are willing to take on board support and assistance from the local authority and go further by saying that they welcome such support and assistance from the local authority.
- 31 Specifically, though, both the mother and the father do not put an active case forward that the court ought not to make care orders and that some more least interventionist order, such as a supervision order, may be the proportionate and necessary reaction to the risks in this case. As well as reading those skeleton arguments I have also heard supplemental submissions from each of the parties following receipt of the produced skeleton argument.

The Law

- 32 My paramount consideration is C's welfare. When I consider the plan for C, agreed by all parties in terms of rehabilitation to the long-term placement with the parents, it is C's welfare which is my focus, and I must apply the welfare checklist which is contained at s.1(3) of the Children Act 1989.

33 When considering what orders to make, if any, I must consider the dual principles of necessity and proportionality when I look at C's welfare needs. I must take the least interventionist approach so as to ensure C's welfare needs and safety are met. As Hale LJ (as she then was) said in *Re O* [1996] 2 FLR 755:

“The court should begin with a preference for the less interventionist rather than the more interventionist approach. This should be considered to be in the better interests of the child unless there are cogent reasons to the contrary”.

34 As I am asked to make final public law orders, I must consider first whether threshold pursuant to s.31 of the Children Act 1989 is met to allow me to do so.

35 Whether I ought to make the Order sought, or any Order, is a different question based on the principles of proportionality and necessity, always keeping C's welfare as my paramount consideration. In this case there is an agreed threshold and welfare finding document which has been provided. That document, which is found within the bundle, but which requires slight amendment, is found at A67 within the bundle. I have looked at that document and considered it alongside all of the evidence that I have read within the court bundle. I am satisfied that the threshold and the welfare findings which are sought, and which are conceded, are made out to the requisite standard on the basis of the papers before me. I make those findings.

36 Having made those findings, I am satisfied that the threshold findings satisfy s.31 of the Children Act 1989. The welfare findings that I have made filter into my overall welfare analysis.

37 Because the local authority plan is a care order at home with C being placed in the care of his parents, I must consider the guidance set out by the President of the Family Division in *Re JW* [2023] EWCA Civ 944, to which I have already referred. That guidance is essentially a reflection of paragraphs 158 to 162 of the President’s Public Law Working Group Guidance 2018. Those paragraphs are ultimately a reference to, and a reflection of, the principles of proportionality and necessity. They are also a cogent reminder that the court must take the least interventionist approach so as to meet a child’s welfare needs. The 2018 Guidance includes the following:

“159. The making of a care order should not be used as a vehicle to achieve the provision of support and services after the conclusion of proceedings unless a final care order is necessary for the protection of the child an alternative means/route should be made available to provide this support and these services without the need to make a care order.

161. A final care order should also not be used as a method prematurely to end proceedings within 26 weeks artificially to alleviate concerns that the children be at continuing risk of harm.

162. the making of a final care order must be a necessary and proportionate interference in the life of the family. The care order has a very intrusive effect of state intervention with ongoing mandatory statutory interference not only in the lives of the parents but in the life of the child who will have the status in law as a looked after child and all that goes with this. It can only be justified if it is necessary and proportionate to the risk of harm to the child. If such an order is made, there will be a real prospect of further litigation in the future because the responsible local authority should regularly review whether the care of the child is such that the order is no longer necessary and, if so, an application to discharge the order should be made. In the appropriate cases, consideration should be given to the making of a supervision order”.

38 Later on, in Appendix F of that same report:

“34. The making of a care order on the basis of a plan for the child to remain in the care of her parents or carers is a different matter. There should be exceptional reasons for a court to make a care order on the basis of such a plan. The making of a care order as intended to be used as a vehicle for provision of support and services, that is wrong.

A means route should be devised to provide these necessary support and services without the need to make a care order. Consideration should be given to the making of a supervision order which may be an appropriate order to support the reunification of a family. The risks of significant harm to the child are either judged to be such that the child should be removed from the care of the parents and carers, or some lesser legal order and regime is required. Any placement with parents under an interim or final order should be evidenced to comply with the statutory regulations for placement at home.

37. It should be considered to be rare in the extreme that the risks of significant harm to the child are judged to be sufficient to merit the making of a care order, but nevertheless the risks can be managed with the care order being made in favour of the local authority with the child remaining in the care of the parents or carers. A care order represents a serious intervention by the state in the life of the child and in the lives of the parents in terms of the respective ECHR Article 8 rights. This can only be justified if it is necessary and proportionate to the risks of harm of the child”.

39 In *Re JW*, the President used the case to set out that Public Law Working Group guidance in case law. He set out the principles to be considered when looking at whether a care order at home with a parent should be made as follows, they are contained within paragraph 28 of *Re JW*:

“Looking at the statutory scheme in case law as a whole, the following is clear:

- 1 Making a care order with the subject child placed at home in the care of their parents is plainly permissible within the statutory scheme, and express provision is made for such circumstances in the Children Act 1989 s.22C and in the placement regulations.
- 2 The early post Children Act 1989 authorities established that a care plan for placement at home was an appropriate outcome where the facts justified it without the need for exceptional circumstances.
- 3 The analysis of Hale J (as she then was) in *Oxfordshire* and in *Re O* lay particular weight on the need for the authority to have power to remove the child instantly if circumstances required it, or to plan for the child to be placed outside the family.
- 4 Since *Oxfordshire* and *Re O*, the High Court decision in *Re DE* containing guidance endorsed by the President, it has been widely accepted so that in all but a true emergency the local authority power to remove a child from their home under a care order

should not be exercised without giving parents an opportunity to bring the issue before the court.

- 5 The difference concerning removal of a child from home either under a care order or where there is no care order is now largely procedural. In all but the most urgent cases a decision on removal will often be taken within the umbrella of court proceedings rather than administratively within a local authority.
- 6 Sharing of parental responsibility by the local authority with parents is an important element but as Hale J (as she then was) stressed, the fact that considerable help and advice may be needed over a prolonged period is not a reason in itself for making a care order.
- 7 It is wrong to make a care order in order to impose duties on the local authority or use it to encourage them to perform duties that they have to a child in need.
- 8 The protection of the child is the decisive factor, but proportionality is key in making the choice between a care and supervision order for a child who is placed at home.
- 9 A supervision order should be made to work where that is the proportionate form of order to make.”

My Analysis

40 I have considered all of those matters contained both within *Re JW* and the Public Law Working Group guidance. I have considered all of the risk factors in this case which are set out within the findings that I have made and will be set out as part of my final order.

41 I make the following points then:

- (a) If it needed to be distinguished, this case is not the “slow burning” risk case that is described in *Re JW*.
- (b) This is a case which involves a high level of risk associated with actual physical harm being inflicted on a half sibling for which the mother does not accept

responsibility. I agree when I look at the various risks in this case that this is a case that involves dynamic risks as opposed to static risks.

- (c) The risks around physical harm must be seen and set against the additional risks in this case that are associated with the father's mental health difficulties and where each parent is essentially a protective factor for the other parent in terms of physical harm and emotional harm.
- (d) As of November 2022, the local authority supported by the Children's Guardian considered that the risks in this case were so high that there was no other option in this case to meet C's welfare needs than a plan of adoption.
- (e) The shift in position from the local authority does not mean that the risks have been reduced but rather that a strategy has been developed in association with all of the professionals that are involved in this case, to manage those risks that exist.
- (f) In my judgment the risks associated with the placement with the parents remain high, albeit in the evidence before me do not justify a permanent placement outside of the family by way of adoption. In my view when I consider all of the evidence in this case, the local authority plan which is rehabilitation to the parents' long-term care, is the appropriate plan which meets C's welfare needs.
- (g) The management of the plan to keep C safe in the parents' care is complex, as I have indicated to Miss Benson in my exchanges and involves the input of a number of different safeguards.

- (h) In my judgment, the continued involvement of an independent reviewing officer to ensure that C's needs do continue to be met and that the plans underpin his safety care are maintained is in my judgment vital – and I make this clear for the parents' benefit – not only for his safety, but also ensuring that he can remain safely placed with his parents. On the evidence I have before me, that can only be in his best interests, so long as it is safe for him to do so.
- (i) The risks identified in this case require the local authority remain involved in my view on a statutory basis with the reviews, meetings and safeguards that final public law orders require, be they final supervision order or final care order.
- (j) The making of a supervision order in this case is clearly the least interventionist approach. It would mean that the family, and C in particular, would not be subject to state intervention where the local authority share parental responsibility, with the potential stigma of being a looked after child and the day to day practical reality of local authority involvement.
- (k) I remind myself that it has to be the least interventionist approach so as to adequately and properly meet a child's welfare needs. A Supervision Order is limited in its scope, in terms of longevity. A supervision order can be made for a period of one year but can then be extended up to a maximum period, of three years.
- (l) The risks in this case, in my judgment, require local authority statutory involvement for a period in all probability lasting beyond three years. The risks in this case are real and they are significant. My decision, then, is not about using the final Order as a vehicle for the services that might be made available to

this family in any event, but ensuring that the vehicle which provides the necessary oversight, support, review and hands-on local authority involvement, does not run out of gas to the detriment of this child.

42 When I look at all of these matters, I am satisfied that the risks in this case associated with the separate issues in respect of the mother and father, are sufficient so as to justify the making of a care order. This is one of those cases where a fine balance must be struck between the ongoing significant and complex risks there would be in placement with parents as against the clear welfare benefits for C were he to remain in the care of his parents, albeit with a high level of local authority involvement and intrusion in family life.

43 I am clear that the risks can be managed by the making of a care order with C being placed in the care of his parents. That care order will allow the local authority to share parental responsibility and ensure that the long-term management (and I stress the long term management) of the risks associated with the parents' care can be assured.

44 If I felt that it was proportionate in all the circumstances of this case to make a supervision order, I would. However, I am firmly of the view that this is one of those exceptional cases identified by the President both in terms of:

- (a) the unusually different risks posed separately by the parents and the unusual way that each parent whilst presenting a risk provides conversely a protective factor as against the other parent's risk, and;
- (b) the longer-term management that will therefore be required by the local authority not only in ensuring safety but also ensuring that the means of keeping

this family safe and together are constantly reviewed and maintained throughout his minority.

45 I am satisfied that a supervision order, whilst providing a shorter-term framework for support, assistance and management of risk, is simply not adequate to meet the specific risk identified in these proceedings. Longer-term oversight will be required with the assurance under the framework provided for by a Care Order, that the services required and multi-disciplinary oversight needed, will be maintained moving forward.

46 In those circumstances I am satisfied that the local authority plan is the appropriate plan for C, that being one of rehabilitation back into his parents' care. However, the specific and exceptional circumstances of this case require me, when I consider C's welfare interests my paramount consideration, to make a care order in favour of the local authority. I make that Order not only to keep C safe, but to provide the best framework that I can so as to keep this family together in the longer term.

That ends my *ex tempore* judgment.

CERTIFICATE

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