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Neutral citation number: [2023] EWFC 84

Case No: OX21C00077

THE FAMILY COURT SITTING AT OXFORD

ON APPEAL FROM DISTRICT JUDGE JENKINS

IN THE MATTER OF s31 CHILDREN ACT 1989 AND IN THE MATTER OF A

Date: 19 May 2023

Before: HHJ Vincent

Between:

OXFORDSHIRE COUNTY COUNCIL

Appellant

and

A Mother

1st Respondent

and

A Father

2nd Respondent

and

A

(Through his Children's Guardian, LEEANDA MORREALE)

3rd Respondent

Vicky Reynolds instructed by Oxfordshire County Council
David Marusza instructed by Brethertons solicitors for the mother
Paul Froud instructed by Jackson West solicitors for the father
Maria Savvides instructed by Bastion Lloyd Morris solicitors for the children's guardian

Hearing date: 12 May 2023

JUDGMENT

Introduction

1. The proceedings concern a boy, A, now five and a half years old. He is the youngest son of the mother and the father. They have two adult sons, X and Y. The local authority has been involved with the family on and off since 2005.
2. On 16 May 2021 the father assaulted the mother by headbutting her. A and his older brother Y were at home at the time. The parents separated following this incident.
3. Two days later the mother suffered a brain aneurysm which required surgery at the time and again in December 2022. There is a family history of brain aneurysm. A causal link between the headbutting incident and the mother's brain aneurysm has not been established. A and Y stayed with their father until 16 June 2021 when they returned to the care of their mother.
4. The local authority issued proceedings in respect of A on 24 June 2021. A was three and a half. The local authority sought and was granted an interim supervision order and A has remained in his mother's care throughout proceedings.
5. The mother alleged that throughout the relationship the father had perpetrated significant domestic abuse and violence towards her. Initially, a finding of fact hearing was listed for five days in December 2021 but vacated at the PTR a month earlier. The recital to the order stated that the parties and the court agreed that there was no need for a separate fact-finding, and all issues could be dealt with at 'a rolled-up' final hearing.
6. Over the next four or five months, various assessments of the parents were carried out, including a psychiatric assessment of the mother by Dr Sumi Ratnam, a psychological assessment of both parents and A by Dr Dawn Bailham, and parenting assessments of each of the parents. The parenting assessments concluded that neither parent had the capacity to meet A's needs.
7. From early 2022, A had started to stay with his father overnight. This built up during the course of the year, eventually with A staying with his father every other weekend and for around a week at a time during school holidays.
8. I believe there was some delay in listing the final hearing due to getting all the evidence in, and then some uncertainty around the timing of the mother's second brain surgery. The final hearing was listed in November 2022, but was adjourned as by then the mother's symptoms prevented her from participating in a final hearing and the surgery was imminent. The hearing was put back for three months to allow for the mother to have her operation and then recover from it.
9. The final hearing was heard by District Judge Jenkins between 6 and 9 February 2023. He heard evidence from Dr Bailham, A's social worker, each of the parents, and the children's guardian.
10. The local authority sought care and placement orders in respect of A. The parents opposed this, each seeking orders that A should live with them. The guardian supported placement of A with his father.

11. The judge emailed a draft judgment to the parties on 8 March 2023, following which the mother and the local authority sent requests for clarification by email. At a hearing listed on 3 April 2023 to hand down judgment, District Judge Jenkins gave an *ex tempore* response to the questions and formally handed down the written judgment.

Summary of District Judge Jenkins' decision

12. The threshold for making public law orders pursuant to section 31 of the Children Act 1989 was found to be crossed for the following reasons:

i) Domestic abuse in parental relationship

A had been exposed to his parents arguing and to their aggressive and violent behaviour towards each other. They were found to have had a dysfunctional relationship characterised by controlling behaviour from the father towards the mother, including financial control, using a tracker in her car, accessing WhatsApp messages. He was the dominant character in the relationship and her poor mental health meant she was not well placed to resist his domination of her.

The children had witnessed arguments between their parents. Y told the police who attended their house on 16 May 2021 that his mother and father argued day and night and sometimes he struggled to sleep because of the noise. A told staff at his nursery that he was cross with his daddy, *'he beats my mummy up all the time and that makes me sad'*.

The father had headbutted the mother on 16 May 2021.

On a date in February 2021 the father wished to have sex with the mother but she was unwilling. There was physical manhandling of the mother by the father in the course of which she stumbled or fell against a wall and struck her head.

ii) A had been exposed to domestic abuse involving his older siblings

A had been exposed to arguments between the father, X and Y which had involved physical assaults. A finding was made that Y had assaulted his mother and brother in the family home, and that X had damaged property in the family home. X had been bailed not to attend the family home, but the parents allowed him back in.

A had normalised aggressive behaviour, and had been seen to hit, kick, punch, headbutt or swear at his parents, but particularly his mother.

A had shown similarly concerning levels of challenging behaviour at nursery, including hitting other children and swearing.

iii) Mother's poor mental health

The mother's long history of recurrent depression, self-harm, threats to take her own life, emotional dysregulation and relationship instability over twenty five years presented as a risk to A.

She was found not to have consistently engaged in support around her mental health leading to a pattern of crisis.

Her difficulty in acting in a self-protective manner in relationships, and implementing and maintaining interpersonal boundaries with others meant she could not keep A safe in her care.

A's development had been compromised as a result of his mother's preoccupation with her own health.

iv) Poor supervision

There had been instances when A's parents had not been supervising him properly so that he was at risk of harm. A's mother had once allowed X to collect him from nursery, although professionals did not consider it safe for X to be caring for A without supervision.

v) Cannabis use

The parents had put A at risk of harm when using cannabis as they would not have been responsive to his needs.

Welfare decision

13. In a lengthy judgment the judge surveyed the evidence he had heard and read, and set out clearly his assessment of each of the witnesses.

14. The judge had significant concerns about the evidence given by the father. He wrote:

'I have greater difficulty in accepting as honest, true or realistic the evidence given by father. He appeared to me to have a very fixed and rigid and almost wholly positive view of his ability to meet A's needs and provide him with adequate parenting. He was reluctant, to a remarkable degree, to accept any responsibility for the deficiencies in the parenting afforded to A or, for that matter, the parties' two older children X and Y.'

15. He found the father's behaviour towards Y had been *'abusive and unsupportive'*, that he was a man who had no capacity to show empathy and understanding for the mother, nor for his older sons X and Y. This meant that the father would struggle to support A's relationship with his mother and his siblings, or to protect him from further conflict between them.

16. The judge levelled some criticism of the guardian's report and analysis. He found that she had not addressed the nature and importance of A's relationships with his adult siblings, had not set out in her analysis the reasons for rejecting adoption, and he found that there was only *'limited analysis of the risks associated with each of the realistic options for A's future'*. However, he had also heard the guardian give evidence at the final hearing, following on from all the other witness evidence, and considered the written and oral submissions made on her behalf.

17. The judge concluded in his judgment that the guardian's report and recommendations carried *'less weight than would be the case had the report and analysis been more complete'*, but he did not go so far as to say that he could not rely upon the guardian at all, or that he had no confidence in her recommendations, or that he rejected them outright.
18. The judge was impressed by the evidence of Dr Bailham. She had been unequivocal in her view that adoption was 'extreme' and not in A's best interests.
19. The judge's conclusions and the reasons for them are set out at paragraphs 83 to 91 of the judgment.
20. He identified three realistic options for A; remaining with his mother, moving to his father's care, or being placed for adoption.
21. The judge concluded that it was not safe for A to remain in his mother's care:

'84. ... this would result in A remaining in the care of a mother who loves him and who is, to all intents and purposes, motivated to promote his welfare. ... Mother is clearly capable of meeting A's physical needs and to a degree his educational needs. Sadly, her ability to meet A's emotional needs are severely compromised by her own mental ill-health which has endured over many years. Sadly, mother's difficulties have been reflected in the difficult relationships she now has with X and Y. Dr Bailham has investigated mother's situation in great detail and has recommended that A should not remain in her care or full-time care on conclusion of these proceedings. I accept Dr Bailham's assessment and conclusion, which is, of course, shared by the guardian.'
22. The judge noted that other than the alternate weekend staying contact, A's placement with his father had not been properly tested. He regarded this as a significant gap in the evidence in the context of the local authority being invited to support a care plan for adoption.
23. This was the basis of the guardian's recommendation for A to move to live with his father. The guardian suggested it should happen under the umbrella of a twelve-month supervision order, and subject to detailed extensive agreements between the local authority and father, addressing issues such as father's employment, the need for him to participate in a domestic violence perpetrators' programme, a parenting course and possibly therapy.
24. The judge weighed up the pros and cons of this option. The positives were that A would remain in the care of one of his parents. He was reported as having a positive relationship with his father, which he describes as, *'a relationship creating a greater emotional stability and ... lacking the conflict which A experiences in the care of mother'*.
25. On the other hand, the judge went on, *'I, like the guardian, perceive a range of serious risks associated with this option. I have found that Father has been violent toward mother and his behaviour towards her has been profoundly abusive on a number of fronts. A negative associated with this option is that A might be exposed to Father's unhealthy and unacceptable attitude towards third parties and in particular Mother. A further risk associated with this option derives from Father's inability to sustain a*

positive relationship with his older children, X and Y. I can say little about Father's relationship with X, but I am clear that Father's behaviour towards Y has been abusive and unsupportive. There is a risk that, without extensive intervention and monitoring, Father's relationship with A will degenerate into the sort of relationship Father now has with Y. I accept that the evidence suggests that Father is presently meeting A's emotional needs but there is a significant risk that he would be unable to sustain that positive relationship with A when A becomes more demanding, more challenging and more independent as he grows older.'

26. Looking at the local authority's plan for care and placement orders, the judge had reservations about the plan for A to be moved into a therapeutic foster placement (noting such a placement had not yet been found) for an unspecified period of time, while he was prepared for a move to an adoptive placement, and while an adoptive placement was found for him. The judge had earlier identified positives and negatives of adoption for A, but noted again the difficulty A might be expected to find in forming attachments to new parents at his age, and having lived all his life within his birth family. He said this difficulty would be likely to be 'more tangible' the longer A had to wait before he could move to an adoptive placement. The judge went on to say:

88. A further negative of the local authority's care plan derives from the two-stage process it proposes namely a move into therapeutic foster care and then move into an adoptive placement. I have already identified that A is very likely to experience significant trauma in being removed from the care of his parents. There is a risk in my assessment of that trauma being reinforced by a second move into an adoptive placement. There is a serious risk of A becoming wholly displaced in society by virtue of experiencing, sequentially, the loss of his family of origin; the loss of a home and, it would be hoped, stability in the care of foster carers and then for him to be uprooted from that placement into an adoptive placement.

27. Finally, the judge set out his conclusion and the reasons for it:

89. The jurisprudence is clear in its guidance to the lower Courts and is broadly to the effect that a Court should not sanction a care plan for adoption unless it is satisfied that there is no other realistic option often described as the Court needing to be satisfied that nothing else will do. In this case the evidence shows that Mother is not in a position to meet A's global needs: she can meet some of them but by no means all. I conclude that A would not be safe (using that expression in its widest sense) in her long term care.

However, there has been no real testing of Father's ability to care for A. Mother was clear in her evidence that Father was, with support, capable of being a good Father to A. The Guardian advances the case that A should move into Father's care under a regime that would enable the local authority to provide support and guidance. This option has not been assessed in any great detail. I was initially attracted to the concept of adjourning these proceedings to enable Father's parenting capability to be tested over a longer period of a few months. On reflection I take the view that A needs a degree of finality, these proceedings having already been afoot for an unconscionable period of time and I have settled on the view that A should be placed in Father's care with a support package. That would have the benefit from A's perspective of bringing these protracted proceedings to an end and imbue in him a sense of finality.

90. I have identified a range of risks in this strategy and should Father fail to meet A's needs there will be the unhappy prospect of further care proceedings. In my assessment A should be afforded the opportunity to remain in the care of one of his biological parents and I do not think his situation would be seriously compromised were he to face the possibility of entering a therapeutic foster placement followed by adoption at some time in the future. It would in my view be quite wrong for the Court to support the local authority's care plan for adoption unless and until the option of A being placed in Father's care had been explored and shown to have failed.

28. The judge made a child arrangements order for A to live with his father and spend time with his mother. The judge made a supervision order to the local authority.

The appeal

29. The local authority does not seek to challenge any of the judge's findings on threshold, nor the judge's dismissal of the application for a placement order. The appeal is against the dismissal of the application for a care order.
30. The appellant's notice was lodged on 18 April 2023. On the same day, HHJ Moradifar granted a stay of execution of the order, provided for the respondents to file skeleton arguments and listed both the application for permission to appeal and the substantive appeal before me.
31. A had been with his father from 11 to 17 April 2023, in preparation for moving to live with him full-time. The effect of the stay of execution was that A returned to the care of his mother and the previous pattern of seeing his father every other weekend resumed.
32. At the hearing I have been greatly assisted by the written and oral submissions of counsel; Ms Reynolds for the local authority, Mr Marusza for the mother, Mr Froud for the father and Ms Savvides for the guardian. Each of them represented their clients in the final hearing before the District Judge.

The law

33. An appeal will be allowed if the Appellant can show that the decision of the Court below was wrong, or the decision was unjust because of a serious procedural or other irregularity in the proceedings in the lower court (rule 30.12(3) Family Procedure Rules 2010).
34. Permission to appeal may only be given where (a) the Court considers the appeal would have a real prospect of success or (b) there is some other compelling reason why the appeal should be heard (rule 30.3(7) Family Procedure Rules 2010.)
35. In Re T [2015] EWCA Civ 453, the Court of Appeal reminded itself of the margin of respect that should be given to a judge at first instance; an appeal is not a wholesale review of the case:

[41] Secondly, I have already described the approach of the judge and the experience of the judge. Where a judge correctly identifies the legal test, says he is applying it,

and says he has the evidence which justifies that conclusion, and is able in the course of the judgment to refer to that evidence, this court should be slow to interfere and say he is wrong. There is no indication here that there was an error of principle in the judge's conclusion, and to my mind he should be given a substantial margin of respect by this court in having conducted the exercise that he said he had undertaken.

(per Lord Justice McFarlane at paragraph 41)

36. I have also been referred to Manzi v King's College NHS Foundation Trust [2018] EWCA Civ 182, per Sir Ernest Ryder:

'Weight is a contextual evaluation for the judge who reads, hears and sees the evidence of the witnesses. It is inappropriate for this Court to interfere with that evaluation unless it is perverse.'

37. And to Piglowska v Piglowski [1999] 1 WLR 1360 at 1362, per Lord Hoffman:

'The appellate court must bear in mind the advantage which the first understood on questions of credibility and findings of primary fact. But it goes further than that. It applies also to the judge's evaluation of those facts.'

38. And to Re B [2013] UKSC 33, per Lord Wilson:

'The function of the family judge in a child case transcends the need to decide issues of fact; and so his (or her) advantage over the appellate court transcends the conventional advantage of the fact-finder who has seen and heard the witnesses of fact. In a child case the judge develops a face-to-face, bench-to-witness-box, acquaintanceship with each of the candidates for the care of the child. Throughout their evidence his function is to ask himself not just "is this true?" or "is this sincere?" but "what does this evidence tell me about any future parenting of the child by this witness?"

39. I gave permission to appeal at the outset of the hearing.

40. Having heard the oral submissions of all parties and taken some time to consider judgment, I was able to inform the parties at the end of the day that the appeal would be dismissed on all grounds, giving brief reasons and offering a written judgment if requested. The local authority did ask for a written judgment, which I sent to the parties by email the following week.

41. I now set out the grounds of appeal and my reasons for dismissing the appeal in respect of each ground.

Ground 1

Having made significant findings of domestic abuse and violence against the father, the learned judge erroneously disregarded and/or failed sufficiently to take account of these findings within his welfare evaluation of the father

42. The judge was faced with a stark choice. He evidently had grave concerns about the father as a carer for A in the long-term and was not impressed by him as a witness. He made significant findings against the father. He set out the ways in which the father's

abusive behaviour towards the mother and two older sons had caused harm to A in the past, and would continue to present a risk of significant harm in the future if not addressed.

43. The risks arising from domestic abuse and the father's level of acceptance and insight are on any view concerning. The judge did not seek to minimise the risks, but identified ways in which those risks might be reduced or managed for A in the future, in line with the guardian's recommendations. The proposals included a supervision order, intensive monitoring by the local authority, a tightly worded written agreement, attendance on a domestic abuse perpetrators course, a parenting course, and possibly therapy. In the short term, the judge noted that observations of A in his father's care were positive. The guardian had given evidence of a very recent observation of them together that had been very influential in forming her final recommendation. The judge noted that A had been seen to be much more regulated in his behaviour when with his father than in his mother's care. The judge noted that A's mother had given evidence that she thought the father was capable of caring for A, with support. It is right to note that in her evidence she confirmed that if she could not care for A, then she would think foster care a better option for him than living with his father.
44. The judge weighed in the balance the risks to A of the local authority's plan of A being permanently separated from his family and placed with prospective adopters. The judge was concerned that an element of this plan involved an interim placement to a therapeutic foster care placement for an uncertain period of time, and that such a placement had yet to be found.
45. The judge recorded in his judgment Dr Bailham's view that if the Court were to find the father responsible for inflicting domestic abuse upon the mother then the only option in her opinion would be for A to be placed in long-term foster care. The local authority submits that the judge was wrong to ignore this evidence, having been otherwise impressed by Dr Bailham's written and oral evidence.
46. However, Dr Bailham also gave evidence that adoption would be against A's welfare interests. If the judge had acceded to the local authority's application for a placement order, he would also have found himself at odds with Dr Bailham.
47. I understand from submissions of the other parties that Dr Bailham was not asked for her views about the pros or cons of the option of long-term foster placement. Notwithstanding the evidence that Dr Bailham had given, the local authority's clear position at the final hearing was that long-term foster care was not in A's interests, and care and placement orders were the only way that his welfare needs could be met.
48. Ultimately the decision was for the judge to make, and not Dr Bailham. She had read all the papers and assessed A and the parents, but the judge had the benefit of surveying the whole canvas of evidence, and seeing the witnesses give evidence. He had regard to all the factors on the welfare checklist, and weighed the pros and cons of each option. He was entitled to exercise his discretion in favour of A's placement with the father.
49. In her oral submissions, Ms Reynolds argued that, having made findings of domestic abuse, the judge should have directed himself to practice direction 12J of the Family Procedure Rules 2010, in particular paragraphs 33, 36, 37 and 40. She submitted he should have carried out an analysis with proper reference to the checklists within those

paragraphs, analysed the risk, having regard to findings made and any risk assessment obtained. She submitted he should then have explained why it was that he had concluded that the order made would not expose the child to a risk of harm and was beneficial to the child.

50. This point was not put to the judge in submissions at the final hearing, nor raised in the clarification questions, nor raised as a point in the grounds of appeal nor skeleton argument in support of appeal.
51. While the judge did not refer to any of the paragraphs of the Practice Direction identified by Ms Reynolds at this hearing, I find that he did properly consider the risks arising from the findings of domestic abuse he had made. He did give reasons for his ultimate decision to place A with his father, notwithstanding those risks.
52. In the short term, there was evidence that the parents had managed a shared care arrangement for over a year, that A's father seemed to be able to meet his needs, and that A seemed to be doing well in his father's care. The judge identified clear concerns in the longer term, arising from the significant history of domestic abuse, the father's attitude towards the mother and A's older brothers, his idealistic descriptions of his own parenting, and his 'remarkable' lack of responsibility for his contribution to the failures in parenting that the judge had found.
53. However, the judge was within his discretion to conclude that there were measures of support that could be put in place to address these risks, and that it was in A's welfare interest for the father's ability to engage with this package of support to be tested before pursuing a plan of adoption for A.

Ground 2:

The learned judge attached disproportionate weight to the recommendations of the children's guardian

54. The judge was plainly entitled to accept the recommendations of the guardian, which were underpinned by the evidence that she had obtained, and by evidence from other parties and professionals in the case. A's mother had given evidence that the father could be a good father, with support. Dr Bailham had also seen some positives in the father as a carer alongside the risks she identified.
55. That the guardian's position evolved throughout the case does not necessarily detract from its force. It could just as well be said to an indication of keeping an open mind. At the time she filed her final analysis there remained significant disputes on the facts. The guardian's final recommendations were influenced by the evidence she heard at the final hearing. Further, she had made a recent visit to A and his father, when she had been notably impressed by how relaxed and happy A was in his father's company, and how attentive and caring his father was towards him.
56. Having made some criticisms of the analysis in her written report, it did not follow that the judge had to reject all the guardian's recommendations. He made clear in his judgment that he gave less weight to what she had said, not that he would not follow her recommendations at all.

57. The closing submissions on behalf of the guardian powerfully set out her concerns about shortcomings in the local authority's analysis. The guardian submitted that the local authority's care plan for adoption risked causing serious and irreparable harm to A. It was noted that the local authority placed heavy reliance upon Dr Bailham's evidence, but had chosen not to heed Dr Bailham's warning about the potential harm to A if he were removed from the only family he had ever known and placed first with foster parents then prospective adopters. It was submitted on behalf of the guardian that this attitude was 'inexplicable'.
58. The guardian criticised the local authority for failing to carry out a carefully balanced analysis in respect of adoption, noting that in the social worker's final statement the only risk of adoption identified for A was made almost in passing. It was said simply that adoption would have the effect of 'severing his relationships from his family', but there had been no attempt to explore what that would mean for A. It was submitted that there had been no proper consideration of the fact that A would be at least six by the time he was placed for adoption, that he had built an identity for himself within his birth family and that separation from them now would cause anxiety and confusion in the short-term, and could well result in complex feelings of abandonment or blaming himself in the long term.
59. It was submitted on behalf of the guardian that as well as failing to give any detailed consideration to the risks of harm to A from adoption, the local authority had not fully explored the option of a placement with father. In the circumstances, it was submitted, the local authority could not establish that nothing else but adoption would do for A.
60. The District Judge clearly accepted this analysis. This reasoning underpins his decision. In all the circumstances, he was plainly entitled to give the weight to the guardian's recommendations that he did.

Ground 3

The learned judge failed to apply the evidence and findings regarding the father's parenting deficits in the context of the evidence and findings regarding the particular parenting needs of A, and thereby erroneously concluded that [no] further assessment of the father was required.

61. The judge concluded that A was a troubled little boy who, *'requires better than merely adequate parenting in order to address the deficits in his emotional and educational needs.'*
62. It is submitted that the judge had insufficient regard to (i) the negative parenting assessment; (ii) to Dr Bailham's view that if the findings of domestic abuse were made then A should not be placed with his father; and (iii) the nature of the findings that the judge did then make.
63. This point essentially rehearses grounds 1 and 2, that the judge did not exercise his discretion correctly. For the reasons given, I have found that the judge did weigh up all the evidence, apply the checklist and explain why he concluded that A should be placed with his father.

64. In the alternative, the local authority argues that the judge erred in bringing the proceedings to an end by making final orders. It is submitted that the judge should have adjourned the proceedings for an updated psychological risk assessment to consider the father's response to the findings of fact to consider his insight and capacity to make and sustain positive change, and the timescales for that.
65. The judge explained the reasons for bringing the case to an end at paragraph 89 of his judgment:
- I was initially attracted to the concept of adjourning these proceedings to enable Father's parenting capability to be tested over a longer period of a few months. On reflection I take the view that A needs a degree of finality, these proceedings having already been afoot for an unconscionable period of time and I have settled on the view that A should be placed in Father's care with a support package. That would have the benefit from 's perspective of bringing these protracted proceedings to an end and imbue in him a sense of finality.*
66. By that stage the proceedings had been continuing for nearly twenty months, about a third of A's life.
67. There had once been a plan for a fact-finding hearing, with the opportunity for risk assessments, reflection and consideration of father's insight and capacity to change thereafter. But by agreement of all parties and the Court, the fact-finding hearing was vacated in November 2021 and the assessments were undertaken on the basis that findings may or may not be made against the father.
68. At the final hearing the local authority confirmed in both its opening and closing submissions that all assessments had been completed, and the court had before it sufficient evidence and information about the realistic options for A's long-term care, including about the parenting capacity of each of the parents, to be in a position to make final determinations for A.
69. The local authority's position at the conclusion of the final hearing was that care and placement orders should be made. It was not putting forward a case that there should be an adjournment for further assessment.
70. No other party suggested this should happen.
71. In all the circumstances, the judge cannot be said to have been wrong in concluding that a final order should be made, for the reasons he gave.

Ground 4

The learned judge erred by failing to identify and analyse long-term foster care as a realistic option for the purpose of his comparative holistic welfare evaluation

72. The judge plainly had significant reservations about the option of placing A with his father, but was equally clear about the disadvantages he saw in the plan for placement for adoption. Should the option of long-term foster care have been explored by him more thoroughly?

73. Having heard submissions from all parties and considered fully the judgment and all the documents in the appeal bundle, I find this criticism of the judge is not made out.
74. If the judge had put this forward as his decision at the conclusion of the judgment, one might reasonably have expected appeals from all sides. No party had advanced this as an option for A. The local authority had made clear in its opening and closing submissions that long-term foster care had been considered, but rejected. Long-term foster care was described as an *'extraordinarily precarious legal framework'* for a child of A's age. It was further asserted that the benefit A might gain from ongoing contact with his parents and siblings did not tip the balance in favour of foster care for A, and therefore the only option of meeting his welfare was adoption.
75. Having heard Dr Bailham's evidence that adoption would not in her view be a good outcome for A, it was open to the local authority to reflect on its case and advance long-term foster care as a realistic alternative. The local authority did not seek to clarify or explore with Dr Bailham what other options might be considered. In both its opening and closing submissions, the local authority raised the prospect of long-term foster care and promptly dismissed it, as inappropriate for a child of A's age. Its case was put on the basis that nothing but care and placement orders would meet his welfare.
76. Throughout the whole of the proceedings, the local authority had not sought A's removal from his parents into foster care. I understand that it had initially planned to apply to the Court for an interim care order, but the guardian at the time indicated he did not support that. The local authority reconsidered its position, and did not pursue removal, seeking instead an interim supervision order.
77. The local authority had not found a suitable foster care placement for A at the time of the final hearing.
78. In any event, the judge did not ignore the question of long-term foster care altogether. Whether as a precursor to an adoptive placement or if foster care was a longer term plan for A, he identified that removal from his parents and placement with strangers would be confusing, anxiety-inducing and undoubtedly harmful to A.
79. Further, he was asked about this in the clarification questions and his response was as follows:
- 'as to whether long term foster care is a realistic option for A. It is clear from the judgment when read as a whole that I discount that as appropriate given the strength of A's attachments to his parents and siblings, notwithstanding that some of those attachments are dysfunctional, in particular A's relationship with the mother and her inability to manage his inappropriate behaviours. But long-term foster care was not the care plan. The care plan was for A to be placed in foster care until such time as he was ready for an adoptive placement, The local authority did not advance the case that long term foster care without the adoption element was part of the care plan.'*
80. Further, the judge's analysis was that the option of A being placed with his father was essentially untested. He found that it was in A's welfare interest for him to remain in his father's care and that the local authority should actively monitor and support the

father to address the risks that arose as a result of the findings of domestic abuse and deficiencies in his parenting.

81. As long as the option of A being brought up within his family was still viable, the judge found that it would not be in A's welfare to make an order that would place him with strangers.

82. In the circumstances, the District Judge was not wrong to refuse the local authority's application for a care order.

Conclusion

83. Permission to appeal is granted, but the appeal is dismissed.

84. The stay of execution of the final order made by District Judge Jenkins on 3 April 2023 is lifted.

HHJ Joanna Vincent
19 May 2023
Family Court, Oxford