

IN THE FAMILY COURT AT NORTHAMPTON

Neutral Citation Number: [2024] EWFC 281

85-87 Lady's Lane
Northampton NN1 3HQ

Wednesday, 24 April 2024

BEFORE:

MRS JUSTICE LIEVEN DBE

BETWEEN:

NORTH NORTHAMPTONSHIRE COUNTY COUNCIL

Applicant

- and -

A MOTHER, A FATHER & OTHERS

Respondents

MR N O'BRIEN appeared on behalf of the Applicant
MR A BAGCHI KC appeared on behalf of the First Respondent
MS A COLLINSON appeared on behalf of the Second Respondent
MR A FORBES appeared on behalf of the Third and Fourth Respondents (through their Children's Guardian)

JUDGMENT
(As approved)

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1. MRS JUSTICE LIEVEN: This is the welfare stage in a long-running saga in which I gave a lengthy fact-finding judgment on 25 January 2024. I do not intend to repeat any of the matters I set out in that judgment. There are two live issues before me today: what form of order I should make and what contact should be set out in the care plan.
2. The background position is that the parents accept, in the light of the fact-finding judgment and their situation, that they cannot care for the children, the two boys, at the moment. The children are living with their maternal grandmother and step-grandfather, and it is worth noting that in practice they have lived with the grandparents for most of their life. They were removed from the parents' care shortly after B's birth when he was about 5 weeks old, when the original injury took place. They were then returned to the parents' care for a period of between three and four months in 2021. They then had a brief period in foster care and then went back to the grandparents, so in practice the grandparents have been their primary carers for almost all of B's life and most of J's life. They are very well settled with the grandparents.
3. The grandparents have both read my judgment but also had the benefit of some legal advice. They have both filed statements and they have filed a position statement albeit they are not represented before me. The grandfather is in court as I conduct this hearing. The grandmother is, I think, looking after the children. The grandparents' position in their statements is that they have considered my judgment and now accept my findings of fact. Although, as Mr Forbes on behalf of the guardian says, one might hope the grandmother would go a little further than she has in her statement, they are heartfelt statements that, unusually for this jurisdiction, seem to have some sense of what the witnesses themselves said and thought, and they do appear to show a significant change, particularly in the grandmother, from the position she took when she gave evidence before me in January. So there is a good deal of optimism to be taken from those statements and their position.
4. The first issue before me is whether I should today make a final care order or whether, as Mr Bagchi on behalf of the mother submits, I should adjourn any final order, continue the ICO and come back to this case at some later date when an SGO

assessment of the grandparents has been completed and in the expectation that I would then make a special guardianship order. So the real issue in this case is the difference between a care order and a supervision order and the benefits of making a care order at this stage.

5. Mr Bagchi points me to the case of Judge Bellamy, *Re FC* [2016] EWFC B90 and the four differences that are set out in that case between a care order and simply making a supervision order. Those four differences are these. First of all, under a care order the local authority would share parental responsibility with the parents. If I adjourned in the expectation of an SGO then under an SGO and a supervision order the local authority would not have parental responsibility. Secondly is the reference to the local authority being able to remove the child from the home if there is a care order. I note, as Mr Forbes points out, that that difference is somewhat varied by subsequent case law about the degree to which interim separation is a serious interference with article 8 rights and therefore there now has to be, save in very extreme cases, a notice period before such interim separation can be made. The third difference is that a care order is made until the child is 18, whereas a supervision order only lasts for 12 months. The fourth and quite important difference here is that under a care order there is a role for the independent reviewing officer.
6. The local authority and the children's guardian support the making of a final care order. As I said, Mr Bagchi, albeit with some acknowledgment of the difficulty of the argument, supported by Ms Collinson, asked me to adjourn so that a special guardian assessment of the grandparents could be done and then the matter would come back.
7. I have absolutely no doubt on the facts of this case that it is appropriate to make a care order. As I alluded to above, the grandmother has made a significant shift in her perception of what happened in this case, and I fully accept the grandparents are highly child-focused and are thinking very much about the best interests of the children. However, this is a case with a pretty dreadful history where, in my view, it is essential that the local authority maintain oversight over the situation, at least until the special guardianship assessment can be completed. Further, that the LA share parental

responsibility so that they can support the placement with the grandparents and ensure that ongoing work is done so that the concerns I set out in the fact-finding judgment are fully addressed. I very much hope there will be a positive special guardianship assessment and that perhaps later this year or next year it will be possible to move to an SGO, but we are not at that stage now.

8. It is also, in my view, in everybody's interest to make a final care order so there is absolute clarity as to what is happening in this case, and so to the degree possible everyone can move on to a new reality. I have no hesitation in making a care order.
9. The second issue is that of contact. The local authority, supported by the guardian, supports a significant reduction in contact. At the moment the parents have contact twice a week, professionally supervised. The local authority propose a transition relatively quickly to once per month. The parents, although initially supporting a continuation of the level of contact they have at the moment, very realistically through Mr Bagchi, tentatively supported by Ms Collinson, accepts it should be reduced and suggests a compromise of twice per month.
10. The justification for the local authority and the guardian's position is that it is now essential that the children understand that they are not going back to the care of their parents and that their primary carers, probably for the rest of their childhoods, will be their grandparents. The children are young (6 and 4) and so simply explaining this to them is not likely to give them any real understanding of the position. It is therefore, in the view of the local authority and the guardian, essential that there is a clear break with contact reduced to once a month so that the children have a full understanding that their home is with their grandparents and that they have relatively limited contact with the parents.
11. Mr Bagchi and Ms Collinson emphasise that all the records of contact at the moment are positive, the children plainly enjoy contact, they love their parents very much, and when asked they say they wish to go to live with their parents (although they are, as I have said, perfectly happy and well settled with their grandparents).

12. The position of the grandparents, very importantly, is set out in their position statements, and that is that they support once per month. Ms Collinson suggested to me that this was simply, or in large part, because the grandparents wanted to be in step with the local authority. I have to say that I agree with Mr Forbes; the grandparents have had legal advice, have set out their position in their position statement, and I have no grounds to go behind it.
13. I appreciate this is difficult for the parents and I appreciate it may be to some degree upsetting for the children, although actually I suspect they will accept whatever reality, given their age and the fact they are well settled, is placed upon them.
14. I accept the need for the children to understand they are not going home and for that to be indicated by a significant reduction in contact. I am reassured by the fact that contact will be reviewed by the local authority so that if the children are very upset, or equally if relations change, there can be a review. But in my view this is a situation where there is no right answer. Nobody can know precisely what will happen in the future, but what I can say with confidence is that there is no justification on the evidence before me for me to depart from the professional judgment of both the social worker and the local authority. I therefore accept that contact should be reduced in accordance with the draft care plan down to once a month.

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This transcript has been approved by the Judge