

IN THE FAMILY COURT SITTING AT WEST LONDON

Neutral Citation Number: [2023] EWFC 294 (B)

Case No. ZW50/22

Courtroom No. 4

Gloucester House
4 Dukes Green Avenue
Feltham
TW14 0LR

Tuesday, 14th November 2023

Before:

HER HONOUR JUDGE DOWNEY

B E T W E E N:

PROSPECTIVE ADOPTERS

and

London Borough of Ealing (1)

SK (2)

NS (3)

E (by his Children's Guardian AS) (4)

MR. EDWARD BENNETT appeared on behalf of the Applicants (instructed by Payne Hicks Beach LLP)

MR. MARK TREGIDGO appeared on behalf of the Local Authority

MS. ANN OSBORNE appeared on behalf of the Second Respondent (instructed by National Legal Service)

THE THIRD RESPONDENT appeared In Person

MS. CAROLINE CROFT appeared on behalf of the Children's Guardian (instructed by Duncan Lewis Solicitors)

JUDGMENT

(Approved)

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

HHJ DOWNEY:

1. I want to start the hearing by commending both the birth parents and the prospective adopters for their dedication and devotion to this little boy. In particular, I want to thank the birth parents for the courage and dignity they have shown in attending and participating in this incredibly distressing hearing.
2. The Court is faced with very stark options for E. I either make an adoption order placing him with his prospective adopters or I sanction a phased return and placement with his birth mother after a bridging foster placement.
3. I know that either the prospective adopters or the birth parents will be devastated by my decision. This is a desperately sad case, and as before, I have not found it an easy one.
4. I am going to announce my decision now before I go into the detail of my judgment because I know how painful this judgment will be for the prospective adopters and birth parents.
5. I have decided to make the adoption order because when considering E's welfare throughout his life, despite his birth parents love and devotion for him, I am, on balance, satisfied that the risks of moving E outweigh the risks of leaving him where he is. E's primary and only attachment now is with his prospective adopters and to move him now would cause considerable emotional harm and distress. That coupled with the longer-term risk posed by the parents' failure to accept the findings and their inability to work honestly with professionals, in my judgment, makes the risk too great to run.
6. I am now going to go into the detail of my judgment, but I fully appreciate that both birth parents may find it simply too painful to listen to; if they do not feel able to do so, I am happy to excuse their continued attendance.

JUDGMENT

7. This is the final hearing of the prospective adopters' application dated October 2022 to adopt E, a little boy, now aged two years, eight months, having been born on [redacted] and placed with the adopters on 3 June 2022.
8. The prospective adopters are represented at this hearing by Mr Bennett of counsel. The Local Authority are represented by Mr Tregidgo. The Mother is represented by Ms Osborne. The Father attends in person and the child, through his Guardian, AS, is represented by Ms Croft.
9. The application for adoption is opposed by E's parents, SK and NS. SK wishes to care for E herself and Father, in principle supports Mother in that application. However, if the Court did not find favour with that course, NS invites the Court to allow further assessment of him and to consider placement of E with him, with the support of his wider family.
10. The Local Authority and the Children's Guardian both support the application for adoption.
11. In an order dated 4 August 2023, I gave both parents leave to oppose the adoption application on the basis that the parents had separated and appeared to be living separate lives since the middle of November 2022 and it appeared that the risks identified in the fact-finding hearing and earlier welfare hearing might now have reduced. In addition, I gave directions for further assessments.
12. I should say at the outset that Father did not attend this five-day hearing until day three. He had previously issued an application for leave to oppose the adoption application, but then after the 4 August 2023 hearing, he applied for leave to withdraw that application on the basis that his health was suffering and he needed time away to prioritise that. All parties agreed to him having permission to withdraw that application and a consent order approved that arrangement on 28 September 2023. Mother's application to oppose was of course continuing.

13. Father then filed written statements in the days before this five-day hearing started and once the Local Authority contacted him to clarify his position, he attended on day three and confirmed that he did in fact still wish to continue to oppose the adoption and he also put forward a position separate to that of the Mother.
14. The background to this application is set out in my two earlier judgments in the care proceedings dated 10 September 2021 and 22 March 2022. However, the brief summary is as follows: Mother is now aged 43, she is an Indian national, was previously married to GS and they have two children, L, now 20 and J, now 13. Mother came to the UK in October 2019 on a visitors' visa and both daughters, and her husband joined her a couple of months later. It seems the marriage ended very swiftly, in or around December 2019, and at some point in 2019 to 2020, Mother had formed a relationship with E's Father, NS. He has been in the UK since 1999 and is a British Citizen.
15. By January 2020, Mother and her daughters were living with NS at his property and by June 2020, Mother was pregnant with E. The family were not known to the Local Authority at all until an incident on 18 August 2020 when L reported to police when they attended at the property that she had been sexually assaulted by NS and that he had attempted that day to kiss her or have sex with her, when she refused, her Mother intervened. NS pushed Mother, then pregnant onto the sofa, J tried to intervene, and NS slapped her on the cheek twice and NS was abusive to Mother and both girls.
16. As a result of those allegations, NS was arrested. Mother was taken to hospital for a check-up and Mother and both daughters were then looked after by the Local Authority and engaged in interviews with both the police and the Local Authority. They each confirmed the allegations made to the police on that day, on 18 August, but by October, L withdrew her statement, saying she wanted to get on with her life and focus on her studies, although she stood by her allegations. The police took no further action. Mother and the girls were rehoused by the Local Authority. However, by November 2020, Mother and J returned to live with NS and L went to live in Birmingham with a boyfriend.
17. The Local Authority were involved after the midwife made a referral in February 2021 when Mother explained she was reconciled with NS. Therefore, the Local Authority began care proceedings in light of the risk to J because of L's allegations and care proceedings in relation to E began just after his birth in March 2021.
18. Mother and E were placed in a residential unit and remained there for nearly nine months. I then had a fact-finding hearing to consider the allegations made by L, Mother and J. In fact, L withdrew her cooperation from those proceedings and so a fact-finding hearing took place only to consider the allegations of physical assault by NS on Mother and the two girls and the allegations of failure to protect in relation to Mother prioritising her relationship with NS. As the fact-finding judgment shows, Mother had, by the time of the fact-finding hearing, resiled from all of her earlier statements and said that NS had not assaulted her or any of the children and she blamed L for making up false allegations and indeed J also said the allegations were false and L had put her up to it and L had slapped her, not NS.
19. Having heard all of the evidence in September 2021, I concluded that Mother and NS had not been truthful about events, and I made findings, as sought by the Local Authority, as follows: that NS had physically assaulted Mother, J and L on 18 August, as alleged; that they had suffered harm as a result; that Mother had failed to protect J from exposure to harm by her reconciliation with NS and that Mother had caused further emotional harm to J by pressurising her to retract her account previously given to the police. In addition, finally, I concluded that Mother had prioritised her relationship with NS in a way which put J at risk of significant harm.
20. After that judgment, in readiness for the welfare hearing, the residential care centre filed their parenting assessment in October 2021 and that report was negative, with a key issue being Mother's inability or refusal to accept the allegations against NS. The workers at the

residential care centre identified that Mother's dependency on the parental relationship with NS meant that she was unable to be sufficiently protective towards children in her care.

21. After the fact-finding hearing, the parents confirmed in statements that they did not accept the findings of the Court, nor the assessment of risk. However, at the request of the Children's Guardian, I sanctioned a further independent social work assessment. That assessment too concluded that neither parent could care for J or E because they did not accept the findings and still claimed that the allegations were false ones made up by L.
22. During the final welfare hearing in March 2022, there was some shift in the position of the parents and their evidence. They did accept some of the Court's findings. For example, NS accepted that he had slapped J.
23. However, at the conclusion of the welfare hearing, on a very finely balanced basis, I concluded that the parents could not meet E's needs because I was not satisfied that they were able to understand the risk of harm to E arising from the parental relationship and the abuse that had occurred. In addition, I concluded at paragraph 67, that Mother's evidence was not candid, was confused, implausible and inconsistent, and that echoed the assessment of professionals within those welfare proceedings.
24. I made a similar assessment in relation to NS. He too minimised his role in the events of 18 August, and I considered his evidence was implausible and lacking credibility.
25. I carried out an analysis of the advantages and disadvantages of E being placed with his parents and on balance, I was satisfied that the risks were too great, given their inability to accept the Court's findings and to work openly and honestly with professionals.
26. After that final hearing, when I approved and made a care order and a placement order, the parents had a "farewell for now" visit with E in May and E was placed with the prospective adopters on 3 June 2022 after a very careful transition. The prospective adopters then issued this application in October 2022 and almost 13 months later, the Court is only now finalising the adoption application.
27. As I say, both parents applied for leave to oppose and there were some delays in progressing the leave to oppose stage of the application, while Mother secured legal aid. However, by 4 August, I did grant both parents leave. In addition, on the Children's Guardian's application, I directed that there should be mobile phone analysis of both parents' phones and a specialist assessment of Mother's ability to act protectively and safeguard E by a domestic abuse specialist agency called DV Act. I listed the adoption application for a contested five-day hearing starting on 8 November.
28. In readiness for this hearing, I read all of the documents in the trial bundle and of course, I am very familiar with this case, having, I think, done every hearing in it since the beginning of the care proceedings in 2021.
29. I heard the oral evidence of Ms Chana, the social worker, Ms Dawkins, the Deputy Team Manager, Mother, Father, a friend of Mother's called Mr GS, Ms Sabrina McCleggan, the DV Act risk assessor and the Children's Guardian.
30. I heard the evidence over four days and concluded yesterday with oral submissions from each of the parties and then today, 12 November, I am delivering this *ex tempore* judgment.

LEGAL FRAMEWORK

31. I now turn to the law. The application is governed by the provisions of section 1 of the Adoption and Children Act, 2002. The Court's paramount consideration is E's welfare throughout his life. The Court must have regard to the matters as set out in section 1(4) of the Adoption and Children Act Checklist.
32. The key principles which I have to apply are set out in a number of authorities, but in particular, I have had regard to the decisions of the Strasbourg Court in *R and H v UK* [2011] ECHR 844, *YC v UK* [2010] ECHR 1228 and the decision of the Supreme Court in *Re B (Care Proceedings: Threshold Criteria)* [2013] UKSC 33 and more recently the Court of Appeal decision in *Re W (A Child)* [2016] EWCA Civ 793 and *Re W* [2017] EWCA Civ 829.

33. I consider in particular that the Court must have regard to a number of key principles and, in particular, that measures which deprive biological parents of their parental responsibilities and authorising adoption should only be applied in exceptional circumstances and can only be justified if they are motivated by an overriding requirement pertaining to the child's best interests.
34. I remind myself of the language in *Re B*, which uses a number of words and phrases which underline the message that orders sanctioning non-consensual adoption are a very extreme thing, a last resort, made only where nothing else will do and only made in exceptional circumstances.
35. I remind myself, also, that if in the final analysis there is a conflict between the child's welfare, which is paramount, and the rights and claims of even an unimpeachable parent, it is the child's welfare which takes precedence.

EVIDENCE

36. I now turn to a summary of the evidence I read and considered.
37. Ms Chana was the allocated locum social worker who was the author of the Annex A report dated 21 December 2022 and then subsequently, a statement dated 24 May 2023, in which she recommended that leave be granted because of what she considered to be a significant change in Mother's ability to separate and remain separate from NS.
38. In her Annex A report, Ms Chana strongly supported adoption and at that stage, the parents were still together. In her later assessment, as I say, she supported leave to oppose being granted on the basis that the parents had by then been living apart since mid-November 2022 and Ms Chana felt that Mother had demonstrated an ability to live independently. She noted that she now had separate accommodation, a job which provided her financial independence and that she had improved her English and formed a support network around her. She considered that Mother should have an opportunity to demonstrate that E could be returned to her care.
39. Ms Chana felt that Mother did now understand the risk posed by NS and her continuing relationship with him. In addition, Mother told Ms Chana that she had severed contact with NS, save for occasional, infrequent, irregular phone calls, which were purely for matters of practical application, such as involving her tenancy or these court proceedings.
40. The social worker felt there had been a significant shift in both parents', but particularly Mother's level of understanding about the concerns.
41. I note at this juncture that the Local Authority did not agree with Ms Chana's assessment and Ms Dawkins, the Deputy Team Manager, filed a separate statement at that time, setting out the Local Authority's support for the adoption and opposition to leave being granted.
42. The DV Act assessment by Ms McCleggan was a lengthy and comprehensive report and in that report, Ms McCleggan concluded that, although Mother had ostensibly accepted the findings, that domestic abuse had occurred in her relationship with NS, she said:

“I am again left with doubts regarding her true position due to her poor insight and understanding regarding domestic abuse and what has occurred and one of the main issues with establishing her insight is her constantly changing version of events”. She added that, “[SK's] understanding of domestic abuse appears, at best superficial”.

43. Ms McCleggan is an advanced practitioner, and she conducted her assessment over the course of five or six hours and in her detailed assessment, I will set out some of her observations. At page 534 of that assessment, Ms McCleggan highlights that:

“Mother's memory was problematic as she did at times contradict earlier versions of events, and when challenged, she maintained the

position that I had been confused or that she had not said it. I expressed to [SK] my concern that her recall of events before the incident in August 2020 left me with doubts regarding her ability to be honest and raised my concerns regarding her ability to engage meaningful in interventions rather than attending to tick a box. There were times when [SK's] responses to questions left me with the impression that due to a long history of interactions with children's social care, she was providing me with answers she believed I wanted to hear rather than acknowledging that her children had been emotionally and physically harmed while with [NS] and that she needed support in learning how to respond to this".

44. And at page 537 of that same report, Ms McCleggan added:

"Mother's failure to prioritise the safety of herself and her children in the past does not necessarily indicate she is unable, with a support structure in place, to protect them in the future. However, the evidence from the assessment meetings, care proceedings and mother's conflicting accounts means that I remain concerned about the level of insight [SK] has developed regarding the experiences of her children, which is a prerequisite to her having capacity to meet their emotional needs".

45. SK told Ms McCleggan that she had not spoken to NS since November 2022 when she had blocked him. She also told her that she had attended the Freedom Project domestic abuse course since their separation, and that she was committed to remaining separate from NS. Notwithstanding that, Ms McCleggan's assessment, as set out, was that there remained live issues about Mother's ability to accept the Court's findings, whether she had the requisite insight, and her ability to work openly and honestly with professionals.
46. Other evidence that was made available to me included the mobile phone records of Mother's phone between 14 November 2022 and 7 May 2023. In short, a summary of those dense records show that there were 1,215 communications records, voice calls and calls to voicemails between Mother's phone and Father's phone between 1 November 2022 and 7 May 2023.
47. Those records also showed that there were 205 dates between 2 November and 1 August where NS and SK's phones were both using the same masts or masts close by to each other. This is not evidence that the phones were together, but simply evidence that they could have been. There was, in addition, evidence showing that the phones were connected to the same masts at the same time on or around 21 February 2023 at around 1pm.
48. The other aspect of the mobile phone records of note was that Mother's phone had had a factory reset on or around 14 August 2023. In addition, that at a time after 7 May 2023, a different SIM card appeared to have been used in Mother's telephone.
49. The Local Authority filed their final evidence in the form of a statement from Ms Dawkins the Deputy Team Manager. Having considered all of the available evidence, she opposed the parents resuming care of E and considered that the available evidence from DV Act and from the mobile phones showed insufficient insight by the parents into the risk arising out of continuing parental relationship and the Court's findings. In addition, Ms Dawkins acknowledged the significant harm that is likely to be caused to E, if he were moved from his prospective adopters. Therefore, for those reasons, the Local Authority invited the Court to grant the adoption order.

50. The prospective adopters filed detailed statements in which they set out the very careful approach they took to settling E in their family. The female carer took one year off to manage the transition, and the male carer worked from home for the first year.
51. In addition, their devotion to E and his happy transition in their care is detailed also in Ms Julie Terry's statement, their social worker, who has spent a considerable amount of time with the family.
52. The prospective adopters' statement and Ms Julie Terry's statement sets out in detail not only E's attachment with the prospective adopters, but also with his adoptive sibling and the wider family. Ms Julie Terry describes how E is thriving and has a deep and secure attachment to his adoptive family, having previously moved three times after he was removed from his Mother's care and experiencing loss and adjustment issues each time he was moved. She noted that he trusts these carers and shows them affection and that he is very attached to his adoptive sibling, grandparents, aunts and uncles, and his young cousin [redacted]. He speaks English in the prospective adopters' home. In addition, Ms Julie Terry set out in her statement, the harm that she considered he would experience if he were removed from the prospective adopters. She says:

“As a social worker with extensive experience of attachment identity and a child's sense of self, I fear the damage in real terms to E would be irreparable should the adoption order not be granted. He will lose his whole world. He would lose his adoptive parents, the only mummy and daddy he knows, and it would be difficult for him to understand this, as they have kept him safe and stable, and he is a very happy child because of their devotion. He would lose the bond he has with his adoptive [sibling], and this is the biggest connection he has with another child. He would lose every loving relationship he has memories of in his short life”.

She adds that:

“If he were removed, he would also lose trust in the adults as his adoptive parents, his mummy and daddy, told him that he will be with them forever, in his forever family with his [sibling]. E could possibly be moving back to an environment where English is not his first language and where he would not only suffer loss, but also lose his ability to communicate and express himself and this could have a devastating effect on him over his lifetime. He would lose the home he has claimed, including the garden he loves playing in, and jumping on the trampoline, and his bedroom where he sleeps peacefully at night knowing he is safe and loved beyond measure”.

53. The Children's Guardian filed her analysis in April of this year in which she recognised Mother and Father had separated, albeit only as late as November 2022. However, she recognised Mother's independence and whilst she had concerns about the parents' acceptance of findings, she supported leave being granted at that stage on the basis that she considered there should be an assessment of Mother's acceptance of the findings and her ability to remain separate from NS. She had, I note at that stage, visited E for the only time on 28 March 2023 and she commented then on his close attachment with his prospective adopters.
54. In place of a final analysis, she then filed a detailed position statement for this final contested adoption hearing, and in that position statement, AS sets out her concerns and her assessment and her analysis of E's welfare interests. In short, she concludes that the risks of moving E to his birth parents are simply too great, given his attachment to his adopters and given the

risks identified by the Court in November 2022, which she considers remain live risks despite the absence of any evidence of domestic abuse issues since then.

55. I then heard oral evidence from a number of witnesses.
56. Ms Dawkins confirmed the Local Authority's view, which was that despite Ms Chana's positive report, the Local Authority felt Mother still underestimated the risk of harm arising from her relationship with NS. In addition, that although Mother had a good relationship with E prior to his removal, that now, E's attachment was with his prospective adopters. Ms Dawkins, in short, deferred to the risk assessment carried out by Ms McCleggan and she questioned whether, in light of the phone records, Mother has really separated from NS. She herself had had limited involvement with the child and also deferred, in terms of the risk of harm to E of removal, to the assessment of Ms Terry.
57. I then heard from Ms Chana. Ms Chana confirmed she felt Mother should have been given a chance, but she conceded that Mother was not a good historian and gave a number of differing accounts of the incident of 18 August 2020. Ms Chana had not been involved with the family since 24 March 2023, but her understanding was that the parents had lived apart since November 2022 and the impression she had been given was that there was only infrequent and irregular contact since then. She has now seen the phone records, which she accepted showed several calls a day on an almost daily basis, and on reflection she felt that that did show a level of contact that was excessive, which suggested a level of dependency which she had not been aware of, and that Mother had not been honest about with Ms Chana.
58. Given the central issue in this case, it seems to me that Ms Chana failed to properly probe the parents in her assessment of them, in understanding their acceptance of the Court's findings in relation to domestic abuse. However, in her oral evidence, she did, very sensibly, concede that she would have formed a different view of the parents had she known the full extent of their ongoing telephone contact.
59. Mother gave evidence to the Court, which I recognise must have been excruciatingly painful for her and she was at times, appropriately, very sad and tearful. She very bravely gave evidence over almost a full day, for what is now the third time before me in relation to her young son. She said that she had not seen Father physically except at Court since 14 November 2022 and that she had not spoken to him since May or June 2023 after she had received advice from her solicitor. She denied resetting her phone to factory settings in August 2023. She denied using another SIM since May 2023. She denied ever meeting Father since November.
60. Regrettably, as in my previous two assessments of Mother's oral evidence, I found her evidence was littered with inconsistencies, particularly in relation to the extent of her contact with NS. She could not be clear when she blocked him, why she stopped contact, and what the calls were relating to. Mother confirmed that she did not agree with the DV Act conclusions and said that that report was rushed.
61. In addition, when exploring the volume of calls between her and NS, she said that she had made a mistake and she made some of those calls under pressure, but that the calls were not of a romantic nature.
62. She did now accept, she said, the Court's findings. In addition, she was adamant that if E were moved to her care, she would work her shifts around him. She has the support of friends and her housemate, and that she would manage without any support from NS.
63. Despite recognising Mother's love and devotion to her son and her bravery and courage in participating in this process, sadly, my assessment of Mother now is very similar to my previous assessments of her: she is a poor historian, at times economical with the truth and that her insight has developed very little since the welfare hearing in March 2022.
64. I heard from Ms McCleggan, the senior advance practitioner who carried out the risk assessment. I found her to be a very measured and balanced witness and in relation to her thorough report, amplified by her oral evidence, I attach considerable weight.

65. Ms McCleggan confirmed her view that Mother did not accept the risk posed by NS. In addition, her view was that the phone records confirm that Mother does not recognise the risk posed by NS and show a total lack of insight into the Court's findings and the professional's concerns.
66. She was particularly concerned about Mother's many conflicting accounts. She acknowledged that Mother was now open to doing more work and was willing to accept support, but she considered, that as Mother has not been honest about her ongoing contact with NS, the likelihood is that the current risk of harm remains as assessed previously.
67. Ms McCleggan did not herself assess NS, but she considered that if NS had also not been honest and open about his contact with Mother, the professionals would not be able to manage the risk.
68. I heard briefly from Father. He confirmed his wish to oppose the adoption and considered that whilst the parents had made mistakes, they and in particular Mother, deserved a chance to parent their young son again. As identified by the Guardian, his handwritten statements to the Court, showed his fierce and determined love for his young son and his desperation for the parents to be given the opportunity to resume caring for him.
69. NS submits that the calls between him and Mother were only short, necessary calls to deal with practical things such as the tenancy that they previously shared up until April of this year. He said he had not appreciated the extent of those phone calls, and he denied knowing anything about Mother factory resetting her phone or using any different SIM. He denied seeing her at all since November 2022, despite his statement suggesting that there was one meeting since then. When it was put to him that Mother had been dishonest about the level of calls to those assessing her, namely Ms Chana and Ms McCleggan, he said "these are little mistakes - we should not lose our son over this".
70. Even when asked about the events of 18 August 2020 again. Father's account was again a different version of events. He said he had been arguing with L, Mother started feeling dizzy and began to fall towards the sofa and he helped her lie down, and as J was pulling at his clothes, he slapped her. He does not, however, accept he is a risk to E or to SK.
71. As in my previous assessment of NS, his account and version of events was littered with inconsistencies again and I conclude that the driver behind all of his answers was a wish to paint himself and SK in a good light. I do not consider I can rely on his evidence.
72. Finally, I heard from AS, the Children's Guardian. She commended both parents for their devotion and love for E and their commitment to him as observed by their participation in three sets of difficult court proceedings. In addition, she observed, as I say, that Father's eloquent written statements show the depth of his feeling for his son.
73. AS had heard all of the evidence and said that she had some concerns about Mother meeting E's concerns practically, given her working hours and not having recourse to public funding. However, for her the central and core issue remained that Mother lacked insight into the concerns of professionals about the risks posed by NS, that she was not honest with professionals, and she queried whether any separation would in fact be sustained.
74. In conclusion, she considered that Mother was still unable to recognise the risk posed by NS and would be, therefore, unable to prioritise E and keep him safe. In doing so, she was keen to stress that this was not a punishment for Mother's lack of honesty, but forced her to conclude that still now Mother lacked insight into the risk posed by an ongoing relationship with NS.
75. AS, as I say, had only seen E once on 28 March of this year, and as to the impact on E of a move, while she recognised it would be damaging for him, she did not agree with Ms Terry's term that it would be "irreparable damage". She felt if there had been a prospect of E being placed with his birth parents, that a sensitive plan of transition could have managed the distress, although she accepted that she had not specifically done an assessment of his attachment.

76. Poignantly, when Ms Osborne, on behalf of Mother, asked AS, what more Mother could have done, given all the changes she had made, AS said:

“She should and could have been honest; her lack of honesty and inconsistency shows that she fundamentally does not understand the risks of her relationship with NS”.

77. AS said when she drilled down the parents’ evidence, she concluded that their acceptance of the findings remains minimal and that there is very limited shift in their position from the time of the fact-finding hearing or the welfare hearing last year.

78. AS gave her view in relation to an open adoption and was clear that because these parents do not accept adoption as a plan, she does not consider they have the emotional capacity to respond to E in the way he would need to help him manage contact if he were placed with the adopters.

79. Finally, AS said to the Court that although the Court’s findings were limited in breadth, she said that they were serious findings and the parents’ inability to develop their insight and Mother’s inability to prioritise E over her relationship enabled her to conclude that adoption was the right outcome and the one that was in E’s best interests.

80. In their closing submissions, Mr Bennett on behalf of the adopters was careful to be respectful of E’s parents and he recognised the changes they had made. However, his focus was on E’s world now and on the impact on him of moving away from that world. Mr Bennett relied on the evidence of Ms Terry, the social worker to the prospective adopters.

81. In his closing submissions, Mr Bennett reminded the court that there is no presumption in favour of a birth parent, and he reminded the Court of the contents of paragraph 65 and 66 of *Re W*. He submitted that Ms Terry’s account in relation to the irreparable damage that she envisaged E would suffer was not challenged by any party, that the Local Authority accepted that evidence, and whilst the Guardian had a different view, Mr Bennett observed that the Guardian’s assessment seemed to fall foul of the guidance in *Re W*, “that there should be a sophisticated and in-depth assessment of a child’s attachment and the impact of separation” and that Ms Terry appeared to have completed that assessment and thus he invited the Court to prefer the assessment of Ms Terry to that of the Guardian.

82. In addition, Mr Bennett, on behalf of the applicants said that given the degree of attachment between E and the prospective adopters and his degree of settlement and integration with them, that it would be catastrophic for his welfare to be removed and severed from that life that he now knows. In addition, the risks identified in the care proceedings, relating to the birth parents remain, such that it would not be safe for E to be placed in the birth mother’s care.

83. In closing submissions for the Mother, Ms Osborne said that Mother does now have some insight and she is open to work to improve that insight and that the Court should make appropriate allowances for her cultural background, for her language issues, and her overall vulnerability at the time of the care proceedings. In addition, that she is now in a very different position, working and living independently, financially independent and improving her lifestyle by becoming a more integrated and independent member of society.

84. Ms Osborne points to the fact that Mother has accepted that she has continued contact with NS and she did not challenge the mobile phone data. She had not appreciated the extent of her calls, but she accepted that data and was not trying to deceive the Court in setting out her contact. Ms Osborne invited me to accept that the fact that these were very short calls, lends credence to Mother’s account that these were just short calls focused on practical issues, such as the accommodation and tenancy issues. Ms Osborne points to Mother’s oral evidence which refutes the co-location evidence, as Mother refutes seeing NS at all after 14 November. Mother refutes the allegation that she wiped her phone or used a different SIM.

85. However, on the other hand, Mother accepts that she has made mistakes and wants to work with the Local Authority. Ms Osborne invited me to accept that Mother has done enough to justify being given a chance to care for her young son and that with support, she too would be able to meet E's needs as a sole parent.
86. In particular, Ms Osborne pointed to the absence of any evidence of domestic abuse since 18 August 2020 and the absence of any evidence of the parents being seen together since November 2022.
87. Ms Osborne said, in short, that it was not proportionate in the circumstances of this case to make an adoption order now.
88. Father supported Mother's account and added that instead of highlighting Mother's faults, the Local Authority should provide her support and help and that she, the Mother, deserves another chance to parent E.
89. The Local Authority supported the prospective adopters and in short, they say that Mother had not developed her insight sufficiently and the fact that she lives separately from NS is simply not enough, in light of the extensive phone contact that has taken place and the likelihood of some face-to-face meetings as evidenced by the telephone co-location reports.
90. Mr Tregidgo on behalf of the Local Authority said neither parent really accepts the Court's findings and that professionals cannot work to monitor any placement given their lack of insight and, crucially, their lack of honesty. In addition, when considering the Welfare Checklist throughout E's life, that the Local Authority say a move to the parents' care presents too great a risk.
91. Ms Croft on behalf of the child and the Guardian says, in short, that the risks remain as they were, largely in March 2022, because although the parents live physically apart, the phone records and lack of honesty of the parents about their ongoing relationship shows that the risk remains a live issue.
92. She too agrees that the parents' evidence showed that they do not accept the Court's findings, that the parents remain inconsistent, confused, and lacking in candour in their accounts to the Court. In addition, the Guardian agrees with the Local Authority that the placement with birth parents could not be managed, given that level of dishonesty.
93. Therefore, the Guardian too submits that the risks of E moving to the birth parents are too great and outweigh the risks of him remaining where he is.

ANALYSIS

94. I turn now to my analysis. Having granted leave, I have to ask myself whether adoption remains right for E now, and whether the parent's consent to the adoption should be dispensed with.
95. I remind myself that it is E's welfare throughout his life which I must consider and for a child of E's age, that is another 80 or 90 years. In addition, I remind myself that I should not attach too much weight to the short term or medium-term difficulties he is likely to encounter if removed.
96. There is no presumption of a family placement, and I have to consider E's welfare in a manner which is proportionate and compatible with the child's right to family life.
97. The central issue in approaching the Mother's application for E to return to her care and considering the adoption application, is evaluating the risk to E of moving from his current placement. Is Mother able to meet his needs? She has shown her fierce love for her son throughout these proceedings and has made progress in her lifestyle by living independently, working, improving her English, and becoming a more fully independent member of society. However, the findings I made in September 2021 against NS, whilst limited, are significant. In addition, I was satisfied by March 2022, despite work and support, that Mother did not then have sufficient insight into the risks, and I concluded then that it was not safe to allow E to remain in her care.

98. I am now asked to conclude that Mother has separated from NS, and will not reconcile, and that she is developing or has developed better insight into the risks. In addition, I am asked to find that she is open to work to improve that insight such that a placement of E could be safe, and risks could be managed.
99. Whilst Mother is to be commended for living separately since November 2022 and for making some progress, there is very inconsistent and confused evidence about what contact there has been between the parents since that physical separation. Mother told Ms McCleggan for DV Act that she had blocked Father from all calls since November 2022. She told Ms Chana that she had had occasional, irregular phone calls, just for practical issues such as the tenancy or this case. In her recital to the court order on 4 August, Mother confirmed that there were one or two calls a week lasting up to 10 minutes. The phone records show a different picture, as I have already said, 1,215 calls in a six-month period, with several calls a day on an almost daily basis. Neither parent disputes those call logs, although they do not recall the frequency and volume of phone traffic.
100. When they were pressed in oral evidence, Mother said that she had blocked NS's calls after she had spoken to her solicitor in May 2023, and then said it may have been as late as June or July. However, she was unable to explain why in August she had said that she was still speaking to him one or two times a week.
101. After agreeing to the phone download at that hearing on 4 August, Mother's phone had a factory reset some nine days later. Mother denies knowing anything about that. However, I am driven to conclude that the phone was only ever in Mother's possession, she has not suggested that it was in anyone else's control, and it is simply too much of a coincidence that the phone was reset at a point when Mother and Father knew that their contact was going to be the subject of Court scrutiny. I am satisfied on a balance of probabilities that Mother did reset her phone to wipe any further evidence.
102. The phone records also show a different SIM card was used and although Mother denies using a different SIM card, there is no evidence in the phone records of any contact between Mother and NS after 7 May 2023 and even on Mother's own evidence as recorded in the recital of 4 August, there must have been another number or another SIM card she was using, because even she accepts that she was contacting NS after that date.
103. Regrettably, as previously, I did not find Mother to be a credible witness on this issue of her ongoing contact with NS. Her accounts were inconsistent, confused, and I considered that the parents' phone contact did continue beyond May 2023. That they have not been open and honest about their contact with each other to professionals and have deliberately misled professionals and have said simply what they think professionals want to hear, which is that they accept the findings and have separated.
104. As to the parents meeting face to face, again the evidence from the parents is inconsistent and confused. The foster carer thought she had seen the parents together and Father's July statement confirms he did see Mother once after the November 2022 separation, although Mother denies ever meeting Father. The co-location records suggest that Mother and Father's mobile phones were in close proximity, or the same location, in that they were using the same phone mast on several occasions, those locations include Location A, Location B, , the Storage Unit, the Retail Park, on various dates between February and April 2023. Both parents deny ever seeing each other on those dates and say that it is just coincidence that their phones are logged at the same location on those dates.
105. Specifically in relation to Location B, Mother said that she had lent her phone to a friend, a Mr GS, for one day in February 2023 when he was working with NS.
106. Mother was not asked about this in her evidence because the witness Mr GS was called late after Mother's evidence had concluded. However, Mr GS's short account of this encounter did not ring true. Mr GS had suggested that he had stayed with Mother, an old friend from India on the night of 20 February because his phone was broken, he had asked to borrow her phone and had taken it on 21 February to Location B where he worked with NS for the day

and then returned. The phones were shown to be together in Location B from later on in the day on 21 February.

107. However, I did not find that Mr GS's evidence plausible or credible on this issue, as he was unable to explain what work he had done that day, he was not able to explain why he had borrowed a phone given that he had said he rarely got calls, and he was with NS for whom he was working that day. I also considered highly implausible that Mother did not know, as he asserted, that he was working for and with NS that day.
108. In short, on a balance of probabilities, while the co-location data does not mean that the phones were together at that time, it does suggest that the phones were in the same vicinity at a time when the parents were having ongoing phone contact and on a balance of probabilities, I consider that it is more likely than not that the parents were together at the times when the co-location reports suggest that their phones were together. In particular, in relation to the Storage Unit, those visits to a storage unit at 10pm in April coincided with Mother moving from one property that she previously jointly occupied with NS. On a balance of probabilities, I find that the parents did meet in person at this time.
109. Therefore, in short, I am satisfied on a balance of probabilities that the parents have maintained contact physically in person and on the phone. In addition, that they have not been open and honest about the extent of that contact with professionals and that that underlines their inability to understand the risk posed by their ongoing relationship.
110. I also consider that neither parent is consistent or credible, still now, on what occurred on 18 August. For example, Mother told Ms Chana in her interview on 23 February that she wanted to clear up the confusion about 18 August and proceeded to tell her that NS had simply kicked the coffee table and shouted and then he had gone outside. In my judgment, this shows again, Mother's willingness to cover up for NS and to protect him, as I determined previously. Mother and Father both continue to change their account of what had occurred and what they now accept occurred.
111. I am driven to conclude, exactly as I did in March 2022 that neither parent really accepts the Court's findings and that Mother does not accept the risks posed by NS and that she does not accept that she has failed to act protectively in prioritising her relationship with him over and above her need to protect her children.
112. I turn now to look at the Welfare Checklist and I remind myself that the relationship E has now with his prospective adopters is at the core of one side of the balancing exercise. At the earlier stage in these proceedings in March 2022, when I was considering the placement order, this was not a factor. However, the prospective adopters are relevant persons under section 1(4) subparagraph (f) and a key focus for the Court now is what harm E would experience if his bond with the prospective adopters was broken. E has been with the adopters for seventeen months and the certainty of the care he receives in their household is a significant factor. If he were removed from them, he would be separated from his primary, and only, attachment figures.
113. When I consider the advantages of an adoption order, I note that the current placement is a tried and tested, established placement over seventeen months. Ms Terry's account of the close attachment between E and his adopters and his sibling and his wider family is a very significant factor. Ms Terry's report describes the highly attuned care he has received at the home of the prospective adopters. He has been there for over half of his lifetime and in E's world, this is his family.
114. The adoptive parents are established adoptive parents already to one child. They are committed to life story work, and to the indirect contact and will help E make sense of his origins and mitigate any potential difficulties or help mitigate any potential difficulties that he will encounter when he learns of his adopted status. Remaining with the prospective adopters avoids any move for E.
115. The disadvantage of this placement is, of course, that it will involve a severance of his legal ties with his birth family. It would involve the loss of his identity, his religion, his language,

and of course, would mean the loss of contact with his parents, his half-siblings and wider family.

116. When he gets older, it may well be that E experiences emotional harm when he learns of his adopted status. It may be difficult for him to make sense of his origins, particularly when he knows that, for example, Father's children remain in contact with him and J was not adopted.
117. Adopted placements can be difficult in adolescence when the adopted person learns or understands more about their life story, and problems may well manifest themselves. It is difficult to predict and quantify how the risk of emotional harm will show itself for E, given his young age now.
118. When looking at the advantages of the birth parents, SK and NS unconditionally love their young son. They are utterly devoted to him, and their commitment has been very plainly evidenced by their tenacity and perseverance and involvement in the care proceedings and now this litigation. E had a very close bond with his Mother previously and cried when separating from her after initial removal and at contact. Mother was able to meet his day-to-day needs and a placement with his birth parents would obviously preserve his identity, his mother tongue, his religion, and his cultural heritage. It would preserve his links with his parents, his half-siblings, and his wider family members.
119. The disadvantage of the placement with the birth parents is that there would be significant, and Ms Terry says irreparable, short-term and medium and longer-term emotional harm and the potential for life-long impact on E in breaching his trust in adults having been told that this was his forever family.
120. The birth parents speak Punjabi and E has been with his prospective adopters, only speaking English, and it may be very difficult for the birth parents and Mother to reassure E and may impair his ability to express himself and to communicate.
121. The other key risks and disadvantages of placement with the parents is the limited development of insight the parents have shown since the care case concluded in March 2022 and their subsequent lack of honesty with professionals, meaning it would be very difficult to manage the risk and to monitor the placement. Although the parents remain apart, physically, there must be a risk of the parents reconciling, given the extent of contact they have continued to have.
122. In addition, there are disadvantages in the placement with the birth mother because of the practical difficulties which she may have in meeting his care, given her shift patterns and the relative uncertainties about her immigration status and her finances.
123. Looking now specifically to the Welfare Checklist, E at two years, eight months old is too young to express his wishes and feelings. However, it is clear he is very attached to his prospective adopters and his sibling and regards them as his family. Previously, it is acknowledged, that he had good relationship and a good bond with his Mother, but he has no memory now of his birth parents.
124. In terms of E's particular needs, his overriding need now is for permanency and stability. At two years, eight months old, he has been subject to litigation for his whole life. He is now a happy and thriving toddler. The Annex A report and Ms Terry's report speak to the delightful, lively, and cheeky toddler he has become, and he has no particular needs, save for, as I say a decision about his future so that he can enjoy the rest of his childhood without being subject to uncertainty and litigation.
125. The likely effect on E of having ceased to be a member of his original family and becoming an adopted person is an important factor to consider. The Court has to have significant regard to this, given the very draconian nature of adoption which means that E ceases to be a legal member of his family and severs all of those legal ties. Even if, E has a very happy adoptive experience, there may still be long-term emotional harm and difficult consequences for him. He may struggle to make sense of his origins and understand why he was adopted. However, it is hoped that with the life story work, that his prospective adopters will be able to help mitigate any harm that he may experience when learning of his adoptive status.

126. In terms of his sex, age, background, and any other characteristics, as I say, there are no particular characteristics, save for his need for permanency. He is placed currently in a placement of similar ethnicity, although a different religion and language and as I say, having been subject to litigation all his life, what he needs now is permanency.
127. In considering any harm he suffered or is at risk of suffering, I concluded in the care proceedings that E was at risk of harm as a result of the exposure to domestic violence and risk of Mother failing to prioritise him over her relationship with his Father. Now, in looking at harm, I have got to consider the impact on him of not only that risk, which I am satisfied remains as it was in March 2022, but also the harm he will suffer on being removed from his prospective adopters. I have to balance that risk against the risk of him losing his links with his birth family.
128. Finally, the relationship the child has with his relatives and the person who is the prospective adopter, with whom the child is placed is a very significant factor the Court has to have regard to. This is a key aspect in E's case. He has, as Ms Terry attests, a very established and secure attachment with the prospective adopters and she considers the damage he will encounter, if removed, will be irreparable.
129. A move for E would mean him being removed from the care of his primary and only attachment figure to a bridging foster placement, pending a planned move to his birth mother. However, carrying out the balancing exercise of the welfare analysis of the advantages and disadvantages of the plan for adoption as against a return to birth parents, I have to consider as a starting point, E's reality now. In summary, I conclude that there are greater risks and uncertainties in moving E from his prospective adopters to the birth parents than in leaving him where he is. If he were removed from the prospective adopters, there is a high probability of fairly immediate and significant distress and trauma occurring for E. Whilst the Guardian says that this could be managed with a proper and sensitive transition plan, I prefer the evidence of Ms Terry, who has assessed E's attachment and the impact of the move and I agree that whilst it may not be irreparable harm, it would be very significant distress and harm that E would encounter. I was particularly struck by the point that he has been told by his prospective adopters that this is his forever family, and that for a child of two years, eight months to be removed from the only family he has any memory of, would be very damaging indeed.
130. I consider that a move to the birth parents would be very difficult for them to manage, given that E does not now speak Punjabi and Mother speaks limited English and that E is at a pivotal stage of his development at two years, eight months. All of that, coupled with the risks to E from the ongoing parental relationship, that I am satisfied exists, and Mother's inability to act protectively, outweigh any benefits in E moving to the birth family.
131. In short, E no longer has a meaningful relationship with Mother or Father, given that he has not seen them since May 2022 and on balance, I am satisfied that the risks of a move for E from his prospective adopters, to his birth family are simply too great.
132. E's welfare, in my view, now requires permanence, and adoption in my judgment, is what E's welfare requires.
133. I have considered the range of powers available to me and whether or not long-term foster care or indeed a phased move to the birth parents would be appropriate, but I am satisfied that that is not appropriate.
134. I am mindful of E's right to family life and indeed the parents' Article 8 rights to family life. However, I remind myself that where the maintenance of family ties would harm the child's health and development, the parent is not entitled to insist that the Article 8 rights are maintained. In addition, I am mindful also, that it is the child's welfare which is paramount, and which takes precedence over the claims and rights of the parents.
135. Therefore, having considered carefully and borne in mind all of the guidance in the authorities I have cited, and having considered all of the available evidence, I reach the clear conclusion the E should remain with the prospective adopters in his adoptive placement and

- that I should make the adoption order. In reaching that conclusion, I have had particular regard to the impact on E of ceasing to be a member of his original family and becoming an adopted person. In addition, the ability of either of his parents to meet his needs and their wishes and feelings about his placement, and their vehement opposition to this plan.
136. The parents have fought a valiant battle to care for their young son and I acknowledge that they love him deeply and both are to be commended for the changes they have made.
 137. However, ultimately, I conclude that they have not made sufficient changes, not because of the concerns about their day-to-day parenting abilities, but because of their inability to reflect and show insight into the Local Authority's concerns and the Court's findings and because of their inability to be open and honest with professionals in a way which would enable any placement with Mother to be safely managed.
 138. As the Guardian concluded, the risks of moving E are simply too great and unmanageable, so the risk should not be taken.
 139. Therefore, I am satisfied E's welfare continues to demand that he be adopted. I make the adoption order as sought by the prospective adopters, and I dispense with the consent of the parents, leave having been granted, and so I am required to consider their consent again.
 140. I should just add that in relation to the Father's position that he wished to have a further assessment. I reject that application, which was not strongly pursued by Father. However, for the same reasons, as I have set out in relation to Mother's case, Father simply was unable to persuade me that he understood and accepted the Court's findings and the risks posed by his behaviour and I was unable to conclude that his relationship with Mother, that he would remain permanently separate from Mother.
 141. Mother had invited the Court to consider making a post-adoption contact order and she invited the Court to consider an open adoption. The Local Authority have proposed that their plan for E is letter box contact once a year and the Guardian supports that. In her evidence, AS identified that because of their opposition to adoption, the parents would simply not be able to manage post-adoption contact in a way that kept E in mind, and it would be too difficult for them and for E to manage that contact. I agree with that approach. Therefore, whilst I understand that the parents' desperate wish to see their son again, I am satisfied that imposing an order on these adoptive parents is not in E's best interests. They are, however, committed to the indirect contact, and will keep contact under review and I hope that in later life, they will be able to support E in seeking out his birth family, should he wish to do so.
 142. Therefore, I make the adoption order and dispense with the parents' consent pursuant to section 52(1)(b) of the Adoption and Children Act.
 143. In addition, I thank all of the advocates and professionals for their help on this difficult case.
 144. Finally, I would like to thank the adopters for their devotion and their commitment to E. I appreciate how difficult this case will have been for them, and it was not what they signed up for when they took on E and it is to their credit that they have maintained a calm and happy home for E, despite these difficult circumstances.

End of Judgment.

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

Ubiquis (Acolad UK Ltd) hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

This transcript has been approved by the judge.