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Case No: BM23C50138

Neutral Citation Number: [2024] EWFC 210 (B)

IN THE FAMILY COURT AT BIRMINGHAM

Birmingham Family Court
Civil and Family Justice Centre
Priory Courts
33 Bull Street
Birmingham, B4 6DS

Date of hearing: Friday, 21 June 2024

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Before:

DISTRICT JUDGE PARKER

Between:

A LOCAL AUTHORITY

Applicant

- and -

(1) E

Respondents

(2) S

(3) THE CHILDREN

(Via their Children's Guardian)

MR P PAISLEY appeared on behalf of the **Applicant**

MR R. GLANSFIELD appeared on behalf of the **First Respondent**

THE SECOND RESPONDENT was not present and not represented

MS S. WOOLEY appeared on behalf of the **Children's Guardian**

JUDGMENT

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DISTRICT JUDGE PARKER :

INTRODUCTION

1. I am concerned with three children, H who is three, A who is two and E who is one. The mother, it is fair to say, has another child which is also subject to ongoing proceedings albeit not before this court. Although mother successfully completed a residential placement, on 1 May 2024, that child, I believe, was removed following an incident involving her current partner, and has been placed with a family member. The outcome for that child is yet to be determined.
2. There are two fathers for these children, Mr S is the father to A and E and Mr F is the father to H. Neither have attended today or been represented or engaged in the proceedings. Originally, there was a Mr G who was initially named, but incorrectly, on H's birth certificate. I note, however, he did not wish to be assessed, in any event, as a potential carer.
3. The concerns in this case relate to mum's mental health, domestic abuse and the impact of mother's diagnosed learning needs on her capacity to parent leading to neglect. Mother has a diagnosis of a learning disability, ADHD and Tourette's, she also has a diagnosis of emotional unstable personality disorder. A previous cognitive assessment recommended the use of an intermediary and an advocate, which has been facilitated today. A pre-proceedings assessment was negative, but it was not based on a PAMS assessment.
4. At the outset, the mother sought the return of all the children to her care. A number of alternative carers were put forward, however, none have materialised. I am told the grandmother has withdrawn from the process and the maternal grandfather was assessed as negative, as was the paternal grandfather who withdrew and although a

further paternal grandmother was positively assessed, this is the mother of Mr G, she herself later withdrew.

5. By an order of 22 June last year, it recorded that Mr S, who is the father of E and A did not wish to be contacted any further. It was also recorded in that order that Mr F was also served but wished to play no part. Within that order, the court approved an independent social work assessment on the basis of the utilisation of the parent assess methodology in relation to the mother. A subsequent report from the mother's GP confirms her mild learning disabilities, a diagnosis of emotional unstable personality disorder, ADHD, Tourette's and a history of self-harm. As I indicated, a subsequent Communicourt report confirmed that she required an intermediary, and various recommendations were set out in the eventuality that she was required to give oral evidence in court.
6. A parenting assessment within these proceedings was undertaken of the mother and the mother's partner, Mr W. Sadly, it was negative. It concludes that a focus on developing the couple's parenting skills alone, would not be sufficient to enhance their parenting capacities to an acceptable standard. Reunification, therefore, was considered not to be a viable option, and that a change in their parenting style would be a major challenge.
7. The mother has a worrying history of entrenched behaviours and has not undertaken any meaningful therapy or training, she has complex mental health needs and the couple together would struggle to manage the stresses and strains of caring for three children. It was also considered the mother lacked insight into her own needs, and the impact this has on her as a parent. There were concerns as to the couple's ability to recognise risk, and any identified work would fall outside of the children's timescales.

8. The local authority care plan is therefore one of adoption. Mother, as the case developed, indicated that she opposed this option, she still wished to seek the return of the children but if not, she would prepared for them to remain in long-term foster care, preferably with the current foster carers. The Guardian, at the outset, highlighted various issues in this case with regards to the parents learning difficulties, neglect, the mental health problems and emotional regulation, domestic abuse and parenting abilities. Added to that, of course, was the fact that mother has given birth to another child who, at that time had been placed with the mother in a residential unit where it was noted the outcome, potentially, was finely balanced.
9. I note various toxicology reports in relation to mother's partner, which was positive for cannabis from November to January 2024, but were negative from January to February 2024. There was also passive exposure to amphetamines. However, it did record excessive alcohol consumption from October to February 2024.
10. The Guardian noted the mother's mental health fluctuates and it is unlikely that she will be able to care for all four children, including the new baby. Of course, if mother is unable to care for the children, she would seek for them to remain in foster care with their current carers.
11. The Guardian reports that all three children are thriving with their current foster carer, who is happy to become a long-term foster carer for them, but with fostering support. She feels unable at this stage to accept a special guardianship order. She has a good relationship with the mother, and would even consider caring for the new child if the mother was unable to do so. The foster carer stated to the Guardian that she would be concerned if the children were separated on adoption. The Guardian commented on the difficulties in the Family Finder being able to identify suitable families to take all

three children within the West Midlands area. She therefore indicates that she has reservations about adoption being the only available option in this case, and sought consideration for a long-term foster carer to be looked at as a viable option, given this is a tried and tested placement of the sibling group.

12. The Guardian was concerned that the local authority's evidence lacked analysis as to the disruption of removal and potential severing of sibling ties, when compared with the potential for long-term foster care with the current carers. The Guardian noted that the foster carer is trained in attachment style parenting, and was concerned that adoption was being considered due solely to the age of the children themselves without proper analysis. She mooted that long-term foster care with committed carers can offer the same level of stability and also a sense of belonging albeit not 'legal belonging'.
13. Adoption would also mean the loss of a relationship with the mother and the new sibling, as well as the established relationship with the foster carer, and that local authority intrusion during the life of long-term foster care would be a small price to pay. Accordingly, she does not accept that nothing else will do. In light of that, the mother shifted her ground, and does not actively oppose the making of a care order, provided it is on the basis of long-term foster care with the current carers.
14. The local authority issued their placement application and placement directions were given on 5 February 2024. I noted in my order of 29 February of this year, that the issue in this case has now narrowed to that of placement by way of a care order under the plan of long-term foster care, or an application for a placement order by way of adoption. The local authority pursues the placement order. The mother and the Guardian proposes long-term foster carer and for the children to remain with their

current carer. Mother bravely accepts that she herself is not able to care for all three children. She is wishing to concentrate her efforts on the new-born baby.

15. It was also determined at that hearing that the mother would not give oral evidence at this hearing, and therefore full participation directions were not needed, although she has had the assistance of an intermediary and been represented by counsel. It was confirmed that the issue in this case is a difference of opinion with regard to where the balance should be struck between the Guardian and the local authority, the mother supporting the Guardian's position.
16. I subsequently made directions for the final hearing to be in effect today, which it has, and there is an agreed threshold which I accept. My judgment, therefore, will not deal specifically with whether threshold is crossed, it clearly has been and I make findings in accordance with that document.
17. There was a late twist in that as stated in the order of 17 May, a paternal grandmother re-entered the scene to seek to care for H, due to a change in her own personal circumstances since previously withdrawing from the full connected persons assessment. A subsequent viability assessment which was obtained, was negative. She does not seek to challenge that assessment.
18. I have read the statement of the Family Finder, who confirms that the children belong to a bonded sibling group and have lived with the foster care since 12 January last year. Despite this, the current foster carer does not feel able to consider a special guardianship order or, indeed, any other kind of order. In her own words, the Family Finder states the foster carer sees her position as a career. She provided various data in relation to the availability for adopters in the local area for three or two children. At the time of her report, there were no internal adopters for all three children.

However, an external search identified two. In her report, she indicates it is difficult to forecast the likelihood of identifying an adopted family and the timescales but suggested timescales for a twelve-month search. The alternative plan will be for them to remain in long-term foster care.

19. The local authority's final evidence confirms a plan for adoption. They accept the children are settled in their current placement and have a lovely sibling bond. However, long-term foster care would not meet the children's needs and therefore, prefer the permanency of an adoptive placement over long-term fostering. There is a together and apart assessment which confirms the children's positive relationship with one another.
20. There is ten months between each of the children by way of age, they are of the same gender. They have no behavioural issues, and H is described as being the leader, A is more independent. There may well be an exploration going forward in relation to sibling contact between them and the mother's other child, although at this stage they have not met. It is intended that the placement of all three together is the ultimate goal. However, if that was not achievable, the two older boys, H and A would be placed together, and that a dual placement perhaps should be looked at, following a search for all three together after a period of six months. If the children were to be placed separately, sibling ties will need to be maintained.
21. As indicated, the mother in her statement does not consent to placement orders. She believes the children should remain together in their current foster placement, and that it is not in the children's best interests to be separated from one another.
22. The Guardian in their final analysis cites the difficulties in particularly finding adoptive placements for all three, given the limited pool. She believes the foster

carer's home is the right home for these children, and they see themselves as a forever family, and for them to remain as a sibling group. She uses the expression, "the bond between the children is unmatched". This, as far as the Guardian is concerned, are the views on the ground. She accepts that no placement is 100% certain, but that equally applies to adoption.

23. She reports that the foster carer speaks with a passion and commitment, that this is a tested placement, the foster carer having cared for the children for a large portion of their formative years. It meets the requirements of placing the children together, with a person who is invested in the placement and provides an alternative to the more draconian outcome of adoption. She accepts that the decision of the court is a finely balanced one, however she remarks that if the foster carers had accepted a special guardianship order, as invited to do so, this hearing would not have proceeded on the basis of a contested hearing. If a placement application is successful, she feels it is more likely than not that the children will be separated and if they are separated, there is no guarantee of ongoing sibling contact.

24. As I have indicated, the issue in this case is between adoption, placement orders and remaining in long-term foster care with the current carers. The local authority pursue placement as this, they say, provides the children with lifelong permanency and reflects their change of legal status without long-term intervention, insofar as the local authority would be involved if they were to remain looked after children and the stigma that attaches to this. Such an order would feel different from the children's perspective to that of long-term foster carer and, of course, would extend into adulthood, and that the court should not deprive the children of a lifelong placement on the basis of a short period of time with the current carer.

25. As I have indicated, the Guardian in their position statement forms the polar opposite view. They are settled and thriving in their placement and invested in it. The foster carer is fully committed to the placement long-term, which mitigates the risk of a placement breakdown. The placement is tried and tested, the sibling bond is significant. The local authority's plan will, more likely than not, lead to a separation of the siblings, which cannot be compensated through inter-sibling contact. There will be, in essence, a triple whammy with regard to initial separation of the parents, the foster carers and potentially each other. The decision of the court in this matter needs to be more nuanced and fact-specific.

EVIDENCE

THE FAMILY FINDER

Evidence in Chief

26. She was asked questions by the local authority and spoke as to the statement provided by her predecessor. She provided updated information. In the Birmingham area, internal searches have shown that there is currently one couple approved to consider three children, and there is another couple currently being assessed. They are at stage two of three, which is likely to be completed in August of this year.
27. External searches have revealed no families for three children, but sixty-seven families who could potentially adopt two children. Sometimes, however, if presented with three, they might be persuaded to take on three. Those families could also consider sibling and parental contact. Other searches revealed two external couples, all able to consider three children.

28. This is an experienced Family Finder, she has been a Family Finder for fifteen years and has in the past placed three children together. With regard to the placement of these three children, she is of the view that they are very adoptable, but accepts there is a national shortage, so will need more time to identify an appropriate placement, hence the request for a twelve-month search. The matching process is quite complex, and she was unable to predict the possibility of a match, it can be variable. She has met the foster carers, she said they regard their role as paid employment and therefore, in her view, their decision is financial.
29. She was asked why they were unwilling to seek a special guardianship order or a child arrangements order, her view was the issue was potentially commitment, and the financial aspect of receiving ongoing support. She confirmed that she would continue to be involved in care plan meetings. If the children are to be separated, then prior to doing so, there would need to be an updating sibling assessment.

Questions from the Children's Representative

30. It was put to her that after a further twelve months the bond with the current carers will have strengthened. She accepted that and said that it would be taken into account. She was asked if her role was to assess commitment of the foster carers, because it appears that they are committed to care for the children long-term. It was put to her that their reasons for not adopting is understandable.
31. With regard to the national shortage of adopters, she indicated that matters had plateaued somewhat, but rising slightly. She was asked if the process of matching was taking longer and she said a little, but the local authority had participated in a number of new initiatives to improve the process.

32. With regard to the internal couple approved for three children, they can take a non-sibling group of three, but there is no guarantee that they will take all three boys of the same sex. She accepted that. The other family in the internal search has just expressed an interest. She was asked about placement of other groups of three within the area, and she said that currently, they are looking to place another sibling group of the same number. She explained the matching process would be commenced by providing the children's details and thereafter meeting the family. She explained that the local authority had been able to place two groups of three siblings in the past two years, roughly one a year, but she was unable to tell how many placements could not be achieved for sibling groups of three.
33. It was put to her that the twelve-month timescale reflects the difficulties in placing the three children together, and she said this was not necessarily the case. The matching process could be variable. Twelve months would enable the local authority to undertake a full profile of the children. It was put to her that the numbers, nevertheless, are low and she accepts that it will not be easy, but statistics are only one side of the equation. In reality it may be different for these children, depending upon the adopters' emotional response on an adoption day. It needs to be tried. There are more emotive issues merely than statistics. She feels very positive that these children are likely to be placed, there are only two families who are interested and more can come through, it is a 'moving feast.'

Questions from Mother's Representative

34. It was put to her that statistical data suggests that adopters prefer girls. She was asked statistics as to how many children are to be placed in the Birmingham area, and the duration of placement of siblings groups. The fact that these children had been placed

with the current carers since January 2023, and it would take potentially a further twelve months for suitable adopters to be found if they are found. Again, she indicates that two families have been identified and if they are successful, then the process would be much quicker, because they are talking about adopters who have already been approved. It was put to her that if the matching process has not been successful for all three there is likely to be a planning meeting to review the position and it may well be that the siblings will be split. It was put to her that by then, more time would have passed whilst the children remained in their current foster placement.

35. The Family Finder said she would be guided by her professional colleagues in relation to any change in planning for the three children to be kept together. However at the moment in time, the position is that all three should be placed, and not for a dual placement.

Re-Examination by the Local Authority

36. She was asked what she meant when she indicated that the current foster carers have a history. She indicated that they have previously cared for a sibling group of three, but the children were subsequently removed from their care. One of them then moved back and then the carers decided that they could not proceed with that placement, there was a disruption meeting and the placement terminated. Very little information, however, had been provided as to the reasons for that breakdown. They terminated their relationship with the local authority and re-registered with an independent agency, so there is a concern as to the relationship these foster carers have with the current local authority, albeit of course that they were sourced in January 2023 to care for these three children, nonetheless, which they have done so throughout.

- 37.

SOCIAL WORKER

Examination in Chief

38. He outlined the advantages of adoption, adoption providing more stability and permanence as opposed to long-term foster care, even if the current foster carers say that they are committed. Adoption is not as intrusive, even a special guardianship order gives permanence and is subject to an assessment process which is more in-depth in looking into the carer's support network.
39. Foster care for these children is dependent upon the foster carers commitment. He accepts it will keep the family together. He confirmed the placement search would take twelve months and was asked what would happen at the end of that period if a placement had not been found. He said that matters would be considered at a placement meeting, and they could consider extending the search and updating the sibling assessment to see how the dynamics are presenting at the time, including potential placement in early May. Matters will always, effectively, be a moving target with ongoing reviews.
40. He accepts that this is a finely balanced decision and there is a difference of opinion with the Guardian and the social worker, with each looking at it from a different perspective based upon their expertise and experience of working with children in care and seeing placement breakdowns. He did not look favourably on the children being subject to care orders for the next fifteen to sixteen years.
41. Historically, there are placement breakdowns involved with foster carers and in relation to the previous breakdown of the private placement in relation to a previous

sibling group, as referred to by the Family Finder, the social worker was unable to give any additional information other than that which was already given.

Questions from the Children's Representative

42. It was put to the social worker that the foster carer is very passionate about the boys and retaining them. There is no doubt about their commitment for the long-term, however, the social worker was of the view that this commitment does not extend to achieving legal security for them by way of a formal order. They have requested respite care in the past, which suggests that they are not involving them within their own family. It was put to the social worker that this took place at a stage when they were in an interim position of a care order and that going forward in the future, their expressed views are different.
43. The email which was provided to the court by the Guardian presents an image of integration within the family. The social worker is of the view that a formal special guardianship assessment will explore this in a lot more detail. At the present moment in time, the current view is that they have little insight into the commitment of the foster carers and the concern if respite care was continued with the children going to adults with whom they are not familiar with. It was put to the social worker that this current placement provides the children consistency and stability because they are invested in it, they are thriving and it is meeting their needs. They regard it as their home. The social worker is of the view however that they need security.
44. It was put to the social worker that the foster carer's views, however, may well shift in that respect in the future, which is always a possibility. Adoption would permanently sever all ties, including those with the foster carer. The social worker responded that there would, nevertheless, be a transition plan and, indeed, that their relationship

would be promoted post-adoption, which is not uncommon. Nevertheless, it was further contended and challenged that the separation from the foster carer will, nevertheless, impact upon the children significantly. The social worker accepted it would have a large impact, but it would be mitigated by transition planning.

45. The social worker was challenged again that the risk is heightened, due to the fact that they have endured separation from their mother and, initially, at the outset from each other when they were placed separately and a further separation would reinforce that trauma. However, the social worker indicated that this was something the local authority manages all the time with their work with children.
46. The local authority accepts that it would be difficult to place all of the children together, and that there are limited adopters. It is accepted the children have a good relationship with one another. They have no additional needs and are very likeable, but because of that the Family Finder is optimistic. It was put to the social worker that the real prospect is the children may well need to be separated at the end of the twelve months.
47. It was put to the social worker that would mean a further year of bonding with the foster carer and with each other, which means that separation would be even more devastating. The social worker is of the view that even if separated, the relationship between the siblings would nevertheless be promoted.
48. It was put to the social worker that H is the protector for his younger siblings and separation, therefore, will also affect him more acutely. The social worker was of the view that the matching process is dynamic and during the twelve-month period, in particular, the main focus would be on seeking placement for all three together.

Questions from the Mother's Representative

49. The social worker confirmed that he would continue as the children's social worker. He was questioned about the ambiguity with regard to the placement itself. Is the plan a search for three or, potentially, at some point a search for two? The situation appeared fluid and reference was made to the together and apart assessment.
50. I myself queried that at the end of the social worker's evidence, and the social worker confirmed that he could not guarantee that this would ultimately result in a placement of all three together.
51. It was put to the social worker that there are no negatives in the current placement. The social worker accepted that, but again, queries the reasons why there requested respite care. The social worker was challenged that the adopters themselves may well need respite for three children where the age gap is narrow. The social worker is of the view that they would need to find this from within their own family. It was put to them that respite care would not be available to them, as it would be with foster carers.
52. There were questions about the sibling relationship, and the social worker agreed that it is important. The age gap between the children is very close and for the majority of their lives, apart for a brief period, the children have always lived together. It was accepted that the relationships between each of the children are, in varying degrees, different.
53. It was put to the social worker that the local authority's case is to launch the children into the unknown, due to the need for permanence and a potential separation and that effectively, the current situation cannot be bettered.

54. At the end of the social worker's evidence, I also raised the issue of the purposes of any subsequent reassessment, on the basis that the longer the children remained together, the likelihood is that bond will only have increased over time.

Re-examination by the Local Authority

55. As between the choice of long-term foster care and adoption, the social worker conceded that this is a finely balanced case. Adoption, however, in his view tips the balance because of the advantage of permanency and the lack of statutory involvement going forward, as well as full autonomy for the carers. They will also be labelled as children in care. There is a psychological importance of being part of a family and a sense of belonging.

THE CHILDREN'S GUARDIAN

Examination in Chief

56. Effectively her reasons for foster care is the uniqueness of these children from the potential separation and the fact that mum actually supports the placement. The bond is palpable and will increase as time goes on. The foster carers were purposefully approached to care for all three together. The only thing standing in their way was legal status.

Questions from Local Authority's Representative

57. There was challenge in relation to the foster carer's recourse to respite care on four occasions. Many families ask for this on occasions, and their commitment is demonstrated and the reasons for this in their email.

58. Whilst not undermining the value of long-term foster care, adoption has its advantages into adulthood. With regard to a placement search, the Guardian was of the view that the likelihood of placement altogether is slim. This is based upon the local authority's own evidence and her own experience, and this is an important factor. The court needs to have a degree of realism as to the likely outcome. The current figures supplied by the local authority are based upon numerous inquiries, without detailed information and photos. It was put to her that there may be more interest once that information is supplied, and the Guardian accepted that. She accepted there is a possibility that they could be matched from the process and the ability for adopters seeking two children to have all three. She regarded this however as vague, and she was not confident and felt that that view was speculative.
59. She was asked therefore why not at least make the attempt whilst they remained in the current placement. The Guardian said that this is not without some difficulties. The children are bonded in the placement, the foster carer is committed to them, that in essence, we have a secure placement now and by making a placement order in light of that, places the children in limbo. She is of the view that long-term foster care can also provide a permanent family. It was put to her that any loss sensed by the children can be mitigated by direct work, the foster carer would support the transition and is happy to remain in contact with the children, however, the Guardian is of the view that there is no guarantee that that will happen. If the placement broke down, the children would experience loss. The Guardian was of the view that the children are already integrated in the family.
60. She accepts that long-term foster care has its downside, statutory involvement, reviews, meetings, stigma, subsequent change of mind of the foster carer. That there

is more difficulty in relinquishing an adoptive placement as opposed to a long-term foster placement. However, with regard to the risk of the children remaining where they are, the Guardian is of the view that the potential breakdown of the placement is, in her assessment, unlikely. There is commitment in everything other than legal status. The mother supports the placement which is, in itself, a strength and is unlikely to undermine it.

61. It was put to her that on the face of it, the local authority should not be sharing parental responsibility with the carers for the rest of the children's lives, that the foster carer seems to approach the matter as a career. It was put to the Guardian that the foster carer is, in essence, putting their own needs first. The Guardian's view is that it is more complex than that. The children have experienced trauma and the foster carer welcomes additional support. On the face of it, these children have no additional needs, but they may well have emotional needs going forward. She was challenged as to whether or not she would look to the foster carer as akin to a family member, and she did not accept that, nor did she accept that she had placed excessive weight on the attachment to the foster carers.

Questions from the Mother's Representative

62. She accepted that long-term foster carer is a valid permanency option in itself, and the court needs to adopt a holistic analysis. She stated that the foster carers are committed to permanency, but simply not going along with the local authority's plan to have it formalised by way of an order, but they may do so later. They are a young family and have a wide family network who they wish to utilise going forward.
63. She recognised that children do have feelings of stigma in long-term foster care, but following information from the Family Justice Board, children much prefer to be

placed with their siblings than forgo any stigma in order to preserve the sibling bonds. As for the Guardian, this is the trump card. As far as she is concerned, the sibling bond will sustain the children through any adversity going forward, for the children it is their day to day experiences which matters.

64. In addition, the mother supports the placement, because it keeps the children together, and recognises the bond the foster carer has with them. Therefore, the support is child-centred and not with an eye on the children's subsequent discharge.

SUBMISSIONS

Local Authority

65. The local authority seeks care and placement orders. There is an agreed threshold. The question is should a placement order be made. It is a finely balanced case, but as far as the local authority are concerned, the balance sits within the placement order side of the equation. The phrase, "nothing else will do", refers to proportionality and the analysis of the risks and the pros and cons. The test remains the same as far as placement orders generally are concerned.
66. In the case of *Joe (a child) (Long term foster care versus adoption)* [2023] EWFC 174 (B), a case I referred to prior to this hearing commencing is not binding authority, being a Circuit Judge case. The court should rely upon Court of Appeal authority as to the various pros and cons. Both the social worker and the Guardian have thought very carefully about matters, and the local authority still retains an open mind if a placement cannot be identified within twelve months. The Guardian has given excessive weight to the attachment of the foster carers, their commitment to the

children and the effects of separation upon them, but insufficient weight to the risks of the placement breaking down.

67. The positives of adoption, in essence, is the flipside of the negatives of foster care. It is not as easy for adopters to relinquish a child as it is for a foster carer. Reference was also made to the historic breakdown in relation to a placement prior to the foster carers taking these children. The local authority does not accept that the foster carers are as committed as they say they are, evidence of that is that they choose not to seek an order with regard to cementing that position by way of legal permanency. They see it as a career, they will not be holding parental responsibility, and respite care has been used in the past. Their commitment is not total.
68. In adoption the children will gain a family. Of course it is accepted that the outcome is not set in stone. I am invited to consider that the court should not place excessive weight on placement statistics, it is only one part of the analysis. It is not based upon full disclosure, and the statistics themselves are not without hope. The timescale is variable. Whilst the boys are attached to the foster carers, effectively, this is overstated and can potentially be mitigated by way of post-adoption contact and a well thought out transition plan.

The Mother

Siblings, ordinarily, should be placed together, where possible, provided it is in accordance with their best interest and welfare. One has to look at the welfare of all three children as a sibling group, and this dictates the importance of maintaining that sibling unit, particularly given their age group, and given the fact that their relationship will transcend beyond those who care for them. The case of *Re Joe* was

cited with regard to the various comments made on stigma, and the risk of placement breakdown.

The Children

69. It is contended that the issue is a balancing exercise, which they accept is a fine one. Reference is made to the case of *Re Joe*. Long-term foster care is a viable permanency option. Permanency attracts the definition as defined by the Nuffield Foundation, which it is contended the children currently have alongside good quality care and support.
70. The Guardian has balanced a whole range of factors to come to a holistic and nuanced view tailored to these children. One must therefore view the case on its own merits. The Guardian disagrees with the view of the local authority, insofar as the foster carers' commitment is concerned. Their commitment is clearly evidenced and they should not be criticised for accessing respite care, nor for failing to accept an order which the local authority would wish them to have to cement the placement. There is no evidence of potential placement breakdown in this case. Both carers and children have invested in the placement.
71. If the carers had chosen to obtain a formal order by way of a child arrangements order in place of a special guardianship order, that, no doubt, would have been accepted and speaks volumes. There would be no issues with this placement, since the children were placed since January 2023. Reference to the previous placement breakdown only surfaced in evidence from the Family Finder and yet, the placement continued and there has been no concerns and, therefore, no weight should be attached by this court to that fact.

72. With regard to the sibling relationship, whilst it is not impossible to find a placement for all three within twelve months, in all likelihood it will not happen. Ultimately, it may well lead to the children being split up, which is not in their best interests. Sibling contact will not make up for that loss, and there will also be the negative impact of separation from the foster carers. Local authority intrusion is a small price to pay to maintain an otherwise positive placement. Any stigma can be managed with an appropriately managed care plan, implemented so as to keep any intrusion into the children's lives to a minimum as they get older.

THE LAW

73. The court should only separate a child from their parents, if satisfied that it is necessary to do so and that nothing else will do. (*Re B* [2013] UKSC 33).
74. In undertaking that task, the Judge must undertake a global, holistic evaluation of all the options available for the child or children's future upbringing. As said in the case of *Re G (A Child)* [2013] EWCA Civ 965, what is required is a balancing exercise, in which every option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives, and each option then compared side by side against the competing option or options.
75. As long ago as *J v C* [1970] AC 668, it is a process whereby when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the children's welfare.
76. A care order is a serious order, that can only be made when it is justified, where it is in the children's interest and where it is necessary and proportionate. The aphorism "nothing else will do" applies only to cases involving a plan for adoption. That is

where the court is considering the most serious of all orders, and one which will sever the parental relationship altogether. By that, I mean a non-consensual adoption.

77. As noted in the case of *Re B-S (Children)* [2013] EWCA Civ 1146, such orders are a very extreme thing, a last resort and should only be made when nothing else will do.
78. Ultimately, I must ask myself is adoption necessary and proportionate in this case. To that extent, there is the analysis that I need to undertake between adoption and long term foster care.
79. To assist in that process, there is the case of *Re S (A Child) (Placement Order)* [2021] EWCA Civ 1212.

Adoption points in favour:

80. It is the most permanent form of order, and the only option which extends beyond childhood. A child's needs may well extend beyond childhood, and thus the permanency provided by adoption and the forever nature of adoption has a particular benefit. Adoption offers greater stability than long-term foster care, with a much lower risk of placement breakdown, albeit there are cases such as this, where it will be with the same proposed carer.
81. Adoption would mean that the child is no longer a looked-after child. Being a looked-after child means that they will be subject to statutory intervention requiring social work visits, authorisation for particular activities, and interference in family life. If an adoption order were made, it would be less likely that the child would not be vulnerable to further proceedings, than of a situation if there were a final care order or a special guardianship order. I quote, in particular, *Re V* [2013] EWCA Civ 913,

"Adoption makes the child a permanent part of the adoptive family to which he or she fully belongs. To the child, it is likely therefore to "feel" different from fostering. Adoptions do, of course, fail but the commitment of the adoptive family is of a different nature to that of a local authority foster carer whose circumstances may change, however devoted he or she is, and who is free to determine the caring arrangement.

ii) Whereas the parents may apply for the discharge of a care order with a view to getting the child back to live with them, once an adoption order is made, it is made for all time.

iii) Contact in the adoption context is also a different matter from contact in the context of a fostering arrangement. Where a child is in the care of a local authority, the starting point is that the authority is obliged to allow the child reasonable contact with his parents (section 34(1) Children Act 1989). The contact position can, of course, be regulated by alternative orders under section 34 but the situation still contrasts markedly with that of an adoptive child. There are open adoptions, where the child sees his or her natural parents, but I think it would be fair to say that such arrangements tend not to be seen where the adoptive parents are not in full agreement. Once the adoption order has been made, the natural parents normally need leave before they can apply for contact.

iv) Routine life is different for the adopted child in that once he or she is adopted, the local authority have no further role in his or her life (no local authority medicals, no local authority reviews, no need to consult the social worker over school trips abroad, for example)."

Adoption points against:

82. The child ceases to be part of the birth family if legally adopted, even if the plan is for continued contact. Adoption is not a panacea, and adopters face all the vastitudes of life encountered by other parents with the added complication that they are caring for a child who is not their birth child. Adoptions can and do break down, sometimes with disastrous consequences. The fact that a child is not brought up by his birth family can also cause a child emotional harm. (See the publication Adoption and trauma: Risks, recovery, and the lived experience of adoption. Brodzinsky and others)

83. Adoption per se is not inherently a trauma for the individual, but at the same time, there is no question that for some individuals, the adoption experience is a difficult one, compromising their emotional security, self-esteem, identity and relationships.

Foster care points in favour:

84. The advantage of long-term fostering under a care order is that it does not sever the legal relationships between a child and their birth family. Long-term fostering will still allow a child's current foster carers to care for them, and contact is proposed whatever the legal nature of the placement.

Foster Care points against:

85. A final care order means that the foster carers will not have parental responsibility. It does not offer the same kind of permanency, it has the continuing intrusion of the local authority and makes the placement more vulnerable to future applications in the future, for example, for the child to be returned to a parents' care, and it does not extend beyond adulthood.
86. Reference, of course, is also made to *Joe (a child) (Long term foster care versus adoption)* [2023] EWFC 174. I specifically highlight this, mindful of the fact that it is a Circuit Judge decision, and therefore not binding on this court. However, what it does have to say in paragraphs 34 to 48 of the judgment is quite interesting with regard to the research, and various sentiments expressed by various publications:

"Nothing about the future is certain. The Court does not have a crystal ball and it is unreasonable for any case to be put in terms of 'certainty' or 'guarantee.' The essential element of care planning is the balancing of risks and differing options for children. No option of care planning offers certainty and no option is perfect.

The main conclusion in the Care Enquiry 2013, funded by Nuffield Foundation is at R356:

'From all that we have learnt - is that 'permanence' for children means 'security, stability, love and a strong sense of identity and belonging'. This is not connected to legal status, and one route to . . . permanency is not necessarily better than another: each option is right for some children and young people. Adoption, although right for some children, will only ever provide permanence for a small number of children in care.'

Notably the report went on to conclude that:

'A core principle of the care system should be that relationships are a golden thread running through a child's life'.

In the Care Planning and Fostering Miscellaneous Amendments England Regulations 2015, parliament specifically introduced long term foster care as a legally defined permanence option for looked after children.

40. The amendment of Regulation 28 of 2010, allows for the frequency of visits to a child to be reduced to intervals of not more than six months after a child has been in a long term looked after placement for at least one year. The care planning and placement care review of July 2021 provides that where a child is placed in a long term placement, which has been for a year, the IRO should consider whether it is necessary to hold a meeting as part of that review.

41. In relation to the Nuffield Foundation document at R343,:

'Research evidence suggests that long term foster care can work well as a permanence option for children, but success relies upon appropriate care planning. Multi-agency support. High quality care giving. Achieving stability and enabling children to feel part of the family.'

Long term foster care is therefore a permanence option for children, crucially alongside adoption and it is no lesser an option to be considered for permanence, albeit it has different advantages and disadvantages."

42. The Nuffield report also refers to some historic studies. The Biehal report from 2010.

44. What the data suggests is that age is a key factor in breakdowns for long-term fostering, and emotional attachment is a key reason why placements do not breakdown.

45. In the article entitled 'Keeping Secrets: How children in foster care manage stigma', dated March 2019 in a Saga Journal by Dansey et al., it is noted there is a potential future risk of stigma becoming an issue.

47. The article also emphasizes that children need to be helped to build and develop their resilience and sense of identity and self-esteem to recover from those difficult experiences. Positive relationships with their foster carers, their peers, teachers, therapists and birth families, where possible, will be key in helping children to rebuild their resources, identity and self-esteem. The article ends by saying that in fact more direct research is needed about this area."

MY ANALYSIS OF THE EVIDENCE

THE FAMILY FINDER

87. The overall tenure of evidence was cautious optimism. However, in my mind, there are two important considerations in this case. Firstly, what is the likelihood of placing all three children together in an adoptive placement. Secondly, the balancing of the risks of a move to such a placement which may never materialise and the uncertainty that that creates for the children and their carers versus remaining where they are in a tried and tested placement with committed carers via long-term foster care.
88. The Family Finder suggests a search of twelve-month duration. Clearly, it is not possible to predict a match with any degree of certainty within that timeframe. I am concerned that, insofar as the local authority's evidence is concerned, that although the main goal is to keep these children together, this cannot be guaranteed and clearly, the matching process will be a fluid, dynamic and variable process. As hinted at in the together and apart assessment, the local authority clearly cannot guarantee a change in the goalposts from a placement for all three children to that of a dual placement search within that process.
89. Of course, if the children are to be separated, then there will need to be an updated sibling assessment, prior to giving consideration to this. However, it is difficult to see

what that would tell us, over and above the fact that the bond between these children will have strengthened over the course of time, As of course with the foster carer's own investment in the children, this, I believe, is conceded.

90. The Family Finder within her evidence refers to the historic concerns as to the previous breakdown of a family placement of three siblings with this carer. However, evidence is sparse to say the least, and it did not stop the local authority placing the children with them, and there is no evidence at all as to any safeguarding concerns. Indeed, quite the contrary. I therefore attach no weight at all to that factor.

THE SOCIAL WORKER

91. The social worker advocates matters from the children's perspective. He is concerned as to a potential placement breakdown whilst the children are in long-term foster care. His concern is that the placement lacks legal security, namely setting out with whom the children should live and, indeed, who should have parental responsibility for them.
92. However, one must ask why such legal security is a 'deal breaker', when the sole criteria is section 1(4) of the Adoption and Children Act, 2002, where we have otherwise exemplary carers, who are committed to look after these children for the long haul. Their passion in the email to the Guardian is not just mere words, insofar as the Guardian's evidence goes. It is worth drawing a few sentences together from that email dated 19 June:

"We have never used respite due to needing a break or being overwhelmed by caring for the boys. Yes, they are a lot and sometimes it is chaotic, but we have adapted, and love every minute of it. We are never shy of admitting that it's hard work having three boys so close in age at one time. However, we have worked hard as a family to have a routine that works for us, all in the chaos of having three toddlers. From

taking turns sleeping on their bedroom floor to ensure they would sleep, to where we are now and where they put themselves to bed, lie down and sleep for the night. The boys are a part of our family life, and we love to include them in everything. Not only do we have an amazing and solid bond with the boys, so does our son. He sees them as his little brothers, and they all look up to him in awe, and just love being around him. I don't know what more I can say to prove our long-term commitment to the boys. We love being their caregivers and providing them with all the love, safety and security they deserve. We love our career as foster carers and support and training is what makes us know we will be able to provide the best care for them as they grow. We know in our heart of hearts we would be there for the boys forever, not merely until eighteen or twenty-one, but forever. Yes, we cannot predict the future or what is to come, however, we have overcome some of the biggest challenges since being foster carers, both within fostering and with our own son and together as a family, and remain not only together, but stronger. We love these boys and want nothing but the best for them. We hope to have the boys reunited as a sibling group, and after watching them grow and bond together for the last eighteen months has been incredible. We believe that this is how it should remain."

Very powerful words, in my view.

93. I am, of course, aware of the dangers of placement breakdown. However, placements break down, even when there is a legal security behind it by way of a child arrangements order or special guardianship order. In my view, the only thing lacking insofar as what these foster carers can have, and the only lacuna, is a formal order, and the lack of parental responsibility which, of course, will remain vested in the local authority under a care order.
94. I accept legal security is important, but it is not the paramount consideration of this court under section 1(2) of the Adoption and Children Act. I accept that the foster carer can terminate the placement and that the future is uncertain. Equally, having formed a genuine love and attachment for these children, there may come a time when they do seek to obtain legal recognition under private law orders, so as to cement the

children's relationship in their lives, and to obtain parental responsibility, without the continuation of the involvement of the local authority.

95. As the social worker highlighted in their evidence, the children have a great relationship with one another. They have no additional needs and are very likeable, and it is for this reason the foster carers wish to be their long-term caregiver.

THE GUARDIAN

96. Her evidence is clear. The placement with the current carers is secure, a placement order, in her view, will potentially lead to these children not being placed together. Although placing all three together is possible, it is likely to take up to twelve months, with slim chances of success, placing the children in statutory limbo. Long-term foster care should not be undervalued, this too can provide a permanency solution. The children are already integrated in the foster carer's family. Both children and foster carers have invested in it. The bond between the children is palpable and must be maintained. The carers are committed. Other than legal status, this placement ticks all the boxes and is supported by the mother.

DECISION

97. Whilst I accept the notion of the stigma that may be attached to a child in care, balanced against the uncertainties of the local authority's plan and its potential impact on these children, as against retaining them in their current placement, where they have thrived together as a family, I am persuaded that the Guardian's perspective is the correct one, as opposed to the local authority's.
98. These children are settled in their current placement and have a lovely sibling bond. There is ten months between each of the children's ages. They are the same gender.

The foster carer speaks with a passion about these children, and I am satisfied that her commitment and love for these children is genuine and unqualified. This placement has been tested over a prolonged period since January 2023. It guarantees that the children will be placed together. In every sense of the word, these foster carers have become ‘connected’ to these children. A move will have a significant impact on these children, and potentially could lead to separation of the siblings which, in my view, is not in their best interest.

99. Adoption, of course, is a potentially viable option, but in this particular case, I do not believe it is in these children's best interests. The positives of the current placement for these children should not, in my view, be sacrificed on the altar of adoption, purely because it is viewed as a more favourable permanency solution. I accept the Guardian's argument that if these carers had signed up to a special guardianship order or other order, there would be no contentious issue in this matter. In my view, the absence of such an order in itself is insufficient to rule out long-term foster care.
100. In many cases, adoption is the right outcome for children, however, it is not a panacea for every eventuality, and long-term foster care should always be considered as a viable option if the situation warrants it. Any stigma attached to long-term foster care can be minimised by sensitive, light-touch implementation of a care plan to keep intrusion to a statutory minimum.
101. Legal status in permanency planning, although important, does not overshadow the realities in family life, which is defined by love and commitment. Indeed, in many families, the no-order principle prevails although in this case, of course, there has to be an order to secure the children in their placement, so that parental responsibility is

exercised on their behalf, albeit not by the carers. However, that, as I have indicated, may change.

102. I do not believe the children will be affected by the absence of parental responsibility for their carers. For these children, it is my judgment, that permanency has been achieved in a tried and tested placement, where they are loved, are flourishing and with carers who are, in my view, committed to maintaining the sibling bond. As against a move to an adoptive placement, which could ultimately lead to a triple whammy of separation from their mother and thereafter separation from their foster carer, with whom they have invested, and a very real possibility of separation from each other. Sibling contact, in my view, would be a poor substitute, as well as the devastating effect on the current placement by leaving it in limbo whilst the searches are undertaken.
103. I therefore will make a care order as a final order, and dismiss the application for placement orders . That is my decision and the reasons for it.

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