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This judgment was handed down remotely at 10.30am on 6 September 2024 by circulation to the parties or their representatives by e-mail.

## **IN THE FAMILY COURT SITTING AT OXFORD**

Neutral Citation Number: [2024] EWFC 269 (B)  
Case no.: OX23C50074

Date: 6 September 2024

Before: HHJ Vincent

**Between:**

**OXFORDSHIRE COUNTY COUNCIL**

**Applicant**

**and**

**Ms D**

**First Respondent**

**and**

**Mr E**

**Second Respondent**

**and**

**[NATALIA]**

**(by her children's guardian MARIA KIRNIG)**

**Third Respondent**

Michelle Farbrother, CILEX lawyer for the applicant local authority  
Rosanna Cawthray Stern, instructed by AC Gilead solicitors, for the respondent mother  
Rod Fowler, of Reeds solicitors, for the child through her guardian

Hearing date: 29 August 2024

# **Approved Judgment**

## **HHJ Vincent:**

1. I am concerned with [Natalia (not her real name)] who is now six years old.
2. On 29 August 2024 I made final orders in care proceedings concerning Natalia. At the parties' request, this short reserved judgment sets out the facts and reasons for that decision.
3. Natalia's mother, Ms D, and Natalia's father, Mr E, are both Polish nationals who have lived in England for some years. At the time Natalia was born they were living in [X]. Mr E has parental responsibility for Natalia. Ms D has reported that the relationship was characterised by domestic abuse. [X] City Council was involved with Natalia before and after her birth. Natalia and her mother moved to Oxfordshire in 2020.
4. Mr E has not seen Natalia for well over two years. He had previously said that he wished to re-establish contact with Natalia and to be in her life, but unfortunately he has not engaged with the local authority, nor with the solicitors engaged to represent him in these proceedings. They were granted permission to cease acting for him on 4 July 2024.
5. Shortly after she moved to Oxfordshire, Natalia's mother entered into a relationship with [Mr F]. The local authority became concerned that this relationship was characterised by domestic abuse, alcohol misuse and that Natalia's basic needs, education and health were being neglected.
6. Natalia was subject to child in need plans in Oxfordshire in 2020 and 2021, and then a child protection plan. Despite a lot of support being given, the situation was getting worse not better. There were four police call outs to the house in July 2023 in response to reports of domestic abuse. There was an incident of domestic violence on 4 October. On 23 October 2023 the police attended the home once again to find the mother caring for her daughter with blood on her face. Ms D had been punched several times in the face by her partner. Natalia had been present in the home at the time. She then attended hospital with her mother.
7. A significant concern for the local authority was that although Natalia's mother would sometimes call the police, she has in general been unable or unwilling to recognise the harm being suffered by Natalia as a result of the domestic abuse she has been exposed to. She has not been able to protect Natalia.

8. The local authority issued proceedings following which, on 27 October 2023, Natalia was removed from her mother's care. She has been living in a foster placement since then.
9. Throughout the course of these proceedings the mother has continued to experience turmoil in her life. She has continued in her relationship with Mr F. She was evicted from the home she shared with Natalia and moved to a caravan. She has continued to struggle with alcohol misuse.
10. To her credit she has engaged well with children's services, the parenting assessment of her, and with the proceedings in general. However, the parenting assessment was negative. The assessing social worker concluded that Ms D continues to lack insight into how her personal relationships and living conditions pose a risk to Natalia. She is not even in a position to start making the changes that she would need to make for it to be safe for Natalia to be returned to her care. Natalia needs stability and security throughout her childhood. She cannot wait for her mother to turn her life around.
11. Since the outcome of the parenting assessment, Ms D has been quite preoccupied with finding work. This has made it difficult for her to be consistent in attending contact sessions with Natalia.
12. Ms D loves Natalia very much. She wants her to be safe, healthy and happy. While she would have wanted to care for her, she recognises that she is not able to be the parent that Natalia needs her to be.
13. Ms D's mother and step-father, Mr and Mrs H, have been positively assessed as long-term carers for Natalia. The assessments took place in England (in December 2023) and by the Polish authorities (in March 2024). Both assessments are thorough and conclude positively. Mrs H and Mr H have been married since 2011. They live in Poland where Mrs H is a nurse, with a specialism in intensive care and palliative care. Mr H fabricates and installs bells in churches. They live in a large apartment in a lovely neighbourhood in Poland with beautiful scenery. They both have secure jobs and are in good health. Natalia is their only grandchild. They have known her since she was a baby and they love her dearly.
14. As part of these proceedings they have been made aware of the local authority's concerns about Natalia in her mother's care. They have reflected carefully and understand that Natalia's mother was not always open about the

reality of the situation. In the course of these proceedings Natalia's guardian has spoken to the maternal grandmother and was greatly impressed by her understanding of the issues, her insight, and commitment to putting Natalia's needs first. This is also evidence in a thoughtful and detailed statement Mrs H and Mr H have submitted to the Court.

15. The Children Act 1989 gives the Court jurisdiction to make orders for Natalia. The local authority brought the proceedings because it considered orders were required to be made to safeguard Natalia's welfare. At the time the local authority took protective measures in respect of Natalia, she was suffering significant harm and at risk of suffering significant harm as a result of the care she was receiving from her mother. Her father was not present in her life and had contributed to the harmful environment in which Natalia had been raised.
16. The agreed threshold document is annexed to this judgment.
17. In considering what order to make, the Court has regard to all the circumstances and in particular the welfare checklist factors.
18. Having regard to all the evidence I have read, and to the welfare checklist factors set out at section 1(3) of the Children Act 1989. I am in no doubt that Natalia's welfare needs will best be met by her moving to Poland to live with her maternal grandmother and Mr H. It will be a big change for her to move to another country. However, she will be moving to the home of family members who love her and who she loves in return. They are experienced parents and generous and kind individuals who have welcomed the opportunity to have Natalia in their care. They have travelled over to England to spend time with Natalia. It is proposed that following the hearing and orders being made, they will travel to Poland with Natalia in the next day or two.
19. The transition has been made easier by the work of Natalia's social worker CM, who has supported her to build up her relationship with her grandparents, to have Polish lessons, manage her fears of flying in an aeroplane, and more generally to prepare her for the changes that are coming.
20. Natalia's foster carers, with whom she has lived for nearly a year, have also been a huge support in helping her, and they will continue to be important figures in Natalia's life.

21. Natalia's mother has also bravely done her best for Natalia by showing her support for the plan. On 12 August 2024 Natalia's mother accompanied Natalia and her social worker CM to get a Polish passport for Natalia.
22. The parties have had useful discussions around the times that Natalia will have contact with her mother and their agreement has been recorded in the recitals to the order.
23. Advice has been obtained from Ruth Cabeza, barrister, who has set out the conditions that must be met in order for the order to be recognised and enforceable in Poland.
24. The first question is whether to make a child arrangements order or a special guardianship order. I have had regard to Ms Cabeza's advice, and to the evidence, in particular the social worker's and guardian's final analysis. There is no equivalent to a special guardianship order in Poland. The local authority will not be in a position to provide the support that would be provided under a special guardianship support plan; discussions have already taken place with local Polish children's services who will be available to support Natalia and her grandparents as and when needed. In all the circumstances, there are no benefits to making a special guardianship order rather than a child arrangements order.
25. As to recognition and enforcement. The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children applies.
26. Pursuant to Article 23(1) of the Convention, *'the measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.'*
27. Both Poland and the United Kingdom are contracting states to the 1996 Convention. Therefore, Poland will recognise the measure taken by an English Court by operation of law, and there is no need for any other steps to be taken to register the order, or obtain a declaration of recognition, or equivalent order from a Polish Court.
28. However, the Polish Court retains a residual right to refuse recognition, if any of the factors in Article 23(2) were established. None of those factors causes any difficulties in this case. In short the Article 23(2) factors are:

- *If the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II.*
29. Natalia has been habitually resident in England at all relevant times. The English Family Court does have jurisdiction to make the order.
- *If the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested state;*
30. Natalia has been represented throughout by her children’s guardian, Maria Kirnig, who has made sure that her needs, wishes and feelings have been clearly understood and voiced to the Court.
- *On the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;*
31. Natalia’s mother has been represented throughout the proceedings, and has been given every opportunity to be heard. She has given her consent to Natalia’s placement in Poland, expressing her sincere gratitude to her mother and step-father for providing a home to Natalia. Natalia’s father has also been given every opportunity to participate in the proceedings. Notwithstanding this, it is understood that he has contacted the maternal grandparents directly and consented to Natalia’s placement with them.
- *If such recognition is manifestly contrary to public policy of the requested state, taking into account the best interests of the child;*
32. The Polish authorities have undertaken their own assessments of Natalia’s grandparents and have given their consent to the making of the orders. The orders provide a means of securing the placement of a Natalia, a Polish child of Polish parents with her grandparents in her country of origin. They are plainly not contrary to public policy;
- *If the measure is incompatible with a later measure taken in the non-contracting state of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested state;*
33. There is no intention for Natalia or her grandparents to leave Poland, let alone go and live in a country that is not a signatory to the Hague Convention. The complex legal circumstance that is described is so unlikely as to be safely

discounted as a reason that might cause the Polish authorities to refuse to recognise the child arrangements order in Natalia's case.

- *If the procedure in Article 33 has not been complied with.*

34. Article 33(1) provides that where an authority with jurisdiction in one contracting state contemplates the placement of a child in another state, it shall first consult with the Central Authority or other competent authority of that state, by transmitting a report on the child together with reasons for the proposed placement.

35. Article 33(2) provides:

*'The decision on the placement or provision of care may be made in the requesting state only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.'*

36. Both Article 33(1) and 33(2) have been complied with. Through the diligent work of Ms Farbrother, the local authority kept the Polish authorities fully informed of its thinking, and submitted information and the draft order well in advance of the decision being made that Natalia could travel to Poland. The Polish authorities carried out their own assessment of Natalia's grandparents. The local authority obtained the consent of the Polish authorities to placement of Natalia with her grandparents in Poland before the final hearing.

37. In all the circumstances there is no basis for the Polish authorities to refuse to recognise or implement the child arrangements order in Poland.

38. I will therefore conclude these proceedings by making a child arrangements order for Natalia in favour of her maternal grandmother and step-grandfather.

39. The order will take effect in Poland by operation of Article 23(1) of the 1996 Hague Convention so that her maternal grandmother and step-grandfather obtain the equivalent of parental responsibility for her.

40. I wish Natalia, her grandparents and her mother all the best for the future.

HHJ Joanna Vincent  
Family Court, Oxford  
6 September 2024



**Annex A: threshold document**

**IN THE FAMILY COURT SITTING AT OXFORD**

**CASE NUMBER: OX23C50074**

**OXFORDSHIRE COUNTY COUNCIL**

**Applicant**

**and**

**Ms D**

**First Respondent**

**and**

**Mr E**

**Second Respondent**

**and**

**[NATALIA]**

**(by her children's guardian MARIA KIRNIG)**

**Third Respondent**

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**FINAL THRESHOLD DOCUMENT**

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The Local Authority contend that at the relevant date, namely 26<sup>th</sup> October 2023, there were reasonable grounds to believe that [Natalia], a girl born on [redacted], was suffering or was at risk of suffering significant harm, such harm being attributable to the care given or likely to be given to her if the Order were not made, not being what it would be reasonable to expect a parent to give to her.

The Local Authority assert that the harm suffered or likely to be suffered by the child is in the categories of physical harm, emotional harm and neglect. In satisfaction of the threshold test the Local Authority rely on the following evidence to establish its case.

1. Ms D and Mr E have placed Natalia's physical, emotional and psychological harm by exposing her to significant domestic abuse within her home, for example:
  - a. Ms D and Mr E exposed Natalia to their hostile and volatile relationship when previously living together, requiring the involvement and intervention of Children's Services to ensure that Natalia was safe (A22; I19).

- b. On 10.03.2023 Ms D's current partner presented at hospital with a suspected broken finger following him hitting a wall in the family home. Whilst Natalia was not present, Ms D accepts that she would be exposed to emotional harm should she witness such behaviour. (A22; F88)
  - c. On 02.07.2023 there was a disturbance within the home whilst Natalia was in the property. Natalia is at risk of emotional harm by hearing and witnessing verbal arguments and/or domestic abuse between her mother and partner (A22; F97).
  - d. On 09.07.2023 Ms D was outside her home 'kicking off and throwing / smashing things' whilst Natalia was in the home. Police attended the property with tasers as a result of the call and the risk of harm posed to Natalia – such action would have been extremely frightening for Natalia to witness (A22; F103-104).
  - e. On 10.07.2023 Natalia voiced her fears with staff at school, saying "Mum and Mr F were fighting in the garden - Mummy says 'stay in the bedroom'. I didn't cry, I felt scared and I played with my toys.", before telling another teacher "mummy stay with police - mummy hit daddy". Natalia also shared "Mr F is not nice; he hurts Mummy but does not shout at me". When Natalia was asked if she was scared at home she nodded (A23; C33-34).
  - f. On 04.10.2023 Ms D was hit in the face by her partner following an altercation and causing her to suffer significant facial injuries whilst Natalia was present in the home (A23; F113).
  - g. On 22.10.2023 Ms D was punched in the face several times by her partner following an argument and causing her to suffer significant facial injuries. Natalia was present in the home. (A23; F119-120)
  - h. Ms D has made multiple reports of domestic abuse to the Police but has never supported further action to ensure Natalia can be safeguarded from harm (F74; F123; F129).
  - i. Ms D is either unable or unwilling to recognise the harm being suffered by Natalia as a result of the domestic abuse she has been exposed to and continues to prioritise her interpersonal relationships above her daughter's need for safety (C92; C93; C94; C101).
  - j. Mr E has not sought to intervene or improve his daughter's lived experiences despite him being aware of the significant domestic abuse concerns held by the Local Authority (C65-68).
2. Ms D has neglected Natalia's emotional and psychological needs by exposing her to substance and alcohol misuse and the effects thereof, for example:
    - a. On 11.12.2023 Ms D's Hair Strand Test result concluded that she had consumed cannabis between May 2023 and September 2023 (E30).

- b. On 11.12.2023 Ms D's Peth Test result concluded that she had consumed excessive alcohol in the month prior to sample collection taken on 24.11.2023 (E30).
3. Ms D and Mr E have neglected Natalia's physical and emotional welfare needs due to their inability or unwillingness to provide her with a clean and stable home, appropriately manage her health, hygiene and educational needs, for example:
- a. Natalia's home conditions are inadequate due to Ms D's home being, at times, cluttered, dirty and unhygienic. This presents hazards to Natalia and are likely to cause significant physical harm (C21; C99; F103; I68).
  - b. Ms D does not have suitable accommodation for Natalia having been served with a notice of eviction and not been proactive to work with housing to obtain alternative accommodation for herself and Natalia (C103; C115)
  - c. Natalia has not always had her health needs met by Ms D as she has been unable / unwilling to seek medical assistance in a timely manner and without significant prompting (C18; C21).
  - d. Mr E has not sought to intervene or improve his daughter's lived experiences despite him being aware of the significant welfare concerns held by the Local Authority in relation to her health, education and home environment (C65-68)

Oxfordshire County Council  
14.05.2024