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Case No: BM23C50258

**IN THE FAMILY COURT AT BIRMINGHAM**

33 Bull Street,  
Birmingham,  
West Midlands, B4 6DS

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**Before:**

**DISTRICT JUDGE PARKER**

**Between:**

**BIRMINGHAM CITY COUNCIL**

**- and -**

**(1) L**

**(2) W**

**(3) THE CHILD**

**(Via her Children's Guardian)**

**Applicant**

**Respondents**

**MR LUKE EATON (Counsel) appeared for the Applicant**  
**MR ANDREW CRUMPTON (Solicitor) appeared for the First Respondent**  
**MR BASHARAT HUSSAIN (Counsel) appeared for the Second Respondent**  
**MR BARRY WALKER (Solicitor) appeared for the Children's Guardian**

**JUDGMENT**

Digital Transcription by Marten Walsh Cherer Ltd.,  
2<sup>nd</sup> Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.

Telephone No: 020 7067 2900. DX 410 LDE

Email: [info@martenwalshcherer.com](mailto:info@martenwalshcherer.com)

Web: [www.martenwalshcherer.com](http://www.martenwalshcherer.com)

**DISTRICT JUDGE PARKER:**

**INTRODUCTION**

1. I am concerned with SL, who was born on 11<sup>th</sup> September 2023. She is currently in foster care. This is the local authority's application for a final care order and a placement order. To summarise the history of this matter, the major issues relate to the parents' relationship, which was one which featured domestic abuse, and substance and alcohol misuse, which, along with the parents' dysfunctional relationship, has been present for a long time. I note that there was non-engagement initially with the pre-birth assessment and pre-proceedings, and at the outset the local authority were not proposing that any further assessments should take place.
2. There were no alternative carers put forward in this case, and indeed mother throughout, and indeed today, seeks the return of her child to her care. Both parents assert that progress has been made.
3. Mother states that she has ceased substance misuse and is addressing the multitude of concerns which the local authority have highlighted when they first instigated these proceedings. Father too also asserts that progress has been made in so far as he is concerned, and that they have both learnt from the past.
4. At the outset, this matter was referred to the Family Drug and Alcohol Court which deemed the case unsuitable because at that stage as there was little change or motivation.
5. I have read the statement of the health visitor, which at the outset again restated concerns of domestic abuse, substance misuse, and the fact that there were previous proceedings in relation to the parents' previous children which were concluded,

effectively, in two successive years. Those children were removed from the parents' care.

6. The statement of the midwife indicates that the parents have previously broken up and resumed their relationship and there were a number of missed appointments and issues of substance misuse.
7. I note that within these proceedings the mother applied for a Part 25 assessment seeking an independent social work assessment on the basis that she maintained that she had made positive changes.
8. At that stage she had separated from the father, had obtained a restraining order and was engaging with professionals and support services, in particular her GP and CGL, as well as programmes in relation to 'Breaking the Cycle' and the Freedom Programme. She also maintained that she had been substance free for a number of months.
9. At a hearing on 20<sup>th</sup> November 2023 that application was dismissed, as the changes reported were not considered, at that time, to be sustained changes, given the concerns held in respect of the parents being longstanding in nature.
10. I note that the local authority have lodged their application for a placement order and the agency decision maker has noted that there is a potential for SL to be placed alongside her brother.
11. This matter was last before me on 1<sup>st</sup> February 2024 where it was recorded that the parents were now presenting as a couple and seek to care for SL long term.

12. I note that in that order it is recited that there is a plan of placement with the adopters of the older sibling which was to be explored, and whom the mother has met. I note that the local authority today indicate that placement with the adopters of the older sibling is a significant prospect.
13. I made a number of directions at that time to timetable matters to today's final hearing some of which are outstanding, more notably in relation to father's hair strand tests, an outstanding report in relation to the GP and CGL, and any additional work the father has undertaken. To be fair, he has been in prison, which I will return to, and his position at this stage is primarily focusing upon supporting the mother.
14. The threshold in this matter is accepted and, to summarise, both parents concede that there has been a longstanding history of substance and alcohol misuse which has impacted on their parenting and their ability to meet their child's needs.
15. Father accepts that he is a high-risk offender of domestic abuse with a history of violence, which again, if it were to be continued, would place any child put in his care at risk due to his unpredictable behaviour. Father also suffers from poor mental health, which again could impact on his ability to meet the child's holistic needs.
16. Overall, the concern is that any child placed in the parents' care would be neglected, as evidenced by the pre-birth assessment and the fact, of course, that when the child was born, the child did show signs of withdrawal with regard to Neonatal Abstinence Syndrome.
17. I have read the local authority's evidence.
18. In relation to mother's hair strand test from June to September 2023, it records positive for cocaine, heroin and cannabis and excessive alcohol between the period of

September and October. Father's hair strand test similarly shows usage of cocaine, heroin and cannabis, and excessive alcohol. The local authority maintain that the issues in relation to alcohol and substance misuse therefore remain.

19. The local authority also point to a police incident in October 2023 where the father had been harassing the mother which the local authority again point to as evidencing ongoing concerns in relation to the parents' relationship.
20. The local authority's case is that the mother is at the very early stages of engagement with services and needs to show a significant period of sustained changes, given the longstanding issues that these parents have, and hence the plan is that of a single track for adoption which is supported by the agency decision maker and the independent reviewing officer.
21. I note that the father pleaded guilty in relation to the offences relating to the mother and he is currently serving a prison sentence but will be out in the not too distant future.
22. In essence, the local authority maintain that the combined risks associated with the parents can be summarised as a concerning criminal history; chaotic and unstable lifestyle; poor mental health characterised by difficulties in managing their emotions; and substance and alcohol misuse. The local authority are concerned that the mother does not have the ability to make and sustain the necessary changes within the timescales of their child and the prognosis is uncertain. Mother's support network is also limited.
23. I note that there were further hair strand tests undertaken in December 2023, which again shows positive for substance misuse and excessive alcohol usage.

24. Mother disputes her test results, and understandably both parents oppose the applications for placement orders.
25. I note that the father accepted that he drinks heavily and smoked cannabis, leading to his arrest in December 2023, and he accepts that he needs to address those issues. The father, as indeed the mother, confirm that they are committed to their relationship with one another.
26. The mother accepts that she may not have been wholly honest about this in the past, but, to her credit, she is now.
27. There is an updated statement prepared for the purposes of today's hearing where the local authority asserts that the parents' co-dependent relationship continues, and this is evidenced by the fact that they wish to continue to maintain their relationship and that the previous restraining order has been revoked.
28. Recent hair strand tests conducted show active use of cocaine between November and February 2024 and excessive alcohol use for the mother, and, whilst the mother to her credit has now engaged with outside agencies, they indicate that this is very much in its infancy, when one looks at the concerns as to drug and alcohol use being longstanding in nature. Although there may be a reduction, there has not been cessation. Indeed, the test results still show the use of alcohol in the excessive range.
29. In essence, the local authority repeat their concerns as to the parental relationship and the potential for it to become abusive; mental health problems; drug and alcohol misuse which are longstanding, including previous non-engagement; and that there is no evidence of sustained change, such steps that have been taken being in their infancy.

30. I have read father's position statement.
31. He supports mother in caring for SL. He opposes a placement order. He anticipates being released on 15<sup>th</sup> August (it could be sooner) and placed in a probation property for eight weeks before moving to shared accommodation. It will be a condition that he will not be allowed to go to the mother's flat, but they will be able to meet away from it as they remain in a relationship. Father asserts that he has addressed his drug use whilst in prison.
32. I have read the mother's statement.
33. She opposes the placement order, due again to the positive changes that she says she has made. Although she remains in a relationship with father, it is not their intention at this moment in time to live together upon father's release. That would not be possible. She has attended the Freedom Programme. She has reduced her substance misuse, has engaged with CGL and 'Break the Cycle', and commenced work with the programme 'Enough's Enough'.
34. I have read the children's Guardian's report.
35. Her very initial report highlighted that the main issue in this case is the mother's ability to change and sustain that change. There have been repeated separations and reconciliations, the most recent of which occurred following a police incident in October 2023.
36. The Guardian supports the local authority's application for care and placement orders. As far as the Guardian is concerned, the evidence does not indicate sufficient change can be made within a reasonable timeframe and within the timeframe of the child. The changes that have been identified so far are in the early stages, and the evidence

as to whether those changes can be sustained is simply not there. As far as the Guardian is concerned, there is still a large amount of work to do.

37. Although the mother may no longer be misusing substances, it is accepted there was a relapse in December 2023. The hair strand test does not wholly support what mother is saying in relation to cessation. Notwithstanding that, it still shows excessive alcohol consumption. The Guardian remains of the view that the parties' relationship is very much a risk factor.
38. I have had the opportunity of reading through the police disclosure. It is evident that the father has an extensive criminal record. I will not repeat the various entries with regard to that as it is not necessary for the purpose of my judgment.
39. It is, however, important to reflect the various outcomes of the hair strand test results. The recent one on 22<sup>nd</sup> February 2024 shows a slight decrease in cocaine and was not, it is said, consistent with use certainly prior to August 2023; similarly with heroin.
40. A further test result in relation to mother on 18<sup>th</sup> March 2024 again records positive for cannabis and cocaine and dihydrocodeine between November 2023 and February 2024 and excessive alcohol consumption between February and March 2024.
41. In responses to questions raised with regard to a test on 16<sup>th</sup> April 2024, it is confirmed that the results show a reduction in cocaine, but not cessation. It is stated that it may have been influenced by the use of painkillers in relation to toothache, which contain codeine, but this does not alter the other test results.
42. The supporting letter from mother's GP confirms that mother is attending various classes, including the through the Freedom Program Breaking the Cycle, and her mental health has improved and is described as good.

43. The report from CGL in relation to mother says that her engagement is good; she has had negative screens in relation to illicit substances; and a referral has been made to 'Intuitive Recovery online' and 'Enough's Enough' which is to commence on 9th May and which will be a six-week programme.
44. I also have the report from 'Breaking the Cycle' with regard to the mother, which confirms her engagement following a referral in October 2023.

### **THE HEARING**

45. I was invited at the outset to deal with matters by hearing from the mother by way of submissions to the court so that she can have her say, but not to give formal evidence or be cross-examined. All parties agreed that that was the way forward.
46. Under my extensive case management powers, the court has a wide discretion as to how cases should be dealt with – on the one end of the spectrum with fully contested evidence, to the other end in relation to submissions, and indeed with every variation in between.
47. I accepted what was put to me as a way of dealing with this matter because: (a) I was invited to; (b) I have read all the papers and was fully familiar with what the issues were, including of course the position of the parents; and (c) more importantly, because it is only right that the parents, if they choose to make submissions to the court, are allowed to do so.
48. The local authority indicated that mother was not challenging *per se* the local authority's case. Mother's representative said that she does not actively oppose the case, but is unable to consent to a placement order. That, I can fully empathise with.

49. It is probably if not the most difficult decision any parent can ever wish to make, and if a parent feels that they are unable to make that decision themselves, nobody should criticise them for doing so.

### **MOTHERS SUBMISSIONS**

50. She would like the court to grant a three-month adjournment due to the positive changes that she has made in order to show to the court that the progress she has made can be sustained. She is engaged to the father to be married, and they are presenting as a couple. She accepts the father's previous behaviour was wholly unacceptable, but, whilst in prison, the father has completed detox and undertaken some work in order to address his emotions. She has got a one-bedroom flat; her mental health is very good and she is getting support from 'Breaking the Cycle' and CGL, as well as commencing the 'Enough's Enough' programme. She has also engaged with her GP.
51. She spoke about the 'Enough's Enough' programme, which is a therapeutic group based on domestic abuse and deals with healthy relationships. With regards to 'Breaking the Cycle', she gave them a glowing report. She found it very positive. Through that, she has learned that it is 'okay not to be okay' and to not mask the problems with drugs and alcohol.
52. With regard to CGL, she confirmed the random tests are all negative.
53. With regard to the Freedom Programme, she has completed 9 out of 12 sessions for two hours and she has found it quite intensive, but the fact that she has found it intensive means it is effectively 'hitting the spot'. She says that it is still early days, and she wants an adjournment. The contact she is currently having with her daughter is twice a week which is very positive.

54. Whilst she notes the results of the hair strand tests, she does not accept it but does not challenge the science. She says she last used heroin and crack cocaine in December 2023. She has only ever used cocaine itself once in her teens, and her use of cannabis stopped in the New Year. As far as her drinking is concerned, she is currently drinking four cans per day, but if the child was in her care she would not drink.

#### **LOCAL AUTHORITY SUBMISSIONS**

55. The local authority's submissions, following on from what mother has said, are contained within a written document.

#### **MOTHER'S REPRESENTATIVE'S SUBMISSIONS**

56. Mother's representative reiterates that the court should consider adjourning this matter for three months until August 2024. The mother has set out most eloquently the positive changes she has made and will continue to make. She is both committed and motivated.
57. I was referred to the judgment of the former President of the Family Division in Re S (A Child) [2014] EWCC B44 which indicates that an extension beyond the 26-week timetable for the proceedings (notwithstanding of course the fact there is also a timetable for the child) is necessary in order for proceedings to be concluded justly.
58. Mother has stable accommodation. She is honest with regard to the status of her relationship. Her mental health is stable, and she has a safety net of support around her through professionals. She has undertaken a significant amount of work.
59. Of course, it is hardly needed for the court to be reminded that a placement order is a serious order where nothing less will do, and the court also has to have regard to the

overriding objective. Mother does not make any application for a further assessment. All she wants is some more time to prove herself.

### **FATHER'S REPRESENTATIVE'S SUBMISSIONS**

60. It is maintained that father's incarceration has produced change. He is now clean of drugs and has ceased his methadone script. (This of course needs to be tested once he is back in the community)
61. He may be released earlier, and father's representative echoes that the father has spoken with real conviction.
62. The question of course is: is the change sufficient to give the court confidence in granting an adjournment on the basis of a solid evidence base?
63. It is contended that mother has shown evidence of change, which is not insignificant. Are they more than green shoots, it is asked, and is time on her side due to the past history? It is contended that yes, it is; that the mother has turned a corner and has been able to appreciate what that change looks like.

### **SUBMISSIONS FROM THE CHILDREN'S GUARDIAN**

64. The representative for the children's Guardian set out that this is the third set of proceedings in so many years, where the parents have oscillated between splitting up and getting back together. The relationship status between these parents is still a difficult issue and, despite mother's request for an adjournment for three months, that period of time, it is felt, would be insufficient to test how that relationship develops in the real world and the challenges of a new baby.

### **JUDGEMENT**

65. The first thing I would like to say is that I was most impressed with how mother presented herself in setting out to the court what she would wish. She is clearly at the point whereby she wants to change, and indeed to effectively start the process of change; and she has to be commended for that. That is something that I will take into account in the difficult decision that I have to make.
66. First of all, if at all possible, children should be brought up by their birth family. It is a given with regard to that and we should not elevate our perceptions of parenting into some kind of gold standard.
67. To that end, the local authority has a duty to promote that and provide support for children to be brought up by their birth family in order to preserve the family unit. Reflective of that there is an evidential burden that has to be met prior to the removal of children from a parent's care, the statutory gateway of which is section 31(2) of the Children Act 1989. I will not repeat what that says, but suffice to say that it is not necessary for me to determine whether threshold is met because it is agreed that it is.
68. The key issue in this case is the second stage that I must consider; in other words, what order should I make?
69. To assist me, I have to have regard to section 1(3) of the Children Act and, of course, where a placement application is made, section 1(4) of the Adoption and Children Act 2002.
70. I also have to consider the Article 8 rights of the parents and indeed the child in making orders.
71. I have to consider the issues also of proportionality when balanced against the risk of harm that the parents may expose the child to if the child was to be rehabilitated to

one or both of their respective cares.

72. It goes without saying that, where an application for placement order is made, I have to be satisfied that nothing else will do.
73. In that task, I have to undertake a global, holistic evaluation of all the realistic and available options before the court for the child's future upbringing.
74. I think it is right to say that mother at this stage does not seek for the child to be placed in her care at this moment in time. She seeks an adjournment to provide the evidence base in which the court can be confident that that can take place.
75. In relation to this, it is worth citing the case of *Re B* [2022] EWCA 407. In that case, where a placement order is sought, I should ask myself a series of questions:
  - i) Is the threshold met? The answer of course is it is.
  - ii) What are the realistic options for the child's future? The case that is presented to me today is to finalise matters by way of care and placement orders or adjourn matters.
  - iii) What are the advantages and disadvantages of each of those options? The advantage of course, with a child who is now effectively eight months old, is that matters are concluded and a placement can be made, hopefully, in the near future to determine their forever family. If I do not conclude it today, that will not happen, but potentially it opens the door to a possible rehabilitation with the mother's care.
  - iv) When I am comparing the options available, I have to be satisfied that I am driven to the conclusion that a placement order is the only order that can be

made to meet the child's immediate and lifelong welfare needs.

76. Finally, it is worth reiterating what was set out in the case of *Re C* [2020] EWCA 1598:

- i) The paramount consideration is the child's welfare. Wherever possible, that will be best met by maintaining a connection with the birth parents as to as a full an extent as possible which is enshrined also in the least interventionist principle.
- ii) I have to have regard to necessity and proportionality. Severing the ties between the child and a parent for all time is exceptional and can only be motivated by the overriding requirements pertaining to the child's welfare.
- iii) To that extent, I have to look at all realistically available options. An option of a family placement should not be rejected if the identified deficits could be remedied through appropriate proportionate support provided by the local authority. I have to analyse holistically all the available options and stand back and decide which one best meets the child's welfare.

77. As I have said at the outset, the mother gave a true and honest account. She realises at this stage that she is not in a position of being able to provide a home for her daughter, but she wants a period of time of three months in order to evidence the relevant sustained change.

78. Whilst I am extremely sympathetic to what mother has to say and I cannot praise her highly enough for the steps that she has taken, I have to adopt a realistic approach in as much as the problems both her and her fiancé have are longstanding and a period of three months, in my view, is literally a drop in the ocean when it comes to providing

evidence as to sustained and effective change. Sustained change, in my view, needs to be for a significantly longer period when judged on the history in this case.

79. I have to bear in mind that of course, by virtue of the father's incarceration, the parents are, as a relationship, at a distance.
80. Upon his release, their interaction will not be as great as it once was, although they can meet outside the home subject to the conditions of the father's release, but the relationship itself, which has proved problematical in the past, and the changes that the mother has started to make, are in their infancy and have not been tested in the real world and within the dynamics of the relationship between the parents with all the stresses and strains of having a new baby to care for in the real world.
81. I accept that in certain circumstances the court can adjourn matters to test change out and to transition a child to a parent's care, but there has to be solid-based evidence for this.
82. To her credit, mother has started the process of change, and I fully understand that she has aspirations of maintaining those changes for the better, and I wish her well, but in this particular case, mere aspiration is not sufficient. There has to be an audit trail of sustained growth and change which is subject to the rigours of life and tested over a longer period. As I have indicated, that position has yet to be reached, and I do not believe it is likely to be reached in as little period as three months. The Guardian's submissions in relation to that, I am afraid ring true.
83. So, on the basis of the fact that there is insufficient evidence for me to be confident to accede to mother's request for an adjournment in accordance with the exceptions set out by Munby LJ in *Re S*, more particularly there being no solid, evidence-based

reason to believe that she will be able to make the necessary changes within SL's timescales. I am afraid that there is still a way to go for this mother and, whilst I wish her all the very best in the journey she takes, I am afraid I cannot accede to an application for an adjournment.

84. Evaluating the whole of the evidence and the various checklists I am required to under the Adoption and Children Act 2002 and the realistic options available and treating the child's welfare throughout their life as paramount, I am, sadly, driven to the conclusion that the only order that I am realistically able to make at this stage to meet the child's immediate and lifelong welfare needs, is to make a care order and a placement order, having regard to the Article 8 rights of the parents and the children and the issues of necessity and proportionality.

85. I will accordingly make those orders and dispense with the parents' consent.

86. I will say to the parents this: that they have had a number of difficulties in the past which are longstanding, but the parents' future should not be judged by the mistakes of the past. Everybody makes mistakes. The future will be determined by the actions that these parents take from now on forwards, and I wish them all the very best. They have got engaged. Father has had, he said, a wake-up call in relation to going to prison. Mother has started her journey. If they carry on with that trajectory, which I hope they will, the future (it may not seem it at this moment in time) I hope will be a lot brighter and they will look back at these proceedings as effectively a turning point itself.

JUDGE PARKER: Thank you very much indeed. Is there anything else that I need to add?

MR CRUMPTON: Sorry, judge – one point from me if I may. In terms of the hair strand testing, where there is a dispute between the mother of the scientific testing, am I right

in understanding that you accept the scientific testing?

JUDGE PARKER: I have seen no evidence put forward to suggest the scientific evidence is invalid for any reason. I note the mother says her hair grows at different levels, but of course, my decision is not based solely upon hair strand tests. We know, on mother's own admission, that she is still drinking; that she had a relapse in December 2024; however, just because a parent misuses substances or indeed misuses alcohol does not necessarily strike them out automatically, however, there are wider issues in this case which are longstanding. Accordingly, it is a combination of a number of factors for which the parents have only just started the road to recovery, but at this stage it is not sufficient in the child's timescales to enable me to agree to a further period of testing.

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Digital Transcription by Marten Walsh Cherer Ltd.,  
2<sup>nd</sup> Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.  
Telephone No: 020 7067 2900. DX 410 LDE  
Email: [info@martenwalshcherer.com](mailto:info@martenwalshcherer.com)  
Web: [www.martenwalshcherer.com](http://www.martenwalshcherer.com)