1	THE FAMILY COURT SITTING AT OXFORD	
2	BEFORE HER HONOUR JUDGE OWENS	
3	CASE NO: OX18C00115	
4	24 TH JUNE 2019 TO 25 TH JUNE 2019	
5	OCC v W	
6	Ms Wilkins, Counsel, for OCC	
7	Ms Gibbons, Solicitor, for the First Respondent Mother, M	
8	Ms Georges, Counsel, for the Second Respondent Father, F2	
9	Ms Scarano, Counsel, for the Third Respondent, acting through their	
10	Children's Guardian	
11	This judgment is being handed down [in private] on 25th June 2019. It consists of	
12	19 pages and has been signed and dated by the judge. The Judge has given	
13	permission for the judgment (and any of the facts and matters contained in it) to be	
14	published on condition that in any report, no person other than the advocates or	
15	the solicitors instructing them (and other persons identified by name in the	
16	judgment itself) may be identified by name, current address or location [including	
17	school or work place]. In particular the anonymity of the children and the adult	

complied with. Failure to do so will be a contempt of court. For the avoidance of doubt, the strict prohibition on publishing the names and current addresses of the

parties and the child will continue to apply where that information has been

members of their family must be strictly preserved. All persons, including

representatives of the media, must ensure that these conditions are strictly

obtained by using the contents of this judgment to discover information already in

the public domain.

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Introduction

These care proceedings concern one child, A, who is aged 9 months old. M is his mother and F2 is his father. Proceedings were issued on 29th September 2018 and an interim care order was made at the first hearing on 8th October 2018. A has been in the care of his mother throughout proceedings, and indeed throughout his life to date. Initially this was in a mother and baby foster placement, and since 16th January 2019 he has been with his mother in the community.

Background

M was previously married to the father (F1) of her two older children, B and C (now aged 8 and 4 years respectively). The family were known to social services from 2011 because of concerns around domestic violence, the mother's mental health and neglect of the children's basic needs, including the provision of food, adequate supervision and adequate stimulation for the girls. The family was monitored and supported by a long-standing Team Around the Family which was managed by B's school.

On 27th May 2017 F1 sadly died following a night out drinking with friends; his body was found by B and C in the living room of the family home. Following her husband's death, M's mental health suffered and she struggled to meet the children's needs, with concerns about their school attendance, their physical presentation, and hygiene in the family home. On 17th January 2018 M failed to collect B and C from school despite repeated telephone calls from professionals, who were unable to locate

her. B and C were collected that day by their maternal grandmother, and have remained in her full-time care since.

Following B and C leaving their mother's care it came to light that she was pregnant with a due date in September 2018. During her pregnancy there were concerns about the mother's presentation, with concerns being raised about her mental health and about her physical appearance in which she did not look healthy or well-kept. The mother failed to attend two appointments with a psychologist, Dr Yusef, during her pregnancy and was discharged as a result. Professionals queried the possibility of substance misuse due to her presentation, which was denied by the mother at the time.

During M's pregnancy she began a new relationship with her current partner, D. M has consistently reported this to be a positive relationship, with no features of domestic abuse, however professionals had concerns that M is a vulnerable woman and D may seek to take financial advantage of her (M has significant financial resources resulting from a trust of her late husband's).

A was born on 16th September 2018 and was discharged to a mother and baby foster placement on 18th September 2018 subject to a section 20 agreement.

There have been parallel proceedings in relation to A's half-sisters, B and C, under case number OX18C00101. The proceedings were initially consolidated on 08.10.2018 and then separated on 14.05.2019. The proceedings in relation to B and C concluded at the IRH on 27th May 2019 with both girls remaining in the care of their paternal grandmother, under full Care Orders.

Hair strand testing of M dated 26th October 2018 revealed that the mother had misused cannabis and cocaine during her pregnancy. As a result, M was referred to Turning Point.

The mother and baby foster placement was extended from 12 weeks to 16 weeks due to concerns about M's progress in maintaining A's (and indeed her own) basic care, and concerns about rehabilitating them to the community over the Christmas period. M and A subsequently returned to the family home on 16th January 2019 and M has been caring for him in the community since that date.

As part of the proceedings relating to B and C, M was subject to a psychological assessment by Dr Jo Clarke dated 18th December 2018. This assessment has not been disclosed into these proceedings, save key paragraphs as set out at B55 in the Order of 13th May 2019. Essentially Dr Clarke concluded that M does not present with signs of a clinical disorder, but there are features of her psychological profile which could impact on her parenting of her children. Dr Clarke's most significant concern was M's vulnerability in relationships. The conclusion of the assessment was that M would not be able to meet the needs of B and would struggle to meet the needs of C and A together, however she may be able to meet the needs of A in the community with close supervision and support to maintain positive changes. Dr Clarke did not consider that a psychiatric assessment was necessary.

B and C were also subject to their own psychological assessment by Dr Schnack. This assessment has not been disclosed into these proceedings, although parts of it are referred to in the social worker's final evidence.

Due to concerns regarding the smell of alcohol being observed on M and D in February 2019, further hair strand testing was undertaken dated 4th March 2019. This demonstrated that there was no evidence of M using cocaine or cannabis in the testing period (middle September 2018 to middle February 2019), but M's results were positive for chronic excessive alcohol use in that period. M states that she has not consumed alcohol since the date of that testing and there has been no evidence to contradict this. M has now produced the results of further hair strand testing dated 28th May 2019, which is clean for both drug and chronic excessive alcohol use in the period beginning March 2019 to beginning May 2019 (E9).

M, jointly with her partner D, has been subject to a parenting assessment (C98 – C141) by the social worker. The assessment concludes that M has made and sustained improvements in her parenting capacity over the duration of these care proceedings, has engaged well with all professionals, and is no longer using Class A drugs. D's role, however, is complex and he presents with a mixture of risks (collusion with the mother to conceal matters from professionals and a history of violent offending and Class A drug use) and protective factors (better day to day living skills which motivate better routines in the mother). There remain concerns about M's ability to maintain the good care she had provided A to date, but the overall conclusion of the assessment is that the risks can be managed and supported under a twelve-month Supervision Order to the Local Authority.

A's father is F2. Paternity was confirmed by DNA testing dated 5th November 2018. Despite being aware of his paternity and having met with the social worker on 17th December 2018, and having been advised of the need for him to seek independent legal advice, F2 did not seek to become involved in proceedings until given a final opportunity to do so by the Court in the Order dated 13th February 2019 (B29b). He was subsequently made a party to proceedings on 14th March 2019.

F2 has confirmed that he did not himself wish to be assessed as a carer for A, however he put forward his friends, E and G, for assessment. E and G were subject to a positive viability assessment dated 29th March 2019 (C36 (a) – (j), and a full kinship assessment dated 10th May 2019 (C46 – C97). Due to the timescale for proceedings the full assessment was completed in only 5 weeks. I am very aware of the recent interim guidance on the making of Special Guardianship Orders issued by the Family Justice Council, which stressed the importance of alternative carers being carefully and fully assessed in the appropriate timescale (usually three months). In this case all parties agreed to the expedited timescale to ensure that the proceedings were not unduly extended. As I have also noted, the late involvement of F2 in these proceedings in turn meant that E and G were not identified as potential alternative carers until comparatively late in the timetable. The guidance also stresses the need to assess the relationship between the child and the proposed carer/s; it is not in dispute in this case that the carers have no relationship at all with A.

Despite these limitations, the assessment concluded that E and G would make wonderful parents to a child at some point, however the assessor was unable to make

a full recommendation due to outstanding medical and DBS checks. Furthermore, the couple indicated that they would like to adopt A and so a Special Guardianship Order would not be the most appropriate order and would be questionable given their views (C96).

This hearing has been listed as a final hearing, originally with a time estimate of three days, however on day one it became apparent that it may be appropriate to decide the matter on submissions only given the greater clarity of the issues in the case and the acceptance by the Local Authority and Guardian that the proposed final care plan is not without a need to acknowledge and manage aspects of risk in terms of M. I therefore determined the matter on submissions, having considered all the written evidence contained in the Court Bundle.

Parties' positions

The Local Authority's final care plan is for A to remain in the care of his mother under a 12-month Supervision Order supported by a tight written agreement/statement of expectations.

M supports the Local Authority's plan and has agreed to abide by a written agreement/statement of expectations if a Supervision Order is made.

F2 opposes the final care plan and proposes that A should be removed from the care of M and placed with E and G. He accepts that he does not have detailed proposals for this, including what form of order he suggests would be required to achieve this outcome.

The final care plan is supported by the Children's Guardian.

Relevant legal considerations

In addition to considering the provisions of section 31 Children Act 1989 concerning threshold, I have had regard to section 1 of the Children Act 1989 specifically the welfare checklist headings with regard to the welfare disposal of these proceedings. As I have also noted above, I have had regard to the interim Guidance on making Special Guardianship Orders issued by the Family Justice Council on 24th May 2019.

Findings

In relation to threshold, the final threshold document is at A23-24. As is recorded on the Case Management Order of 29th May 2019, final threshold for the purposes of section 31 is agreed in respect of both the father and mother in this case (B65). Having considered the written evidence in the Bundle, and noting the concessions of both parents, I do find threshold crossed for the purposes of section 31 Children Act 1989 and adopt the document at A23-24 as my threshold findings.

198 The next aspect that I have to consider is what disposal is in A's welfare interests in 199 this case? 200 201 All parties accept that there are two placement options put before me today: 202 203 A to remain with his mother under a 12-month Supervision Order a) 204 A to be placed in the care of E and G. b) 205 206 207 The first heading on the welfare checklist is A's ascertainable wishes and feelings, 208 taking into account his age and understanding. He is obviously too young to be able 209 to articulate his own views about this, but I have no doubt that he loves his mother 210 given the warmth and affection that has been consistently observed between them by 211 professionals. 212 213 A's physical, emotional and educational needs is the next relevant welfare checklist 214 heading. In my view this heading is inextricably linked to the welfare checklist 215 headings of parenting capability and risk of harm. A parenting assessment of M was completed on 17th May 2019 and appears in the Bundle at C98-141. The assessments 216 217 of E and G appear at C36(a)-(j) (initial viability) and at C46-97 (full kinship). 218 219 It is acknowledged in the assessment of M that M has made and sustained improvements in her parenting capacity over the duration of these care proceedings 220 221 and suggests that "the reasons for this are numerous: M is no longer using Class A 222 substances and is not in an abusive personal relationship, M is financially secure and able to engage with professional support and advice to improve her personal circumstances. I suggest that the ongoing high levels of support, monitoring and intervention particularly by Social Workers has been hugely significant in motivating M to sustain the changes that she has made" (C139). The assessment goes on to consider the complexity of D's role and the risks that he may pose (C139-140) as well as the support that he offers to M. The assessor notes "with regard to M's ability to meet A's care needs on an ongoing basis I have significant concerns about her ability to do this" (C140). However, it goes on to recommend that A "should only remain in the care of M under the guise of a Supervision Order to ensure that A remains highly visible and accessible to the Local Authority for safeguarding purposes" (C141).

In the social worker's final evidence at C142-171 the concerns about M's parenting capability and potential risk of harm to A are also acknowledged: "M and D are in a reasonably young relationship which will face further tests. Should this relationship end there would be concerns for how M might cope. With no other informal supports to speak of, there is the risk that she would seek another relationship swiftly, as she has done since F1's death, regardless of A's needs for stability and safe care. M has made concerning child care decisions historically which she could repeat without D's support. Dr Schnack's highlighting of M's inconsistency around her own role in this decision making does not give me confidence that she has developed her understanding or such risks and would not A in similarly risk situations...It could be argued that until M can recognise her role in B and C developing such high emotional support needs and until she can demonstrate some genuine empathy there is a high risk of a repeat of similar parenting with A" (C153-154).

The final social work statement also notes that, as is borne out in the parenting assessment (C113), A's emotional needs have been consistently met to a good enough standard to date in a way that B and C's were not (C153). D is also noted to have positive interactions with A and has shown that he is attuned to A's emotional needs (C153). A's health needs are also noted to be met to a good enough standard, though the impact of his being exposed to substances misused during pregnancy is noted as not yet fully known (C153). The statement also notes the consistently good engagement of M with professionals and the improvement of her parenting during proceedings (C169). On balance it concludes that, despite noting the concerns about potential risks to A from his mother in her care, these can be ameliorated with the support that a 12-month Supervision Order would offer (C169).

The Guardian, who was permitted to file an enhanced Position Statement in lieu of a final analysis and recommendations (A19d-f) summarised her views as follows: "The Local Authority after careful thought is recommending that A remains in the full time care of his mother subject to a one year Supervision Order. The Guardian is supportive of that position but recognises this is not without risk and that there does need to be ongoing Local Authority involvement with and support for M which will be provided under the proposed Supervision Order. The Guardian could not support the case concluding with no Public Law Order but agrees on balance the Local Authority no longer needs to share Parental Responsibility for A" (A192d). She went on to note that "A's ability to remain safely and consistently cared for by his mother throughout his childhood is crucially determined by M's commitment to engage with Turning Point to ensure she ceases all illicit drug use and does not again drink

alcohol to excess. She also needs to access the therapy recommended by Dr Clarke and for which M indicates she can fund privately from her own/the Trust resources. These expectations need to be monitored under the proposed Supervision Order and alongside the proposed Child in Need Plan" (A19e-f).

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As I have already noted, in broad terms the assessment of E and G was positive. The assessment was conducted over an abridged period, as I have also earlier noted, however it is still a detailed and, in my view, carefully considered assessment which has not reached hasty conclusions. The Summary of the assessment set out at C94-95 lists both strengths and weaknesses in respect of a placement for A with E and G. Most significant of the vulnerabilities identified, as noted by the Local Authority and Guardian in their closing submissions to me, is that A currently has no relationship whatsoever with E and G who are not members of his family. There are other aspects of their vulnerabilities which the assessment also highlights would need to be subject to further assessment, such as health concerns in respect of both E and G, the potential impact of their proposed move to an area where F2 resides and how they would manage contact with both parents. It is also to be noted that their relationship and living together as a couple is still relatively new. E and G (for whatever reason) have also indicated a preference for adoption rather than special guardianship. As the Guardian noted in her enhanced position statement, the conclusion of the assessment led her to conclude that E and G "would potentially offer high quality care to a child but she could not recommend them as carers for this child" (A19e).

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It was submitted by Ms Georges for F2 that it is not up to him to come up with a transition plan for A to move to the care of E and G. To some extent this is true in

that he is not a professional social worker and would need to be guided by professionals. However, it is deeply concerning that he appears to have given no thought whatsoever to how A might move to the care of E and G when it is not disputed that they are complete strangers to him. It is also concerning since he accepts moving A from the care of his mother will cause A emotional harm. There is a very real lack of clarity and detail in his proposal as to how the move might be achieved in a way that puts A's welfare first, and it is very striking that this therefore inevitably makes it appear as if his main goal is simply to prevent placement of A with his mother rather than a coherent proposal which puts A's needs first. This sense of F2 being more influenced by a need to prevent A remaining with his mother is reinforced when I read F2's statement at C174-179 which focusses heavily on the documented concerns about M with no acknowledgement at all about the many positives that have been observed by the professionals in relation to her care of A. It also chimes with something noted by the initial social worker in her statement dated 20th December 2018 when she observed that "Whilst F2 did state he wanted to see A, he was not asking about his welfare and that he knew he would be fine if he was with M and in a foster care home. He did not push for sooner contact when I explained it would be until January 2019. My initial meeting with F2 was conspicuous by a lack of requests for specific information about A. I am aware, having read the messages between M and F2 that this is also apparent there being, for example, no requests for a photo of his son" (C22). As I noted in the background to these proceedings, it is also noteworthy that F2 was aware of the pregnancy and his potential to be A's father, and was notified of the proceedings and spoke to the social worker in December 2018 yet did not seek to participate until given a final opportunity to do so in February

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2019. His statement at C176 simply does not address this aspect of the delay in his participating in these proceedings.

It is acknowledged by all the professionals in this case, as well as M herself, that she has been subject to lengthy and very detailed assessment. She has undergone a protracted placement in a mother and baby foster care placement which ultimately concluded that she could safely move to caring for A in the community. It has been raised by F2 that, as identified by the experts (only one of whom was appointed to assess M as Dr Schnack was instructed to assess B and C), M may be able to 'fake good'. This risk is one that is clearly acknowledged and identified in the social work evidence, for example at C169. Ms Wilkins in her closing submissions to me also acknowledged that a level of denial on the part of M as to her role in causing B and C significant harm was one of the risks pertaining to the final care plan.

However, as was submitted by Ms Gibbons on behalf of M, M did accept her drug use from the outset of the proceedings involving B and C (though clearly F2 would not have been aware of this as he has not seen all the evidence from those proceedings). M has also twice accepted that she bears some responsibility for this in her written statements in these proceedings – C171b para 4 and C183 para 5. This is in addition to her stated acceptance that she needs to have therapeutic input as recommended by Dr Clarke (and for which she accepts she will need to pay privately) (C181 and C171b-c).

In relation to the concerns about M's substance misuse, it is true that this is a long-standing concern and one that also arose in M's current relationship with D.

However, the hair strand test results in this case clearly show not just a decrease in their consumption of drugs and alcohol during these proceedings, but the most recent test results for M (E1-13) show that she has not consumed drugs or excessive alcohol at all in the period March to April 2019. In addition, the social work evidence and that of M and D is that they are not only engaging with Turning Point but are engaging well (C151). This must be read in conjunction with the social worker's evidence of unannounced visits since 4th March 2019, chronic excessive levels of alcohol having been detected in M's hair strand results for the period end of January 2019 to end of March 2019. These unannounced visits demonstrate that professionals had no concerns about alcohol being consumed at all, let alone excessive alcohol (C147-149). This aspect of concern about M and D is also one that I find can be adequately monitored and managed by the proposed Supervision Order with a Child in Need Plan and the Written Agreement produced at court on 24th June 2019.

It is also acknowledged by the Local Authority that M's mental health and psychological presentation have in the past been causes for concern and therefore might translate to a future risk. It was correctly pointed out by Ms Wilkins in closing that Dr Clarke concluded that M did not have a diagnosed clinical disorder and was of the view that M may well be able to care for A. Since Dr Clarke reported on M on 18th December 2018, M has had an opportunity to care for A in the community (they returned home on 16th January 2019 under an interim care order as I have earlier noted). There is absolutely no evidence since then of A's needs not being met by M to a good enough standard. In fact, there is much evidence of A's needs being met to a good standard and M actually improving her parenting of A (C169). In addition,

this is a mother who has done everything that professionals have required of her. She has engaged well with professionals as required and has actively pursued sourcing her own therapy (C154 and C169) in the knowledge that she will have to fund this herself (C181). She has also acknowledged that any therapist will benefit from seeing Dr Schnack's report, even though M does not accept everything that Dr Schnack has said about her, and she does say that she agrees with some of the concerns expressed by Dr Schnack (C181).

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When I weigh the two competing placement options carefully, on balance I find that A's welfare requires that he remains in the care of his mother. There are positives in respect of the potential placement with E and G, as is noted at C94, in particular that they are committed to caring for him and want the best for A, and are prepared to put his needs first. They also have a very good support network and have a good understanding of a child's needs with some limited experience of looking after a friend's child. The negatives of a potential placement with E and G which tip against this being in his welfare interests are that this would be a placement with people he does not know and which would remove him from his family, with the consequent potential for this to affect his sense of identity. It would, as was fairly acknowledged by F2, represent a significant change in his circumstances (another relevant welfare checklist heading) which would also cause him emotional harm. A has been cared for by his M as his primary carer since birth. To remove him would be distressing for him and would be deeply unsettling for him as it is by no means clear whether this would in fact require at least one more move to an interim placement prior to moving to the care of E and G. Even if he were to move immediately to the care of E and G upon conclusion of these proceedings, I am satisfied that moving to the care of strangers where there are significant concerns about their ability to manage contact with either parent (as noted in the SGO assessment at C95) would pose a risk of emotional harm to A in any event.

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There are also undoubted potential negatives in relation to the risks which arise from A remaining in his mother's care as I have noted. There are also many positives about her care of A during these proceedings and her acknowledgement and acceptance of her remaining issues. She has also, I find, demonstrated not an ability to 'fake good' but the beginnings of insight and understanding to her own shortcomings through taking active steps to tackle those issues and improve her parenting skills. Her level of engagement with professionals has also been very good and I have no doubt that if she continues with the same level of engagement she will continue to improve her parenting ability. D has also agreed to the Written Agreement terms, another safeguard in respect of the identified risks, I find. On balance, I am satisfied that the risks of placement with M are therefore sufficiently ameliorated by being managed under the proposed 12-month Supervision Order (which may be extended if assessed as necessary to continue to provide M and A with support) and with compliance with Written Agreement which both M and D have signed up to. This therefore means that I cannot conclude that it is necessary and proportionate to make the most draconian decision that a Family Court can make, namely to remove a child from not only their family but from the only carer and parent they have known since birth.

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This leads me on to considering the position with regard to contact between A and his father. The Local Authority final care plan is that this should continue initially as it

has been under the interim care order, namely for one hour per fortnight but that this can move to being unsupervised contact. Beyond this the Local Authority, through Ms Wilkins in her closing submissions, accepts that this will need to be progressed but that it can be dealt with under the auspices of the reviews that will be built into the Supervision Order and Child in Need Plan. This is accepted by F2 who, whilst he wishes to have weekend staying contact with A as he has with his older children, accepts that this must be built up at a pace which meets A's needs. The Guardian also endorses this, though would welcome the opportunity to have some more detailed discussions about what precisely will be the intention once the outcome of this hearing is known. I endorse the proposals for contact between A and in fact with his half siblings (which it is proposed will also need to be addressed through the review process) as being in his welfare interests.

Finally, it is also agreed by all parties that F2 should be granted parental responsibility for A. M actively agrees with him being granted parental responsibility and, as was submitted by Ms Georges on his behalf, it is clear that he has demonstrated a good level of commitment to A since he was shown to be A's biological father and actively engaged with these proceedings. He has also complied with the requirements of section 4(1)(c) of the Children Act 1989 and applied for a parental responsibility order by application dated 1st May 2019 (C42-50).

Conclusions

446	Given my findings above, I will grant a 12-month Supervision Order	in the favour of
447	Oxfordshire County Council. I will also grant Parental Responsibility	to F2 in respect
448	of A. I endorse the final Care Plan contained at D11-17 as amende	ed in respect of
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