

MISS RECORDER HENLEY

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

Before:

MISS RECORDER HENLEY

**IN THE FAMILY COURT
SITTING AT NEWCASTLE UPON TYNE**

CASE NO. NE18C006555

BETWEEN

LA

Applicant

M

First Respondent

and

F

Second Respondent

and

E (DOB: FEBRUARY 2018)

(By his Children’s Guardian, ALISON CLOUGH)

Third Respondent

JUDGMENT

Representation

Applicant – Miss Reay

Respondent Mother – Miss Miller

Respondent Father – Not present or represented

Introduction

1. The Court is concerned with E (February 2018) now aged 14 months old. E has been placed in local authority foster care since 25.07.18, initially on a voluntary basis pursuant to s.20 Children Act 1989 and subsequently under the auspices of an Interim Care Order which was granted on 26.09.18.
2. The Mother is M, she attended the final hearing and was represented by counsel.
3. The Father is F. He has Parental Responsibility for E as he is named on E's birth certificate. He is neither present nor represented. He has been given notice of these proceedings. He cannot read and therefore the LA SW spoke to him on 10th September 2019 by telephone to check his position. He confirmed that he did not wish to participate in these proceedings and agreed that E should be adopted. A statement has been filed by the LA to confirm the content of these discussions. I am satisfied that he is aware of these proceedings, aware of the care plan for E and does not wish to advance himself or any other member of his family to care for E. I am satisfied on that basis that I am able to proceed to make final orders today.
4. E is represented by his Children's Guardian, Alison Clough.
5. This matter came before me for IRH on 13th May 2019. The Mother's position was unclear at that stage but the Guardian had indicated in her final report that the Mother may be coming to terms with E's care plan and that there was a possibility that she would not actively oppose the making of Care and Placement Orders in respect of him. I therefore adjourned the IRH for one week, until today, to allow further instructions to be taken from the Mother, away from the Court precinct, to

see whether the matter could be concluded in advance of the final hearing, which is presently listed for 3 days on 17th June 2019.

Background

6. This is a very sad case. E is the parents' first child.
7. LA involvement commenced during the Mother's pregnancy following a midwifery referral due to concerns about the parents' mental health and their backgrounds. The Mother suffered chronic neglect and abuse in her childhood and engaged in abusive relationships as an adult.
8. E was made the subject of a Child Protection Plan as an unborn child in November 2017 under the category of Neglect.
9. The LA carried out a pre birth assessment shortly before E was born. The conclusion was negative in respect of whether the couple could safely care for E. Home conditions were squalid, both parents' mental health was poor and the Father was presenting in an aggressive way towards professionals. The assessment indicated that if the Mother was prepared to separate from the Father then she may be able to care for E with support.
10. M agreed to separate from F in March 2018 and moved into homeless accommodation with E once he was discharged from hospital following the birth. M refused to move into a Mother and Baby Unit in a local Hospital and no other suitable mother and baby placements were available. A team of professionals offered regular support and monitoring.
11. M associated with a man that she met in homeless accommodation who was asked to leave that property after displaying aggressive behaviour whilst under the influence of alcohol and exposing himself to a child. In breach of a written

agreement she continued to have contact with him and allowed him to come into contact with E.

12. An updated parenting assessment of M demonstrated sufficient positives that the LA decided to formally end the Public Law Outline Process on 18.7.18 on the basis that the Mother should attend the Freedom Programme and the Incredible Babies Parenting Course.
13. During a home visit just a week later, on 25th July 2018 the SW was so concerned about the unsafe and unhygienic home conditions, the Mother's continued breach of the written agreement permitting E to have contact with the man she met at Homeless accommodation, her poor handling of E and his loss of weight, believed to be due to underfeeding, he invited the Mother to agree to E being accommodated in LA foster care. M agreed to E being placed in foster care that day.
14. These proceedings were issued on 30.8.18. The 26 week timetable expired in February 2019.

Threshold Criteria

15. The Mother accepts that the threshold criteria for the making of public law orders pursuant to s.31 Children Act 1989 is crossed.
16. The Father makes no concessions, but is aware that findings and final orders may be made in his absence.
17. The Mother makes the following factual concessions:
 - a. The mother has failed to maintain safe and hygienic home conditions.

b. The mother failed to ensure that E was properly fed, resulting in him losing 4oz and becoming underweight for his age.

c. The mother has failed to prioritise E's needs above her own, for example:

i. The mother spent backdated benefits on trips to the cinema and on gifts for her boyfriend, despite her home not being fully furnished or carpeted.

ii. The mother failed to prioritise paying rent and spent available money.

iii. The mother has prioritised her relationship and has continued to allow him into the home with E despite advice from professionals that this should not happen due to his behaviour around E and other children, including exposing himself to a child and being drunk and disorderly.

iv. The mother allowed a family from Homeless accommodation to move into her property, including the mother's partner who she was aware had been involved in a violent crime. The mother provided this family with financial assistance despite being in debt and having rent arrears.

d. The mother has failed to meet E's health needs in that the mother was slow in treating significant nappy rash and ran out of prescription medication.

e. The mother has failed to work openly and honestly with professionals and has breached numerous written agreements that have been put in place to protect E.

f. The mother is at risk of eviction and homelessness due to accruing £300 of arrears on a property despite only moving there in June 2018.

g. E has suffered physical harm in the care of the mother, including:

h. The mother dropped a frozen pizza on E's head on 24 April 2018

i. E's head was bumped on a fire door on 7 June 2018. E was taken to hospital due to vomiting after this incident.

- j. The father has poor mental health and is unable to address his own health needs.
- k. The father has a fascination with knives and has been observed playing with a pen knife or keeping a knife next to him during visits.
- l. The father is prone to outbursts of violent aggression and has problems controlling his anger. He has presented in an increasingly threatening and violent manner towards professionals and has not engaged in any support to address this.
- m. The father has had no contact with E since he was born and appears to show no emotional warmth towards him.

18. Having considered all of the papers in this matter, I am satisfied that these concessions are borne out by the unchallenged written evidence and I make these findings of fact on the balance of probabilities.

19. As a consequence of these findings I am satisfied that the threshold criteria for the purposes of making final public law orders is crossed and that E has suffered and is at risk of suffering significant harm in the form of neglect, physical harm and emotional harm attributable to the care of his parents.

Evidence

20. During this hearing, I have heard from the legal representatives on behalf of each party. I have read the bundle of documents filed for this hearing. I have not heard any oral evidence and no party invited me to do so.

Care Plan

21. The final care plan in respect of E is dated 15th April 2019. It provides for E to be placed for adoption. The local authority seeks Care and Placement Orders in respect of E.

Legal Framework in respect of welfare decisions

22. I remind myself that E's welfare is my paramount consideration. That is section 1(1) of the Children Act 1989. In considering what orders to make I have regard to the Welfare Check List found in section 1(3) of the 1989 Act.
23. In relation to the threshold criteria of section 31(2) Children Act 1989 I have regard to whether I am satisfied that E has suffered or is at risk of suffering significant harm.
24. When considering which orders if any are in the best interests of E I start very clearly from the position that, wherever possible, children should be brought up by their natural parents and if not by other members of their family. The state should not interfere in family life so as to separate children from their families unless it has been demonstrated to be both necessary and proportionate and that no other less radical form of order would achieve the essential aim of promoting their welfare. In Re B [\[2013\] UKSC 33](#) the Supreme Court emphasised this, reminding us such orders are "very extreme", and should only be made when "necessary" for the protection of the child's interests, "when nothing else will do". The court "must never lose sight of the fact that (the child's) interests include being brought up by her natural family, ideally her parents, or at least one of them".
25. I have looked again at the words of the then President in Re B-S (Children) [\[2013\] EWCA Civ 1146](#) as well as the judgments in Re B (supra) and reminded myself of the importance of addressing my mind to all the realistic options for the child, taking into account the assistance and support which the authorities or others would offer.
26. In considering making a Care Order I have had close regard to the Article 6

ECHR and Article 8 ECHR rights of each parent and of the child, but I remind myself that where there is tension between the Article 8 rights of the parent, on the one hand, and of the child, on the other, the rights of the child prevail; *Yousef v The Netherlands* [2003] 1 FLR 210.

27. When considering whether to make a placement order, it is trite law that I must be satisfied that any orders I make are a lawful, necessary, proportionate and a reasonable response to the child's predicament. The granting of a placement order represents the most drastic curtailment of the right of these parents and of the child under Article 8 of the European Convention on Human Rights and Fundamental Freedoms, which can only be justified by pressing concerns for his welfare. However, in construing both the Convention and domestic law, I have the assistance of the decision of the Supreme Court in *Re B (A Child)* [2013] UKSC 33 followed by the decisions of the Court of Appeal in *Re P* [2013] EWCA 963 and *Re G* [2013] EWCA 965. Those cases firmly re emphasise that a placement for adoption is a "very extreme thing" and "a last resort to be approved only when nothing else will do". Both domestic and Convention law do require a high degree of justification before adoption can be endorsed as "necessary", the term in the Convention or "required", the term in the Adoption and Children Act.

28. I must apply the welfare checklist found in section 1(4) of the Adoption and Children Act 2002, and I must be satisfied that the making of a placement order accords with the child's welfare throughout his life.

29. If I conclude that the child's welfare throughout his life demands that such an order is made then the law requires me to dispense with the consent of the parents to the making of a placement order in circumstances in which they oppose the applications.

Positions of the parties

30. The local authority seeks Care and Placement Orders in respect of E inviting the Court to approve him being placed for adoption.
31. The Mother has taken a very sensible and child focussed decision not to actively oppose adoption and the making of Care and Placement Orders. She would wish to participate in life story work for E, would wish to meet his prospective adopters and would wish to have direct contact with E post adoption. She also seeks to exchange indirect contact twice per year via the post box system and would like to be provided with a photograph of E each year.
32. The Father has played no role in these proceedings but has recently informed that social worker that he supports E bring adopted.
33. The Children's Guardian fully supports the LA's care plan for E and the making of Care and Placement Orders in respect of him. She supports on going direct contact for the Mother post adoption and would invite the LA to ask prospective adopters whether they would be willing to promote this.

Welfare analysis

34. In so far as realistic placement options are concerned, there are no realistic potential family or kinship placement options for E. Negative viability assessments have been concluded and not challenged. The only two options before the Court are a placement with the Mother and adoption.
35. I have no doubt that the Mother loves E and that he loves her. The Mother has suffered much adversity in her life which has sadly left her ill equipped to care for E. She has tried her very best to care for him but has an overwhelming unmet need for therapeutic intervention. The timescales for the work that she requires are beyond those that are acceptable for E, which she bravely accepts.

36. The Mother has had a number of assessments in these proceedings, these have taken place before E was born, whilst E was in her care and after his removal. She has had a PAMS based assessment and a psychological assessment during these proceedings. I am satisfied that she has been fully and fairly assessed and I accept the conclusions of those assessments.
37. The Mother has had a cognitive assessment by Dr Stephanie Hill. Dr Hill confirms that the mother has no significant deficits or difficulties in her cognition and straddles the high borderline learning disability and low average ranges. Dr Hill also confirms that the work carried out with the Mother during these proceedings to support her and try to assist her to improve her parenting ability has been done in a way consistent with her cognitive abilities.
38. Dr Hill's psychological assessment of the Mother concludes that she has psychological/psychiatric difficulties such that she will find it difficult to learn and will struggle to maintain consistent levels of care for E because her own difficulties are, at times, overwhelming for her. The Mother requires urgent input from a mental health team and treatment for PTSD and dissociation. Once her mental health is more stable, she can begin to address wider issues and the timescales for psychological and therapeutic intervention from a secondary care mental health service are estimated between 6-12 months. This time estimate does not include the waiting time to identify an appropriate service and begin therapy. There can be no guarantees that the outcome of the work once started will be successful. I am satisfied that on the basis of this expert assessment, the Mother is sadly unable to care for E within a reasonable timescale for him. E is 14 months old and has been in local authority foster care for almost 10 months. I am satisfied that decisions need to be taken without any further delay for E and that he needs a settled and permanent placement now. These proceedings have already been unacceptably lengthy from his perspective and it is not in his best interests for there to be any further delays.
39. Adoption provides the greatest sense of legal stability and permanence for a child

who cannot be placed within the birth family. It is a placement of last resort because it results in the total severance of a child's ties with their family of origin, save for, usually, limited indirect contact via the post box system. The child is given a new family, and as a result there is a loss of previous identity and usually a loss of all direct contact with the birth family, as is proposed here.

40. Adoption offers E the opportunity of a secure placement not only during his minority but also for the rest of his life, if the Court concludes that he cannot be safely cared for in his family of origin. Adoption allows him to live his life free from the state intervention that long-term foster care would bring for him and would allow him to be permanently and securely claimed by a family.

41. There is a risk that an adoptive placement can break down however this is more likely with an older child than with a baby. It is not anticipated that there would be any difficulties in finding an adoptive placement for E given his age.

Discussion and conclusion

42. In determining the right placement option for the child, I must consider her needs now and in the future.

43. E is a fourteen-month-old baby who has been in foster care for almost 10 months. His primary attachment is to her foster carer. E is meeting his developmental milestones and has no additional needs. He requires a stable, nurturing permanent home with carers who can meet his needs and keep him safe.

44. Having considered all of the evidence in this case I am satisfied that very sadly E cannot be cared for by his mother.

45. I consider that the Mother has been fully and fairly assessed and that there is no

reasonable prospect of her being able to provide good enough safe care to E within the timescale that he needs. Sadly I am driven to the conclusion that nothing but adoption will do for E. I approve the local authority's care plan and make a care order in respect of him.

46. I must now turn to consider the local authority's application for a Placement Order.

47. In considering whether to make a Placement Order I must consider not only what is in E's best interests during his minority but also what is in his best interests throughout his life. Having already concluded that nothing but adoption will do for him, a Placement Order is the order which provides the local authority with the legal permission required to put the care plan that I have already approved into effect. I am clear that it is in E's best interests throughout his life to be adopted and thereby claimed not only throughout his childhood but also into adulthood.

48. There is a pressing need for plans to be implemented for E without delay – he has already been in foster care for almost ten months of his life. I have come to the firm conclusion that the only plan, which meets E's needs, is one of adoption and that that plan needs to be implemented without delay. Consequently, I have no hesitation in concluding that E's welfare requires me to dispense with the parents' consent and I make a placement order in respect of him.

49. I invite the local authority to discuss with any prospective adopters whether they would be willing to meet the Mother and willing to promote direct contact post adoption. I also invite the local authority to discuss with any prospective adopters whether they would be willing to provide the Mother with a photograph of E on an annual basis. This would be at the discretion of the adopters and is not a prerequisite to the placement. The Mother has a good understanding of adoption as she was adopted herself. She has not taken any steps to undermine E's placement and is supportive of adopters being found for him. In the

circumstances I hope that prospective adopters would view her requests kindly.