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Case No: LV18C03025

IN THE FAMILY COURT AT LIVERPOOL

35 Vernon Street,  
Liverpool, L2 2BX

Date: 9 October 2019

**Before:**

**HIS HONOUR JUDGE GREENSMITH**

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**Between:**

**A Local Authority**

**Applicant**

**And**

**E**

**Respondent**

**And**

**L**

**Respondent 2**

**And**

**K**

**A child through his guardian**

**Respondent 3**

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Mr Pugh appeared for the **Applicant**  
Mr Rowley QC and Mr Wright appeared for the **First Respondent**  
Miss Brennan appeared for the **Second Respondent**  
Miss Daley appeared for the **Third Respondent**

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## JUDGMENT

### **HIS HONOUR JUDGE GREENSMITH :**

1. The court is concerned with the welfare of K, a boy who was born in 2018. The mother of K is E. K's father is L who has parental responsibility for K. The parents are not married; the father was registered as K's father at the time of the registration of his birth. These proceedings were initially instigated by the local authority as care proceedings. The local authority no longer seeks public law orders in respect of K, who is living with his mother. The issues before the court are whether the father should retain parental responsibility for K or whether he should have his parental responsibility restricted by way of an order made pursuant to section 8 of the Children Act 1989.
2. The local authority is represented by Mr Pugh of counsel, the first respondent mother is represented by Mr Rowley Q.C. & Mr Wright, the second respondent father is represented by Miss Brennan of counsel, and K is represented by Miss Daley, solicitor, through his Guardian.
3. The Initial application was made in 2018. The matter comes before the court today for final hearing there having been a number of case management hearings and a final hearing listed earlier this year having been adjourned because of its proximity to the father's criminal trial which has emanated from the circumstances which have given rise to this current application in the family court. As a result of the criminal proceedings the father has been sentenced to a term of imprisonment which he is currently serving. The mother appeared today with the benefit of participation directions; the father appeared by video link from prison.
4. The circumstances which gave rise to this application, in summary, are that in 2018 whilst K was in the sole care of his father, his father assaulted K by shaking him which caused catastrophic injuries. K was an infant at the time of the incident. The injuries which K suffered can be summarised:
5. K has significant traumatic injury to his brain. The result of all this brain injury is such that K now has virtually no residual normal brain tissue. Such that remains is only sufficient to keep him alive. He has further suffered significant injury to his spine; there was bleeding within his spinal canal and injury to two of his thoracic

vertebrae. Further K sustained injuries to his eyes in that he has retinal detachment in both eyes. His vision is significantly impaired, and he has diabetes insipidus. K has been left unable to eat or drink orally and this will never change. His legs are fixed and rigid and he is likely to need surgery to enable his legs to bend. He is unable to recognise day or night and his sleep pattern is reflective of this. K does not have an awareness of his surroundings. He has no ability to take care of his own needs and the prognosis is that he never will have. For the rest of his life, K will need constant care. This care is given to K by his mother.

6. The effect of K's injuries on his mother is graphically set out in the Guardian's final analysis which summarises the position thus of the mother. She explains how the mother will never see K through childhood, adolescence into adulthood and will be deprived of the experiences the parents normally feel entitled to when bringing up children. The Guardian says that K's presenting issues and conditions require a complex regime of nine medications per day just to enable his body to carry out functions that are usually taken for granted such as sleeping, swallowing, secretions, opening his bowels and concentrating urine appropriately. When faced with these challenges the Guardian has deep admiration for the mother who she says has demonstrated a level of maturity that is way beyond her 21 years and despite K's and her own life being changed forever the Guardian has never once heard the mother complain about the level of care that K needs.
7. All the medical evidence that is available in the bundle supports the description of K being a child who has little or no awareness of his surroundings and who is incapable of relating to either situations or people. K has a significantly reduced life expectancy and during his life such quality as he is able to enjoy is provided entirely by his mother.

#### The issues

8. It is common ground that K is to continue in the care of the mother. The local authority is entirely satisfied with the level of care that the mother is providing for him. All involved are full of admiration for the mother and there is no requirement for an ongoing role for the local authority in K's life. The issue which the court needs to adjudicate upon is the extent to which the father will play a role in K's life. The mother has made an application within these proceedings for the father's parental responsibility for K to be terminated. Whilst it is the mother's primary

position that as a result of termination of the father's parental responsibility the father should not have any ongoing input into K's life or any involvement at any level, the mother would accept a position whereby the local authority would undertake to inform the father in the event of K's death provided that information was not communicated immediately. This concession would only be given by the mother in the event that the court deems it to be in K's best interests.

9. The father's position is that he wishes to retain parental responsibility for K. The father accepts that K would continue to live with his mother and he agrees that he would not take any steps to involve himself in K's life. The father maintains that he should be provided with an annual update in respect of K, such update to be provided by the local authority. The father also seeks to be informed of K's death. The father will agree to his parental responsibility being restricted by way of either specific issue orders or prohibited steps order is.
10. The local authority and the Guardian support entirely the mother's position.
11. Each party has filed statements and skeleton arguments in support of their positions which I have carefully considered. In addition, each party has made submissions through their respective counsel. No oral evidence was given at the final hearing.
12. The mother has also made an application to change K's surname. The father has indicated his agreement to this aspect of the mother's application and therefore the court has no need to adjudicate upon it.

#### The Law

13. A father who has gained a parental responsibility for a child by virtue of being registered on the child's birth certificate as his father can only lose parental responsibility by an order of the court to that effect, that order being made pursuant to the Children Act 1989 s.4(2A) on an application by another person who has parental responsibility for the child. In this case the mother who, of course does have parental responsibility, has made an application to terminate the father's parental responsibility.
14. Section 3(1) of the Children Act 1989 defines parental responsibility as all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.

15. Parental responsibility has been acquired by the father in this case as he has been registered as the father in the child's birth certificate by virtue of section 4(1) of the Children Act 1989.
16. By virtue of section (2A) of the act a person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the court so orders.
17. On an application to terminate parental responsibility the child's welfare shall be the court's paramount consideration as is prescribed by section 1(1) of the Children Act. Consideration of the Welfare Checklist in s.1(3) is not mandatory but it may be helpful for the court to demonstrate this has been considered in order to provide an analytical framework: *Re D (Withdrawal of Parental Responsibility)* [2014] EWCA Civ 314 per Ryder J (as he then was).
18. The court must also consider whether making such an order is better for the child than making no order at all – s.1(5). *Re D*
19. The court has been referred to several key decisions in the High Court and the Court of Appeal which have established principles relevant to these proceedings. Those principles relevant to this application can be summarised as follows:
  - i. The significance of parental responsibility is the contribution to a child's welfare that status confers on the adult concerned. The concept of parental responsibility describes an adult's responsibility to secure the welfare of their child which is to be exercised for the benefit of the child not the adult. *Re D*
  - ii. If the circumstances are such that the court would not conceivably make a parental responsibility order where one does not already exist then the circumstances are likely to indicate that parental responsibility could properly be terminated. *Re P (Terminating Parental Responsibility)* [1995] 3 FCR 753 per Singer J.
  - iii. The court should consider that it is appropriate to terminate parental responsibility where there is no element of the bundle of responsibilities that make up parental responsibility which the father could in present or foreseeable circumstances exercise in a way that would be beneficial for the child. *CW v SG* [2013] EWHC 854 (Fam).

- iv. Where the Article 8 rights of a parent conflict with the article 8 rights of a child, it is the rights of the child that take precedence. *Yusuf v The Netherlands* [2013] 1FLR 2010.

Analysis

20. It is without question that the mother does not want any form of help or support from the father. I am entirely satisfied that the mother will not allow the father into K's life at any level. This is entirely understandable. The father has deprived K of any significant quality of life and the mother of enjoying the simple pleasures of her child grow through childhood to adulthood. I can safely find, on the balance of probabilities, that the father will never play any role in K's life or be allowed to take any responsibility for his welfare.
21. I turn to the father's motives for wishing to have ongoing involvement in K's life. I have had conduct of this case from its inception. I have read and re-read the father's statements and all the evidence from the criminal proceedings including the sentencing hearing transcript together with the pre-sentence report. Despite my efforts to establish the extent to which the father takes full responsibility for his actions I am unable to be wholly satisfied that he does. I give the father credit for admitting immediately that he injured K by shaking him. However, his initial story was based on his trying to remove a hair from K's throat. Only during the criminal proceedings was it discovered that there had been an exchange of social media messages between the father the mother and a friend of the mother which suggested to the father that the mother was engaged in (what was clearly innocent) flirtatious activity during her night out. It seems that the father became angry and it raises the possibility that he took his anger out on K. There has not been a fact find exercise in these proceedings and my problem is that in the absence of clarity, caused by the father's contradictory accounts, I am unable to say that the father is committed to telling this court the full version of how and why he caused K's injuries. I suspect the mother feels the same way. This cloud of uncertainty has the effect of raising unanswered questions regarding the father's integrity.
22. The father has not asked for permission to adduce psychological evidence which might have provided answers and explained the father taking the position he has. In the absence of such professional evidence I think it is reasonable for me to raise

the question as to whether the father has completed what is commonly called the five steps of grieving: denial, anger, negotiation, depression and acceptance. My concern is that if the father is still in denial, receiving any information regarding K at any subsequent stage of grieving might be information he cannot cope with which might prompt an inappropriate reaction on his behalf. As it seems the father will be released from prison next year, this could cause untold further problems for the mother.

23. As the legal focus of parental responsibility is on the child not the parent, I have to ask what benefits would be bestowed on K if his father were to retain parental responsibility.
24. I acknowledge that the father wishes to have his involvement limited to receiving information annually and in the event of K passing. In my judgment, there can be no benefit for K in any information being passed to the father regarding his health or general welfare. If K's health deteriorates, the father will never be in a position to assist. If K were to die, it is self-evident that K would not benefit from his father's knowledge of such. The only person who would benefit from knowing K had died would be the father as he would then know that that K had been released from the permanent suffering the father has caused.
25. The father has raised the fact that he would, as a person with parental responsibility, be informed if K were to be the subject of an application for adoption. It would be offensive to suggest that such an application would be made as a result of the mother surrendering K for adoption and highly unlikely that K would ever be the subject of a placement application in any subsequent care proceedings. It follows that it must be in the mind of the father that the circumstances that this might apply is in the context of a step-parent (or similar) adoption. In those circumstances it is inconceivable that the father would have any meaningful input into the process. In the event K were ever to be the subject of a placement application, no local authority would be expected to assess the father as a possible kinship carer in the light of K's history.
26. The mere fact that the father is resisting the mother's application deeply concerns me. I ask myself why would a father not understand that putting the mother through the necessity of having to make this application with all that is involved in re-living her nightmare and having to listen to professionals recite details of K's

life? When I ask myself this question I cannot find any answer that would suggest the father has an understanding of how best to serve K's welfare.

27. It is a tragic fact of this case that K is in a physical state that he cannot benefit from any involvement in his life by his birth father.
28. By way of a cross-check and to ensure I have conducted a comprehensive analysis I make reference to the Welfare Checklist set out in section 1(3) of the Children Act 1989.
29. It is impossible to ascertain K's wishes and feelings. This is usual in a child of his age, but in K's case this is unlikely to change as he grows older. Whilst in usual circumstances it may be reasonable to assume a child would want a relationship with his father, in these circumstances I think it is equally reasonable to assume that K would not want a relationship with anyone who has caused him such catastrophic injuries.
30. K has extreme emotional and physical needs. These are being entirely met by his mother. He has no needs that his father would or indeed could meet.
31. If the court made a decision to deny K the parental responsibility of his father K would benefit. His mother would naturally be more settled without the threat of the father having even the opportunity to interfere in her son's care.
32. K is disabled to an extent that is difficult to imagine. He is wholly dependent upon the loving care of his mother. Nothing this court does should run the risk of destabilising the current position. If the father were able to influence the mother's life in any way this would inevitably cause harm to K. While the mother is fully capable of meeting K's needs the father has no such capability..
33. I must consider whether making no order at all would serve K's welfare. The problem with that is that if I make no order the father will retain parental responsibility and that would be unconscionable.

#### Conclusion

34. During his opening Mr Rowley Q.C. invited me to undertake a balancing exercise. He asked me to consider whether I could find any advantage in the father retaining parental responsibility for K. Having considered this question, and looking at it from K's perspective, I cannot. Conversely, I can only see issues which are contrary to K's welfare if parental responsibility were to be retained. I



am entirely satisfied that it serves K's welfare for parental responsibility to be terminated.

35. It would be inconsistent with my reasoning if I were to impose any responsibility on either the mother or the local authority to pass any information regarding K's welfare to his father at any time; neither would it serve K's welfare if there was any obligation on the mother or the local authority to advise the father in the event of K's death.

