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IN THE FAMILY COURT AT OXFORD

CASE NO: OX18C00016

**IN THE MATTER OF THE CHILDREN ACT 1989
RE: L**

Date: 28th February 2019

Before: HHJ Vincent

Between:

OCC

Applicant

and

M

First Respondent mother

and

F

Second Respondent father

and

L (acting by his Children's Guardian)

Third Respondent child

Chloe Wilkins instructed by Oxfordshire County Council
Ian Robertson of Griffiths Robertson solicitors for the mother
Douglas Darlow of Fairbrother & Darlow solicitors for the father
Andrew Leong, instructed by Oxford Law Group for the child

Hearing dates: 25th, 26th and 28th February 2019

JUDGMENT

Key:

Child: L
Mother: M
Father: F
Mother's partner: B
Social worker: SW
Children's guardian: CG
Special Guardian: E
Maternal grandparents: MGPs
Maternal grandfather: MGF

Judgment read out in Court and given to the parties

M loves L and wants to be given the chance to look after him.

M was badly treated by her birth parents. This has affected her whole life. M's adopted parents loved her very much, but M still had a difficult childhood. It was hard for M to be separated from her brothers. She was confused and sad when she saw her birth dad.

M has learning difficulties. She was diagnosed with autism. M does not always understand what other people are saying to her. Sometimes she does not understand the words they use. Sometimes she does not understand their feelings. Sometimes she does not understand what other people want from her. She does not always know what to say to them.

M has sometimes chosen friendships or relationships which might be dangerous or harmful to her. She does not always know how to work out if someone is kind or if they are dangerous. If you are a mother it is important to know this so you can protect your child.

M needs support to manage her daily life.

M was brave to go and live with L in the foster carer's home. It was very hard for her to live with a family of strangers but she did it for L.

Since she moved out of the foster carer's home she has carried on seeing L at contact.

L enjoys spending time with her in contact. L is a healthy and happy baby.

It has not been easy to travel from [redacted] to contact visits with L. B has helped and sometimes M has made the journey alone. This has been really hard for her, but she has done it for L.

M has tried very hard to be the best mother she could be.

I have been impressed with how hard M has tried.

SW has worked very hard to try and support M. She has tried to find ways to help M be the best mum she can. She has tried to help M be more independent by living in [*independent living project – name redacted*].

She has talked to M about B. SW would like M to feel safe with B. SW was worried when M said that sometimes B frightens her.

SW knows M very well. M is a good mother to L in lots of ways. But because M has her own difficulties, SW thinks M would not be able to look after L. SW does not think M can give him everything he needs. SW worries that M cannot protect L from harm.

Even when M had lots of support in the foster home M still struggled to meet all L's needs.

B is a kind person who loves M. He wants to do everything he can to support her.

B also needs help to manage his own life. SW thinks that B would not be able to manage his own life and look after M, and look after L as well.

CG agrees with SW.

Conclusions

I listened carefully to M and B. I listened carefully to SW and CG. I read all the reports and statements in the case.

I have thought very carefully about what is best for L.

I think this case should come to an end and a decision should be made about L now.

There is no more information I need to decide the case. I do not think there should be a report from another social worker.

I agree with SW and with CG that M and B will not be able to care for L and keep him safe. This is because they have their own difficulties. The difficulties they have are not their fault.

I think that if L lived with M and B, it would put a lot of pressure on their relationship. They have a lot to cope with to manage their own lives. They could not cope with a baby as well. I think L would not get the care he needs and he would suffer.

I think M would not always be able to protect L from dangerous situations in the future.

I am going to order that L goes to live with E in Scotland. She loves L and will take very good care of him. She understands it is important that L spends time with M and other people in his birth family.

Adoption is not the right decision for L because it is better for him to have the chance to grow up knowing his birth family. If L was adopted outside the family he would not get to see M and other people in his birth family.

I am sorry that I made M so sad in July last year. I am very sorry that the decision about L will make M very sad again, but I have to do what I think is the best for L.

I wish M and B all the best for the future.

Longer written judgment given to the parties

Introduction

1. I am concerned with L, who has recently had his first birthday. His parents are M and F, but they separated before L was born. M entered into a relationship with B shortly after she separated from F. At this final hearing M and B have presented as a couple.
2. L was born prematurely at 32 weeks and spent the first few weeks of his life in a special care baby unit. M and L went to live in a mother and baby foster placement on 5th March 2018 when L was discharged from hospital. While she was there, the local authority carried out a parenting assessment of M and concluded that although there were some positive aspects to her care of L, they did not consider that she would be able to care for L on her own.
3. The local authority sought the Court's approval to a change in its care plan so that L would remain living with the foster carer on his own and M would move out. She applied to move to a residential placement with L where she could be further assessed. I was the judge who heard that application in July 2018. I refused the application for further assessment and approved the local authority's changed care plan for reasons which are recorded in a note of the judgment. It was very hard for M to have to leave L, and at that time she had nowhere else to live. I remember very clearly her pain and distress at the time I made this decision. Although for the reasons I explained in my judgment, I considered it was the right decision for L, I was very sorry to have caused M so much sadness.
4. L has stayed living with his foster carer throughout the proceedings and he is a happy, healthy baby. M has continued to see him three times a week. As she and B are living in [*place name redacted*] and she is dependent upon him to drive her to contact visits, it has not always been easy to arrive to every single

one on time, and some others have been cancelled for various reasons. But on any view M and B have tried their absolute best to get to contact sessions.

5. M and her two birth brothers were severely neglected as very young children and when she was two and a half M was removed from their care. All three children were subsequently adopted into separate placements. M was adopted by her great aunt and uncle. Although she is very much loved by her family, M has been profoundly affected by the experiences she had as a child, by the sorrow of being separated from her brothers, and the confusion she felt when meeting her birth parents at family occasions.
6. As a child M was diagnosed with high-functioning autistic spectrum disorder, developmental co-ordination disorder, a mild intellectual impairment, dyscalculia and dyslexia. Within these proceedings, Dr Richer has formed a different conclusion about her diagnoses. He considers her diagnosis of autism to be unhelpful and thinks that her behaviour is more usefully understood in terms of her low IQ, and a deep attachment insecurity consequent on her frightening experiences in her first two and a half years. He identifies some executive functioning difficulties, visuospatial difficulties and incoordination contributing to her delay in literacy and numeracy. M does not accept Dr Richer's view, but she does accept that she needs some help and support to live independently. It is her case that she has all the support she needs from her partner B, and her family.
7. In the year or so before L was born, things had become very difficult at home for M, she had been bullied at school, had a history of suicidal thoughts and self-harming, and her relationship with her parents was sometimes difficult. Since the age of fourteen she had started to go missing, and as a vulnerable young woman, was in danger of forming friendships with risky individuals who might take advantage of her. In summer 2017 her father was sectioned under the Mental Health Act. M had around that time met and moved in with F, and become pregnant, then shortly thereafter, separated from him and moved in with B.
8. Throughout these proceedings M has made it clear that she wishes to be given the chance to care for L. At the outset of proceedings she asked for B to be assessed with her, but the local authority did not have confidence at that time that the relationship would sustain. M renewed her request in January 2019, and L's social worker carried out an addendum parenting assessment.
9. A full assessment of maternal grandparents, as potential alternative carers for L was negative and noted concerns in relation to their relationship with M and MGF's mental health. Sadly MGF suffered a serious head injury in August 2018 which initially left him in a coma. He is currently recovering in a rehabilitation unit and he and his wife are not now in a position to care for L in any event.
10. The maternal aunt and her husband, [*names redacted*] were positively assessed and the local authority's plan in the summer of 2018 was that L should be placed with them. However, they indicated in September 2018 that in the light

of MGF's injury and the birth of their own first child, they were not able to care for L.

11. MFG's injury and [*maternal aunt and uncle's*] subsequent change of position led to the adjournment of the original final hearing in September 2018 and the extension of the timetable for proceedings.
12. The father proposed family friends, Mr and Mrs X to be assessed. Their viability assessment was positive but then they withdrew from the full assessment process.
13. In July 2018, MFG's niece, E, put herself forward for assessment. She lives in [*Scotland*] and works as [*redacted*]. She had a positive viability assessment but a full assessment was not pursued at the time since the [*maternal aunt and uncle's*] assessment was positive and there were then tensions within the family as a result of her application. Following [*the maternal aunt and uncle's*] change of position, E again sought assessment as a prospective adopter for L. Concerns were raised as to her suitability as an adopter, and the Court could not in any event in these proceedings have made an adoption order, or even a placement order with a plan that she be L's prospective adopter. E took some legal advice and indicated her wish to be assessed as a kinship carer for L. The kinship/SGO assessment of E is positive and supports her being made L's special guardian.

Parties' positions at final hearing

14. The Local Authority's final care plan recommends that a Special Guardianship Order be made to E.
15. M opposes the care plan and wishes for L to be returned to her care. She says that there are gaps in the local authority's assessment of B, and has made a part 25 application for her and B to be assessed by an independent social worker.
16. The Guardian supports the Local Authority's final care plan and opposes any further assessments.
17. F has not engaged with the proceedings. He did ask to be assessed as a carer for L but did not then engage with the assessment proceedings. His solicitors have had no contact with him since December. He has had three contacts with L, the last one in July 2018. His solicitor Mr Darlow attended Court on the morning of the first day of the hearing but we agreed that it was not necessary or an appropriate use of public funds for him to stay for the duration of the final hearing when he had no instructions from his client. I excused Mr Darlow's attendance for the remainder of the hearing but will provide a copy of this judgment to him to be shared with F.

The law

18. In all care cases the Court must ask two questions; it must first consider whether the threshold for making any orders as set out at section 31 of the Children Act 1989 is crossed. If that threshold is passed, the Court then has to consider what order to make, having regard to the matters set out in the welfare checklist at section 1(3) of the Children Act 1989.
19. The question of what order to make is properly determined by reference to all the factors on the welfare checklist.
20. In reaching my decision L's welfare is my paramount consideration and his welfare has been at the forefront of my mind throughout this hearing. I also have full regard to proportionality. A court should not make any orders unless it is satisfied that it is both necessary and proportionate, and that no other less radical form of order will achieve the essential end of promoting his welfare.
21. Mr Robertson has referred me to the case of *Medway Council v MI and others* [2017] EWFC 59 (Fam) in which Theis J. helpfully sets out the legal position where an applicant based in Scotland applies for a special guardianship order for a child who lives in England at paragraph 27 onwards:
 27. An SGO order is made pursuant to s 14 CA 1989 and its effect is set out in s 14 C, which sets out the enhanced parental responsibility of a special guardian as follows:

'The effect of a special guardianship order is that while the order remains in force—(a) a special guardian appointed by the order has parental responsibility for the child in respect of whom it is made; and (b) subject to any other order in force with respect to the child under this Act, a special guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian).'
 28. Before making a SGO the court is required by s 14B CA 1989 to consider whether to make a contact order.
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 30. An SGO can be registered in the Court of Session in Scotland under the Family Law Act 1986, which effectively makes it an order of the Scottish Court.
 31. The relevant statutory provisions are: -
 - (a) The Children's Hearings (Scotland) Act 2011
 - (b) The Children's Hearings (Scotland) Act 2011 (Transfer of Children to Scotland – Effect of Orders made in England and Wales or Northern Ireland) Regulations 2013 (the "Transfer of Children to Scotland Regulations")
 - (c) The Children's Hearings (Scotland) Act 2011 (Consequential and Transitional Savings) Order 2013 (the "Consequential Provisions Order").
 - (d) Family Law Act 1986.

32. Part 1, Section 1 of the Family Law Act 1986 (FLA 1986) applies to a section 8 order made by a court in England and Wales under the Children Act 1989, other than an order varying or discharging such order (FLA 1986 s1 (1) (a)) and to a special guardianship order made by a court in England and Wales under the Children Act 1989 (FLA 1986 s.1 (1) (aa)).
33. The Part 1 order can only be enforced once it is registered with the appropriate court in Scotland. Section 25 of the FLA 1986 states:

Recognition of custody orders: general.

(1) Where a Part I order made by a court in any part of the United Kingdom is in force with respect to a child who has not attained the age of sixteen, then, subject to subsection (2) below, the order shall be recognised in any other part of the United Kingdom as having the same effect in that other part as if it had been made by the appropriate court in that other part and as if that court had had jurisdiction to make it.

(2) Where a Part I order includes provision as to the means by which rights conferred by the order are to be enforced, subsection (1) above shall not apply to that provision.

(3) A court in a part of the United Kingdom in which a Part I order is recognised in accordance with subsection (1) above shall not enforce the order unless it has been registered in that part of the United Kingdom under section 27 of this Act and proceedings for enforcement are taken in accordance with section 29 of this Act.

34. The procedure for registration of the order is set out in section 27 FLA 1986 as follows: -

Registration.

(1) Any person on whom any rights are conferred by a Part I order may apply to the court which made it for the order to be registered in another part of the United Kingdom under this section.

(2) An application under this section shall be made in the prescribed manner and shall contain the prescribed information and be accompanied by such documents as may be prescribed.

(3) On receiving an application under this section the court which made the Part I order shall, unless it appears to the court that the order is no longer in force, cause the following documents to be sent to the appropriate court in the part of the United Kingdom specified in the application, namely—

(a) a certified copy of the order, and

(b) where the order has been varied, prescribed particulars of any variation which is in force, and

(c) a copy of the application and of any accompanying documents.

(4) Where the prescribed officer of the appropriate court receives a certified copy of a Part I order under subsection (3) above, he shall forthwith cause the order, together with particulars of any variation, to be registered in that court in the prescribed manner.

(5) An order shall not be registered under this section in respect of a child who has attained the age of sixteen, and the registration of an order in respect of a child who has not attained the age of

sixteen shall cease to have effect on the attainment by the child of that age.'

35. The procedure for making an application to register the English order in Scotland is set out in Family Procedure Rules 2010, r 32.23. In Scotland the prescribed court is the Court of Sessions [FPR 2010, r32.23 (a)]. The English order must be registered as soon as practicable.

Evidence

22. I have read the bundles which include Dr Richer's report, the parenting and kinship assessments, and statements of evidence from social workers, M and B. I have reviewed the very detailed foster carer logs. I heard evidence from SW, who is L's social worker, and from M, B and the guardian. The mother was ably assisted throughout the final hearing by Jessica Brodie from Communicourt, and I am grateful to her.
23. Dr Richer gave evidence at the contested interim hearing before me in July 2018. While M does not accept his conclusions, it was agreed that there was no utility in bringing him back for the same points to be put to him again.
24. There is no suggestion by any professional that M would deliberately hurt L. It is clear that she loves him very much and wants only the best for him.
25. Dr Richer identified the risks to L from M to be (i) from the difficulties she has in planning, organising and being flexible, and (ii) arising from her attachment insecurity.
26. Because she struggles to organise and manage her own needs, and as part of the parenting assessment was seen to struggle to prioritise and manage L's needs consistently, there is a risk that if she were looking after L, she would struggle to anticipate and provide for all his physical, emotional and educational needs.
27. Dr Richer explained in his report how M's own attachment insecurities have caused her to present as emotionally avoidant. When she first moved to live with her adoptive parents, she did not cry, was virtually silent, did not speak or do anything to seek out attention from her carer. If touched she would go rigid. Growing up she has found it difficult when confronted in any way that might expect an emotional response, and is described as 'shutting down'. She sometimes finds other people difficult to understand; their language and their behaviours, and has struggled with friendships. Her parents described her as desperately wanting to fit in, and saying what she thought others wanted to hear so as to please them, but what she was saying might not be true, or else would lead to some misunderstanding. Dr Richer was concerned that these sorts of difficulties might make it difficult for M to be attuned to L's needs and to be responsive to him. He observed this in her interactions with L. He did acknowledge however, that at the time he assessed M, L was still a very small baby and that M should be given the opportunity to live in a supportive

environment where she could be taught how to care for L, and how to learn to understand his needs and respond to them appropriately.

28. It was in such an environment that the parenting assessment of M was carried out. SW has been L's social worker for nearly a year. I found her parenting assessment of M to be thorough, comprehensive and fair. She does identify a number of positives, and as I have noted, there is no question that M would deliberately place L at risk of harm. However, her overall conclusion was that M would not be able to meet L's needs consistently, and that he would be at significant risk of harm if placed in her care. She wrote:

In my view, by far the most significant impediment to M's parenting capacity is the attachment disorder that results from the neglect and the traumatic events that she experienced in her early childhood. Primarily, I am concerned that M is not attuned to L and is unable to respond consistently to his attention seeking behaviour.

29. There is a large amount of evidence to support her opinion, in particular within the foster carer logs, and from SW'S own observations when carrying out the parenting assessment. Examples are given of the mother not always being able to maintain her attention on L when she was caring for him, being distracted by her phone, finding it difficult to empathise with him or to respond to his needs. The mother found it difficult to implement a routine of feeding, and there were some issues around sterilising and preparing bottles properly. The parenting assessment identifies that she did not always go to L when he woke up in the morning or when he needed stimulation. She needed a lot of prompting.
30. Dr Richer observed within his report that his discussions with M 'confirmed and amplified the picture that was emerging from the bundle and it was consistent with what her adoptive parents told me.'
31. SW's evidence and observations are also consistent with Dr Richer's conclusions, his report of what M's parents had told him about her, and the impression that M herself gave to me when it was her turn to give evidence.
32. SW was an impressive witness in Court. Her oral evidence was consistent with the evidence in her written reports and statements. She had a clear and detailed recollection of conversations that she had with M, B and other individuals, she was able to describe not just what was said, but the context and the tone or emotion which was conveyed. What she remembered was consistent with the evidence from her own notes made at or near the time. I agree with the guardian's observation that SW has worked tirelessly on this case, has a good knowledge and understanding of the issues and, to the credit of both her and M, has maintained a good working relationship, despite her recommendations ultimately being for L to be separated from his mother. Her conclusions are well-reasoned and supported by the evidence that she obtained. I consider that I may safely rely upon her evidence as accurate and reliable.

33. SW's assessment of B was in my judgment fair and balanced. She read out her handwritten notes of her conversation with B's adult social worker and she had properly put all the relevant information into the assessment. She does fairly acknowledge a number of positives about B, but also identified some concerns.
34. While the assessment noted some insight on the part of B and that he has demonstrated he is able to live independently with some professional support and encouragement from his family/friend network, the assessment noted in particular worries that the relationship appeared to involve abusive behaviour by B towards the mother (as reported by the mother). SW felt that B was not in a position to reduce the risks arising from M's previous parenting assessment.
35. I invited B to come into the Court to listen to the evidence in the case and he then gave evidence himself on the first day. He found the experience very stressful, but he was prepared to overcome his anxieties and the stress of being at court in order to do all that he could to help M. I was left in no doubt that he loves her very much, and it is clear she loves him in return.
36. I was impressed by B's commitment to M. However, the effect of his evidence on me was to confirm that the local authority is right to be worried about whether B would be able to provide M with the level of support she would need in order to look after L.
37. B has an adult social worker. He does not need an enormous level of day to day support, and is to be congratulated for the positive steps he is taking towards completing his apprenticeship and qualifying as a plumber. However, it is clear that these ambitions take up a great deal of his focus and energy and that he does well when he feels in control of what is going on in his life. By contrast, he struggles with change, when he is not able to control events, and stress. In those circumstances he finds it hard to manage his emotions.
38. Both he and M tended to say that there were no difficulties at all in their relationship, and could not imagine any problems they might encounter as parents to L. B did not foresee any problems with M being L's main carer while he was out at college or later work, from 8am to 5pm four days a week, he said she was a perfect mother and needed no help. M could not identify any support that she might need with looking after L save she said she and B would add tasks involving L to their existing rota, and she might need some reminders about feeding times. They said that although they did not have family close by, there were a number of playgroups locally to them and eventually L could go to nursery. However, I think that B and M both underestimate how difficult it would be to manage L's needs day in day out.
39. While I do not doubt their sincere love for one another, having heard both B and M give evidence, and considered all the evidence in the bundle, I find that there were more difficulties in their relationship in the past than they were prepared to admit to me. I understand that B was keen to look to the future

and not dwell on the past, but what has happened in the past is significant in the circumstances of this case.

40. B and M had become friends when B was going out with a close friend of M's. They had spoken on the phone a number of times. When M separated from L's father she told me that his sister assaulted her and a kind stranger helped her by calling the police who came to collect her and took her to the police station. She chose to call B who came to collect her and brought her back to his home. Thereafter they went out that evening and their relationship quickly developed. M then discovered she was pregnant with F's child.
41. They both told me that when M was in the mother and baby foster placement they had put their relationship on 'pause', so that M had the best chance to bond with L and commit to being a mother to him. She denied there were any difficulties in their relationship at that point. B I think was more realistic and honest when he told me that there had been some problems between them and they did need space, not just to give M and L time together, but space from one another. The situation between him and F was obviously causing him a great deal of stress. I am satisfied on a balance of probabilities that the foster carer and social worker's notes and recollections of M being distressed after phone calls with B are accurate, and that at times he had shouted at her. B's evidence to me changed and became quite muddled about whether or not he had been in touch with M while she was in the foster care placement. At first he said not at all, then said they contacted one another only through friends. He then admitted it had been more. M had said in her witness statement he was in touch with her a great deal.
42. I am satisfied on a balance of probabilities that SW's account of M's relationship with a man called [name redacted] is reliable, and again it is supported by notes within the foster carer logs and social work statements. M at that time was in the foster placement, had told SW and the foster carer that she had separated from B and that she intended to move to live close to Joel. SW was concerned that M seemed to be investing very quickly into a new relationship with someone she had not met and knew little about. Concerns were subsequently raised about [name redacted] having contacted one of the foster carer's children and this in turn again raised a question about whether M is able to identify whether someone might pose a risk to her or to L, and a pattern of behaviour where it appears she enters very quickly into relationships where she is very dependent and therefore vulnerable to abuse.
43. I see that contemporaneous notes and Dr Richer noted that as B and M told me, it was F who was threatening B rather than him threatening F, but I also got a clear impression from B that he too had arguments with F. He accepts that he can shout and the mother did not disagree with SW's evidence about a conversation she had with her and [name redacted], her adult social worker, about how to manage B's anger. M accepted that she had said in the event that she could not calm B down, she would call his sister, who knew how to manage him. SW described a number of conversations she had with M in which it was clearly acknowledged that there were difficulties in the relationship, that M sometimes felt frightened of B, but she was committed to

the relationship and SW was ‘safety-planning’ with her, by which she meant identifying ways M could learn to identify when she might be in danger and to manage the risk and seek out help.

44. I do not consider that M or B were being truthful when they told me about the incident between them on 26th September. I do not think that M was frightened because B was shouting down the phone to British Gas. I find that, as the police record and [*her adult social worker name redacted*]’s statement says, she was tearful and frightened because B had been shouting at her, that he hit her, and that he then drove off without her, but with her bag and purse in his car. I find that this incident was also reported by M to her housing officer and this was the reason that B was banned from the project. Subsequently, M then left this property and moved in with B. I accept their evidence that the police who came round to their property later did not see any marks on her, but that does not in my view take away from the fact that this was a significant incident and that M was frightened of B at that time.
45. I found SW’s descriptions of the conversations that she and M and [*adult social worker*] had about the relationship to be reliable, and that M was reporting to her that she sometimes felt frightened of B. I accept that M has in the past said things that she didn’t mean or that were not true, but in this case there are notes which have been taken at or very close to the time of the incident, and reports made by her to different individuals, for example social workers, the police and M’s housing officer and I do not think it likely that they have all misunderstood M.
46. I thought that M showed great courage to come back to Court and give evidence to me once again. As in July, she was well able to defend herself, and put her own view across. I did feel that she was reluctant to accept any level of criticism or any suggestion that there had been difficulties between her and B, or that she had in the past formed relationships very quickly. I thought she had a tendency to find it difficult to reflect on her own actions and was quick to blame others when criticisms were levelled at her. For example she was very critical of SW and [*her adult social worker*], the foster carer and the people at the housing project.
47. So far as her care for L was concerned, I felt that sometimes she was a bit too focused on the reasons that something had or had not happened, rather than being able to think about that thing in terms of its impact upon L. For example, she explained that because of her childhood she did get frightened when people were shouting, for example B. She seemed to me to be more focused on explaining why it was that she got frightened, than thinking about how being exposed to shouting might be a risk to L. She explained the good reasons why she and B had not been able to make every contact with L or had been late, but did not seem to have an insight into the impact of late or missed contacts upon L.
48. CG, L’s guardian, gave his evidence with authority and clarity. In his report he sets out the reasons why very sadly he does not support L returning to his mother’s care. He also explained why in his view he does not identify any gap

in the evidence or any need for further assessment of B and M before the Court can make a final decision in this case.

Conclusions and analysis

Threshold

49. The mother's final evidence does not include a response to the final threshold document, but through Mr Robertson, she made it clear that she does not accept it.

50. I have had regard to all the evidence in the case and I am satisfied to the standard of a balance of probabilities that each of the facts relied upon in the local authority's threshold document are proved. In summary:

- The mother is an extremely vulnerable young woman with a very low IQ, a deep attachment insecurity, some executive functioning difficulties, visuospatial difficulties and incoordination contributing to her delay in literacy and numeracy;
- She needs support to meet her own needs, for example cooking, shopping for food, attending appointments, maintaining hygiene, household chores;
- She puts herself in risky situations for example talking to strangers and going off with people she does not know;
- She is at risk of entering dysfunctional, maybe abusive relationships;
- She has difficulties in organisation and planning and in sustaining sensitive interaction with L;
- She has a history of low mood, self-harming and suicidal ideation;
- All these difficulties mean that her ability to care for L is compromised and as a result if he were in her care he would be likely to suffer significant physical, emotional and developmental harm.

51. I stress that it is not M's fault that she has these difficulties and that her ability to care for L is limited in the ways described. However, the Court must be concerned only with assessing the risk to L. M loves her son and wants only the best for him, but because of the factors identified above, she does nevertheless present as someone who is not able to keep him safe from harm if she were to be caring for him without support.

Welfare

52. I have had regard to all the factors on the welfare checklist and all the evidence. I should only separate a child from his birth parents where his welfare requires it and where no lesser intervention is possible to secure his welfare.

53. L is in good health. As a premature baby and then a looked after child he has had more involvement with doctors than most babies. There have been some concerns that he is delayed in some areas of his development but there are no significant concerns. He is a happy, affectionate child who laughs and smiles easily. He enjoys spending time with his mother in contact and has also developed a strong attachment to his foster carer who has been a consistent presence throughout the first year of his life and has provided him with an excellent standard of care, first with the mother, later on her own.
54. M has prioritised having contact with him. She understandably lost a bit of confidence when she first saw him again in a contact centre after their separation in the summer, but asked the foster carer appropriately for advice as to how to soothe L and how to feed him. SW notices lots of strengths in M's interactions with L, but at the same time she has also identified that M is not always able to be sensitive to L's needs. This is consistent with her observations in the parenting assessment. SW is concerned that even with the high level of support from the foster carer or in the supervised contact setting, the mother is not attuned to L's needs.
55. There are strengths in M's relationship with B and I fully accept that he is a good and decent young man who loves her very much and wants to support her in any way he can. However, the overwhelming evidence is that this relationship is not quite as untroubled as they suggest. I accept SW's concerns about M's level of dependence upon B. SW had hoped that M would be able to make some progress at developing her independent living skills and engaging with social work and housing support in August 2018, but in the event M did not engage and decided to leave the project and move to live with B. While I fully understand that for someone with her history, living alone at her age is a very big ask, and that she loves B and wanted to be with him, I also accept the evidence of SW, endorsed by the guardian, that this is a risk factor for L. M is so dependent upon B, there is volatility in the relationship, and she has been known to act impulsively in the past. In my judgment M and B underestimate the pressures on their relationship of having to share responsibility for the care of a young baby. In my judgment L would be at risk of being exposed to difficult dynamics in the relationship when M or B felt stressed and under pressure, and at risk of M's sometimes impulsive responses to difficult situations. If she runs into difficulties with B, it is not obvious where M would go and how she would ensure that L was protected from harm.
56. I accept the evidence of the local authority that L would be at risk of significant harm if placed in M's care. I accept that it has been difficult for M to show progress when she was no longer caring for L, and I also accept that there is much that is positive in the contact notes. However, she is still very much in a similar situation to when L was born. She is dependent on B, she is not independent. She still needs support to manage her daily life and to take care of herself. She is not able to meet his needs to the level required so as to ensure that he is safe and cared for consistently. It is not that the care she gave was only 'good enough', the parenting assessment concludes that she presents

as a risk to L because she is not able to anticipate, understand and then respond to his needs.

57. Any assessment of parenting capacity must take into account the measures of support that could be put in place to help the mother care for L. However, M has found it very difficult to work with professionals, she did not engage with her social worker or the housing officer. She says that B can support her.
58. B is not planning to be involved in L's day to day care and has not identified any areas where M needs to be supported. She herself does not accept any of the local authority's concerns. Without truly understanding what the risks are, then it is difficult for her to make the sort of changes that would be required to reduce those risks.
59. Their relationship is in my judgment more volatile than they suggest and L would be at risk of harm if exposed to shouting and his mother's distress and fear, and further risk of harm from his mother's vulnerabilities and risky individuals preying on her. The social worker's assessment of B is in my judgment balanced and fair and consistent with the impression that I formed of him when he gave evidence. He wants to do everything he can to support M, but even with a very high level of support from a professionally trained and highly experienced foster carer, M was not able to reach the level of parenting L needed. B will not be able to provide the support that she needs. In my judgment L would remain at risk of significant harm in the care of his mother, and the risk of harm would be increased rather than reduced were B to be caring for L jointly with the mother.
60. The overwhelming weight of the evidence leads me to this conclusion that he would be at risk of significant harm if in the care of his mother with or without B's support.
61. I am not satisfied that there would be any benefit in further assessment of B and M. I have not identified any gaps in the evidence or any deficiencies in the way that SW's assessment of B was carried out to justify instructing an independent social worker to investigate. Further delay to L would in my judgment be detrimental to his welfare. There has been extensive assessment of M by professionals and latterly of B. B was in the picture at an early stage and there is information about him throughout the papers. In all the circumstances I am not satisfied that the instruction of an independent social worker is necessary in this case and I refuse the application made by Mr Robertson on the mother's behalf.
62. L's father has chosen not to engage with the assessment of him as a carer for L. There are no other relatives in either parent's immediate family who are in a position to care for him.
63. The assessment of E as a prospective special guardian to L is overwhelmingly positive. She has met him a number of times and is absolutely committed to him. She understands the need to promote his relationships with both

maternal and paternal families and for him to understand his life story and identity.

64. A special guardianship order is in place only until a child is eighteen and does not extinguish parental responsibility of the birth parent, although it is an order which gives the special guardian the right to make decisions for the child without consultation of either parent. It is less secure than adoption, but it does have the advantage of enabling a child to maintain links with his birth parents, and in this case, to grow up with someone who is a part of his birth family.
65. While she has nothing against E, M has expressed the view that it could be very confusing for L to grow up as she did within her own birth family but not in the care of either of his parents. She is worried that L could be confused and upset if he sees her but cannot live with her. For those reasons she thinks that adoption would be a better option for L in the event that he is removed from her care. In making this suggestion M was aware that would mean it was unlikely that she would get to see L during his childhood, but is showing her love for him by putting what she thinks would be in his best interests before her own feelings.
66. I do have some reservations about making a special guardianship order in circumstances where L has no significant pre-existing relationship with E, where she lives so far away from his mother and wider family, where the placement is untested, and local authority involvement will realistically be limited to the odd email or skype call. I understand given her childhood experiences why M suggests that a clean start for L in a completely new family may be preferable.
67. However, placement for adoption should only be contemplated where a child's welfare requires it. In circumstances where a family member is available and willing to put herself forward to care for L, where she has been very positively assessed, it cannot be said that nothing else but adoption will do to meet his welfare requirements.
68. I have considered whether there should be further delay to this case to test out the placement before making a special guardianship order, but I agree with the guardian that further delay in this case would be contrary to L's welfare. He needs to have his future settled sooner rather than later. I share the guardian's confidence in the thorough and objective kinship assessment of E.
69. I am mindful of a recent serious case review in Oxford concerning the making of a special guardianship order to distant family members when the placement was untested, and of previous guidance to suggest that children should be placed with carers before the making of such an order. However, I have also been referred to and reminded myself of the case of *P-S (Children)* [2018] EWCA Civ 1407 which makes it clear that the question is whether in a particular case the Court has the evidence before it to be properly equipped to decide the issues before it.

70. In all the circumstances, having regard to all the factors on the welfare checklist, to L's and M's and his father's article 6 and article 8 rights, I am satisfied that the only realistic option for securing L's welfare is that he continues to be separated from his mother and placed with E as his special guardian.
71. I have had regard to the guardian's analysis and his clear reasoning supported by the evidence he obtained. There is no good reason to depart from his recommendation.
72. I have considered the special guardianship support plan which I approve, and the proposals for contact.
73. I would agree that four times a year as a starting point is sensible. I agree with M that her contact time with L should be time that is set up specifically for her to spend with him, joined perhaps by other family members on occasion. Family occasions where they might meet would be additional to the base level of contact. I agree with E and the guardian that avoiding emotive times of year such as around Christmas for contact visits is probably sensible in the first instance.
74. I agree with SW's view that the 'farewell contact' on 1st March should be regarded as a stepping-down contact and not one of the four annual contacts. L has been seeing his mother three times a week, it will be a very significant change for him to leave his foster carer and his mother and go to a new home.
75. I agree with M and with the guardian that the local authority should be making all efforts as part of its responsibilities to ensure the special guardianship support plan is implemented, in particular to ensure that L's contact with his mother takes place. I note that E is willing to travel to England once a year and the mother and B say they could finance two trips, that still leaves a fourth visit in Scotland. It may well be that M's family can help her fund this, but it may be that M and B need some help to budget so that they can save up money for a train fare or flight, that M needs help to identify the cheapest route, plan her journey, and to book tickets in advance at the best price, or simply to have the funds given to them so that they are able to make the trip. Like the guardian, I would regard this as well within the remit of the special guardianship support plan, and would hope the local authority will be able to assist, even if only for one or two visits in the first year or two of the special guardianship support plan.
76. E has requested through her solicitor the disclosure of further documents so that she may be fully aware of the issues given her future role in supervising contact and in providing appropriate information to L as he grows older. The parties have identified a list of documents and I have no difficulty with their disclosure to E.

Conclusions

77. For the reasons given, while I find threshold crossed for making public law orders, I have had regard to all the factors on the welfare checklist and I am not satisfied that L's welfare requires the making of any public law order. I approve the local authority's plan and grant the application for a special guardianship order to E.
78. It is not M's fault that she was so badly mistreated as a very young child and it is not her fault that she is still living with the consequences of that.
79. I do not think that B and M would be able to protect L and meet his needs, but I acknowledge that they have tried very hard to do all that was asked of them by the local authority and their love and commitment to L is not in question.
80. I am very sorry once again to be the cause of sorrow and pain to M. I know that she wants only the best for her son and that she will always love him.

Joanna Vincent

28th February 2019

HHJ Vincent
Family Court, Oxford