

**IN THE FAMILY COURT AT NOTTINGHAM**  
**IN THE MATTER OF THE CHILDREN ACT 1989**  
**AND IN THE MATTER OF N (A CHILD)**

8 October 2019

**BEFORE**  
**HIS HONOUR JUDGE MARK ROGERS**

**B E T W E E N:-**

**NOTTINGHAMSHIRE COUNTY COUNCIL**

**AND**

**APPLICANT**

**L (THE MOTHER)**

**FIRST RESPONDENT**

**AND**

**M (THE GRANDMOTHER)**

**SECOND RESPONDENT**

**AND**

**N (THE CHILD)**

**THIRD RESPONDENT**

**Judgment**

**(Approved)**

Representation:

Nottinghamshire County Council – Mr James Cleary

L – Ms Maria Mulrennan

M – Mr Steven Veitch

N – Ms Anne Buttler

**His Honour Judge Rogers:**

1. This is the most complicated and difficult case. Several months ago, I held a lengthy fact finding hearing and made serious findings against a young Mother, where the administration of unnecessary substances brought this child's health to such a low point that had intervention not happened, this child may have died.
2. I also made findings against the Grandmother, that she ought to have known what was going on, although that is culpability by omission, by not acting on that which was obvious. It was a serious finding made. Although there was some doubt about her level of acceptance of those matters, she does not resile from that position. She

accepted, and her evidence supported, that she was culpable in failing to intervene and act in the way I described in contributing to the significant harm this child has suffered.

3. There are different forms of culpable behaviour and the culpability of the Grandmother is less than the Mother's, but I do not underestimate the seriousness from her point of view.
4. I emphasised they form the factual substratum of investigation, but the welfare questions would be considered independently in this hearing, which has taken far longer to come into the court's diary than it should.
5. I have been reminded of the extensive case management decisions in May, following the fact finding hearing. There was a whole range of applications, including expert evidence and I was persuaded there should be a psychiatric assessment of Mother and psychological assessment of the child.
6. Mother cannot now put herself forward as a carer, so the focus has moved towards the Grandmother. Ms Mulrennan and Mr Veitch remind me the nature of enquiry was hotly debated in May and the question of whether a psychological assessment of the Grandmother was needed was raised and Ms Mulrennan's note of the discussion at the hearing supports that.
7. I was persuaded the principle investigation of Grandmother was psychiatric and the psychological aspect of the child would cover that part of the case.
8. Sadly, the fall-back position was, if the psychiatric assessment turned out to be the wrong form of enquiry or only partially necessary, the matter should come before the court for the instruction of another expert. That has not been done.
9. The court is always reluctant to authorise the instruction of a whole range of experts. This case may be a salutary lesson in relation to that.
10. Now the focus has fallen on Grandmother. It is argued that in order to investigate the welfare needs of the child, the lacuna cannot be filled by the existing evidence but must be fulfilled by the adjournment of proceedings and instruction of another expert.
11. The factual position is, the child is well looked after in foster care, but her future is uncertain. Although she is only 6, she is undoubtedly very bright and is questioning what the future holds for her.
12. The Mother's position is now somewhat in the background in that she wants to maintain a relationship but is not putting herself forward to care. The Local Authority are quite rightly ruling out adoption. The choice therefore at the present time, is a care order in terms of long-term foster care in the same placement or another suitable placement, or immediately or in the foreseeable position a placement with the Grandmother.
13. As a result of my findings the risks are complicated. The first risk is physical, a

repetition of the behaviour from Mother. That risk so long as safeguards are in place, is low.

14. Second, the more difficult question is whether the Grandmother could protect against that risk if there was unregulated contact with Mother. That in part is as a result of practical facilities and safeguards but is inextricably linked with the complex and dysfunctional relationship between the Grandmother and Mother. At the heart of it, is a tension and one interpretation is that the Mother has a dominant personality and can control the Grandmother or undermine her qualities and caring abilities by her conduct or sending subliminal messages or subtle approaches.
15. It is not as straightforward as that. Even if one looks at solving the difficulties in the adult relationship, there are underlying issues of the Grandmother herself. On one view, whatever environment she is in, she could be assisted by personal support or therapy to maintain a robust personality to deal with daily life.
16. On the other side of the equation is N. Although the physical danger was removed, the depth of emotional and psychological harm is as yet uncertain. I have heard evidence there is much hidden in this child, that will emerge piecemeal as she develops into her next stage and adolescence. So, any carer looking after N will have to have exceptional or specialist qualities to deal with the extra problems she poses and is unlikely to be able to do that without outside support.
17. The question for the court is whether, I have before me a sufficiency of evidence to undertake the holistic evaluation of the welfare question of N's future, to consider an analysis of the realistic options and stepping back to see where the best welfare solution lies.
18. Mr Veitch began the case yesterday and an application was made at the outset to adjourn for the completion of the imminent criminal proceedings, but the central application was made by him on the basis of the gap I have identified, and it would be impossible to make a realistic evaluation of his client without that specific piece of work.
19. He says that, because although the psychiatric report is helpful and is in some ways definitive, it only touches on the wider issues of psychology that are at the heart of what needs to be investigated. Ms Mulrennan supported that application. It was put in general terms, although not with timescales and costings at this stage.
20. The Local Authority and Guardian resisted that application to say there was more than enough evidence to deal with the points raised and the delay would be highly damaging.
21. As it happened, the order of witnesses was such that Ms Thorp, the clinical psychologist, was ready to give evidence and one submission of the Local Authority and the Guardian was she had in fact undertaken a more broadly-based assessment and could deal with the missing pieces of the jigsaw. This was resisted but I took the decision to hear from Ms Thorp.
22. Ms Thorp's addendum report was the linchpin of the application and I heard from her

yesterday and again briefly this morning. She has provided a full report and she has provided an addendum, which are of the greatest help in terms of the descriptors with N and her needs. It seems little could be said to contradict her. She went on to comment on the family dynamics and interrelationships in delay and expressed significant reservations of the Grandmother on her basic qualities and ability to detach from the Mother. The need was for a specialist type of care for N.

23. She did so tentatively and cautiously because it went beyond the scope of her instructions. Her view is of value and I am not content to disregard it, but the central theme was, this was not a forensic evaluation of the Grandmother's case and she remained firmly of the view, that a forensic psychologist, to deal with the specific points of this case, was a valid exercise. Whether that is useful, helpful or necessary is a matter for me. She saw it in her clinical terms as an extremely valuable piece of work.
24. There are a number of strands to that assessment. It would investigate the relationship between two people, the management of risk, availability of and type of therapy and they are entirely relevant and proper considerations.
25. I will return to the second limb. Although we are sitting in the Family Court, the fact-find was an investigation into potentially criminal behaviour. The factual material in this case is identical to that, that might be pursued in another jurisdiction.
26. As it happens, by what might be said as a helpful coincidence of dates, or on another interpretation entirely unhelpful, last Friday, information was obtained that the police with the CPS were intending to charge both individuals. Although the detail is not yet fully to hand, the Local Authority has sufficient material to tell me, charges will be brought under the Children and Young Persons Act 1933 for offences that are broad in their scope but would involve in respect of the Grandmother, allegations of neglect. The timescale is uncertain. If a charge is brought shortly there will be the process through the Magistrates' Court, pleas and legal advice will be required and no doubt a committal to the Crown Court. The overall timescale is troubling, this case will take its place and will be delayed for many months.
27. Whether the Grandmother, if charged, pleads guilty or is dealt with separately, I do not know and cannot predict the timescale.
28. In the course of Ms Thorp's evidence, it seems to place N with an individual potentially facing a conviction and imprisonment, which would be unusual and highly damaging, so the timescale is very important.
29. Mr Veitch applied to adjourn proceedings on the short-term basis, but his application is that the case would have to go off and would probably be in parallel with that of the Justices and Crown Court.
30. In explaining the precise distinction of tasks, Ms Thorp was keen to point out that a forensic psychological assessment depends upon the psychology of someone behaving in a potentially criminal way and drilling down into the thought processes of that. Her expertise would assist her, but she is not a forensic psychologist and she thought that was the key ingredient and there was some force in that. When looking at

the Grandmother and understanding the psychology of someone's omission which leads to harm, where she admits she should have known what was going on and did not act, is more difficult and complicated.

31. It all comes to this. Mr Veitch, upon my invitation renewed his application. He submits in light of the evidence of Ms Thorp, the position is even clearer than it was before.
32. Mr Cleary says it is much more straightforward. He says there is much more material that can cover the points omitted by the absence of such a report. Ms Buttler supports that and says the detriment to the child is delay. A period of at least 12 weeks and the delay whilst people react to it, is an unacceptable delay and she needs to know where her future lies.
33. The test for me is that of necessity that arises from statute and authorities and I need not rehearse the test. The Local Authority submit that the test of necessity is not met. Mr Veitch's and Ms Mulrennan's points are two-fold. The question of necessity has already been met in the May Order, as the court was well aware this was a live issue and should have been submitted to court. Secondly, it is submitted that here and now, the necessity is obvious because an analysis of the Grandmother's position is impossible on the current evidence. Mr Veitch does not make the point as starkly as this, but it is implied in his submission, that if the case proceeds on the current evidence, his client's position is untenable.
34. I find this a very difficult question to resolve. In trying to unpick the complexity it seems there were facets of an investigatory process of risk itself and the examination of the nature of relationships between the adults and ongoing therapy for Grandmother, perhaps linked with therapy for N. Those matters have not been addressed.
35. There is much to be said that gives cause for concern about Grandmother's presentation and ability to disentangle herself from her relationship with her daughter, where plainly a certain amount of distancing was required. This has not been fully tested out. That may be imposed if a serious sanction is imposed on the Mother in the Crown Court or if this court considers the Mother should be kept at arm's length. This court at the end will have a stark choice. Adoption is not on the table. It does not dilute the necessity for a proper assessment and evaluation of a realistic placement.
36. If I was to proceed now and make an immediate placement with the Grandmother, I would have to make a speculative judgment whether that was possible. It would involve more guess work than judgment. Not only is it fair to the Grandmother, it is also necessary to explore the option of a family placement. To ensure the welfare interests of N are examined, it seems the necessity of the report requested and advocated remains as important today as in May. The only possible reason I could revise that, would be if it was so clear that the Grandma's position was not a realistic option or that the timescales were so long as to be merely academic. I cannot say that.
37. A key question is, if this report suggested a package of support and therapy, in parallel with the placement at home, it would have to be investigated and would probably involve the Mother taking a less important role than at present and whether

the Grandmother could cope with that strain.

38. I recognise that putting the matter off will be a matter of months of delay that will involve uncertainty and delay for the child and that I much regret. It is one of enormous concern that, that should be so. In the end, it may be a price necessary to pay and that a placement with Grandmother, if her needs can be met, may well be safe. The Local Authority and Guardian's concern about delay are valid and I give substantial weight to both points of view. I consider it essential that the matter is now adjourned, and this missing piece of the jigsaw can be put in place.
39. Grandmother should not raise her hopes. It is a realistic option that requires investigation and is not determinative of the outcome that this piece of work is being undertaken.
40. It is unsatisfactory that I do not have a name, timescales or costing but it is important that experts report within their expertise and as soon as possible.
41. Mr Veitch has made an attentive application for an independent social worker, but I am not this time persuaded to hear more on that. This is all about the psychology of the Grandmother. Her parenting and ability is very much in doubt but I am satisfied that a Local Authority such as this, will reflect and undertake a thorough review of the position.
42. I should add that, I considered hearing all of the evidence in the case before determining the application, but I take the view that nothing would change the need for further assessment.