

IN THE FAMILY COURT AT CARLISLE

Earl Street

Carlisle

Before HIS HONOUR JUDGE BAKER

IN THE MATTER OF THE CHILD, MARY

ALICE (Applicant)

-v-

CUMBRIA COUNTY COUNCIL (First Respondent)

BETHANY (Second Respondent)

THE CHILDREN'S GUARDIAN (Third Respondent)

MS J DOYLE appeared on behalf of the Applicant

MR S FLOOD appeared on behalf of the First Respondent

MR DONNOLLY appeared on behalf of the Second Respondent

**MR P GILMORE appeared on behalf of the Third Respondent instructed by the
Solicitor for the Child via the Children's Guardian, Mr Moray**

JUDGMENT

13 APRIL 2023

APPROVED

WARNING: 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. This includes publication on or relating this judgment to any form of social media content leading to the identification of the family members. 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.

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Anonymisation

To protect the anonymity of the parties, social work professionals and family members in this matter the names used in this judgment are not their real names.

1. This is an oral judgment in relation to a little girl by the name of Mary, who [is currently 7 years old].
2. Although I adjourned from finishing relatively late in the afternoon yesterday to give judgment today, I did announce my decision yesterday, and other work has meant that this judgment still remains, to a large extent, *ex tempore*. At the end of this judgment, I will ask the advocates present whether there are any matters of clarification or correction that are needed.
3. Mary has two individuals who I shall refer to as parents throughout this judgment, although for reasons I will explain in a moment, that is a term that recognises the psychological parenting that has been provided by one of the individuals concerned, and the birth parent, which applies to the other individual concerned.
4. The biological mother of Mary is Bethany.
5. Alice is Mary's psychological parent. She has been so categorised when this matter has been before the Court on a number of previous occasions and Mary has spent the majority of her life in Alice's care.
6. Alice and Bethany met and began a relationship together in late 2010. They purchased a home together in October 2013 and that home was in Cumbria, and on 10 September 2015, Mary was born. That was a result of a private non-registered donor arrangement, which the parties had agreed to. Bethany was the mother who bore Mary.
7. The parties' intentions were that they were both to be parents of Mary, demonstrated by the fact that they commenced an application for an adoption in relation to Mary with Cumbria Council. They were married on 8 December 2015, but unfortunately on 13 October 2016, the parties separated. At that time, Mary remained in the care of Bethany. The adoption application foundered with the separation.
8. In February 2017, Alice issued an application for a child arrangements order and parental responsibility for Mary on the basis that, at that time she was not having any form of relationship with Mary, Bethany being of the view that that was not appropriate.
9. District Judge Jabbar undertook that first set of proceedings. During the course of those proceedings, Bethany alleged domestic abuse in her relationship with Alice. It is fair to say that the majority of the allegations were denied although some partial admissions were made. I have the judgment from the finding of fact hearing, which took place in July 2017,

and those findings or lack of them, are set out in that judgment. The disputed incidents and matters alleged by Bethany against Alice were not found proven. Further, District Judge Jabbar found that:

“[Bethany] was asserting a level of control over [Alice], that there was a constant belittling and once the toxic relationship was at an end, [Alice] is of no risk at all to [Mary].”

10. District Judge Jabbar signed off their judgment with the following observation,

“This child is a child with a family and there is no reason whatsoever why [Alice] should not have a relationship with [Mary] and that relationship I would expect to be recommended by Cafcass given the findings I have made and I expect there to be some proposals before the matter comes back into court as to how the contact arrangements can be set up. [Alice], inevitably, will have to accept that [Mary] is, at the moment, a stranger to her. Any arrangement, therefore, is likely to need to be, if not supervised, but with someone there. That someone must not be [Bethany]. It would be wholly inappropriate though for [Bethany] to supervise the arrangements between [Mary] and [Alice] given the findings I have made and given the criticism that has been levelled against [Alice] in respect of how she cares for [Mary]. I am not satisfied that will not continue, that is to say the criticisms, if [Bethany] were to supervise contact.”

11. A Cafcass report was commissioned and that Cafcass report recommended the re-establishment of contact between Mary and Alice, and a children’s guardian was subsequently appointed in September of 2017. It is fair to observe that, following the finding of fact hearing, Bethany did not attend court on dates that were set in August 2017, two dates in September 2017 and a date in October 2017.

12. On the last of those hearings on 18 October 2017, Bethany had indicated to the children’s guardian that she was not prepared to engage in the proceedings and the matter was transferred to HHJ Forrester who, at the time, was the designated family judge for Cumbria.

13. The matter first came in front of her the day after 18 October 2017, and again Bethany did not attend the hearing and it is right to observe that HHJ Forrester directed the then-involved social worker to attend the home address of the maternal grandparents, that is to say Bethany’s parents, with the police, to inform them that if Bethany did not cooperate and facilitate a check on the welfare of Mary, then the Court would consider making an interim care order and Mary may be removed to local authority foster care.

14. The social worker did gain access to Mary and because there were some suspicions about what Bethany was up to, namely that her camper van was packed and looked to be liveable, Judge Forrester made an order ensuring that the child’s passport was retained.

15. After that, the matter was adjourned to 20 October, and at that hearing Bethany attended. The local authority had that morning lodged an application for a supervision order with respect to Mary, concerned about the approach that Bethany was taking to the issues in the case.

16. The Judge found that the threshold on an interim basis was crossed and made a supervision order and ordered, in addition, a psychological assessment to be undertaken by Dr Elsbeth Kemp, a consultant clinical psychologist. That psychological assessment, which is dated 12 January 2018, in summary, said that Bethany has in the past suffered depression, including one overdose when she was admitted to hospital, her depression was linked to family difficulties, work stress and feelings of isolation. Although she tried to portray herself in a positive light, the psychologist's opinion was that she had symptoms of anxiety and depression, personality difficulties causing her to have difficult relationships, she has little insight into her problems, holds grudges and blames others. Although she said she was emotionally intelligent, she had difficulty containing her emotions during the assessment.

17. A psychiatric assessment was not recommended as her personality disfunction was not so extreme as to be considered a personality disorder, nor that she appeared to be suffering from a mental illness. Her difficulties probably stem from childhood experiences. She had had an impulsive overdose when she was 16 and then one in 2001, when she had returned from London. Those were, at least in part, associated with arguments with her father and the psychologist opined that her difficulties were compounded by what the psychologist considered to be a preoccupation with sexual identity, the lifestyle differences which she was experiencing living in Cumbria versus what was available to her in London.

18. And the psychologist goes on to observe:

“Her function appears governed by her idiosyncratic self-absorbed perception of events. She has an inflated opinion of her abilities as a carer of the child and as a partner. She has little understanding of a mutually supportive relationship. **It is considered that [Bethany] poses a significant emotional risk to [Mary] because she may project her negative self-absorbed feelings onto her, and [Mary] may be exposed to difficult relationships within the family. She seems unable to separate [Mary] from her negative thoughts about [Alice].** During the assessment, she completely rejected the findings made by District Judge Jabbar and said that the Family Court has made many mistakes.” (my emphasis)

19. Further, Dr Kemp thought that Bethany is unlikely to be unable to meet Mary's needs, that is to say psychological and emotional needs or to prioritise Mary's needs above her own. Further, she would be unlikely to promote contact. She would be unlikely to engage in

therapy as she does not believe that she needs it. She has entrenched personality difficulties, according to Dr Kemp.

20. That was in, of course, an opinion expressed in January 2017.

21. Shortly after that psychological report, it is fair to observe that attempts to arrange contact had not been particularly successful. A parenting assessment followed on from that psychological assessment. That is dated 23 January 2018 and during that parenting assessment, Bethany expressed the view that she would never allow Alice to have contact with Mary and she was strongly opposed to them having any form of relationship. She was of the view that Alice was a psychopath and that her biggest fear was that Alice would kill Mary during contact or that she may commence a new relationship and expose Mary to sexual acts and inappropriate behaviour and, indeed, raised the possibility of Alice kidnapping Mary and taking her to [to another country], which is the country where Alice was born.

22. A parenting assessment of Alice concluded in essence in positive terms. The local authority having issued its application, the case came before Judge Forrester, in February 2018. The local authority intended to promote a relationship between Mary and Alice with a view to re-establishing contact. The contact did restart and by March 2018 it was the local authority's opinion that the contact was going well, that both parents, contrary to previous expectations, were supporting contact and that Mary was enjoying the time that she was spending with Alice and that contact should progress to overnights. By May 2018, this was what was taking place.

23. Unfortunately, the guardian and the social worker became concerned, come June 2018, that in fact there were increasing amounts of disagreement between Alice and Bethany, and the Court ordered a report from a second psychologist, Dr Ashcroft. That report was available by 2 July 2018 and the summary of Dr Ashcroft's conclusions in that first report are as follows:

“Neither mother presents with significant mental illness or personality disorder. I do not recommend a psychiatric assessment. Their primary personality characteristics have led to difficulties that they now face in ending the relationship and in the organisation of contact between, in particular, [Alice] and [Mary].”

24. In relation to Bethany, Dr Ashcroft's opinion was that,

“Her primary personality characteristics are histrionic and turbulent. She has a sense of entitlement and superiority and seeks to dominate. The medical notes attest to significant emotional problems in the past and difficulties with her family relationships. She has overdosed twice and self-harmed and taken

recreational drugs. She did not reveal the extend of her problems in interview.”

25. In relation to Alice, she said this,

“She was very submissive and tolerated the emotional abuse and control within the relationship with [Bethany]. Her compulsive characteristics enabled her to stay in that relationship, suffering abuse for some years. Sometimes the control of her emotions would erupt in anger, but I note it was never directed at another person. She hurt herself or her anger was taken out on inanimate objects. ... this inner turbulence was associated predominantly with [Bethany]’s treatment of her.”

“Now contact is now taking place. I suggest [Bethany] uses handovers and her contact notes to again try to exert control and belittle [Alice]’s attempts at parenting, yet the notes written by [Alice] attest to a good bond now between herself and [Mary]. I suggest that the parents move forward, they cooperate to formally end the marriage via divorce, that they sell their former home. Such actions may be necessary before the emotional and psychological harm is properly severed. **I think it is highly unlikely that [Bethany] will promote contact between [Alice] and [Mary] once these proceedings finish. However, I suggest that [Alice] is likely to be more attuned with [Mary], better able to prioritise her needs, than [Bethany]. [Alice] does not need therapy. She needs the marriage to end and learn more about herself and why she tolerated control and emotional abuse from [Bethany] for so long. I do not believe [Bethany] wishes to change as she believes she is in the right and that her attitudes are appropriate.**” (my emphasis)

26. By September 2018, the local authority were recommending that, in fact, Mary should live with Alice. The local authority had come to the view, as I understand it, that Bethany’s ability to provide appropriate care and indeed to manage Mary’s emotional needs, not simply including a need to have contact with her other mother but more generally, were severely circumscribed and recommended a placement or a change of care arrangement, so that Alice was undertaking the majority of care for Mary.

27. In August 2018, Dr Ashcroft updated or prepared an addendum report, in which she made the following observations on the back of questions about what would be in Mary’s best interest in the context of the possibility of Mary living primarily with Alice. Dr Ashcroft observed:

“It is possible, in fact, and as with contact in recent months, [Bethany] may well appear to comply but try to undermine [Alice]’s developing relationship with [Mary]. She may criticise and question [Alice]’s competence. Given that [Alice] is rather submissive, she could find the difficult to control or cope with. Further contact times, when [Bethany] is with [Mary], she may influence her to form a negative view about [Alice].

I note from the local authority final evidence that in the contact at the end of July, [Alice] said that [Mary] asked her ‘will you get sick of me?’ [Bethany] may plant the idea in [Mary]’s mind that, although things may sometimes be positive with [Alice], that ultimately [Alice] will abandon her and [Bethany] may, therefore, try to influence [Mary] so that she is not secure in her views about life with [Alice].” (my emphasis)

28. At a hearing on 5 September, the local authority advanced the view that they wished to change Mary’s placement with Bethany prior to any final hearing. As the final hearing was not listed until a later date, HHJ Forrester listed the matter for an interim placement contest. That evening, the social worker visited Mary at Bethany’s home and was there with Bethany and Mary’s maternal grandmother. At that point, despite that there had been a hearing that day, during which time no such allegations had been mentioned, concerns were raised by Bethany about sexualised behaviour and that was reported in the context of that behaviour relating to Mary spending time with Alice. Bethany had reported those concerns to the police after the social worker left and the police, I understand, later decided to take no further action.

29. The following day, on 6 September 2018, the local authority pursued its application to place Mary with Alice and indeed that was the decision that HHJ Forrester made. At that hearing Bethany confirmed that she was not making allegations of sexual misconduct. It became known Bethany had been recording conversation without the participants’ knowledge during their meetings with her, since February of that year.

30. There was a further hearing on 7 September. The attempt to transfer the residence of Mary to Alice had given rise to what might be regarded as a considerable amount of resistance from Bethany and she had recorded the removal event and posted it on social media. Bethany herself did not attend the hearing on 7 September.

31. The matter headed towards a final hearing before HHJ Lancaster, and HHJ Lancaster heard the matter from 15 to 18 October. There is, in the bundle of documents that I have before me, a full transcript of that judgment, and in that judgment HHJ Lancaster relates some of the history that I have related and, ultimately, comes to the conclusion that the best place for Mary, having heard evidence, was to remain living with Alice and for there to be a care order in relation to Mary.

32. Mary, therefore, lived with Alice from 7 September 2018, to, as it turns out, and for reasons I will explain, November 2022, and Mary remains the subject of the care order.

33. During the course of the judgment that HHJ Lancaster dealt with a number of allegations that had been made in relation to Alice’s care of Mary. Ultimately the Court

accepted the evidence that Dr Ashcroft gave and came to the view that contact between Bethany and Mary should be carefully supervised and concluded that Alice was in the best position and indeed was the only of the two potential carers who could meet Mary's emotional needs.

34. That brought to an end those proceedings, although the next order that I have in the bundle of documents is an order made by HHJ Forrester, sitting in the High Court, dated 4 April 2019. That order is an injunction and in short it makes provision for prohibiting Bethany from publishing, posting or broadcasting by any means, any information that relates to or identifies the child or, indeed, any information that relates to or identifies Alice and makes other stipulated prohibitions designed as a package to ensure that the previous events whereby Bethany had published videos and pictures of the child and others on social media were not repeated. In addition, the order directed Bethany to remove a website she had established that contained information about the proceedings, photographs, et cetera.

35. That order remains extant.

36. In November 2019, Bethany made an application for contact to Mary. That application gave rise to a judgment. I have a transcript, given by HHJ Forrester, dated 10 June 2020. The judgment observes a number of things. At paragraph 4, Judge Forrester comments:

“I think it is fair to say that since the separation of [Bethany] and [Alice], [Bethany] has found it very difficult to see any positives in [Alice] and her behaviour has been totally focused on returning [Mary] to her care and of denying [Alice] contact with [Mary]. Running alongside these proceedings are injunction proceedings which have been ongoing for a considerable length of time to try and limit the exposure of [Mary] to the current situation in the care of the local authority, on the social networks, and there is to be another hearing this month.”

37. She goes on to say:

“So we have the situation where last year, [Mary] under care order was living with [Alice], [Bethany] has continued to attack the placement, has continued to criticize [Alice], including lengthy allegations that are unfounded in the earlier part of the first set of proceedings, and has continued to identify on social media that [Mary] is a child in the care of the authority.”

38. In relation to the issue of contact, Judge Forrester observed as follows:

“Sadly, I think all those suggestions that [Bethany] has put forward, that is to say, ultimately, in this situation, for shared care, show her lack of understanding of what the local authority and guardian and, indeed, the Court is trying to do. It is to build on the contact that [Mary] is currently having with [Bethany] in a way that will provide a solid base to move forward in the future and not to risk any upset or concern. I am told that in a conversation

with the guardian, [Bethany] has spoke of a shared care arrangement. We are nowhere near that sort of arrangement.”

39. Judge Forrester goes on to observe:

“This is a view I have expressed in other cases and I have concerns about shared care arrangements unless the two parents can communicate well, directly with each other, on the basis of being able to change arrangements as necessary for the child at short notice if this needs to be done and, equally, that they both can respect the timescales and arrangements in the other’s house. What you cannot have is a child who goes between two different households, and I know in some of the papers it was stated that sometimes the contact sessions with [Bethany] changes, that is, [Bethany] changes [Mary]’s clothes and then changes them back at the end of the session. That is wholly unacceptable and if you were to expand on that change of clothes, if there were shared care or overnight contact, changing clothes on arrival and changing on leaving, what message is that giving to the child? It is an unacceptable message. We are a long, long way from that, and I think [Bethany] is being totally unrealistic.”

40. It is right to say that Bethany did not participate in the entirety of that hearing and, indeed, did not attend on the day that judgment was given, and Judge Forrester comments,

“I am very sad she has decided not to take part in the hearing today, and I am very sad that she has felt that she has not been able to agree with what has been put forward by the local authority. Of course, as in any situation where the local authority has a care order, the contact has to be continually reviewed so that the arrangements can change to fit the needs of the child.”

41. In October 2020, Bethany applied to discharge the care order and again applied for contact to take place. She also made the application to have the matter considered by an alternative judge. Those proceedings culminated in a judgment given on 28 May 2021 and in that judgment, HHJ Forrester made a section 91.14 order in respect of Bethany for a period of three years. This is an order preventing a party applying to court for an order with respect to a named child without the court’s prior permission. It raised concerns that Mary appeared not to be allowed to speak about Alice to Bethany, which could be confusing and harmful to her. The judgment also reflected *Alice’s* concern that she was not always consulted in relation to some of the arrangements that were going on with respect to contact.

42. The judge observed that Alice has prioritised Mary and her needs and Alice’s care of Mary has contributed significantly to Mary’s happiness and apparent enjoyment of life. Again, Judge Forrester observed that Bethany had not engaged in the proceedings and the hearing fully and had not attended. The Court ultimately dismissed the application to

discharge the care order and said the contact to continue for, but if Bethany did not engage, then of course the local authority were to review that contact pursuant to its care order.

43. Bethany appealed that decision, that is to say, the judgment given on 28 May 2021. That appeal was dismissed, although it is worth noting what Peter Jackson LJ said during the course of his dismissing that appeal. He observes:

“An appeal will have no chance of success. Following a hearing in which even though you were the applicant you chose to play only a limited part. The judge made orders that were fully justified with the evidence and were supported by the child’s guardian. There was no possible argument for discharging the care order. The judge was entitled to leave contact in the hands of the local authority. The section 91.14 order was plainly justified by the extreme litigation history and the continuing rancour which is so harmful to the child. The extraordinarily extensive correspondence since the hearing is not relevant to this application, but it only serves to confirm the need for the orders that were made. There is nothing in any of your grounds of appeal as developed in your skeleton argument.”

44. And he goes on to observe:

“I am certain that this application as being totally without merit because it is the last in a sequence of unmeritorious applications to this Court and because it is not child centred. It has all the hallmarks of the judge’s assessment at paragraph 29 where she states, ‘It is indicative of the way that [Bethany] has approached these proceedings. It is about her trying to show that it is everyone else’s fault and that none of the criticisms are valid. She thinks she is always right, that her memory of any incident or conversations are correct to her, and that everyone else is lying. She was convinced that children’s services and [Alice] want to stop all her contact with [Mary]. Whilst it is clear they have struggled to engage her on many occasions, in trying to help her understand their concerns and act upon them.’”

45. In June 2021, the local authority tried to review the contact and Bethany did not cooperate with that process and the local authority wanted to reduce the contact to seven times per year. The contact did take place in October 2021 but not in December or February 2022, because Bethany objected to the contact centre location.

46. The dispute over contact led, as I understand it, to a further application by Bethany for permission to make an application in respect of Mary, asserting that the contact being proposed by the local authority was insufficient. Permission was refused by HHJ Forrester on the grounds that Bethany had never accepted any of the decisions of the Court and that the local authority’s discretion was being exercised appropriately.

47. The social worker allocated to this case changed in February 2022, and at that point, Ms T, who remains the social worker to date, took over. There are a number of documents in the bundle in front of me, including a record of contact taking place in March 2022 between

Mary and Bethany, and then an updated child arrangement assessment that was prepared in May 2022. That assessment can be read in its entirety, but there were a number of observations within it, which I could comment upon, but one in particular stood out, and this is in relation to the section which is headed ‘Family and Environment’,

“[Alice] and [Bethany] were married once [Mary] was born and they made enquiries into steps of adoption. The relationship between [Alice] and [Bethany] was a toxic one and both women describe the significant events within their relationship. Both women allege controlling and coercive behaviour towards each other. [Alice] reports that [Bethany] has significant mental health issues and controlled every aspect of her life, and this resulted in self-harming, tying a belt around her neck and stabbing a knife into the worktop. [Bethany] alleges that [Alice] has issues with managing her anger and suffering with terrible pre-menstrual tension and she was difficult to live with.”

48. I pause to observe that, of course, those issues had been determined by the Court in the fact-finding exercise undertaken by DJ Jabbar. One of the purposes of such a process is that where parties cannot agree the court is tasked with the responsibility for determining the truth of those disputed allegations. Thereafter if those findings are not appealed, the parties and in particular professionals are bound by those findings as being the factual basis on which future assessments and decisions are based. Unfortunately, the child and family assessment makes no mention of those findings. The assessment goes on to say:

“The psychological assessment raised concerns about the relationship between [Alice] and [Bethany], but not in respect of [Bethany] or [Alice]’s mental health or ability to parent [Mary]. The section 7 recommended that [Alice] has regular contact with [Mary], but the two women should have no contact with each other and a third party need to be involved to facilitate the contact, to reduce the potential of conflict. [Bethany] did not agree with or engage with contact, and there were referrals made to the local authority, though in this there were concerns raised about parental alienation, that [Bethany] was a risk of fleeing with [Mary] and the court ordered the supervision order for the local authority to have an oversight of the development of contact with [Alice]. During this time, there was a further psychological assessment completed, a parenting assessment was completed with [Alice] and [Bethany]. **The psychological assessment did not raise any significant concerns in respect of either parent.** However, it did raise concerns in respect of [Bethany]’s ability to positively conduct contact between [Mary] and [Alice].”
(my emphasis)

49. I have to say, it is almost as if the author of that report had read a completely different set of psychological reports to those that I have in the bundle before me now. Furthermore, there is no reference at all to any of the judgments, which were all available, anywhere in the assessment. There is no analysis of why, unusually, the court decided (with the support of the

psychological assessments and indeed, the local authority at the time) that Mary's welfare was better served by living with her non-biological parent. There was no proper identification and analysis of the risks that had previously been identified. There is no reference to why the contact between Mary and Bethany was supervised and no analysis of what changes, if any, had taken place since those assessments and decisions.

50. In any event, the child and family assessment also reads:

“[Mary]’s wishes and feelings as they were obtained during the course of the child and family assessment from [Mary] herself and, for example, on 17 May 2022, it is recorded, ‘[Mary] and I chatted about the time that she had been spending with [Bethany]. [Mary] stated, “I am not seeing Mummy and spending time with her. I would like to do it more.” I asked [Mary] how she would feel about going to [Bethany]’s house. [Mary] stated “I would love that and see papa and grandma and my aunties and my cousins.” I told her when the next time she would see mummy it was going to happen and [Mary] did a fist pump in the air. [Mary] and I chatted about [Alice], she shared that they ought to play games together, make jigsaws and things. “I love this mummy lots too”, she said.””

51. The assessment goes on to record:

“I chatted with [Mary] about different types of families and how some parents separate and the children then have two parents. They spend some of the week with one mummy and then the rest of the week with the other mummy. [Mary] initially stated that she would love to do this. “I want to spend more time with my mummy.” [Mary] then went quiet and said, “Wait, maybe I do not want to do this.” When I asked why, she said, “My mummy has lots of family people to make her happy. My other mummy does not, there is only me and her, and she would be sad and lonely when I am not there.”””

and it goes on to record that Mary was reassured that the social workers speak to both mummies and that everyone make sure that Alice was OK.

52. Because, as I understand it, there were relatively rapid proposals for changing the contact arrangements, Alice made an application to court on 31 May 2022 to discharge the care order, being concerned, as she saw it, that the local authority was pursuing a plan of rehabilitation with respect to Bethany and Mary, and that contact was being proposed to take place in June 2022 without any risk assessment or indeed revisiting the previous psychological assessments.

53. That application came before Judge Forrester on 6 June. Bethany, again, did not attend the hearing. A social work statement was subsequently submitted which is dated 24 June, sets out as follows:

“Both [Alice] and [Bethany] have very different views in relation to how we are in the current situation. Although [Bethany] appears to have changed her view to look forward and spends less time focused in the past and is prepared

to work towards a shared care situation, which would continue to be reviewed via the child Cafcass process and have oversight from the IRO. [Alice] remains focused on the past assessment and behaviours and does not want to work towards a shared care situation.”

54. The statement goes on say:

“In preparation for the family time being introduced, the risk assessment matrix was completed covering the main concerns that were evident when reviewing children’s services’ records ...”

55. I pause to observe that I have not seen that document and have not been referred to it, and I am sure it is not in the bundle.

“The risk assessment matrix was clearly at the risk of harm being identified at a minimum ... It was agreed with [Bethany] that family time was to be moved from the family centre, because [Bethany] continues to express her discomfort that this was not a good environment for family time to take place in, and she requested that this took place [closer to where she lives]. [Alice] had not agreed with this plan.

Family time was arranged to take place near to where [Alice] lives. [Bethany] stated she would not be attending family time with [Mary] anywhere else other than where she lives and had identified an appropriate venue for this to take place. Such a decision to have no contact would have significant impact on [Mary], who needs both her mums in her life. It was decided that in [Mary]’s best interest the contact would be moved to where [Bethany] lives to ensure that a relationship between [Mary] and [Bethany] could be assessed.

The family time was a success for [Mary]. A trajectory plan was devised with input from [Alice], [Bethany] and family worker, with family time happening once per fortnight. **The plan was for family time to move into the community, then to [Bethany]’s house, then reduced to semi-supervised.** At a looked after children’s review on 27 May 2022, the reports were that family time was going well and [Bethany] requested more time to eat in contact. The care team agreed with that change and this was implemented after discussion with [Alice].

Direct work was completed with [Mary] on **20 June 2022** at school. The three houses task was completed with [Mary]. In her happy house she placed [Bethany] or [Alice], playing football, bubble gum, ice cream and chocolate. In her house of worries she put sitting in the front seat of mummy’s car because I am not 13 yet, being tired when I get home from mummy’s house, my mummy will be all lonely when I am not at home. In the house of hopes and dreams, she placed a dog and a cat as pets, getting married to [Fred], her boyfriend at school, being his wife and having two children, sleeping at mummy’s house when I am not tired the next day, sitting at the back of the car. When completing the direct work with [Mary], she called both [Alice] and [Bethany] mummy, but she would distinguish making say which mummy she is saying by saying mummy [Alice] and mummy [Bethany].” (my emphasis)

56. Those are Mary's expressed wishes and feelings as of June 2022 - that she loved both her parents, that she wanted them to be living together in the same house.

57. In preparation for the hearing which ultimately took place before HHJ Forrester on 22 July, the solicitor for the child at the time prepared a position statement setting out the views of the guardian. That position statement, which is dated **19 July 2022** says as follows:

“The guardian has had sight of [Alice]'s statement dated 15 July 2022 and understands her concern of the shifting position regarding [Mary]'s time with [Bethany]. The guardian will note that whilst it is a new social work team working with [Mary] and her mothers, our role remains the same as in the last proceedings which provides some level of consistent oversight. The guardian notes that [Alice] does not raise any particular issues within her statement with the contact that has taken place since the last hearing.

The Court will recall the guardian's position during previous proceedings in reporting that [Mary]'s time with Bethany was enjoyable and beneficial, and encouragement was given to [Bethany] to work with the local authority. The guardian is pleased [Bethany] is now engaging with the authority as that is only in [Mary]'s best interests and the guardian is content that the local authority is managing the contact arrangements and the risks under the care order.

The guardian is disappointed that [Bethany], refusing to engage with the proceedings, and that continues to raise some concern involving her insight and ability to work with professionals going forward. Nevertheless, she is working with the local authority and the guardian does not consider her reluctance to engage in these proceedings a barrier to the progression of contact as the local authority proposes. The guardian also does not support the application by [Alice] seeking the discharge of the care order. This is due to the dynamics in the parental relationship and the significant history of concerns regarding [Mary]'s welfare and potential emotional harm.

The guardian remains of the view that the local authority needs to remain involved to ensure [Mary]'s welfare needs are met. **The development and progression of contact between [Mary] and [Bethany] is only in its early stages and it will be wholly inappropriate and not in [Mary]'s interest to discharge the care order nor remove the support and oversight from the local authority the care order brings. Should there come a time whereby arrangements for [Mary] are established, working well and both parents are able to positively communicate and cooperate in [Mary]'s best interests, the local authority or parents can make an application to discharge the care order at that time.** Until such time the care order remains necessary.” (my emphasis)

58. As I said, that position statement is dated 19 July. On 22 July, again, Bethany refused to come to the court hearing. Overnight contact had taken place by the time of 22 July on only three occasions. Alice agreed to withdraw her application presumably being reassured

by the expressions of the need, reinforced by the guardian, to continue oversight of the situation and, indeed, the observations made by the guardian that things were at early stages.

59. For reasons I have not fully delved into and are not, as I said at the beginning of the case yesterday, necessary for the purpose of this judgment, within a few weeks the local authority were proposing a shared care arrangement. That was not, as I understand it, the proposal that was before the court on 22nd July 2022 nor was it the basis on which HHJ Forrester agreed to end those proceedings (nor was it, I understand, the basis on which Alice agree to a non-contested conclusion of those proceedings). In due course I will require an explanation as to why, given the proximity of the July hearing and the radical change in care plan, the court does not appear to have been told that this was the intention of the local authority.

60. On 12 September 2022, the shared care arrangement was implemented with the arrangement being proposed being six nights with one parent and one night with the other, week one, and six nights with the other parent and one night with the other, week two, so that time was shared precisely equally.

61. On 19 September 2022, the social worker visited Mary at Bethany's home whereupon Mary locked herself in Bethany's bathroom and refused to leave Bethany's care. Some direct work was undertaken with Mary and of which I have copies.

62. The first was dated 10 October 2022 and of course this must be put in the context of the wishes and feelings that I referred to earlier expressed not many months before which revealed in essence Mary's love for both her mummies and her wish that they should live in a house together.

63. On 10 October 2022, Mary drew a picture which had both Alice and Bethany in it and recorded as follows,

“Where it helps my mummies to make decisions because they do not like each other and they argue about lots of things. I sometimes feel stuck in the middle of my mummies and I want to spend more and more time with Bethany. I do not like the contact centre. Things are much better now. I like the new plan. Mummy [Bethany] said I was spending 10 days with her in October. Mummy [Alice] said she was not going to let is happen. I love both my mummies very much and wish they would be able to live together with me.”

64. At C76 of the bundle, there is a further piece of direct work. It is not clear, although I am assuming from the order of the documents that this is on the same date, that is, 10 October, or sometime shortly thereafter. There are listed under the headings Alice and Bethany, what Mary thinks in relation to both of them, and under the heading Alice it says this:

“It is OK. There is sadness there sometimes. Mummy shouts at me sometimes when we were playing chess this weekend. I was upset when I lost and my mummy said, ‘Does [Bethany] let you win all the time?’ I was then sent to my bedroom and cried myself with my teddies. I was sad. [Alice] and I have some fun times. We like going to the cinema. I went to see Mario 2 yesterday. [Alice] is not my real mum. Yes, I want to have a conversation with her about it but I am scared because I think she will get mad. My mummy does not say nice things about you to me.”

65. Under the heading Bethany:

“Feels lots of love and hugs. I feel safe when I am with mummy [Bethany]. I have two fish in my bedroom. I love seeing my cousins and spending time with them. I remember being taken away from my mummy and feel very sad. I did not know where she had gone. I did not want to talk about it as I was so sad. My mummy really fought for me. She told everyone what had happened and went to the top TV people and she was on the TV. She was very sad and angry.”

66. I observe that that the time Mary was removed from Bethany’s care she was 3 days away from her 2nd Birthday and therefore it is worth considering the possibility that Mary did not have any direct memory of being removed from Bethany’s care. It seems to me obvious that other comments are very likely to have come not from any direct memory that Mary may have but from another source. The local authority evidence does not at any stage seek to analyse these possibilities.

67. There is then a further work session which is dated 25 October, so some 15 days later, by which time the picture had somewhat remarkably changed. There is a picture of a magic wand which reads “If I had a magic wand” and, then, what is written as the magic spell from that magic wand is, “Never, ever see [Alice] again. I just do not want to.”

68. I have searched the papers in vain for anything that has an analysis of such a stark contrast between the views expressed as I have set out in June, July and then October 2022, and the view recorded in the direct work session that took place on 25 October 2022, that Mary does not want to see Alice ever again.

69. Further recorded on 25 October 2022 are the following wishes and feelings expressed by Mary:

“I do not want you to speak to [Alice]. She will get angry. I do not think [Alice] will change ever if you speak to her. She says angry things about mummy [Bethany]. She changes when social workers come round. She keeps asking where mummy [Bethany] lives. She showed me a photo of her front door. What do you call me to a stranger? I said, ‘I do not know’ and she said that is not a good enough answer.”

70. On 9 November, Mary told her school teacher that she wanted to telephone the social worker. During the course of that telephone call, she informs the social worker that she was very unhappy at home, meaning Alice's house, that she did not want to return to Alice's house the next day as planned and that she was not wishing to leave the care of Bethany, that she did not want to see Alice again.

71. On 10 November, there is a diagram at C79 which, again, is under the heading of direct work on which a number of people are drawn and then named. Only mummy Bethany was drawn on the picture and Alice is nowhere to be seen.

72. Again, I looked within the documents provided by the local authority for some analysis or even some acknowledgment of the change. How did it come about that Mary's views had gone from loving both her mummies and expressing positive views in relation to both of their mummies as recently as a few months ago to never, ever wanting to see Alice again? Insisting on remaining in Bethany's care as of 9 November, to the extent of a child just turned 7, knowing that she could ring her social worker from the school to express those views? Any such analysis is entirely, in any real sense, absent from the documents that have been produced by the local authority to date, including the ones prepared for this hearing.

73. Alice has not seen Mary and Mary has not seen Alice since that time. Again, it is difficult to detect in the papers that have been filed what attempts have been made by the local authority to rectify or, indeed, understand that very sudden and, at present, unexplained at the very least, change in Mary's view vis-à-vis Alice. No attempt to observe how and in what circumstances Alice and Mary's relationship had changed in the context of not being under the influence of anybody else, by for example picking her up from school and observing her in Alice's care.

74. Neither do I see within the papers before me any reflection upon the possibility that just, perhaps, the risks identified throughout the papers in the previous proceedings could be at play. No consideration of the views previously expressed by Bethany vis-à-vis Alice and, indeed, the assessments by two separate psychologists, and a parenting assessment, vis-à-vis Bethany's approach and personality profile. No deliberation in the context of Mary's sudden shift in views vis-à-vis Alice. It is, if I may say so, a startling omission from the evidence that the local authority has submitted.

75. The local authority appears, it seems to me, to have taken Mary's expressed views at face value and therefore no serious attempt at re-establishing a relationship between Mary and Alice is evident from the papers that I have read, and Mary and Alice have not seen each other to date.

76. In the end, faced, I suspect, with little choice, Alice issued an application for contact to a child in care on 8 February 2023. The matter came before me, having been transferred to me by District Judge Stone, for the first time on 31 March 2023. In that order, I recorded that Alice seeks return of Mary to her care and I recorded that Bethany had not attended court. She had emailed the Court, I recorded in the order, indicating that she did not intend to attend court or seek legal representation. It is recorded on that order:

“The Court has made it clear today that [Bethany] must attend the next hearing and has directed her to attend ... The local authority will personally serve a copy of this order upon [Bethany].”

77. I gave directions for the filing of statements from both parents and, indeed, a guardian’s analysis by the children’s guardian, Mr Moray. Mr Moray is new to this matter.

78. All of the directions that I made in that order have been complied with, save that I do not have a statement from Bethany.

79. I listed the matter on 12 and 13 April for a day and a half, and the first day of the hearing was yesterday.

80. In the meantime, the local authority filed a statement in which the local authority, certainly, up until the hearing on 12 April, was of the view that Mary should remain in the care of Bethany and that, in essence, work should be undertaken to see whether there was any way of re-establishing the relationship between Mary and Alice. The guardian has filed an extensive and lengthy and detailed report, having undertaken a great deal of work in the most short amount of time, especially being new to the family.

81. The guardian’s report, which I am obviously in this judgment not going to relate fully, was prepared with the cooperation of both Bethany and Alice and relates Mary’s expressed wishes and feelings. He also interviewed the head teacher of Mary’s school and reports as follows:

“Mary has attended her school since she was four years old and Miss [Smith], that is, her teacher, describes [Mary] as a lovely little girl who is very bright and articulate. Miss [Smith] informed me that she had no concerns over the care given to [Mary] by either [Bethany] or [Alice] and stated that [Mary] has thrived in the care of both her parents.

Miss [Smith] stated that, academically, [Mary] is a very bright child, although there continues to be room for improvements. She describes [Mary] as quite a normal little girl who interacts well with teachers and pupils. She stated that should [Mary] be involved in any accidents, she is very keen to make sure that everything is recorded, as she knows she is under a care order. She is anxious about making mistakes and can get quite upset if something is wrong and if she does not get it quite right. In relation to these incidents, Miss [Smith] told

me that [Mary] never said or indicated anything to indicate that she might get in trouble with [Alice].

With regards to the last term, Miss [Smith] stated that [Mary] seemed fine up until last November. On Monday, she asked to come into the office and speak to a social worker. Miss [Smith] stated, she was very surprised when [Mary] stated she did not want to return to the care of [Alice]. There has been nothing in her demeanour or behaviour before that point that would have indicated [Mary] was going to say this. Miss [Smith] stated there have been some low-level issues when dealing with both parents, but generally she felt that [Mary] had become squeezed between her two parents.”

82. During his conversations with Bethany, Bethany expressed the view that if she had failed to engage with the local authority previously, it was because they were not listening to her and not being honest with her. She wanted to point out that she had not put any information relating to Mary on social media for some considerable time, and that when she received the most recent court order in the case she felt like it was against her.

83. In relation to the overall position, the guardian says this,

“I have given careful consideration to the decisions made by the local authority on behalf of [Mary] and I am struggling to understand how the current situation has arisen. The Court being aware of the previous finding of fact hearings, the previous judgments made by the Court and the psychological assessments within the previous proceedings. Having considered all of that documentation, I am finding it difficult to understand the actions of the local authority in progressing [Bethany]’s contact with [Mary] with a view to considering a shared care order made. I do acknowledge that an updating parenting assessment was completed in relation to [Bethany] which was positive. However, the issues in the case do not relate to the ability of either parent being able to meet [Mary]’s basic care needs, or engage with children’s services. It is my view that the principal issues of this case were those identified in the psychological assessment and, as such, those concerns identified by the assessment, I would say, were beyond the remit of the social work assessment and should have been considered by an updated psychological assessment, preferably completed by Dr Ashcroft.”

84. He goes on to say,

“While leaving to one side that there should have been a further psychological report, I am also struggling to understand that, irrespective of the positive parenting assessment of [Bethany] why the local authority deems this case suitable for a shared care arrangement. In my opinion, a shared care arrangement, for it to have been successful for the child, rather than for the parents, there needs to be a high level of cooperation and engagement between the parents. It is very clear from the history of this case that this has never been the case between [Bethany] and [Alice], and as late as May 2022, the IRO reported that [Mary]’s parents continued to have a very acrimonious relationship.”

“I have given careful consideration to the most recent local authority and party statements. I have also conducted interviews with those professionals involved in the case, and [Mary]’s parents and, of course, [Mary]. I feel that, in relation to my interviews with [Mary], I need to draw attention to [Mary]’s wishes and feelings. It is clear to me in my interviews with [Mary] that she has continued in her previously stated wishes and feelings from November 2022, that she does not wish to have any contact with [Alice], and do feel that myself and the Court need to have some caution, given that she is only seven years old, and particular it would appear from those professionals involved with [Mary] between 2018 and 2022 that [Mary] did not express any significant concerns over the care given to her by [Alice] or her relationship with her. In light of those conclusions regarding [Bethany]’s ability to influence, either directly or indirectly, [Mary]’s stated wishes and feelings, stated by the previous psychological report, I feel that, unlike it would appear to the local authority, I need to exhibit some discretion when considering [Mary]’s current wishes and feelings regarding her relationship with [Alice].”

85. I have come to the view that this may be an understatement.

86. He goes on to say:

“I do not feel I have seen anything from the evidence presented by the local authority that principally addresses these concerns that have previously raised regarding [Bethany]. In light of this, I feel at this time, I can only come to the conclusion that [Mary] cannot remain in [Bethany]’s care, as the evidence before the Court clearly indicates that at this time, [Mary] will not be able to have a relationship with [Alice] while she remains in [Bethany]’s care. At this time, I am struggling to see how [Mary] can immediately be placed back in [Alice]’s care given [Mary]’s aversion to having direct or even indirect contact with [Alice] and, in light of this, with it appearing that no family member has been assessed for [Mary], the only other option is for a local authority foster placement. I would hope that this effective neutral ground would allow the re-commencement of [Alice]’s relationship with [Mary]. It would also allow time for further social work and psychological assessments to take place, in order that [Mary]’s long-term placements can be determined.

Regarding the balance of harm test, I feel at this time, as I have stated, I believe, a re-placement would either parent will inevitably cause harm. I feel that a neutral ground placement is the most appropriate placement in the interim. In relation to whether the current status quo can be maintained, there is little information regarding the concerns raised at the final hearing on 2008 before the Court regarding what has changed, what work has been completed during that time by whom and on what basis, and indeed that they are suitably experienced and qualified to complete that work. Given the current information before the Court, I believe it is very difficult to determine how any productive work on the issues highlighted in 2018 can be done with [Mary] while she remains in [Bethany]’s care.”

87. Having listed the matter for hearing to start yesterday and directing that it would be an attended hearing for reasons that I went onto explain yesterday, it was of some

disappointment to me that at the advocates meeting, I understand, it was indicated on Bethany's behalf that there would be a request for her to attend by video link, as opposed to attend the court directly. When Miss Doyle, who appears on behalf of Alice, Mr Flood, who appears on behalf of Cumbria Council, Mr Donnelly, who appears on Bethany's behalf and Mr Gilmore, who appears on the child's behalf, of course instructed by Mr Moray, came in front of me yesterday morning, I had already indicated by email that I wanted Bethany to attend in person.

88. I explained yesterday when I spoke to the parties that I would much prefer Bethany to attend. I explained that I wanted to see both parents, that I had a very important decision and, indeed, I regarded it as a very difficult decision and that I wanted to see Bethany in person, because I needed to ask her questions, just as I did of Alice, and I wanted to in effect understand and observe both of them in the context of everything that I had read. I also, of course, wanted to explore other options to that that had been suggested by the guardian.

89. I told Mr Donnelly that as he and his solicitor could communicate on the phone to Bethany, that I was prepared to treat her as a vulnerable individual as defined by Practice Direction 3A, that she could have screens if she wished or, indeed, any other provision could be made to secure her attendance at court if at all possible, and I indicated to Mr Donnelly that if Bethany's position remained that she would not attend court, then he could make a further application, for example, for her to attend by video. I stressed, at some length in fact, that I absolutely had not made up my mind in relation to what was best for Mary and, indeed, I raised with the parties that it seemed to me the key issue in the case was the balance of harm consideration and that any evidence or indeed submissions should focus upon that.

90. I reminded everybody or commented on the fact, that removal was an extremely serious step. I also raised that both the case recently conducted by Lieven J, when she looked at a rather unfortunate plan for placement in interim foster care in a case where the parents did not agree, and I was referring to the case of *Warwickshire County Council v The Parents* [2022] EWHC 2146.

91. I made reference to the House of Lords decision *Re G*, which I subsequently read in full, which involved a situation, a biological parent and the psychological parent were in an argument in relation to the actions of the biological parent, and whether that warranted a reversal in the arrangements for that child and, indeed, whether there was such a thing as a natural parent presumption.

92. I did not mention to the other parties, but I have subsequently read the case of *Re B* [2009] UKSC 5, which in a way clarifies the position in that it states that whilst there is not a

natural parent presumption, it is one of the factors to be considered and to be given weight depending on its importance when considering the factors in the welfare checklist, but was not determinative and the Court should always remind itself of the child's best interests should be its guiding principle.

93. And during the course of the discussions with counsel first thing in the morning yesterday, I observed that although there had been criticism of the local authority, and in due course I may or may not be critical of them, and that there may come a time when that needs examining, for today's purposes, I was concerned with making a decision based on where we are now, as opposed to picking over the past, and that the key issue in the case is the balance of harm.

94. I emphasized, again, that I had not made up my mind and asked Mr Donnelly, through himself or through his instructing solicitors, to communicate all of those points to Bethany via phone, as I was told they were in phone communication with each other.

95. On return to court, Mr Donnelly communicated to me that Bethany had indicated that she would not attend Court either in Carlisle or Workington. When I asked what the reason for that was, indicating that of course, if there were a good reason, that changed the complexion of things, he indicated that the only instructions he had were that it would cause her trauma and I was not given – and this is no criticism of Mr Donnelly at all – any further details as to what was meant by that, and at that stage, he informed me that he did not have instructions to make an application for her to attend via video link.

96. Although I indicated I was going to start hearing evidence, and indeed wanted to hear evidence from Alice, I indicated that over the lunchbreak he should communicate to Bethany that attending by video link would remain an option that was open to her, that I remained concerned that the decision that I had to make and I really wanted to hear her version of events to be in a position to assess her and that I had not made up my mind.

97. When we returned on that occasion, Mr Flood indicated that following discussions with a number of social work professionals in the local authority, it had changed its position and will be seeking the Court's permission to change the care plan to one of interim foster care, in line with the guardian's recommendation. Mr Flood also indicated that Bethany had sent the social worker a text message which, amongst other things, said, "I am willing to go to jail. I am going public with this, with everything this little girl has gone through."

98. I proceeded to hear evidence from Alice.

99. During her evidence, Mr Gilmore made me aware that there had been a posting on Facebook by Bethany of a video. This was shortly followed by a posting on a Twitter of, in

effect, the same message and the same video. It is to be observed that these postings, which I will relate in a moment, were made well before I had made any decision in the case and, as I have been at pains to indicate, I did not in fact make any decision in the case until I had completed hearing Alice's evidence and submissions yesterday.

100. The message posted on Twitter and Facebook said as follows,

“A message for Judge Baker, Carlisle Family Court. Please share far and wide and tag every important person in the country. You are pure evil to this little girl again. I won't allow you to do it again. [Mary] has disclosed abuse. The trauma of separate again will finish us.”

101. There was a video of Mary in which Bethany says this to Mary first,

“Tell Judge Baker from Carlisle Court what you think about this situation.”

And, then, Mary, getting increasingly upset, says this,

“This is not what I should be going through. I should be with a happy child life left with my mummy. I just want to be with my mummy. I don't want to be fostered. I don't want to be taken away. I don't want to be taken away.”

102. She then gets increasingly upset and in effect *screams*:

“I just want to be free.”

103. There have been further postings on social media since that time which I do not need to relate in this judgment, but observe that they identify the child, they identify Bethany, they identify Alice. I will also record that I have noticed on Bethany's Twitter feed there was a notice replacing a previously posted message, which said this,

“This tweet from [Bethany] has been withheld in the UK in response to a legal demand and they enquired as to what that was reference to.”

104. Alice told me, and I have no evidence to contradict it, that this was in relation to Bethany posting some of her, that is to say, Alice's, medical records online without her permission.

105. After the lunch break, Mr Donnelly had taken further instructions from Bethany, and Bethany had given the following instructions - that she would agree to appear by CVP but only if Mary could be present so that she could share her wishes and feelings with me directly. Mr Donnelly emphasized that they were his direct instructions and not, if I can put it this way, his application. I indicated that I would not be prepared to accede to such a request, with the reasons hardly need explaining, but the idea that whilst a child subject to this type of dispute would be sat in the home of one of the mothers and be relating to the

Judge her wishes and feelings when she had clearly, frankly already been told too much, did not meet with favour in this Court.

106. I still considered it important to hear from Alice because I wanted to understand her point of view. She started by telling me that she considered that the guardian had submitted what she considered to be a fair and balanced document, and that in fact she agreed with the recommendation, and was not seeking for Mary to be placed immediately directly in her care, because she accepted the logic of the guardian's report in relation to the likelihood of that succeeding, especially when taking into account the fact that she had not seen Mary for a considerable period of time and indeed the views that had been expressed by Mary.

107. She was, of course, of the view that Mary's expressed views were, in effect, highly influenced by Bethany, and she was of the view that the significant history; the postings on social media that had been taking place; the fact that Bethany has always, she said, said to her when she left that she could be sure that she would never see Mary again; and indeed the concerns that are littered throughout the previous proceedings in relation to Bethany's approach and behaviour, were all the reasons why she was of the view that it was highly likely that Mary's wishes and feelings, as expressed, would be adversely influenced by Bethany.

108. She explained to me that from her perspective, she was of the view that Mary had always known that she had two mothers and that there had been times when Mary had, for example, talked about being inside her, that is to say, Alice's tummy, and that Alice had corrected her and explained to her in a child focused way the difference in the sense that it was Bethany that had carried her during pregnancy. Alice described Mary in loving terms. Mary was articulate. She loves to draw. She loves reading. She loves doing sports.

109. She explained to me that most of her family live in [another country], but she has lived in the UK since 1997, that some of her family members have, in fact, moved to the UK, most, I got the impression, still live in [another country]. She has a number of close and long-standing friendships which have been formed over the last 25 years whom she would effectively class as her family, that she had a very good relationship with the school.

110. She said that she has never positively opposed contact taking place between Mary and Bethany, and indeed has never stood in the way of it taking place. There is no record I have seen that contradicts her assertion in this regard. She was concerned when there appeared to be, from her point of view, a very sudden and rapid progression towards a shared care arrangement in circumstances that from her perspective did not seem to take into account all that was known about Bethany from the previous proceedings, and I perceive from her a

sense of weariness when it came to the sheer number of times that she has had to come to court and, indeed, the various toing and froing, which is the most neutral term I can think of, in respect of issues with Mary.

111. She was anxious about the way that Mary is presenting and she is very concerned to ensure, if at all possible, that Mary does not associate her with any removal, if indeed the Court were to sanction removal from Bethany's care, but she did say that on previous occasions when there had been interruptions, for example, when the first transfer of residence had taken place as I referred to in the lengthy background above, that Mary quickly settled and she was, of course, understandably concerned about what would happen if the Court made such a decision. Of course, by the middle of her evidence, some evidence of what had or may happen manifested itself in the form of the posts that Bethany had already made on Facebook and Twitter.

112. She spoke, in fact, positively about the early stages of the increase in contact between Bethany and Mary, and it is right to say that certainly in terms of her communication with professionals, whilst Alice has often expressed concerned about Bethany's motivations, I have not seen references to her being critical as to the time that Mary spent with Bethany in terms of whether Mary enjoyed the time she spent with Bethany. She asserted that she had always promoted contact, and indeed agreed that Mary always appeared to enjoy contact with Bethany, and she entirely accepted that Mary wants to spend time with and see Bethany.

113. She explained to me how when she picked her up on 31 October 2022, she was excited to see her. She had a Halloween outfit that had been made ready for her. They had gone to the fireworks that had been a very pleasant experience.

114. I consider this to be, in essence, an interim decision, in circumstances where what I am ultimately being asked to do is to endorse the local authority's now proposal for a change of care plan. Accordingly, I wish to be careful not to reach premature conclusions exceeding more than is necessary when making such a decision, and indeed not to be too influenced by a relatively brief period of evidence. Accordingly, I will restrict my comments to this much when it comes to Alice's evidence.

115. She said nothing and nor presented in such a way that undermined the assessment of her undertaken by Dr Ashcroft and indeed the generally positive impression that has been formed of her and expressed by other members of the judiciary, and indeed professionals (save perhaps Miss T, the current social worker).

116. That is not the same as saying I have come to a completely positive conclusion at this stage about [Alice], neither have I come to a negative one. The purpose of me hearing

evidence at this stage, in my view, was for me to get an impression of her and to see whether there was anything about her or anything in the answers which she gave to me that, in fact, undermined the general view that most professionals have reached of her in respect of the entirety of the length of this hearing, and there was not.

117. Miss T has observed in her initial statement that Alice seemed, and this is Miss T's view, "fixated" upon the past. Again, of course this is not a hearing in which I am enquiring in any huge detail in relation to the local authority's actions beyond that which is necessary for me to make this decision. I will simply comment that Alice's alleged 'fixation' with the past was to an equally opposite extent matched by the local authority's apparent lack of cognisance of the past. Whether, in fact, my opinion changes in relation to that remains to be seen, but at present, certainly on an interim basis, I had considerable concerns about the way the local authority has dealt with this matter since February 2022.

118. The inability or unwillingness of Bethany to take part in this hearing and the change in the local authority's position means that, of course, I have heard no direct evidence in opposition to the proposal that the guardian, which was adopted by the local authority by the on the morning of the hearing. In the circumstances, I dealt with the rest of the case by submissions and it seems to me I need to set out carefully where I consider the balance lies in this case.

119. I have approached this decision on the basis that, in effect, it is an interim decision akin to that faced by the Court if faced with an allegation pursuant to an interim care order to remove a child from the care of a parent. I have reminded myself that my overriding concern, of course, is the child's welfare. I have reminded myself that the child's safety is a particular concern and that safety means not only physical safety but also emotional safety in the context of welfare and, indeed, psychological safety and that my decision needs to be based firmly in consideration for the child's best interest both in the short and medium term.

120. Ultimately, I have come to the view that the best way to reach this decision is to balance the options, the realistic options, for Mary that I will outline in a moment. Her welfare, of course, is a guiding principle, although in reaching welfare decision I am not at this stage coming to firm factual decisions any more than are absolutely necessary but, ultimately, I am assessing risks that exist in relation to each of the options in the context of the welfare checklist.

121. What are the options for Mary? Well, I could just make a contact order (pursuant to section 34 of the Children Act 1989) directing that there should be contact between Mary and Alice, maybe even extensive contact and thereafter re-list the matter. Coupled with that, I

could leave Mary with Bethany and allow the status quo as it currently exists to persist. In my view that would involve Mary living with Bethany and, very likely, having no contact at all with Alice. I could follow the suggestion of the guardian (and now the local authority) that Mary is placed in foster care. The local authority helpfully informed me yesterday that a foster care placement is available, and indeed it is available in such a way as to ensure that there is as little disturbance as possible to Mary's daily routines. Or I could direct or indeed invite the local authority to change its care plan so that it involved a placement of Mary back with Alice.

122. In relation to the final option, no party, including Alice, has suggested that that is a sensible option at the moment. If required to, I can set out why I agree that that is not a realistic option at the moment in greater length, but in essence, given Mary's expressed, and I use that word advisedly, wishes and feelings and the possibility for a backlash and, indeed, the fact that at this moment in time that is probably not possible to make a completely final conclusion in relation to those wishes and feelings, it seems to me sensible that this option is not further considered at this time.

123. The first option was of course making a contact order. No party in fact has suggested that option. It has the advantage of avoiding removal of a child from the care of a parent, but I have reminded myself that the local authority have a care order and they have not achieved maintenance of any sort of relationship between Mary and Alice, despite the fact that, in essence, they have overriding parental responsibility for Mary.

124. I have reminded myself that, despite being asked to do so, and indeed ordered to do so, that Bethany has not attended court. She has not complied with the direction of providing the statement and, indeed, perhaps most importantly, she has posted and continues to post online very inappropriate things, both in contravention of the general provisions of section 12 of the Administration of Justice Act, but also and perhaps more important is specifically in breach of targeted order indicating that she should not do so and, of course, I note the comments that she makes to the guardian, which I related earlier, which indicated to me clearly that she knows precisely what she should and should not do.

125. I would emphasize in relation to the posts of social media, I frankly do not care what anyone posts on social media about me. That is part and parcel of doing the job I do and making the decisions I am employed to make. It is the fact that the various posts include material that identify and referring to the child, Alice, as well as Bethany, from an entirely one-sided perspective, that means that they are potentially extremely harmful. There are also identifying photographs. The geography of each participant in this case means that they are

all relatively local to each other. People could get entirely the wrong impression in relation to those posts if they are taken at face value, and therefore the order that is in place seeking to prevent those, which was made for obvious reasons, was entirely sensible but has had very little effect upon Bethany. Likewise, I have no basis and no confidence in relation to thinking that a contact order would have any effect or be complied with.

126. The fact that Bethany has not attended court, which is a habit of hers, without anything approaching even remotely justifying her non-attendance, is one of the reasons why I have related in such detail in this judgment the history of the case. It also indicates to me that her level of engagement with the court process, and indeed acceptance of the court process, is extremely low or indeed non-existent and is another reason why a contact order, in my view, is not a viable option.

127. Additionally, I have Mary's currently expressed views and I shall come on later to talk about Mary's wishes and feelings. I would be delaying matters and remind myself of the principles set out in section 1 of the Children Act that delay is an impediment to the welfare of the child and there has already been enough delay. For reasons I do not understand, the situation of no contact between Mary and Alice has been allowed to persist since November 2022 despite the fact that Mary had only just turned seven and, therefore, it seems to me, it an attempt to rectify the situation may have been possible had swift and decisive action been taken by the local authority the moment the problem manifested itself, and to delay further by trying something that I am utterly convinced will not work would not be in Mary's best interests.

128. Then there is the fact that, particularly of a consequence of viewing the video posted on social media by Bethany, I have concerns about the child's immediate welfare, which I will expand upon in a moment.

129. That leaves the options of leaving Mary with Bethany (with, inevitably, no contact taking place between Mary and Alice any time soon) or placing her in foster care. There are, of course, positives to leaving Mary with Bethany. I have related at some length, and there is no evidence to contradict it, the positive view that the school have of both parents. That includes the period of time that Mary has been in the sole care of Bethany and, indeed, there is plenty of evidence to suggest that on a day-to-day physical level and in respect of issues that do not relate to Alice, there is at least a sufficient level of care and possibly a very good level of care provided by Bethany to Mary, subject, of course, to the observations made in the psychological assessments as related above in respect of their assessment that Bethany would not be best placed to meet Mary's emotional needs. Nevertheless, an uninformed or casual

outside observer would, I suspect, perceive no particular difficulty in the way in which Bethany cares for Mary on a daily basis.

130. If I were to leave Mary in her care or to sanction leaving Mary in the care of Bethany, she would be remaining with her biological mother and I have to say, as indicated at the very start of the proceedings yesterday, I have thought very carefully about this and I have already mentioned my research into the law in relation to this topic and acknowledged that that is a factor that I have to include in my welfare consideration, but of course in this case there is a considerable caveat which lessens the weight attached to that factor. Alice has cared for Mary, by all accounts very well and without any concerns being raised about the way in which she is doing it, for the last four years. Additionally, although it is old evidence it is possibly still relevant evidence, the psychological assessment speaks positively of Alice. The only criticism of Alice in the psychological assessments is that she allowed herself to be too easily manipulated and controlled by Bethany. It may transpire that she was not the only one.

131. The reality of the situation, as the Court has acknowledged in previous judgments, is that the parties in this case always intended that Mary would have two parents. That was their intention when they arranged for the conception and, indeed, birth of Mary. That was their intention when they got married. That was their intention when they initiated step-parent adoption proceedings and that has been the Court's intention and clearly expressed wish throughout the entirety of Mary's life and indeed everyone has approached it in that way, in particular Mary, and until negatives started being expressed by Mary at exactly the same time as she started spending a considerable amount of unsupervised time with Bethany. Until that time Mary undoubtedly considered that she had two mummies and given the circumstances of her birth she has no other parental figures in her life.

132. Therefore, for all those reasons the fact of leaving Mary in the care of Bethany would be to leave her with her biological parent is, in my view, a factor of very limited weight.

133. Leaving Mary with Bethany would, of course, accord with Mary's current outwardly expressed wishes and feelings. These are wishes and feelings that, for some reason, Bethany thought that I would not be aware of. They have been clearly relayed to me, as I have set out in this judgment, and has certainly meant that I do not need to hear Mary talking with me directly via a video link in the circumstances proposed by Bethany. I will analyse the position with Mary's wishes and feelings a little later.

134. Of course, the biggest advantage to leaving Mary with Bethany is that it avoids a potentially dreadful event, and of course that dreadful event is the possibility of removal. Now some of the harm caused by a removal, of course, is likely frankly to be contributed to

by Bethany's reaction as has already been seen, or others have already seen in the past. Leaving aside that aside for the moment, I have thought very carefully about the fact that this is a proposal that involves placement of a seven year old who is intelligent and aware of what is going on, with strangers, and indeed I asked Alice, who of course knows Mary much better than I do, how she thought that Mary would react, and ultimately Alice was entirely in my view child-focused about that, in that she made it clear that she thought that Mary would be extremely upset and could become potentially disturbed by such a proposal, but ultimately have the resilience and capability and intelligence to understand what and why it has happened, if explained to her in an appropriate and child-centred way and, of course, Alice herself, for entirely understandable reasons has an eye to the longer-term picture when it comes to Mary's welfare.

135. I think it is fair to say, as I will express in a moment, if it were not for the approach that Bethany has taken during and outside of this hearing, had she come and given evidence in to me, either directly or by video link, I would have attempted to explore every possible alternative to the recommendation that the guardian had made, including seeking to persuade her, as much as I could, to allow the relationship between Mary and Alice to be re-established as a matter of urgency.

136. Bethany has taken that option away from me. I am afraid I have come to the conclusion that her behaviour has been, in my view, part of her highly manipulative tactics, vis-à-vis the court process and this case.

137. What, then, are the disadvantages to Mary's welfare of leaving her in Bethany's care? Well, of course, it is perfectly possible for people to change, and my original analysis of this case bore in mind at some length and with some depth, if I can put it that way, the fact that the psychological assessments that I had were of some age, namely from 2018, and that, although they related to personality traits, and therefore, as a matter of general proposition, personality traits are likely to remain static features of an individual, they can change when a considerable amount of time has passed.

138. However, in light of what has happened recently and by recently I mean in the last few weeks, I have come to the conclusion that there is a very real risk, I conclude a high risk, that all those features identified in the two reports that I have referred to at length during the course of this, with apologies, lengthy judgment, still remain, and are highly likely to continue to be relevant. There is a very high risk or likelihood that they remain entirely pertinent to Bethany's current presentation.

139. One of the reasons why I have related the history of this matter at such length is because there are elements of it that, frankly, speak for themselves, and jump out from the history, and it is an exercise that, if I may say so, I wish that others – by others, I do not mean the lawyers or others involved in this court case, but others by which I mean social work professionals – had undertaken prior to making such radical changes in the care arrangements for Mary, because what becomes plainly obvious from the history is that there is a pattern to Bethany's behaviour. She cooperates when she is agreed with and is immediately uncooperative when someone does not agree with her, irrespective of even her own, but certainly her child's welfare interest.

140. She is, in my view, manipulative. The posting on Twitter and Facebook was a clear attempt to manipulate the Court. They are aimed at the Court, addressed to me, despite the fact that she had been given every opportunity, by any means necessary, save for one that would involve harming her child, of attending court either in person or, alternatively, via video link.

141. They are manipulative in the sense of that they seek to use the child in a way that lobbies for a result that Bethany wants, without any regard to the potential harm to the child of doing so, and they are likely to involve manipulation of the child and I will deal with that later when I come to looking at Mary's wishes and feelings.

142. She remains histrionic. The text refers to abuse. Mary has made no allegations of abuse that I am aware of, certainly none alleged to have been perpetrated by Alice, and yet that is what she asserts in her social media posts. Mary's express wishes and feelings do not amount to any allegations of abuse. In fact, they do not amount, frankly, to very much in terms of allegations about Alice's behaviour.

143. At the time that she posted on social media she must have informed her daughter that she might be going to foster care. That decision had not been made. I doubt very much that the information was imparted to Mary in a child focused way. As I have been at pains to make clear, this was not a Court that was rushing towards removal, and nevertheless prior to any decision being made Bethany had publicly posted a video of her child in a highly emotional state with a very real likelihood that what she had been told and the way she had been told was designed to heighten her distress and not reassure her, and, frankly, the risk that the child has been manipulated the child is obvious to any observer of the video.

144. The observations in the psychologist's report from 2018 that she is self-absorbed and lacking in insight are also demonstrated by her postings on Facebook. This is a child who wherever she lives in relation to either of these parents, because I know the geography well,

will never be very far away from people who know her. She has to go to school and she has to live in that community, which is a relatively small community and there on social media to be seen by all is a video parading her for all to see in a distressed and upset state, presenting an entirely one-sided view of the situation to the outside world and, also, in all likelihood to her child, in circumstances where the potential for harm is obvious.

145. That leaves aside the potential for harm for those on the end of those posts and criticisms, not least, of course, Alice, who is identified and thereby is placed, potentially, at considerable risk by such postings, especially when she was named and especially in the eyes of anyone who only knows half the story and a one-sided version of the story, and if Bethany were to stop for one minute and think about the effect on her daughter of the potential consequences of harm occurring to Alice, she would not do it, but as I said the psychological report identifies her as being self-absorbed and, at the moment, I have seen little to suggest that is not still the case.

146. Then, of course, there is her not engaging or only selectively engaging in court proceedings, and I have seen no evidence from any source that contradicts the view put forward by professionals and, indeed, Alice and that is entirely Bethany's own choice, but of course I suspect it gives her the security of being able to claim that she was not listened to, even though she has taken away from the Court the opportunity of listening to her.

147. In relation to the disadvantages of leaving Mary in Bethany's care, I turn to the issue of Mary's expressed wishes and feelings. My conclusion is that there is, in fact, a very real risk that Mary's wishes and feelings are being manipulated by Bethany. There were no problems observed by any professional prior to the rapid and substantial increase in unsupervised and substantial contact between Bethany and Alice. The changes in Mary's wishes and feelings coincided with the transition to unsupervised contact and shared care.

148. That change of approach is entirely contradicted by the evidence from Miss Smith that the guardian obtained and starkest of all is demonstrated by the difference between Mary's view on 10 October, which was:

“I love both mummies very much and wish them to be able to live together with me.”

to saying, on 25th October:

“I never want to see Alice again. I just don't want to.”

149. I return to the fact that I am afraid I find it astonishing that I can see no evidence at all within the papers that at that point anyone within the local authority thought to themselves,

hang on a minute, there is something going wrong here. How is it that we have a child of this age who has done such an enormous volte face in the space of 15 days? What variable has changed? What reasonable conclusion might we come to about why those comments have been made, given what variables have changed? Without reaching a *final* view, in terms of risk, it is worthwhile identifying that certainly in my preliminary assessment there is a substantial amount of adult language in what Mary says. Seven-year-old children, in my experience, do not usually say in a phone call to a social worker “She won’t change.”

150. Further, “I want to be free” is an odd observation made in the video posted on social media by a child of this age. I could relate others on a piecemeal basis but many are obvious from the quotes related above. Mr Gilmore told me that the Guardian was of the view that some of Mary’s recorded comments did not strike him as being age appropriate but more redolent of adult speech.

151. The video that has been posted and must have been made very recently causes me considerable concern in relation to Mary’s welfare. It is an act of manipulation which is wholly about Bethany’s adult desire and wholly against her child’s interests, and of course the entire picture, all of those things I have listed, points to a conclusion that indicates there is a very real risk that Mary’s expressed wishes and feelings are not her own but in fact have been induced by Bethany for Bethany’s own ends and that involves a process of manipulation and indoctrination, which is emotionally harmful in itself, but of course also potentially leads to the consequence of a more medium and longer-term harm, that is to say, an entirely negative view of the person who, in fact, has cared for her for the majority of her formative years and, according to every other piece of evidence, has done a good job at doing so.

152. I have come to the conclusion that there is a very real risk that this child is being subject to considerable emotional pressure and manipulation whilst living with Bethany.

153. Finally, if I leave Bethany with the care of Mary I am absolutely certain that contact between Mary and Alice is not going to take place. That, of course, is a longer-term harm. Were it to be the only factor, it may be that an alternative option could be the better option on an interim basis, although I would remain pessimistic about the prospect of rectifying that situation without some considerable intervention the like of which I struggle to formulate.

154. However, as this hearing has progressed, for the reasons that I have set out at length I have become increasingly concerned about the emotional harm that this child is being exposed to. In my view, there is a very real risk that on a daily or almost daily basis she is being indoctrinated by Bethany solely for Bethany’s own ends in circumstances where Bethany has demonstrated that she is able and willing to use and manipulate the child for her

own ends, and therefore very sadly I have come to the conclusion that leaving a child in that situation is, in terms of emotional safety and psychological welfare, untenable. Even when balanced against all the disadvantages of stranger care, I have come to the view that the option that is in Mary's best welfare interest at present is a placement in foster care.
